



Welcome to the latest edition of Gem Compliance's monthly regulation newsletter. The aim of the newsletter is to tailor industry news in an easily digestible format. As such, not all sources of industry information and FCA publications (and no PRA publications unless specified) will be covered. Therefore clients and associates of Gem Compliance should periodically check the FCA's website for other developments.

As we enter the UK's summer holiday period, the publication of regulatory papers and announcements has started to slow. However, there are several noteworthy news items from the FCA recommended for review in this issue of the newsletter, as well as relevant developments from other entities/jurisdictions.

The FCA's monthly [Regulation Round-up](#) was issued along with the FCA's latest [Policy Development Update \(Issue 24\)](#), which provides a list of recent and upcoming publications.

We hope you find this newsletter useful and should you have any compliance queries or require advice on any of these topics, please do not hesitate to contact us.

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Main features

- * FCA's Annual Report 2014/15
- * CP15/22 Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities
- * Updated Enforcement Referral Criteria
- * FCA Speeches
- * Industry News
- * Enforcement Actions and Prosecutions
- * Other FCA News and Publications

Industry News

Industry body reports a consultation covering a long-stop on complaints for financial advisers is likely to be published by the FCA in Autumn '15.

[Click here for article.](#)

High Court rules against two FOS decisions relating to income protection insurance after finding the same complainant acted fraudulently. The complainant has been ordered to return the redress already paid and has ruled no payment is due in relation to the second award.

[Click here for article.](#)

China Securities Regulatory Commission (CSRC) is to investigate abnormal market movements of the stock market and futures exchanges, and will transfer all cases of criminal activity to the police. The announcement comes after the Shanghai Composite Index is reported to have fallen 25% since mid-June and the Shanghai Exchange more than doubled its value in the last 12 months.

[Click here for article.](#)

The IOSCO (International Organisation of Securities Commissions) publishes a consultation entitled *Elements of International Regulatory Standards on Fees and Expenses of Investment Funds*, which seeks input from firms and regulators as to whether the standards remain valid or should be updated/supplemented following developments in markets and regulation.

[Click here for publication.](#)

FATF (Financial Action Task Force) issues public statement regarding jurisdictions with AML (anti-money laundering) and CTF (counter-terrorist financing) deficiencies.

[Click here for statement.](#)

The Pensions Regulator issues its annual report, which shows complaints have increased significantly year on year.

[Click here for annual report.](#)

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FCA's Annual Report 2014/15

In its annual report the FCA describes its activities over the last financial year with reference to its statutory objectives and the priorities detailed in its last Business Plan. The review covers, inter alia:

- * the FCA's take-over of consumer credit regulation;
- * the launch of Project Innovate;
- * the development of the Senior Manager's Regime;
- * the FCA's retirement income study and implementation of the new pension freedoms; and
- * LIBOR and Forex investigations.

The review also includes commentary on whistleblowing within 2014/15 and the FCA's performance against the principles of good regulation and its own service standards.

[Click here for the report.](#)

CP15/22 Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities

This paper confirms the FCA's final rules on the Senior Manager's Regime and the Certification Regime as consulted on in three previous CPs (Consultation Papers). This paper, and the feedback provided in certain sections of CP15/9 and CP15/5, form the policy statement for the regimes and the new conduct rules, which will apply to banks, building societies, credit unions and dual regulated investment firms.

The FCA has also taken the opportunity to provide practical assistance to help firms prepare for the new regimes. It is also consulting on proposals to include individuals involved in wholesale activity, who could pose significant harm to the firm or customers, within the scope of the Certification Regime. A number of other areas associated with the regimes are yet to be finalised but the FCA has included a timetable of key events, including publications, within the CP.

In response to concerns of potential conflict between the old and new regimes, the FCA confirmed it has not ruled out making wider changes to the approved persons regime once the new accountability regime is in place.

[Click here for Consultation Paper.](#)

Updated Enforcement Referral Criteria

Following recommendations made by HMT, the FCA has updated its enforcement referral criteria and summarised the process it takes when deciding whether to refer a firm/individual to its enforcement division.

The FCA has confirmed it takes the following into account when deciding whether to formally investigate:

- * Is an enforcement investigation likely to further the FCA's aims and statutory objectives?
- * What is the strength of the evidence and is an enforcement investigation likely to be proportionate?
- * What purpose or goal would be served if the FCA were to take enforcement action in this case?

The paper also confirms the FCA is able to appoint investigators to look into firms. Investigators can force individuals to attend interviews and answer questions, and firms that fail to co-operate could be found in contempt of court.

The FCA plans to publish a CP later in 2015 setting out how it proposes to implement HMT's other recommendations from its December '14 report.

[Click here for article.](#)

[Click here for the FCA's referral criteria.](#)

[Click here for HMT's Report.](#)

Industry News Continued.....

FOS dismisses complaint that a firm caused financial loss after it stopped acting for a couple as instructed to do so by the complainants. The firm had offered to refund trail commission, which the FOS confirmed was fair and reasonable.

[Click here for article.](#)

The PRA announces changes to depositor and policyholder protection provided by the FSCS.

[Click here for publication.](#)

FOS fines adviser £150 for delaying payment of an award to a complainant. The adviser said the delays were caused by the complainant reverting to her maiden name during the complaints process, which led the adviser to request further proof of identity. However, the FOS has confirmed the adviser took too long making the initial request for the additional information.

[Click here for article.](#)

Industry expert urges firms to check what IT suppliers are doing with client data, including how and where it is being stored.

[Click here for article.](#)

The Government's Summer Budget 2015 is published and includes changes to tax rules on dividends, inheritance tax and pension allowances.

[Click here for summary article.](#)

The Pensions Ombudsman agrees with Royal London's decision to refuse a pension transfer request to a small self-administered pensions scheme but criticised how the firm communicated its decision.

[Click here for article.](#)

Following the German Regulators report into Deutsche Bank's alleged manipulation of benchmark rates, which suggests the co-CEO, Anshu Jain, created an environment "which favoured behaviour involving the exploitation of conflicts of interest", German prosecutors have launched an investigation.

[Click here for article.](#)

Commenting on the final rules for the FCA's Senior Manager's and Certifications Regimes, TSC Chairman, Andrew Tyrie, said the regimes "should reduce the regulatory burden "compared to the approved persons regime." However, Tyrie urged the regulators to exercise judgment "to avoid recreating the bureaucratic, box-ticking, back-covering approach that characterised the discredited approved persons regime."

[Click here for article.](#)

The SEC publishes new investment management guidance relating to personal trading.

[Click here for updated guidance.](#)

FCA Speeches

“Investor engagement in a changing regulatory landscape,” by Marc Teasdale, Director, Market Oversight at the FCA

Teasdale discusses: developments in relation to inside information and the forthcoming Market Abuse Regulation; the use of dealing commission to fund company research; and the planned market study into investment and corporate banking.

Teasdale comments on the judgment of Ian Hannam and encourages individuals within relevant firms to review it, as it contains a detailed discussion of a number of points that directly relate to some of the difficulties that can be experienced regarding inside information. For example, it discusses how “information about future events (which have not yet happened, and may in fact never happen) is capable of constituting inside information.”

[Click here for speech.](#)

[Click here for Ian Hannam judgement.](#)

“Fair and effective markets review” by Tracey McDermott, Director of Supervision, Investment, Wholesale and Specialists at the FCA

McDermott discusses the lead-up to, and recently published report on, the Fair and Effective Markets Review (FEMR) - a wholesale review of the Fixed Income, Currency and Commodity (FICC) markets by the FCA, HMT and BoE, which seeks to identify the root causes of misconduct and discover the best ways to prevent recurrences.

Commenting on the importance of these markets, McDermott quoted the following statistics:

- * turnover in foreign exchange markets is some \$5 trillion a day;
- * the global stock of corporate, financial and government bonds in issuance is nearly \$100 trillion; and
- * FICC ‘over-the-counter’ derivatives amount to some \$620 trillion in notional terms.

The review found that “the markets broadly work and fulfil their function.” However, the misconduct has “severely damaged trust and confidence in [these] markets, deterring parties from participating, reducing volumes and increasing costs.”

Six root causes of the misconduct were identified. The FCA acknowledges that much has already been done to address them, however more effort is needed to “end the age of irresponsibility,” which is what the Review’s 21 recommendations are intended for.

[Click here for speech.](#)

[Click here for FEMR Report.](#)

“Accountability, from debate to reality” by Martin Wheatley, CEO of the Financial Conduct Authority

Wheatley comments on the challenges caused by the Senior Manager’s Regime and urges those affected to move on from “policy debate” to “practical implementation.”

[Click here for speech.](#)

Industry News Continued.....

FCA asks providers for data connected to pension freedoms, including data for insistent clients.

[Click here for article.](#)

Equitable Life Payment Scheme is to close to new claims at the end of this year. It was also announced by the Government that certain eligible policyholders could see their lump sum payments double.

[Click here for article.](#)

FT Adviser reports that one adviser has seen his annual regulatory bill (excluding the FSCS interim levy in March) rise by 400%.

[Click here for article.](#)

The Pensions Ombudsman has again refused to apply retrospective regulation in two other pension transfer complaint cases.

[Click here for article.](#)

Firm highlights the regulatory risk associated with failing to archive social media interactions.

[Click here for article.](#)

The Work and Pensions Committee is to launch an enquiry into advice and guidance related to pension freedoms.

[Click here for article.](#)

FOS gives a number of the largest financial services groups an additional 75 free cases, bringing the total number of free cases for these groups to 200.

[Click here for article.](#)

BoE Governor, Mark Carney, indicates an interest rate rise could come by the end of the year in order to return inflation to 2%.

[Click here for article.](#)

HMRC publishes paper covering its plans to overhaul Capital Gains Tax on carried interest. The changes are reported to impact individual fund managers who participate directly with the underlying vehicle.

[Click here for publication.](#)

Government announces it will bring forward a Bank of England Bill to improve the Bank’s governance and accountability.

[Click here for article.](#)

Speaking at an Association of Professional Financial Advisers’ seminar in London, Rory Percival, Technical

Specialist at the FCA, and Harriet Myles, an outreach officer from the FOS, suggested insistent clients should be asked to put in writing why they are choosing to ignore their adviser’s advice because “you can’t argue with something in their own words.”

[Click here for article.](#)

Other FCA News and Publications

Press Releases

FCA confirms it has lost the battle over strict call recording requirements under MiFID II, which will require **all** firms subject to MiFID to keep recordings of telephone conversations concerning transactions, and those that are intended to result in a transaction. [Click here for article.](#)

FCA publishes a summary of findings concerning from implementation of the new pensions freedoms, which have been identified through monitoring work carried out by supervisors since the introduction of the reforms. The FCA reports that most firms have coped well with the additional demand but there have been operational challenges at a minority of firms. [Click here for press release.](#)

FCA announces the appointment of Jonathan Davidson as the new Director of Supervision – Retail and Authorisations. [Click here for press release.](#)

FCA confirms approval of the FOS as an ARD (Alternative Dispute Resolution) entity. [Click here for press release.](#)

Martin Wheatley is to stand down as CEO from 12th September 2015 but will continue to act as an adviser the FCA Board until the end of January 2016. Tracey McDermott will be appointed as Acting CEO until a permanent replacement is found. [Click here for press release.](#)

Other Publications

PS15/17: Pension Wise – recommendation policy – contains feedback to CP15/12 and the FCA's final policy for designated guidance providers delivering Pension Wise. [Click here for Policy Statement.](#)

CP15/23: Ring-fencing: Disclosures to consumers by non-ring-fenced bodies. [Click here for Consultation Paper.](#)

PS15/18: FCA Competition Concurrency Guidance and Handbook amendments: Feedback on CP15/01, finalised guidance and rules. [Click here for Policy Statement.](#)

FG15/8 - FCA's powers and procedures under the Competition Act 1998. [Click here for Finalised Guidance.](#)

FG15/9 - Market studies and market investigation references. [Click here for Finalised Guidance.](#)

FCA's Annual Public Meeting 2015. [Click here for further information.](#)

Enforcement Actions and Prosecutions Continued

Tom Hayes, a former UBS and Citigroup trader who denies 8 counts of conspiracy to defraud in relation to Libor rigging, has said during his trial "I acted with complete transparency; my managers knew, and my manager's manager knew. In some cases the CEO was aware of it." Hayes is the first individual in the world-wide investigation to stand trial for allegedly manipulating the benchmark rate. The trial continues. [Click here for article.](#)

Former Virgin Atlantic pilot, Mark Entwistle, has been jailed for 14 years for a £30m mortgage fraud scam and ordered to repay just £1 after prosecutors failed to find any assets. The accountant and solicitor involved in the scam have also been sentenced. [Click here for article.](#)

Following an investigation by the Insolvency Services, the High Court has wound up Warlord Productions Ltd, a firm production company, for failures concerning the recording, managing and accounting of around £3m of private investment funds. [Click here for article.](#)

In response to a report by the Jersey Financial Services Commission, the MLRO of the Jersey pension provider STM Group has been dismissed for gross misconduct regarding internal reporting of suspicious activity reports. The Managing Director has also stepped down. [Click here for article.](#)

Origen Financial Services is the subject of a section 166 review for recommendations made to a number of DB (defined benefit) members that were part of an enhanced transfer value exercise. [Click here for article.](#)

