



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.

The FCA has published a summary of its MiFID II implementation round-table with trade associations and announced the publication of draft technical standards by ESMA. The latest MiFID II news can be accessed [here](#) and also includes details of its upcoming MiFID II conference for wholesale firms. MiFID II comes into force on 3rd January 2017, therefore firms within scope are advised to subscribe to email updates (which they can do [here](#)), to make sure they don't miss anything.

The FCA's monthly [Regulation Round-up](#) was issued, however the next issue of the FCA's Policy Development Update (Issue 26) has not yet been released.

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

- * CP15/27: UCITS V implementation and other changes to the Handbook affecting investment funds
- * CP CP15/29: Amendments to Various Forms
- * CP15/28: Quarterly Consultation Paper No. 10
- * Industry News
- * Enforcement Actions and Prosecutions
- * Other FCA News, Publications and Speeches

Industry News

FCA blames complex cases for increases to application processing times.
[Click here for article.](#)

HMT rejects adviser request for financial services fines to be used to offset the FSCS fee increases caused by unregulated investments held in SIPPs. Earlier this year the FSCS announced a 75% year on year increase in the pensions and life intermediaries sub-class levy for 2015/16. A spokesperson for HMT said "it is right that fines collected from the financial services industry, over and above enforcement case costs, are returned to the taxpayer."
[Click here for article.](#)

APFA's Chris Hannant has said the regulator may lean more towards an insurance solution to limit adviser liabilities rather than the 15-year long stop.
[Click here for article.](#)

Lloyds Bank has labelled a FOS decision regarding an alleged mis-sold savings endowment policy, which began in 1995 and was surrendered in 2007, as speculative. The Ombudsman handling the case accepted a number of representations made by Lloyds - such as the firm had no reason to keep information relating to the policy that was surrendered so long ago - but concluded a 15-year savings policy wasn't a suitable recommendation when the complainant planned to retire 7 years later.
[Click here for article.](#)

It is reported that the FCA is looking into the increase in Friends Life's share price days before the merger with Aviva was first published in the press on 21st November 2014. Prior to the spike in share price (to 380bps), which attracted the regulator's attention, trading in September and October had been between 290bps and 310bps, and had fallen 14% since the start 2014.
[Click here for article.](#)

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CP15/27: UCITS V implementation and other changes to the Handbook affecting investment funds

In this Consultation Paper (CP) the FCA sets out three sets of proposals for authorised investment funds:

- * Part I looks at the changes required to transpose UCITS (Undertakings for Collective Investment in Transferable Securities) V into UK regulation by 18th March 2016. UCITS V aims to address issues and risks that have emerged since the financial crisis by:
 - ➔ strengthening the rules relating to responsibilities of depositaries;
 - ➔ introducing remuneration policy requirements for management companies; and
 - ➔ ensuring national authorities have a minimum set of powers to investigate and sanction breaches of the Directive.

Most of the detailed requirements for depositaries and management companies will be set out in the European Commission's (EC's) Level 2 measures, which are yet to be published, as the adoption process has not yet begun. Level 3 guidelines from ESMA (European Securities and Markets Authority) are also awaited.

- * Part II describes proposed Handbook changes for the introduction of ELTIFs (European Long-term Investment Funds) - a new type fund that will invest in assets of a long-term nature, e.g. infrastructure projects and SMEs); and
- * Part III proposes changes to the Handbook to clarify and update rules relating to authorised funds. Part III also mentions some areas, which the FCA is keen to explore further with stakeholders:
 - ➔ allowing fund managers greater flexibility when temporarily ceasing the acceptance of new subscriptions into a fund (known as 'soft closure');
 - ➔ broadening access to UCITS schemes; and
 - ➔ changes that could be made to the Handbook to "enhance the attractiveness of ELTIFs as a new type of fund for both institutional and retail investors."

The next steps for each part of the CP are as follows:

- * Part I - the consultation period closes on 9th November 2015 and the FCA intends to publish a Policy Statement (PS) in early 2016. The FCA also hopes to issue a CP on Handbook changes for the EC's proposed level 2 measures by the end of 2015, however this will depend on when the final level 2 measures are published.
- * Part II - the consultation period closes on 5th October 2015 to enable final rules and guidance to be in place by 9th December 2015, the date the ELTIF Regulation comes into force.
- * Part III - the consultation period closes on 7th December 2015 and a PS should be issued sometime in 2016.

[Click here for consultation paper.](#)

CP15/29: Amendments to Various Forms

This CP details changes to various forms, some of which are listed below. Changes to forms connected to the new Senior Manager's Regime (SMR) and equivalent insurer's regime (SMIR) take effect from 17th March 2016. However, other changes are being made under the powers of direction, and therefore take immediate effect.

Changes that came into force on 18th September 2015 reduce the scope of the fitness and propriety information being sought to ongoing investigations and past convictions (spent and unspent), which are not protected by the Rehabilitation of Offenders Act. Forms that have been updated include the Long Form A, controller forms for authorisations, and change in control forms.

[Click here for consultation paper.](#)

Industry News continued...

The Financial Services Consumer Panel says Pension Wise staff should be "as qualified and experienced as financial advisers." It also suggests a retirement income calculator could help address the lack of information available to consumers regarding the income, which might be achieved from particular products or by choosing a lump sum.
[Click here for article.](#)

The European Federation of Financial Advisers has secured a number of compromises in the finalised Insurance Distribution Directive. The Directive is expected to be voted on and endorsed in Autumn this year, after which member states will have two years to implement the requirements.
[Click here for article.](#)

Three networks reveal stance on insistent clients.
[Click here for article.](#)

FCA issues new press office handbook, which requires any statement issued by an FCA director to be approved by the Head of News, Director of Communications and the named individual before it is issued. The new rules follow the FCA's poor handling of comments made to the Daily Telegraph regarding a life insurance thematic review, which saw share prices drop.
[Click here for article.](#)

An Ombudsman has said a TenetConnect AR looked at the assets of a complainant as an act of good will because there was no contract in place. The AR's client complained he was mis-led as to the service he was receiving believing he would receive advice on all his assets not just his pension plan. The Ombudsman also said: "While the AR could have managed [the complainant's] expectations better, I do not think his actions have caused material distress or inconvenience in the context of our rules."
[Click here for article.](#)

Standards International urges adviser firms to apply the same professional standards to running their businesses as they do their client work. Founder of the standards body, Ms Hoskin, said: "It's about good management structure, regular board meetings that discuss strategy and implementation, with good senior staff communication."
[Click here for article.](#)

Software provider encourages firms to create social media policies, as they could help "mitigate situations that might attract negative feedback from the FCA."
[Click here for article.](#)

FCA indicates it may ask IFAs to review Pension Wise.
[Click here for article.](#)

This paper consults on changes in the following areas of the Handbook:

- * **CONRED:** updating and addition of the consumer redress scheme guidance to the CONRED sourcebook.
- * **SUP 16:** changes proposed to improve data collection for firms and the FCA:
 - ➔ Amend Q.5 of CCR007 and rewrite associated guidance notes.
 - ➔ Amend PSD001 guidance notes and field 21 of PSD007.
 - ➔ Restrict scope of RMA-C to insurance mediation activities and amend questions so they are aligned to CASS 5, including additional questions related to the client assets audit report.
 - ➔ Extend the standing data firms are required to check annually to include the firm's principal user and email address for GABRIEL.
- * **DISP:** amendments clarifying commencement dates for complaints reporting and written communications from firms to complainants.
 - ➔ The FCA proposes to change the commencement date for reporting to 1/1/16 from 30/6/16 because the original commencement date of 30/06/15 would apply to periods starting on or after 1/1/16. The FCA has confirmed the new return should be used for reporting periods that commence on or after 1/1/16, subject to certain modifications connected to the length and start date of the reporting period.
 - ➔ The FCA also proposes removing the requirement to acknowledge complaints and keep complainants informed where complaints are resolved by the third business day.
- * **GEN:** technical changes to ensure effective working of the Handbook proposed, particularly in view of changes to the PRA's Handbook/Rulebook.
- * **MCD Changes:** The FCA is also proposing changes to various parts of the Handbook to finish the implementation of the Mortgage Credit Directive (MCD):
 - ➔ Amendment of the definition of credit-related regulated activities to include the new activity of advising on regulated credit agreements for the acquisition of land.
 - ➔ Removal of the requirement to offer cancellation rights for an MCD loan not secured on a home and which is a distance contract.
 - ➔ Amendments to PERG and CONC to reflect the treatment of investment property loan brokers and introducers under the Regulated Activities Order.

[Click here for consultation paper.](#)

Enforcement Actions and Prosecutions

- * Former Pru adviser, Lee Chapman, denies five counts of fraud and three of contravening financial services regulations regarding investments into Specialist Packaging Solutions, a company that he and his brother set up. [Click here for article.](#)
- * The Insolvency Service has disqualified Scott Andrews, sole director of Capital Bordeaux Investments Limited, for 11 years for taking nearly £60k from members of the public who thought they were investing in fine wines. [Click here for article.](#)
- * Ralph Wittington, former shareholder of insurance intermediary Savesure Limited has been fined £42k by the FCA and banned from performing any functions in relation to regulated activities for the misappropriation of insurance premiums. Wittington used the premiums to fund business expenses and repay funds he had personally paid into the firm. [Click here for article.](#)
- * Former Asset Land Investment directors all deny conspiracy to defraud in a landbanking scam, which allegedly defrauded 1000 people out of £20m. [Click here for article.](#)
- * Former Halifax and Lloyds bank worker, Mark Cooney has been sentenced to 28 months imprisonment after admitting to stealing just under £300k from six victims between April '13 and March '15. [Click here for article.](#)

Industry News continued...

The FCA will not take action in response to reports by Citizen's Advice that around 1m people have interest only mortgages but with no arrangements to pay them off at the end of the mortgage term. FCA Director, Linda Woodall, said the regulator would only take action if it felt consumers were being treated unfairly, which it doesn't believe is the case.

[Click here for article.](#)

FCA responds to calls from the industry that it needs to clarify whether or not it is acceptable for an adviser to facilitate pensions transactions for clients, which are believed to be unsuitable and not in the clients' best interests.

[Click here for article.](#)

Financial Services Consumer Panel calls for FCA to rate firms' behaviour using a simple system to help consumers make better-informed decisions about which firms to do business with.

[Click here for article.](#)

Government launches a review of AML and CTF rules as part of its Cutting Red Tape programme. The call for evidence will run until 23/10/15.

[Click here for press release.](#)

FCA has updated its webpage on CRD IV.

[Click here to access webpage.](#)

Wolfsberg Group (made up of 13 institutions including Bank of America, Citigroup and Goldman Sachs) publishes FAQ for money laundering, sanctions and bribery and corruption risk assessments.

[Click here to access FAQ document.](#)

HMRC resurrecting '1/60th of salary' annuity rule to close a tax loophole used by partnerships.

[Click here for article.](#)

The Office of the Complainants Commissioner has rejected a complaint against the FCA in relation to losses resulting from dealing with a cloned firm. However, the FCA has been invited "to continue to improve the information available to consumers" and introduce a follow-up check to ensure prompt closure of fraudulent websites by enforcement authorities.

[Click here for resolution letter.](#)

ICO comments on EU Data Protection Regulation progress.

[Click here for blog.](#)

HMRC issues downsizing and inheritance tax technical note.

[Click here for technical note.](#)

Enforcement Actions and Prosecutions continued...

- * Upper Tribunal decisions regarding two directors of Catalyst Investment Group, Andrew Wilkins and Timothy Roberts, who were fined and banned by the FCA in September '13, have been published. The firm was found to be marketing and issuing bonds for a securitisation vehicle based in Luxembourg without a licence, and misleading IFAs as to the firm's licensing position. The Tribunal agreed with the FCA's prohibition order against Roberts, however it rejected the FCA's argument that Wilkins had acted recklessly and without integrity and that he lacked competence. Therefore, the FCA has decided Wilkins should not be prohibited. The Tribunal also found that, contrary to FCA findings, both directors had taken reasonable steps to keep the firm's compliance officer - Alison Moran, whom also received a fine - informed of the licensing position.
[Click here for press release.](#)
- * Former Finance Director for Keydata, Craig McNeil, is fined £350k and prohibited from performing any SIF for breaches of principles 4 and 6 of the Statements of Principle and Code of Practice for Approved persons (APER).
[Click here for press release.](#)
- * Hugo Mbaeri, former Nationwide bank clerk, has been sentenced to 30 months' imprisonment for plotting to steal £135k from elderly customers through standing orders, many of which were labelled as 'care fees'. The actual loss to customers was almost £23k but could have been £135k had the fraud not been detected. Mbaeri's accomplice was sentenced to 27 months' imprisonment.
[Click here for article.](#)
- * John Katege is sentenced to 7 years in prison for attempting to defraud three insurers - Aviva, LV and Legal and General - of £1.7m. Katege's friend, or a woman posing as his friend, took out three life insurance policies in April 2011 with Katege as the sole beneficiary. In July 2011 the woman called the insurers to check whether she was able to hold all three policies and whether each would cover her if she travelled to Uganda. In September 2011, Katege wrote to the insurers to inform them of his friend's death but the documents provided as proof were found to be false. Also, no trace of Katege's friend, alive or dead, was found in the UK or Uganda. Although Katege blamed the Ugandan authorities for the discrepancies, it was ruled that his story did not 'stack up' and he was found guilty of insurance fraud.
[Click here for article.](#)

Other FCA News, Publications and Speeches

Press Releases

- * FCA launches new Handbook website - [click here for press release.](#)
- * FCA announces new Financial Services Register - [click here for press release.](#)
- * FCA announces that GABRIEL is moving to [here.](#)
- * FCA publishes a number of video guides for consumer credit authorisation - [click here to access guides.](#)
- * FCA and PSR Boards appoint new members to four decision-making committees - [click here for press release.](#)
- * FCA appoints Georgina Philippou as COO to complete its ExCo appointments - [click here for press release.](#)

Publications

- * Pension freedoms data collection exercise: analysis and findings - [click here for report summary.](#)
- * FS15/4: Terms and definitions for services which are linked to payment accounts and subject to fees - [click here for feedback statement.](#)
- * GC15/5: Ring-fencing: Guidance on the FCA's approach to the implementation of ring-fencing and ring-fencing transfer schemes - [click here for guidance consultation.](#)
- * Market Watch Issue 49 - [click here for Market Watch newsletter.](#)

Speeches

- * "The future of the UK mortgage market" by Christopher Woolard, the FCA's Director of Strategy and Communications - [click here for speech.](#)

Industry News continued...

Pension Wise is to move from the Treasury to the DWP, however Andrew Tyrie, Treasury Committee Chairman, has said the Chancellor must stay involved with Pension Wise.
[Click here for article.](#)

Industry member calls on FCA "to decide how to handle online investment companies that give advice through decision trees."
[Click here for article.](#)

Latest issue of Ombudsman News from the FOS looks at data security complaints and complaints from small businesses.
[Click here for newsletter.](#)

Industry members call on FCA to force firms to use 'cigarette style' warnings on literature relating to unregulated investment funds.
[Click here for article.](#)

Debate at an FT Adviser event on the benefits of cash accounts for at-retirement clients versus drawdown, which has been labelled as a "potential mis-selling scandal" by Radio Four's Money Box presenter, Paul Lewis.
[Click here for article.](#)

The insistent client debate continues at an FT Adviser event regarding retirement freedoms between the FCA's technical specialist, Rory Percival, and Pinsent Masons' Head of Strategic Development for Pensions.
[Click here for article.](#)

