



**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.

At the beginning of October the Consumer Rights Act 2015 (summarised in the May '15 edition) came into force. This Act makes changes to contractual relationships and affects how products/ services should be offered to consumers. Therefore, firms are advised to review terms, particularly those negotiated on an individual basis, contracts and customer notices against the updated fairness test – prominent and transparent – and the grey list.

The FCA's monthly [Regulation Round-up](#) was issued, and the next issue of the FCA's [Policy Development Update](#) (Issue 26) was published.

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

- \* PS15/22: General Insurance Add-Ons Market Study
- \* PS15/23: Consumer credit - feedback on CP15/6 and final rules and guidance
- \* CP15/30: Pension reforms – proposed changes to our rules and guidance
- \* CCP15/31: Strengthening accountability in banking and insurance: regulatory references
- \* CP15/32: Smarter Consumer Communications: Removing certain ineffective requirements in our Handbook
- \* HMT Paper – Senior Managers and Certification Regime: Extension to all FSMA authorised persons Consultation Paper No. 10
- \* FCA Speech - Investor protection under MiFID II
- \* FCA Speech - MiFID II: the road ahead
- \* Industry News
- \* Enforcement Actions and Prosecutions
- \* FCA Press Releases
- \* Other FCA Speeches and Publications

### Industry News

Industry forum encourages firms to conduct tests on comments made on social media by employees. The test should look at the potential impact of personal as well as business-related social media messages should the tweet, blog, etc. be published by a newspaper.

[Click here for article.](#)

EC announces public consultation on a review of the European Venture Capital Funds Regulation (EuVECA Regulation) and the European Social Entrepreneurship Funds Regulation (EuSEF Regulation).

[Click here to access press release.](#)

The London Stock Exchange consults on changes to AIM Rules for Companies.

[Click here for consultation document.](#)

Two consultation papers on the 4<sup>th</sup> Money Laundering Directive have been published by the Joint Committee of the European Supervisory Authorities.

[Click here to access the first consultation.](#)

[Click here to access the second consultation.](#)

HMT publishes National Risk Assessment Paper, which focuses on money laundering and terrorist financing risks in the UK.

[Click here to access the paper.](#)

ICO publishes guidance for firms on how to prepare for the forthcoming EU data protection reforms.

[Click here for guidance.](#)

ICO publishes blog on website data leaks.

[Click here to access blog.](#)

Personal Finance Society warns that dealing with insistent clients could increase PII costs.

[Click here for article.](#)

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## **PS15/22: General Insurance Add-Ons Market Study – Remedies: banning opt-out selling across financial services and supporting informed decision-making for add-on buyers, including feedback on CP15/13 and final rules and guidance**

This PS contains feedback to the proposals concerning the ban on opt-out selling across all financial markets and improvements to the information that is provided early on in the sales process “to encourage more informed and active decision making.” The rules will come into force on 1<sup>st</sup> April 2016 and firms will need to comply from that date.

The FCA has also published its non-Handbook guidance (Appendix 2), which has immediate effect. However, the FCA recognises firms need time to implement changes and have given firms until 30<sup>th</sup> September 2016 to make the necessary changes and comply.

In June 2015 the FCA published a discussion paper setting out a number of options for introducing a value measure to the general insurance market. The feedback period has now closed and a CP on the FCA’s preferred measure(s) will be published later this year.

[Click here for policy statement.](#)

## **PS15/23: Consumer credit - feedback on CP15/6 and final rules and guidance**

This PS includes the feedback received to the proposed changes in CP15/6 and final rules and guidance in the following areas:

- \* Credit broking;
- \* Lending;
- \* Financial promotions; and
- \* Debt.

The majority of the proposals haven’t changed from consultation stage, however some modifications have been made and further work in some areas is also planned.

Some of the changes (those relating to exercise of continuous payment authority and information and advice) came into force on 28<sup>th</sup> September 2015 but the majority come into force on 2<sup>nd</sup> November 2015.

In response to feedback at roadshows the FCA has published two documents to assist firms understanding of the current rules:

- \* [creditworthiness and affordability](#); and
- \* [credit permissions](#).

[Click here for policy statement.](#)

## **CP15/30: Pension reforms – proposed changes to our rules and guidance**

In this CP the FCA proposes changes to pension rules to enhance consumer protection including: new requirements to help customers shop around; additional rules and guidance on how firms should communicate with customers, including new rules for pension freedoms communications; and a review of the retirement risk warnings.

The CP also:

- \* sets out the FCA’s expectations relating to its existing rules and guidance;
- \* asks for stakeholder views on a range of issues, which the FCA intends to examine as part of follow-up work to its market study; and
- \* invites discussion on other areas of future FCA work.

The CP contains a summary timetable of when different sets of new rules will come into effect ranging from immediately – proposals relating to advice on pensions, retirement risk warnings, use of pension savings to repay debt and attachment orders – to six months or a year.

Due to its wide-ranging nature, firms to which this consultation applies are advised to review this CP in detail.

[Click here to access consultation paper.](#)

## **Industry News continued...**

FCA’s Project Innovate is encouraging new entrants into the automated advice market to increase competition.  
[Click here to access article.](#)

FOS upholds data protection complaint and complainant is awarded £450 for the distress caused. The complaint related to disclosure of information by a lender to the complainant’s partner, who was not named on the mortgage and subsequently left him after finding out about the extent of his arrears.  
[Click here for article.](#)

Debate over SIPP due diligence continues between Ombudsmen with The Pensions Ombudsman ruling in favour of a SIPP Provider in a new complaint relating to due diligence failings.  
[Click here for article.](#)

HMT and MoJ have launched a review into the regulation of the claims management sector and will consider the transfer of regulatory responsibility to the FCA.  
[Click here for article.](#)

Compliance firm warns of the growing demand by the regulator to see social media communications.  
[Click here for article.](#)

Parliament calls for a freeze on FCA fees for a minimum of two years to help improve access to advice for investors.  
[Click here for article.](#)

KPMG warns fund managers on the latest regulatory risk connected to their ICAAP (Internal Capital adequacy Assessment Process). Research conducted by the consultancy firm revealed 69% of 32 investment firms surveyed were subjected to a supervisory review and evaluation process (SERP) after the FCA found inadequacies in their ICAAP submissions. 86% of firms were issued with individual capital guidance.  
[Click here for article.](#)

FCA Technical Specialist, Rory Percival, says it was fortunate the RDR came in before pension freedoms.  
[Click here for article.](#)

FCA states it’s next review of the FSCS (Financial Services Compensation Scheme) “will have to focus more on fairness to IFAs” than when it was reviewed last time.  
[Click here for article.](#)

Interim CEO of the Investment Association (IA) appointed following the shock departure of Daniel Godfrey. In August the IA published a Statement of Principles, which resulted in some firms leaving the industry body.  
[Click here for article.](#)

## **Enforcement Actions and Prosecutions**

FCA bans former senior UBS AG trader, Kweku Mawuli Abdoli following convictions for 2 counts of fraud by abuse of position, which led to losses totalling \$2.25bn. Abdoli’s conviction resulted in a 7-year prison sentence.  
[Click here to access press release.](#)

IFA firm fined £20k by the FCA for failings in Keydata sales.  
[Click here for article.](#)

## CP15/31: Strengthening accountability in banking and insurance: regulatory references

Although this paper is mainly aimed at banking and insurance firms, chapter 3 is relevant to all firms. Therefore, this brief summary is limited to regulatory reference proposals for all firms.

Current rules state that “the rules on references apply despite any agreement entered into by a firm and an employee upon termination of the individual’s employment.” The rules should prevent firms from entering into agreements, or operating policies, that could result in non-compliance with the disclosure requirements.

The FCA is proposing:

- \* to introduce a specific rule preventing firms from entering into agreements, in relation to resignations as well as terminations, that conflict with a firm’s disclosure obligations;
- \* an extension to the record keeping requirements concerning employee conduct, fitness and propriety from 3 years to 6 years after termination/resignation; and
- \* to require firms to establish policies and procedures for compliance with regulatory reference requirements.

The FCA states that references should cover all relevant information, in accordance with a firm’s legal obligations, including roles performed, or services provided, on behalf of more than one regulated entity in a group. This means each regulated firm within a group, on behalf of which an individual acted, would need to provide a reference to a new employer in response to a single reference request to one of the regulated entities. The FCA accepts that in practice this information is likely to be consolidated into one reference.

The rules will only apply to the UK branch activities of individuals within incoming EEA and non-EEA firms.

The consultation period closes on 7<sup>th</sup> December 2015 and final rules are to be published in early 2016 ahead of the commencement date of the new accountability regime (7<sup>th</sup> March 2016).

[Click here to access consultation paper.](#)

## CP15/32: Smarter Consumer Communications: Removing certain ineffective requirements in our Handbook

This Consultation Paper follows the FCA’s discussion paper regarding smarter consumer communications where the FCA committed to improving the effectiveness of consumer communications.

The FCA proposes to amend rules and guidance related to the following disclosures:

- \* The ‘Consumer-Friendly Principles and Practices of Financial Management’ (CFPPFM) – proposed removal of this requirement because it was found to be unsuccessful and new regulation, which comes into force on 31/12/16 – PRIIPs Regulation – will require customers to be provided with a Key Information Document (KID).
- \* Short report – proposed deletion of the requirement on firms to produce a short report for investors in retail authorised funds because it does not seem to be achieving the original aim of providing clear and focused information about funds.
- \* The Initial Disclosure Document (IDD), Combined Initial Disclosure Document (CIDD) and Services and Costs Disclosure Document (SCDD) under ICOBS, MCOBS and COBS – proposed deletion of the templates, Firms will be able to continue to present the required information in the same way but will not be able to use the Key Facts Logo.

The consultation period closes on 18<sup>th</sup> December and the FCA expects to publish a policy statement containing the final rules in early 2016.

[Click here for consultation paper.](#)

## FCA Speeches

### Investor protection under MiFID II – by David Geale, Director of Policy at the FCA.

This speech covers the impact of MiFID II on wholesale markets and what preparations those firms need to be making now. The FCA hasn’t received the final implementing measures (mainly covering market and conduct issues) so the FCA is not yet able to consult or finalise its approach. However, there are some changes which the FCA and firms can be confident in, such as investor protection.

MiFID II aims to ensure investment firms act in the best interests of their clients by:

- \* improving governance and organisational requirements for firms;
- \* strengthening conduct of business rules that cover firms’ relationships with all categories of clients;
- \* ensuring conflicts or interest are managed effectively; and
- \* introducing new powers to supervisors at both national and European level.

A number of the changes aren’t new to the industry; some were identified under MiFID I and other changes are from familiar domestic initiatives, e.g. the RDR (Retail Distribution Review), which includes curbs on inducements and requirements on firms that give independent advice.

Over the next year, the FCA will challenge firms about their preparations for compliance with MiFID II.

Geale’s speech continues with a reflection on thematic work conducted, and guidance published, in recent years to explain the drivers of the changes being introduced:

- \* product governance - MiFID II will introduce rule for product governance and will also create a new management focus for approving and overseeing policies relating to product governance;
- \* suitability of advice and due diligence - Firms will be required to have policies and procedures in place to ensure they understand the nature and features of the products they select for their clients, and they will be required to assess whether alternatives are available that would better meet their clients’ objectives;
- \* inducements - MiFID II will refocus attention on inducements both for firms that give advice or manage portfolios and for those that don’t;
- \* research – MiFID II will bring in a European regime governing the way that asset managers purchase and consume third-party research, therefore managers and brokers should continue to focus on the findings from the FCA’s dealing commission review – DP14/3;
- \* remuneration, performance assessment and reward – MiFID II will bring these matters into the rules for the first time; and
- \* conduct issues, including appropriateness, costs/charges and independence.

[Click here to access speech.](#)

## HMT Paper – Senior Managers and Certification Regime: Extension to all FSMA authorised persons

The Senior Managers and Certification Regime (SM&CR), which is due to come into force for banks and PRA-designated investment firms from March 2016, is to be extended to all sectors of the financial services industry in 2018. The SM&CR is made up of three components: Senior Managers Regime (SMR); Certification Regime (CR); and Rules of Conduct.

The main features of the SM&CR are as follows:

- \* an approval regime focused on senior management;
- \* a regime requiring firms to submit robust documentation on the scope of senior managers' responsibilities;
- \* a statutory requirement for senior managers to take reasonable steps to prevent regulatory breaches in their areas of responsibility;
- \* a certification regime requiring firms to certify as fit and proper any individual who performs a function that could cause significant harm to the firm or its customers, both on recruitment and annually thereafter;
- \* a power for the regulators to apply enforceable Rules of Conduct to any individual who can impact their respective statutory objectives, e.g. non-executive directors.
- \* Giving regulators greater powers to make transitional provisions; and
- \* allowing variations on time limits as well as conditions for senior manager approvals.

To ensure proportionality and a smooth transition to the new regime for all firms, the following changes are being made to the final rules:

- \* removal of the reverse burden of proof, so that regulators will only be able to take action against an individual if they can show the individual failed to take reasonable steps to prevent a breach occurring or continuing;
- \* permitting regulators to make Rules of Conduct apply to non-executive directors (NED) in order to comply with certain EU directives that require Member States to be able to take action against board members; and
- \* Removal of the requirement for banking sector firms to report to the regulator(s) all known or suspected breaches of Rules of Conduct by employees subject to the rules.

[Click here to access consultation.](#)

## FCA Press Releases

FCA comments on latest 6-monthly complaint data. Although the total number of complaints has slightly decreased compared to the previous six months – due to a fall in PPI complaints – there have been increases in other areas, such as a 19.7% increase in complaints for the 'decumulation, life and pensions' product group.

[Click here for press release.](#)

FCA issues statement regarding its decision to consult on a PPI complaint deadline by the end of the year but confirms consumers would have until at least Spring 2018 to complain. The FCA's statement also announces it will investigate whether further intervention in PPI complaint handling is required.

[Click here for press release.](#)

The FCA issues Call for Input on competition in the mortgage sector.

[Click here for press release.](#)

A joint consultation by HMT and the FCA was launched this month on how to improve consumers' access to financial advice. The Financial Advice Markets Review (FAMR) will consider the current framework governing the provision of advice and aims to improve access to effective information, advice and guidance. The review will also consider:

- \* The barriers to advice;
- \* the value and ease of understanding of advice from customers' perspectives; and
- \* The interplay between the regulatory framework for advice and the role of the FOS and the FSCS.

[Click here to access FCA webpage.](#)

## FCA Speeches continued...

**MiFID II: the road ahead** – by David Lawton, Director of Markets Policy and International at the FCA.

In his speech, key dates were mentioned:

- \* 3rd January 2017 – MiFID II takes effect;
- \* 3rd July 2016 – date by which requirements must have been converted into national law/rules.
- \* Technical Standards could be published in Q1 2016.
- \* Delegated Acts could be published by the end of the year.
- \* FCA aims to publish its first consultation papers covering different aspects of MiFID II in December and early 2016.

Other ways the FCA plans to engage with firms on MiFID II include:

- \* regular website postings with links to key documents;
- \* adding content and sign-posting to other publications;
- \* speaking at conferences and events; and
- \* continuing to have detailed discussions with trade groups.

The FCA is also considering publishing online videos and holding webinars and face-to-face workshops.

Lawton concluded with three key messages for firms:

- \* "firms must appreciate the spirit and intent of the legislation and not just the letter;"
- \* "firms should now be in the early stages of planning having considered what the new rules could mean;" and
- \* "the FCA is here to help; supervisors and Contact Centre staff are being trained to answer questions once the legislation is finalised, so please use them as needed."

[Click here to access speech.](#)

## Other FCA Speeches and Publications

### Speeches

**The rapidity of change** – by Tracey McDermott, Acting CEO of the FCA.

[Click here for speech.](#)

**Chairman's speech to the Trust in Banking Conference** – by John Griffiths Jones, FCA Chairman

[Click here for speech.](#)

### Other Publications

**PS15/24: Whistleblowing in deposit-takers, PRA-designated investment firms and insurers**

[Click here for Gem Briefing Note 15/5.](#)

[Click here for policy statement.](#)

