



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.

November saw a number of developments in relation to MiFID II, which was due to come into force on 3rd January 2017. However, a delay to the implementation date has been proposed - [see note from ESMA](#). The FCA held a conference on MiFID II for wholesale firms and a number of videos have been uploaded to the FCA's website and can be accessed [here](#). Firms are advised to review the [FCA's MiFID II webpages](#) and view some/all the videos.

The FCA's monthly [Regulation Round-up](#) for November has been issued along with the next issue of the FCA's [Policy Development Update](#) (Issue 27).

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

- * CP15/34: Regulatory fees and levies: policy proposals for 2016/17
- * CP15/35: Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation (2014/596/EU)
- * Competition and Asset Management Conference Overview
- * GC15/6: Proposed guidance for firms outsourcing to the 'cloud' and other third-party IT services
- * FCA Speech: "Internal investigations by firms"
- * Industry News
- * Enforcement Actions and Prosecutions
- * Other FCA News, Speeches and Publications

Industry News

Consulting firm calls for adviser fees to be displayed in pounds and pence because the use of percentages is reported as becoming increasingly confusing.
[Click here for article.](#)

Industry divided on Which? report that states only 2% (of 500 UK advisory firms' websites in the sample) published "genuinely useful information for clients" regarding the cost of services. The report also revealed that over two thirds of the firms sampled did not publish fees online.
[Click here for article.](#)

DWP consults on the best way to operate a ban on member-borne commission and consultancy charging in workplace pension schemes.
[Click here for consultation.](#)

Following news last month that the number of SIPP complaints to FOS has risen by a third during the second quarter of 2015/16, some industry members are calling for advisers to carry out more stringent due diligence and suitability checks, particularly in relation to discretionary fund managers and platforms.
[Click here for article.](#)

Industry calls for a separate adviser regulator.
[Click here for article.](#)

Chancellor confirms that a response by the government to its pension tax consultation will not be announced until next year's Budget.
[Click here for article.](#)

The Work and Pensions Committee has launched an inquiry into the new State Pension system, which is to be introduced in April 2016.
[Click here for article.](#)

Adviser writes to FCA's Interim CEO on the issue of spiralling regulatory fees.
[Click here for article.](#)

HMRC writes to SIPP providers and IFAs regarding investments in Elysian Fuels after shares in the firm were written down to zero from last year's value of £1. The devaluation has sparked concerns that some investors could face a 55% tax charge on release of pension fund monies.
[Click here for article.](#)

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CP15/34: Regulatory fees and levies: policy proposals for 2016/17

In this CP the FCA is making the following policy proposals:

- * Creating a separate FCA fees handbook, currently the FCA's and PRA's handbooks are linked.
- * Recovery of data reporting costs associated with MiFID II and MiFIR.
- * Changes relating to UKLA fees, which aim to simplify and clarify transaction charges/annual fees and target recovery more effectively.
- * 10% discount for EEA branches passporting into the UK as home finance intermediaries under the Mortgage Credit Directive; and
- * Bringing forward the date when larger firms pay their 'on account' instalment of their annual fees from 30th April to 1st April, effective from 1st April 2016.

Feedback to this CP will be provided in the February/March Handbook Notice. In January the FCA will consult on the FSCS management expenses levy, with feedback to be provided in the March CP, which includes the consultation rates for 2016/17. Final rates are to be published in a PS at the end of June/early July.

[Click here to access consultation.](#)

CP15/35: Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation (2014/596/EU)

Following the proposal by the EC for a regulation on insider dealing, market manipulation and the improper disclosure of inside information, the Market Abuse Regulation (MAR – summarised in [Gem Briefing Note 15/2](#)) was adopted in June 2014 and comes into effect on 3rd July 2016. This CP therefore sets out proposed Handbook changes to implement the new regime. However, the FCA warns its Handbook will not contain all provisions, therefore firms within scope of EU MAR should be aware of all of MAR, including implementing measures, and any relevant ESMA guidance.

This CP invites comments on two areas:

- * Alternative options for implementing two specific MAR requirements:
 - ➔ Written explanation to be provided to the regulator on request regarding delays to public disclosures; and
 - ➔ Adopting the default notification threshold of €5,000 for transactions in specified financial instruments by PDMRs (persons discharging managerial responsibilities) to the issuer and regulator; and
- * Legislative changes required to move from a Directive to a Regulation and ensure national law complies with MAR.

The PS will be published in Spring 2016. In the next few months the FCA will also consult on changes to the Disclosure and Transparency Rules (DTR) for delaying disclosure of inside information.

[Click here to access consultation.](#)

Competition and Asset Management Conference Overview

This event was hosted by the FCA and Saïd Business School and included discussions on a range of topics:

- * how investors can determine value for money from asset management products;
- * the role of advisers in affecting how investors achieve value for money;
- * the importance of scale and the impact this has on value;
- * aggregation of smaller pension funds;
- * reputational challenges facing asset managers; and
- * poor management of conflicts of interest in relation to fiduciary management services offered by investment consultants – it was suggested that large institutional investors would be best placed to manage this relationship, using advisers on a specific and discrete basis.

In her closing remarks the FCA's Director of Competition, Mary Starks, announced the FCA's market study into the asset management sector - see page 5 of this newsletter for more information on this market study.

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

Industry News continued...

Following Sandander's £12.4m fine from the FCA in March 2014 for investment advice failings, the bank has set aside a further £43m in its third quarter statement to cover redress for related claims.

[Click here for article.](#)

FCA confirms it is in the process of collecting information from SIPP providers in order to identify the volume of clients being placed in non-standard investments. This follows a recent report by FOS that complaints regarding SIPPs rose by a third in the second quarter of 2015/16 compared to the same period in 2014/15.

[Click here for article.](#)

FCA is told its annuity data is wrong.

[Click here for article.](#)

ABI data reveals £4.7bn has been withdrawn under the new pension freedoms since April.

[Click here for article.](#)

High court in Belgium orders Facebook to stop tracking non-subscribers in 48 hours. Facebook currently tracks non-subscribers using a cookie, which is installed on the user's device when visiting a Facebook page. The judge ruled that information is personal data and Facebook is required to obtain consent from the user to collect this information. If Facebook fails to comply it could face a fine of up to £180k.

[Click here for article.](#)

It is reported that Treasury Select Committee Chair, Andrew Tyrie, is looking to the industry for ways to make the FSCS funding model fairer.

[Click here for article.](#)

FCA fails to send GABRIEL reminders to firms.

[Click here for article.](#)

With only two months to go until the Equitable Life compensation scheme closes to new claimants, HMT reports that only 88% of eligible policyholders have been paid.

[Click here for article.](#)

Chairman of the Association of Consulting Actuaries and partner at KPMG, David Fairs, believes the government will move to a taxed, exempt, exempt (TEE) basis for pensions tax relief, matching the system used for ISAs.

[Click here for article.](#)

CII to launch new life and pensions foundation exam (LF1) in January 2016, which is aimed at supporting professional standards in the sector.

[Click here for article.](#)

Former pensions minister, Steve Webb, says the money devoted to Pension Wise could have been better spent on an adviser voucher system.

[Click here for article.](#)

FOS orders firm to give a client a full refund plus 8% a year interest. The client met with the firm several times in 2011 and signed a fee agreement for £500. A meeting arranged between the firm and client in 2012 did not take place because the adviser was running late, therefore the firm offered to refund the £500. However, the client was not satisfied and referred his complaint to the FOS.

[Click here for article.](#)

GC15/6: Proposed guidance for firms outsourcing to the 'cloud' and other third-party IT services

This guidance consultation seeks to clarify requirements on all firms when outsourcing to the 'cloud' and other third-party IT providers, from making the decision to outsource and selecting/monitoring a provider through to exit. The FCA sees the 'cloud' as including a range of IT services provided in different formats, e.g. infrastructure, platform or software as a service. It also notes three specific risks associated with cloud-based outsourcing:

- ➔ customers may have less scope to tailor services provided;
- ➔ customers' data could be moved around; and
- ➔ risks associated with outsource providers sub-contracting out part of their operation to other cloud providers.

Important factors to be considered when outsourcing are whether the function being outsourced is critical/important, whether it is material outsourcing or the outsourcing of an important operational function. The form of service being provided doesn't alter regulatory obligations, particularly those under SYSC 8.

The guidance is split into a number of areas, which firms need to consider prior to instructing an outsourced provider:

- * **Legal and regulatory considerations** – including having a clear and documented business case in support of the decision to outsource, use one provider over another, etc.;
- * **Risk management** – carry out and document a risk assessment ;
- * **International standards** – consideration of the provider's adherence to relevant international standards;
- * **Oversight of service provider** – firms should ensure they have sufficient skills and resources to oversee and test outsourced activities, effectively exit or transfer from an existing third party provider, and suitable arrangements to resolve disputes;
- * **Data Security** – firms should carry out a security risk assessment, which includes the services provider and technology assets administered by the firm;
- * **Data Protection Act 1998** – firms should ensure they and their service providers comply with the Data protection Act 1998 or equivalent legislation;
- * **Effective access to data** – by the firm, auditors and the regulator;
- * **Access to business premises** – including head offices, operations and data centres by the firm, auditors and the regulator;
- * **Relationship between services providers** – ensure supply chains do not prevent the firm from complying with its regulatory requirements;
- * **Change management** – risks can arise when changes are made to processes and procedures therefore changes should be managed appropriately;
- * **Continuity and business planning** – firms should have appropriate arrangements in place to ensure they can continue to function and meet their regulatory requirements in the event of business disruption.
- * **Resolution** – services and arrangements with service providers should not create a barrier to the resolution or orderly wind-down of a firm;
- * **Exit plan** – should not cause undue disruption to the provision of services or compliance with regulatory requirements.

The consultation period is open until the 12th February 2016.

[Click here for guidance consultation.](#)

Industry News continued...

The Pensions Ombudsman reprimands firm for failing to make a client aware of the existence of a guaranteed annuity rate when taking her retirement benefits.
[Click here for article.](#)

Industry view on insistent client DB transfers.
[Click here for article.](#)

HMT's financial secretary indicates commitment to introducing greater flexibility concerning replacement capital for venture capital trusts.
[Click here for article.](#)

A complaint to FOS from a theft victim, whose insurance claim was rejected by the provider because the policy had supposedly been cancelled, has received a determination from FOS in his favour seven years after referring the complaint to them. The policy was held with a subsidiary of the provider, which caused confusion as to the existence of the policy, despite the complainant providing evidence of monthly payments. During the process the complainant reported the FOS to the police for fraud and the FOS accused the complainant of providing contradictory information, which hampered consideration of his case. The complainant has been awarded £1k, the original claim amount plus 8% interest for each year the claim has been outstanding but, based on FOS's technical notes, which state that compensation of £10 an hour can take into account the time a consumer has spent to put things right, the complainant believes he is entitled to over £100k. The case remains open.
[Click here for article.](#)

HMRC clarifies rules around carried interest rules for fund managers who are non-domiciled UK residents.
[Click here for article.](#)

Advisers warned of dual tax rate system from April 2016.
[Click here for article.](#)

FOS rejects claim by complainant that he shouldn't have been classified as an experienced investor.
[Click here for article.](#)

FOS orders Tenet to pay £150k to a client for investment advice designed to mitigate a potentially large inheritance tax liability provided by an appointed representative.
[Click here for article.](#)

Lender reports broker to the FCA for not having deposit evidence in relation to a BTL loan following a file-checking visit.
[Click here for article.](#)

Complaints Commissioner criticises FCA for failing to understand the full extent of the errors it made in relation to a change in control application and recommends an increase to the compensation payment originally offered by the FCA to the complainant.
[Click here for article.](#)

ESMA issues note on the proposed delay of MiFID II.
[Click here to view note.](#)

FCA Speech: “Internal investigations by firms” by Jamie Symington, Director in Enforcement (Wholesale, Unauthorised Business and Intelligence) at the FCA

In his speech Symington talks about the investigations firms undertake when things go wrong and comments that most reports are prepared for internal purposes and/or may be shared with FCA supervisors, which is often the right and best thing to do. However, the FCA cannot just accept firms’ report and conclusions and in some cases the firms’ internal reports have no place, e.g. insider-dealing rings.

“Firms’ systems and controls should prevent things from going wrong, but if things do go wrong, then clearly firms bear the primary responsibility for putting them right. Firms need to establish the nature and extent of the problem, its root causes, where accountability lies etc for their own purposes. In short, we recognise, and indeed encourage, firms to investigate proactively when there are concerns.”

Key issues for firms to consider when things go wrong include:

- * **Self-reporting** – the FCA expect firms to exercise judgment about what they report and defensive reporting is not encouraged.
- * **Ensuring the FCA’s ability to take enforcement action is not prejudiced** – firms needs to consider whether their internal investigations will assist or inhibit the FCA’s investigation.
- * **Efficiency and speed of outcome** – “fully transparent and expedient cooperation” can help conclude matters more quickly.
- * **Independence** – the FCA will consider whether they feel a firm’s investigation is sufficiently independent.
- * **Early engagement with the FCA** – in cases where the issue triggers a notification requirement or the firm knows the FCA has related concerns the FCA states that firms must discuss the scope and purpose of their investigations with the FCA as early as possible.
- * **Ground rules** – the FCA has provided a list of points the FCA would seek to establish with a firm that is conducting an internal investigation;
- * **Transparency** – the FCA reports that documents created during the firm’s investigation are normally a contentious issue and firms often try to withhold such documents using the a claim of legal professional privilege. The FCA understands and respects the rights of firms to claim and protect their rights to legal privilege where appropriate but firms shouldn’t let this right become a barrier to sharing information with the FCA. Symington makes particular reference to interview notes, other than the lawyers’ notes, and labels this as unhelpful and unwelcome. The FCA also reports instances where firms have offered to read documents out loud to avoid waiving privilege. Ultimately, if the FCA can’t gain proper access to records of a firm’s internal investigation, the FCA may need to reinvestigate the matter, which will take longer.

In conclusion Symington says “communication, trust and transparency between the regulator and the industry are what make for success. That is what we encourage. That is what we reward.”

[Click here for full speech.](#)

Other FCA Speeches

- * **“Disruptive innovation in financial markets”** by Mary Starks, Director of Competition at the FCA.
[Click here for speech.](#)
- * **“Moving towards a sustainable model of regulation”** by Tracy McDermott, acting CEO of the FCA.
[Click here for speech.](#)
- * **“Innovation in financial services”** by Christopher Woolard, Director of Strategy and Competition at the FCA.
[Click here for speech.](#)
- * **“Changes in mortgage regulation”** by Jonathan Davidson, Director of Supervision – Retail and Authorisations at the FCA.
[Click here for speech.](#)
- * **“Culture and Governance”** by Mark Steward, Director of Enforcement and Market Oversight at the FCA.
[Click here for speech.](#)

Enforcement Actions and Prosecutions

After being convicted of a number of fraud offences and sentenced to 13 years’ imprisonment, Magnus Peterson, former head of Weaving Macro Fixed Income Fund Limited, has been banned by the FCA from performing any function relating to a regulated activity. Peterson defrauded customers for a prolonged period of time through his hedge fund. The loss to customers is reported to be approximately \$536m.

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

Payday lender, Dollar Financial UK, has agreed to refund over £15.4m to customers as a result of detriment caused by the firm’s affordability checks, debt collection practices and systems errors, following a review by a Skilled Person appointed by the FCA in July 2014.

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

As part of a joint operation involving the Derbyshire and Nottinghamshire Police, the Pensions Regulator and the Employment Agency Standards Inspectorate, six people have been arrested in connection with an auto-enrolment scam.

[Click here for article.](#)

CashEuroNet, which trades as Quick Quid and Pounds to Pocket, has agreed to pay £1.7m in redress to customers for failings in the firm’s lending criteria identified by a Skilled Person, which enabled customers to borrow more than they could afford.

[Click here for press release.](#)

Serious Fraud Office issues criminal proceedings against 10 individuals from Deutsche Bank and Barclays for manipulating the Euro Interbank Offered Rate.

[Click here for article.](#)

FCA fines investment analyst, Mothahir Miah, from Aviva Investors £139k and banned him from the industry for an abusive trading practice know as ‘cherry picking’. Miah deliberately delayed the booking and allocating of trades by several hours allowing him to cherry pick.

[Click here for article.](#)

London conveyancer, Anthony Maragh, has been jailed for 3 years and 4 months for stamp duty fraud. Maragh undervalued clients’ properties reducing the amount of tax due but charged clients the full amount and kept the difference.

[Click here for article.](#)

Brothers, Lee and Mark Chapman, who defrauded elderly investors out of more than £250k have been jailed. The victims have lost everything they invested and won’t receive any compensation because the brothers are broke and have no realisable assets.

[Click here for article.](#)

Other FCA News, Speeches and Publications

FCA Press Releases

FCA publishes interim findings in its credit card market study.

[Click here for press release.](#)

FCA's Project Innovate celebrates its first anniversary with plans for a 'regulatory sandbox', which will allow businesses to test out new, innovative financial products, services or business models without being exposed to the normal regulatory consequences associated with engaging in those activities. The FCA will spend the next few months finalising the design of how the unit will work with a view to opening it up to firms for testing in Spring 2016.

During Project Innovate's first year, at the time of reporting, it has helped over 175 innovative businesses, five of which have been authorised.

[Click here for press release.](#)

[Click here for regulatory-sandbox report.](#)

FCA asks for views on changes it plans to make to its rules and guidance as a result of the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer agreements.

[Click here for press release.](#)

Following the FCA's announcement at the Competition and Asset Management Conference earlier this month - see page 2 of this newsletter for more information - the FCA has now published its asset management market study terms of reference. This study will seek to understand: how asset managers compete to deliver value; whether asset managers are willing and able to control costs and quality along the value chain; and how investment consultants affect competition for institutional asset management.

Submissions on the topics included in the Terms of References should be sent to the FCA by 18th December 2015. The FCA plans to publish an interim report on its findings in the summer of 2015 and a final report in early 2017.

The FCA sent notice of this market study directly to authorised investment management firms and may seek to obtain specific feedback from these firms in due course.

[Click here for press release.](#)

FCA and PRA publish review into the failure of HBOS, which "concludes that ultimate responsibility for the failure rests with the Board and senior management. They failed to set an appropriate strategy for the firm's business and failed to challenge a flawed business model which placed inappropriate reliance on continuous growth without due regard to risks involved." The report also criticised the FSA's supervisory approach, stating it was too reactive, and also calls for both regulators to urgently consider taking enforcement action against a number of former senior managers.

[Click here to access report.](#)

Other FCA News, Speeches and Publications

Other Publications

PS15/25: PSR regulatory fees 2015/16 – this paper explains how regulatory fees for the Payments Services Regulator (PSR) will be calculated and collected. The paper also confirms the PSR's decision to implement indirect billing whereby operators of regulated payment systems act as collection agents for the PSR and issue invoicing on its behalf.

[Click here to access policy statement.](#)

CP15/33: Consumer credit: proposals in response to the CMA's recommendations on high-cost short-term credit – this paper follows the Competition and Markets Authority's final report into payday lending (Feb 2015) and contains proposals for additional standards for price comparison websites and also looks at: the use of real-time data sharing to enable informed credit assessments, measures to improve shopping around without affecting consumers' credit ratings, improved disclosure on the costs of borrowing, and credit broking/lead generation. The consultation period closes on 28th January 2016.

[Click here to access consultation.](#)

PS15/26: Implementation of the Transparency Directive Amending Directive (2013/50/EU) and other Disclosure Rule and Transparency Rule changes.

[Click here to access policy statement.](#)

CP15/38: Provisions to delay disclosure of inside information within the FCA's Disclosure and Transparency Rules – proposed changes to guidance dealing with situations where listed companies have legitimate interests in delaying disclosure of inside information.

[Click here to access consultation.](#)

CP15/36: Future regulatory treatment of CCA regulated first charge mortgages – Before the introduction of mortgage regulation in October 2004, first charge mortgages were regulated under the Consumer Credit Act if they didn't exceed a specific financial threshold:

- * £25k between 01/05/98 and 31/10/04;
- * £15k between 20/05/85 and 01/05/98; and
- * £5k before 20/05/85.

Legislation will make administering a regulated mortgage contract in relation to pre-2004 CCA mortgages a regulated mortgage activity from 21/03/16 and the CCA will no longer apply. This CP therefore sets out proposed rules for firms administering or varying these mortgages.

The consultation period closes on 18th December 2015 and a PS will be published in time before the legislation comes into force on 21st March 2016.

[Click here to access consultation.](#)

