



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.

December has seen a surge of publications issued by the FCA, including the first consultation paper regarding MiFID II - [CP15/43](#). December also sees Gem Compliance Consulting enter its 10th year of business and increase its resources with the hiring of a Compliance Associate, Sumreena Haidar.

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 28).

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.

We wish you all a merry Christmas and a happy New Year!

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Main features

- * CP15/43: Markets in Financial Instruments Directive II Implementation – Consultation Paper I
- * CP15/41: Increasing transparency and engagement at renewal in general insurance market
- * PS15/28: Capital resources requirements for personal investment firms (PIFs): feedback on CP15/17 and final rules
- * CP15/42: Quarterly Consultation Paper No. 11
- * TR15/12: Wealth management firms and private banks: suitability of investment portfolios
- * PS15/32: Amendments to Various Forms
- * TR15/13: Flows of confidential and inside information
- * CP15/44: PSR regulatory fees 2016/17
- * FCA Speech: "Examining the future of anti-money laundering regulations"
- * Industry News
- * Enforcement Actions and Prosecutions
- * Other FCA News, Speeches and Publications

Industry News

A 10% Scottish income tax rate has been proposed for 2016/17.

[Click here for more information.](#)

A discussion paper on robo advice has been published by the European Supervisory Authorities.

[Click here for discussion paper.](#)

The Department for Work and Pensions re-considers guaranteed annuity rates advice rules.

[Click here for article.](#)

FCA's Head of Pensions Policy, Maggie Craig, has clarified the role of the regulator regarding the insistent client issue, which is to set rules within which firms/advisers make decisions. Craig also confirmed the FCA's rules "don't say you should" deal with insistent clients.

[Click here for article.](#)

APFA Chairman, John Gummer, calls for advisers to be able to appeal FOS determinations to judges.

[Click here for article.](#)

FCA's manager for retail themes in the FCA's Supervision, Investment, Wholesale and Specialists division, Ritchie Thomson, says advisers need to document why they are refusing to deal with insistent clients. Thomson also said that "insistent clients' does not form part of the official Conduct of Business sourcebook but always acting in the 'best interests' of the client is." The FCA has "got nothing against firms having an insistent client process in place" but "advisers need to be keeping records of why they are rejecting insistent client requests." Thomson also reminded firms of the FCA's three-step guidance published in June 2015.

[Click here for article.](#)

FOS supports firm over disclosure of its tied status following a complaint from a couple who claimed the firm's adviser did not make this clear and they thought the adviser was an IFA.

[Click here for article.](#)

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CP15/43: Markets in Financial Instruments Directive II Implementation – Consultation Paper I

The FCA has published the first consultation paper in a series of papers due out on MiFID II, which comes into force on 3rd January 2017. A delay of up to a year is currently being considered and, should this be agreed, the FCA will update its timetable accordingly.

The first paper covers and seeks views on the regulation of, and issues affecting, secondary trading of financial instruments such as trading venues, transparency of trading and algorithmic and high frequency trading. However, unpublished EU legislation may impact the proposals and views contained in this paper.

The consultation period closes on 8th March 2016 and a policy statement is planned for publication during the first half of 2016. Other consultation papers covering other aspects of MiFID II are due to be published in the New Year.

[Click here for consultation.](#)

CP15/41: Increasing transparency and engagement at renewal in the general insurance market

This paper has been published alongside an occasional paper entitled “Encouraging consumers to act at renewal: Evidence from field trials in the home and motor insurance markets.” The proposals in this paper seek to address issues regarding consumer engagement, treatment of consumers and the lack of competition at renewal. Its proposals include:

- * Requiring firms to disclose last year’s premium on renewal notices;
- * Requiring additional disclosure when customers have renewed the same product four times or more;
- * Guidance on how firms can improve their processes around renewals;
- * Guidance about records that firms maintain to demonstrate compliance, including a record of premiums.

Firms are expected to consider the FCA’s paper on smarter communications when designing processes and material to meet the new disclosure requirements. The FCA also reminds firms of their obligations to treat customers, including longstanding customers, fairly in relation to renewal pricing and general treatment.

The consultation period closes on 4th March 2016 and a policy statement containing final rules and guidance should be published by mid-2016.

[Click here for consultation.](#)

[Click here for occasional paper.](#)

PS15/28: Capital resources requirements for personal investment firms (PIFs): feedback on CP15/17 and final rules

This paper sets out the feedback received in response to CP15/17 regarding new capital resources requirements for personal investment firms (PIFs) and contains the final rules, which will come into force on 30th June 2016.

The FCA reports that respondents raised a number of “salient points”, however the FCA does not believe the responses “present any justifiable reasons to change” its proposals.

In CP 15/17 the FCA proposed:

- * to introduce, with effect from 30 June 2016, a new capital resources requirement that is the higher of £20k or a variable requirement of 5% of a firm’s investment business annual income; and
- * to include a staged introduction for smaller firms by increasing the minimum capital resources requirement (from the current £10,000) to £15,000 from 30th June 2016, before reaching the required £20,000 on 30th June 2017.

[Click here for policy statement.](#)

Industry News continued...

RBS and Standard Chartered ranked lowest in the PRA’s annual stress test, however both banks have since taken steps to strengthen their capital positions.

[Click here for article.](#)

Lloyds Bank has written to FOS rejecting its determination of a complaint relating to a property insurance claim reported in our October newsletter, which has been running for 7 years. The protracted nature of the complaint is due to Lloyds being unable to find a valid policy for the client. In October it was reported that FOS ruled a valid policy did exist with a subsidiary of Lloyds, Cheltenham and Gloucester, and compensation, including the claimed amount plus 8% interest a year for the period it has been outstanding and £1000, should be paid to the complainant. However, Lloyds claims it is unable to find a record of the policy the FOS is referring to in its determination. Therefore, the case will now be reviewed by an ombudsman, whose decision will be legally binding on the firm should the complainant accept it.

[Click here article.](#)

Ombudsman supports adjudicator’s decision to refute a pension transfer complaint concerning a £6000 fee, which the complainant claims equates to 20 hours work. According to the complainant this bears no relation to the amount of work involved in the transfer of the pension into a self-invested personal pension.

[Click here for article.](#)

Trade body APFA urges advisers to make it clear to customers how much of their bill covers regulatory costs. APFA estimates that 12% of small to mid-sized firms’ income is spent on direct and indirect regulatory costs. According to the trade body, this means the average client is paying about £160 each year towards the cost of regulation.

[Click here for article.](#)

It is reported that the FCA is asking financial advice consolidator firms for a sample of records to review the suitability processes of these firms when acquiring businesses.

[Click here for article.](#)

St James’s Place confirms it is to leave the Investment Association as part of a wider policy that will see it leave all trade body memberships.

[Click here for article.](#)

FOS publishes its proposed plans and budget for 2016/17, where it recommends freezing the case fee (of £550 per case) for the forth year running and keeping the number of free cases for each firm at 25. The PPI supplementary case fee will also remain at zero.

[Click here for publication.](#)

CP15/42: Quarterly Consultation Paper No. 11

In this paper the FCA's proposals include requiring firms subject to the Money Laundering Regulations 2007 and some general insurance firms and Lloyds Managing Agents to complete a new annual financial crime return on GABRIEL within 30 days of a firm's accounting reference date. The return will ask relevant firms for information about:

- * the location of their customers;
- * the jurisdictions that the firm has business in, which it considers high risk;
- * the resources the firm allocates to tackling financial crime;
- * the number of suspicious activity reports the firm files with the authorities;
- * sanctions and asset freezes; and
- * the firm's general views on which are the most prevalent types of fraud.

The paper also contains some minor consumer credit related changes to the CONC and PERG sourcebooks including some deregulatory changes to its financial promotion rules. For example, an exemption on the requirement to include a representative example where the APR (in %), and therefore the TCC (Total Charge for Credit) is 0.

The consultation period closes on 4th February 2016.

[Click here for consultation.](#)

TR15/12: Wealth management firms and private banks: suitability of investment portfolios

This review follows the FCA's earlier work on suitability in wealth management firms in 2010 (which resulted in a [Dear CEO letter](#)) and 2012. The report presents the findings from the FCA's latest review of suitability of retail investment portfolios provided by wealth management and private banking firms and includes examples of good and poor practice.

The FCA's main findings are as follows:

- * a number of firms have taken steps to both improve and demonstrate the suitability of customer investment portfolios;
- * many firms still need to make substantial improvements in gathering, recording and regularly updating customer information to support the investment portfolios they manage for customers;
- * firms need to do more to ensure that the composition of the portfolios they manage truly reflects the investment needs and risk appetite of their customers, especially those who have a limited capacity for, or desire to expose themselves to the risk of, capital loss; and
- * firms need to ensure that their governance, monitoring and assessment arrangements are sufficient to meet their regulatory responsibilities in relation to suitability.

The report confirms the FCA is considering taking action against 5 wealth management firms for significant failings in ensuring the suitability of their portfolios.

Relevant firms are expected to consider the findings within this report and ensure they can meet their regulatory responsibilities and demonstrate suitability.

[Click here for thematic review.](#)

PS15/32: Amendments to Various Forms

This paper includes feedback to CP 15/29 and final versions of a number of forms relating to the Approved Persons Regime, the Senior Managers Regimes for banks and insurers, including an updated FCA Form A.

Firms are advised to download the latest versions of forms from the FCA's online Handbook to ensure the correct versions are used.

[Click here for policy statement.](#)

Industry News continued...

The Pensions Regulator has published new guidance for defined benefit scheme trustees on the design and implementation of an integrated risk management framework.

[Click here for guidance.](#)

The Office of the Complaints Commissioner (OCC), the ruling body that oversees the FCA, has criticised the regulator for its poor handling of a whistleblowing case involving HSBC. The 12-year whistleblowing campaign by a former solicitor relates to credit card customers being overcharged by HFC Bank, which was taken over by HSBC in 2003. The FCA originally decided no regulatory action was necessary but has now agreed to review its decision following involvement from the OCC, which described parts of the FCA's handling of the case as "negligent" and "defensive". The FCA has also confirmed it will issue a letter of apology to the complainant.

[Click here for article.](#)

IFAs come together to provide financial support for a mortgage adviser that faces ruin after the FOS ruled £90k should be repaid to a client for a failed investment. The adviser arranged a remortgage for the complainant (an accountant), which she used to invest in a Bulgarian buy to let. The complainant claims the adviser inflated her income to allow her to raise the funds and is therefore responsible for her losing the money.

[Click here for article.](#)

The Pension Protection Fund (PPF) has confirmed its final levy rules for 2016/17 will remain predominantly the same as for last year.

[Click here for article.](#)

HMT publishes consultation relating to the powers the Bank of England should have over the UK's buy to let mortgage market.

[Click here for article.](#)

ESMA publishes updated Q&A on the application of the AIFMD.

[Click here for publication.](#)

ICO announces big leadership changes underway, including recruitment of a new Information Commissioner. The term of the ICO's current commissioner, Christopher Graham, will end at the end of June 2016.

[Click here for more information.](#)

A new self-assessment toolkit to help firms rate and improve their compliance with the Data Protection Act is to be launched by the ICO soon. Further details will be posted on its website in due course.

[Click here to visit the ICO's website.](#)

TR15/13: Flows of confidential and inside information

This paper presents the findings of a review into how a sample of Debt Capital Markets (DCM) and Mergers and Acquisitions (M&A) departments of small to medium sized investment banks manage the confidential and inside information they receive and generate. The review also contains examples of good and poor practice. The FCA found conduct and conflicts of interest failings and regulatory and legal breaches, which resulted in heightened risks for market participants and firms.

The paper includes a number of key messages for firms:

- * Employees at all levels should understand their role in controlling flows of confidential and inside information and make it an integral part of how they carry out their work.
- * While firms and senior management had identified and considered the main risks that flows of confidential and inside information posed to clients, firms themselves and the financial markets, they were not doing enough to manage these risks.
- * The FCA expects to see business heads acting in a supervisory capacity taking responsibility for controlling flows of information, with appropriate challenge and monitoring from the second and third lines of defence.
- * Firms should place the assessment of circumstances that could present heightened regulatory and conduct risks at the centre of their ongoing risk assessment. These circumstances could also give rise to misuse of confidential and inside information.

The FCA expects all UK-based and FCA-regulated financial services firms to review the paper and consider whether any changes to internal processes and procedures need to be made.

[Click here for thematic review.](#)

CP15/44: PSR regulatory fees 2016/17

In this paper the PSR proposes how it will allocate its annual funding requirement across fee payers and how it will calculate and collect fees for 2016/17. The annual funding requirement of £15m is split between its two functions:

- * £13.5 million for functions and activities in relation to FSBRA (Financial Services (Banking Reform) Act 2013) and concurrent competition powers – the PSR is proposing to follow the same approach as last year in respect of allocation and collection; and
- * £1.5 million for functions and activities in relation to the IFR (Interchange Fee Regulation) – the PSR is proposing a separate three-tier approach to allocation of this portion of the AFR as follows but collection of fees for IFR will be the same as for FSBRA:
 - ➔ equal allocation across the larger IFR card payment systems;
 - ➔ those with a more limited UK presence would pay a flat fee; and
 - ➔ the systems with the smallest UK presence would pay nothing.

The FCA is responsible for funding the PSR and makes rules in order to raise the required funds. The final rules will follow this consultation, which is open to feedback until the 11th February 2016.

[Click here for consultation.](#)

FCA Speech: “Examining the future of anti-money laundering regulations” by Rob Gruppeta, Head of the Financial Crime Department at the FCA

Gruppeta confirms the government will soon issue a consultation paper looking at how the UK will implement the Forth Money Laundering Directive. This latest directive requires firms, inter alia, to screen employees and, where relevant, scrutinise the accounts of domestic as well as foreign public officials. However, the details haven't yet been decided, so Gruppeta urges firms to review the government's consultation and also the proposed guidance notes issued by the European Supervisory Authorities.

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Enforcement Actions and Prosecutions

The Court of Appeal has upheld a 10 year prison sentence imposed on Phillip Harold Boakes, who has also been banned by the FCA. In March 2015 Boakes was convicted of three counts of using a forged instrument, two counts of fraudulent trading and one count of accepting deposits without authorisation. The FCA also imposed a confiscation Order on Boakes for £165k.

[Click here for press release.](#)

FCA fines Barclays £72m for failing to effectively manage financial crime risk. The failings relate to a £1.88bn transaction in 2011/12 involving ultra-high net worth individuals who were also PEPs and therefore should have been subjected to enhanced scrutiny. No evidence of financial crime was found in relation to the transaction but Barclays were guilty of applying a simplified level of due diligence in order to take the clients on quickly and generate £52.3m in revenue.

[Click here for press release.](#)

Following the initiation of bankruptcy proceedings against John Anderson, Kenneth Peacock and Kautilya Nandan Pruthi, who were all found guilty of operating illegal deposit-taking schemes, the FCA has now received the funds recovered in the bankruptcies and has started to return money, albeit only a small percentage of the amount originally invested, to each investor.

[Click here for press release.](#)

Charles Anthony Llewellyn Palmer, CEO of Standard Financial Group Limited (group), and a director and de facto CEO of Financial Limited and Investments Limited, has referred the FCA's decision to fine him £87k and ban him from holding a significant influence function in relation to any regulated activity, to the Upper Tribunal. The FCA believes Palmer failed to take adequate steps to ensure the firms' appointed representatives (ARs) and CF 30s gave suitable advice to approximately 40,000 customers.

[Click here for press release.](#)

FCA fines Threadneedle Asset Management £6m for failing to put in place adequate controls in the fixed income area of its front office, for providing inaccurate information to the regulator and for failing to correct the inaccurate representation for four months.

[Click here for press release.](#)

The Financial Standards Authority has disqualified two directors of Pritchard Stockbrokers, David Gillespie and David Welsby, for 8 and 6 years respectively for breach of rules and regulation relating to client monies. In 2014 the FCA fined and banned both directors for serious failings regarding the protection of client money.

[Click here for article.](#)

“Examining the future of anti-money laundering regulations” continued...

The speech also covers the FCA’s proposed financial crime return (see review of CP 15/42 in this edition of the newsletter), the requirement to allocate responsibility for overseeing a firm’s financial crime controls to a senior manager at the top of an organisation and how this requirement fits alongside the MLRO function.

Derisking in banks is mentioned and Gruppetta confirms that, whilst “the decision to accept or maintain a business relationship is ultimately a commercial one” ... “there should be relatively few cases where it is necessary to decline business relationships solely because of anti-money laundering requirements.”

Technology and innovation in relation to financial crime was discussed and it is reported that the FCA is interested in how new technologies can be used to make a range of regulatory areas – from KYC to firm supervision – “more efficient, effective and easier for both firms and consumers.”

Gruppetta concluded by stating that “enforcement proceedings on financial crime issues are based on material failings in high risk areas” and enforcement activity highlights failings by the regulator as well as by the firm.

[Click here for speech.](#)

Other FCA News, Speeches and Publications

FCA Press Releases

FCA issues update on its activities in relation to the pensions and retirement income market, ahead of the introduction of the secondary annuity market in 2017, and the potential changes being considered by HMT regarding the pension tax regime. [Click here for press release.](#)

The FCA has published a webinar on its website for newly authorised consumer credit firms. There are some messages in the webinar that are applicable to all types of newly authorised firms and firms in the process of applying for authorisation. Therefore, relevant firms are encouraged to view the webinar. [Click here to access webinar.](#)

FCA provides update on project to improve its website. [Click here for press release.](#)

FCA issues notice to financial adviser firms and their advisers regarding improper delegation of authorised activities such as pension switching advice. [Click here for press release.](#)

FCA issues Call for Input on how regulation is working in relation to the social investment market where the main aim is to provide wider social benefit rather than a good return for investors. [Click here for press release.](#)

Guidance on the FCA’s approach to advancing its objectives - [click here for guidance.](#)

The FCA publishes a new application form for ELTIFs - [click here for application form.](#)

Update to GABRIEL released - [click here for more information.](#)

FCA Speeches

“Wholesale market policy – a year in review” by David Lawton, Director of Markets Policy and International at the FCA - [click here for speech.](#)

“Personal Accountability” by Tracy McDermott, Acting CEO of the FCA - [click here for speech.](#)

Enforcement Actions and Prosecutions continued...

Ex-Aviva employee, Matthew Cooper, has been given a 10-month suspended sentence and ordered to do 180 hours of unpaid work after pleading guilty to fraud by false representation. Cooper was involved in a scheme whereby customer accident data was unlawfully obtained and sold to a firm that would make unsolicited calls to try and persuade customers to submit a personal injury claim, even though they may not have been injured. [Click here for article.](#)

Former NatWest bank manager, Lesley Austin, is given a three-year prison sentence for stealing more than £250k from customers’ accounts over a 6-year period. [Click here for article.](#)

Former director of Quintillion Asset Management has been banned by the FCA for causing or allowing the misappropriation of almost £660k of clients’ funds and contributing to further client losses of over £2m through inappropriate investments. Prior to this, in June 2014 the FCA disqualified him as a director for 11 years. [Click here for article.](#)

Other FCA Publications continued...

Call for Input: Supporting the development and adoption of RegTech - technologies that facilitate the delivery of regulatory requirements. [Click here for publication.](#)

FG15/11 – Primary Market Bulletin No. 11 - [click here for guidance paper.](#)

GC15/7 – Primary Market Bulletin No. 12 - [click here for guidance paper.](#)

Occasional Paper No. 11: Methods for analysing mortgage markets - [Click here for publication.](#)

Call for Inputs: Big Data in retail general insurance - where big data is “the rapid collection and analysis of huge amounts of digital information.” [Click here for publication.](#)

CP15/39: Rules and guidance on payment protection insurance complaints - [Click here for consultation.](#)

DP15/7: Our approach to SMEs as users of financial services – this paper looks at, inter alia, the suggestion to extend FOS rights to SMEs. [Click here for discussion paper.](#)

CP15/40: Financial Services Compensation Scheme: changes to the Compensation Sourcebook - the proposals include changes to the compensation level for some types of general insurance. [Click here for consultation.](#)

