



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.

In February the FCA announced the launch of 'FCA: Live and Local', its regional engagement programme for authorised firms, which spans 12 months and starts in the South West of England. Full details of the programme can be found on the [FCA's website](#).

The FCA's monthly [Regulation Round-up](#) was published containing, inter alia, comments on the Senior Managers and Certification Regime and the European Commission's proposed one year extension to the MiFID II implementation date - despite the delay, firms are being urged to continue with their implementation work. The FCA also mentions it has converted the IPRU-INV Prudential Sourcebook and the Enforcement Guide from PDFs to HTML web pages.

In addition, the latest issue of the FCA's [Policy Development Update](#) (Issue 30) was 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

- * PS16/2: Implementation of the UCITS V Directive
- * FCA Data Bulletin: Issue 5, February 2016
- * TR16/1: Assessing suitability: Research and due diligence of products and services
- * FCA Speech: "Do I need to worry about benchmark regulation?"
- * FCA Speech: "Independence, confidence and fairness"
- * Industry News
- * Enforcement Actions and Prosecutions
- * Other FCA News and Publications

Industry News

FOS upholds complaint from client who claims he and his mother received poor investment advice in 2009 and 2010. The mother died in 2010 and prior to this the son acted as her attorney and is now the executor of his mother's estate. The firm argues that although they provided the mother with advice in 2009 they did not provide advice in relation to the second investment. However, an Ombudsman has said the firm was aware that the son was making the investment on behalf of his mother and on the same basis as the first investment, therefore, "the firm either repeated that advice or failed to warn Mr. S [the son] that a proper process should be followed so that properly considered advice could be given."

[Click here for article.](#)

The Pensions Regulator faces criticism over publishing on its website a list of pensions schemes available to small employers for automatic enrolment.

[Click here for article.](#)

Andrew Tyrie, Treasury Select Committee Chairman, tells regulators it wants banks to improve their IT systems. In a letter to the PRA's CEO, Andrew Bailey, Tyrie suggested:

- * The banks need greater IT expertise at main board and subsidiary board level.
- * Much greater resources should be put towards modernising, managing and securing banks' IT infrastructures.
- * Legal, regulatory, structural and cultural changes are needed to the way that banks manage their cyber security risks.

[Click here for article.](#)

FCA confirms no more consultation papers concerning SIPP capital adequacy are planned between now and the 1st September 2016, when the new requirements come into force. Although the FCA says it will work with firms to help them meet the requirements the FCA is also reported to have said that it will be ready to wind up firms that fall a long way short.

[Click here for article.](#)

DWP publishes second consultation paper regarding the options for banning member-borne commission in occupational pension schemes.

[Click here for consultation.](#)

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In this paper the FCA sets out the responses it received to CP15/27 (see [Gem Briefing Note 15/4](#)) and the final Handbook changes. However, responses to the other proposals consulted on in parts II and III of CP15/27 affecting investment funds have been considered separately, so the final rules and guidance for these are not included in this CP. The paper also outlines some advisory guidance for depositories of AIFs, which the FCA consulted on in CP15/8.

Key points to note in this PS:

- * Some changes made to proposed remuneration and disclosure guidance relating to non-cash instruments.
- * Managers of NURS will now not be required to disclose in the prospectus the list of the depository's delegates and sub-delegates. However, some of the disclosure requirements are being maintained for NURS where they are consistent with AIFMD.
- * Rules and guidance regarding the appointment, operational duties and responsibilities of UCITS depositories have been clarified - for example, the FCA confirms UCITS depositories would be able to delegate the performance of administrative and technical tasks to a third party.

The rules and guidance (including changes affecting managers and depositories) come into force on 18th March 2016, the date the FCA is required to implement UCITS V. However, transitional provisions will apply to certain requirements:

- * Managers of UCITS will not have to comply with some of the remuneration requirements until the start of the first full performance period starting after 18th March 2016;
- * The prospectus of a UCITS (or a NURS) will not need updating with the relevant new disclosure requirements until 30th September 2016 (extended to 31st March 2017 for a NURS);
- * The key investor information document (KIID) of a UCITS will not need to include the new UCITS V disclosure requirements until it is updated for other reasons, and then only if the relevant information on remuneration is available at the time of the update (otherwise they should be included as part of the 2017 annual update and no later than 18th March 2017); and
- * Non-bank depositories appointed before 18th March 2016 may continue to provide depository services to their UCITS clients until 18th March 2018, even if they do not meet all the new operational and prudential requirements applicable to them.

The FCA is not able to confirm when the Level 2 text will be published and when it will apply, however the draft text provides a 6-month transitional period from when the Regulation comes into force. Therefore the FCA expects firms will not be subject to the Regulation until the third quarter of 2016 at the earliest. During the period after UCITS V comes into force and before some of the Regulation requirements become applicable, the FCA expects firms "to make efforts to comply with the UCITS V requirements as of 18 March 2016 (unless a relevant transitional provision applies) even if detailed requirements under the Level 2 Regulation are not yet applicable at this date."

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

FCA Data Bulletin: Issue 5, February 2016

This data bulletin provides information on:

- * the latest retirement income data following the pension reforms;
- * consumer credit authorisations - to date, over 27k applications have been submitted and almost 23k have been determined. However, just over 18k firms with interim permission have not yet been determined or are still to apply;
- * complaints against the FCA – complaints received in the latter part of 2015 (up until November 2015) have been almost the same as the number received in the early part of 2015 and December 2014. Of the 291 allegations investigated during the year, 42% were upheld in full or in part;
- * financial promotions – of the 1,108 financial promotions reviewed between July and September 2015, 34 promotions (3%) had to be withdrawn or amended.;
- * senior management attestations – in Q2 2015/16 the wholesale and investment management sector received the most attestations; and
- * skilled persons reports – in Q2 2015/16 the personal investment and consumer credit sectors were required to instruct the highest numbers of skilled person reports - out of 13 reports in Q3 2015, 3 were commissioned in each of these sectors.

[Click here to access data bulletin.](#)

Industry News continued...

Andrew Tyrie, Chairman of the Treasury Select Committee, calls for veto powers over senior appointments at the FCA. [Click here for article.](#)

FOS upholds complaint regarding pension transfer advice. The firm in question recommended a client in his mid 50s transfer 4 out of his 5 pensions plans to another provider at a cost to the client, who was also charged commission and an additional cost to set up the new plan. The Ombudsman concluded the firm's justifications for recommending the transfers were not convincing given that the previous plans were not difficult to monitor, the client had no immediate need for income and he didn't need to transfer his plans to reduce risk. The firm has been told to compare the performance of the client's investment with that of the FTSE WMA Stock Market Income Total Return index and pay the difference between the fair value and the actual value of the investment. [Click here for article.](#)

The Pensions Ombudsman rules in favour of 95-year-old complainant who was deprived of his pension for over two years because the new managing director of his former employer was unaware the firm had a pension scheme. The firm was ordered to reinstate the pension and also pay £1000 for the distress and inconvenience caused. [Click here for article.](#)

DWP publishes factsheet for providers regarding the advice requirement for pension benefits with a guarantee. [Click here for factsheet.](#)

FCA saved from vote of no confidence by the economic secretary to the Treasury, Harriett Baldwin. [Click here for article.](#)

Following an initial quantitative study into 1,250 active funds that are more than 10 years old and have more than €50m in assets, ESMA reports that 15% of the funds investigated may be 'closet trackers'. ESMA said "definitive evidence, potentially leading to supervisory action, will require a more detailed follow-up by national competent authorities, including on the actual information provided by funds to investors." [Click here for article.](#)

Scottish law firm, Maclay Murray & Spens, has highlighted in a recent newsletter the need for firms to ensure they have appropriate controls to prevent bribery on behalf of the firm, following a number of decisions by English and Scottish authorities, some of which are explained in its newsletter. The case involving Brand-Rex Limited is reported as the first company to be penalised for contravention of the new corporate offence that came into force in 2011. The firm paid £212,800 under the Proceeds of Crime Act 2002 after an installer of its products gave holiday tickets they had won in an incentive scheme run by the firm to an employee of one of the installer's customers. The newsletter also includes a reference to the OECD's paper entitled Corporate Governance and Business Integrity: A Stocktaking of Corporate Practices, which explains how better corporate governance can prevent corporate misconduct. [Click here to access the newsletter.](#) [Click here for more information regarding the prosecution.](#) [Click here for the OECD's paper.](#)

The industry is warned some claims management companies are switching from PPI claims to more complex issues, such as pension advice. [Click here for article.](#)

TR16/1: Assessing suitability: Research and due diligence of products and services

This report sets out the FCA's findings of its thematic review into the due diligence processes and research carried out by 13 advisory firms, of different sizes and a variety of propositions, regarding the products and services recommended to retail clients. The review, inter alia, explored how:

- * firms selected products, funds, platforms and discretionary investment management services;
- * created panels and centralised investment propositions (CIPs); and
- * considered options for individual clients.

The FCA found that:

- * In the main, firms sought to achieve positive outcomes for clients.
- * Good practice was not consistently demonstrated across all products and services – issues were noted relating to platform research, which disappointed the FCA given its previous publications in this area.
- * Firm culture was important to the success of research and due diligence.
- * A culture involving effective corporate challenge was found to be a key driver of good research and due diligence – the better firms had either in-built challenge in the process and/or individuals who were knowledgeable, enthusiastic and challenged the firm's approach.
- * Where the firm culture didn't involve challenge a variety of weaknesses were identified:
 - ➔ firms didn't seek to understand or challenge inappropriate bias towards products, services or providers; and
 - ➔ inadequate management of conflicts of interest between their clients' interests and those of the firms.
- * Size of the firm was not a barrier to good research and due diligence.
- * Robust systems and controls are needed, which for most firms is a file review. However, the review should involve a genuine assessment of the recommendations rather than just checking the presence of research and due diligence.
- * A lack of structure in the research and due diligence process meant results were not always up to date or challenged adequately.
- * Some firms demonstrated insufficient research and due diligence in the selection of platforms.

The FCA reports that research and due diligence form part of wider requirements to ensure good consumer outcomes, e.g. competence of advisers and assessment of suitability. Although the objective of research and due diligence is the same, the FCA states the level conducted should differ depending on the adviser's recommendation and the needs of the client.

The FCA believes its second MiFID II consultation paper, which is due to be published later this year, will include requirements in relation to research on products. The FCA is also planning to publish other communications to firms in this area to help raise standards.

[Click here to access thematic review.](#)

FCA Speeches

“Do I need to worry about benchmark regulation?” by Edwin Schooling Latter, the FCA's Head of Markets Policy.

Latter begins his response to this question by quoting some of the traders involved in benchmark manipulation:

- * 'Not even Mother Teresa wouldn't manipulate Libor if she was setting it and trading it'
- * 'Just give the cash desk a Mars bar and they'll set wherever you want'
- * Trader A: 'Can you put six month swiss Libor in low please?'
- Submitter B: 'What's it worth?'
- Trader A: 'I've got some sushi rolls from yesterday?'
- Submitter B: 'OK low 6m[onths], just for you.'

continued on page 4...

Industry News continued...

Pensions Minister Baroness Altmann, criticises pension providers' use of wake-up packs. Altman has said information regarding the government's service can be found buried in text relating to the provider, which could mis-lead individuals into thinking the provider is offering advice thereby encouraging the individual to contact the provider in the first instance.

[Click here for article.](#)

Mary Starks, Director of Competition at the FCA, has responded to queries regarding the FCA's market study into asset management in view of reports that there are over 2000 firms operating in this space. Stark responded by saying "a large number of competitors itself does not, of itself, make for effective competition." Stark continued by saying: "Effective competition requires two things; it requires informed and engaged and empowered buyers... there are some serious challenges to being an effective buyer in asset management services. It also requires a market that is open to entering innovation."

[Click here for article.](#)

DWP issues information sheet regarding state pension sharing rules on the termination of marriage/civil partnership, which come into force on 6th April.

[Click here for information sheet.](#)

ICO launches new data protection self-assessment tool to assist smaller businesses and organisations with data protection compliance.

[Click here to access self-assessment toolkit.](#)

Consultation on privacy notice code of practice issued by the ICO. The code still focuses on what data controllers need to do to provide privacy information and what is good practice. However, there is also a focus on how to provide data subjects with more choice and control over what happens with their personal data.

[Click here to access consultation.](#)

ESMA publishes updated UCITS Q&A.

[Click here to access Q&A.](#)

ESMA has issued a public consultation covering draft guidelines clarifying Market Abuse Regulation in relation to market soundings and delayed disclosure of inside information.

[Click here to access consultation.](#)

HMRC comments on the discovery of discrepancies between employers records and those held by HMRC ahead of the new flat-rate pension system, which comes into force in April. HMRC is also encouraging employers to register for its free reconciliation service before the 5th April deadline.

[Click here for article.](#)

A new Joint Fraud Taskforce comprising Financial Fraud UK, the City of London Police, the National Crime Agency, the Bank of England, Cifas and CEOs of major banks is being set up to combat fraud across the UK.

[Click here for news report.](#)

FCA is told by the Tribunal to reconsider its decision to refuse an application for authorisation of a financial advice firm from an individual acquitted of fraud by Southwark Crown Court.

[Click here for article.](#)

Summary of “Do I need to worry about benchmark regulation?” continued...

Latter confirms that benchmark regulation is not just trying to address the “ethical drift” of traders or correct the governance and controls issues that have since been identified, but also to eliminate weaknesses in the design of benchmarks.

Libor became regulated on 1st April 2013 and in April 2015 the list of regulated benchmarks was widened.

The main part of Latter’s speech focuses on EU regulation of benchmarks, which was proposed in September 2013 and is now in its final stages. Latter comments on the scope of the regulations, how they will interact with existing UK rules, and how it will impact three main groups - benchmark administrators, contributors and users.

Latter encourages affected firms not to wait until completion of the Level 2 process before taking steps. Latter also points out that “where administrators fail to become authorised or registered in the EU, their benchmarks will no longer be available for use.”

In conclusion, Latter encourages all those that have a stake in this sector of the industry to add their names to the dedicated mailing list, which the FCA will be using to provide regulatory updates.

[Click here for full speech.](#)

“Independence, confidence and fairness” by Tracey McDermott, Acting CEO of FCA

Tracy McDermott begins her speech by mentioning how close implementation of the new Senior Manager’s Regime is and states that along side this the FCA is reviewing responses to the Financial Advice Market Review and consulting on PPI. McDermott also revealed there will be developments in pensions, savings and mortgages over the next 12 months.

McDermott reports that the regulator welcomes “scrutiny of our [the FCA’s] decisions and actions.” However, McDermott also pointed out that external comment should not be able to become the key driver in its decision making. McDermott continued by stating “its regulatory priorities and, in particular, the importance we place on incentives, accountability and culture has not, and will not, change.”

McDermott’s main topic was wholesale markets and said “the City is the second largest capital market in the world; at its best, it supports growth and innovation, allows businesses to plan and invest for the future and protect themselves against the unexpected; at its worst, the industry has exploited clients, colluded to cheat the market for the benefit of individual traders, and has required taxpayer bailouts as a result of poorly controlled risk taking in pursuit of profit.”

McDermott believes that for wholesale markets to work well improvements need to be made in three broad categories:

- * managing integrity risk – the risk that confidence in the functioning of markets diminishes as a result of too many examples of market abuse or misconduct by key players.
- * managing the risk of poor treatment of end users – for example, consumers and clients losing out as firms fail to properly manage conflicts of interest; and
- * managing competition risks – where clients across the board might face reduced choice, innovation and increased cost, where market structures and practices work for the few but not the many.

Moving on to MiFID II, McDermott points out that if there is a delay to implementation “the purpose will be to allow time for those changes to be made, not to provide an excuse to reduce the intensity of preparation for implementation.” The FCA’s first MiFID II consultation paper was published in December and the FCA aims to complete its Handbook changes as quickly as the European process will allow.

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Industry News continued...

FOS upholds trail commission complaint against adviser firm, which continued to receive commission once the initial agreed sum had been paid but failed to contact the client for more than a year. FOS ordered the firm to repay the commission plus 8% interest and £150 for distress and inconvenience. However, FOS confirmed it found no evidence that the firm was required to provide ongoing advice.

[Click here for article.](#)

It has been announced that global law firm Withers is in the process of pulling together a case against a number of intermediaries and IFAs for recommending unsuitable investments to around 100 individuals (including footballers and managers) who were looking for tax efficient investment schemes but who were subsequently contacted by HMRC with large tax demands. Withers’ litigation partner said “the common theme is these investments should be sold to sophisticated investors. They are not for footballers who are newly out of school.”

[Click here for article.](#)

ESMA publishes responses to consultation on PRIIPs Key Information Documents.

[Click here to access consultation.](#)

FCA confirms it is part of working group, which also includes representatives from trade bodies, mortgage firms and academic institutions, to overhaul the CeMAP (Certificate in Mortgage Advice Practice) qualification for mortgage advisers. A consultation paper is due out this summer and is expected to include proposed changes to exam scenarios and terminology, which haven’t been updated since 2011. The FCA has not commented on whether or not the changes will affect existing CeMAP holders.

[Click here for article.](#)

At the end of February the National Audit Office is expected to publish a report into how the FOS, FCA and FSCS work to identify mis-selling risks and secure potential redress for consumers. Depending on the NAO’s, findings further investigations could follow.

[Click here for article.](#)

Research consultancies issue warning to advisers who outsource investment decisions that the returns of a variety of multi-asset, DFM and multi-manager portfolios have been found to significantly deviate from their stated risk boundaries. Therefore, advisers may need to reassess their investment choices.

[Click here for article.](#)

HMRC has suggested to pension scheme members affected by the reductions in lifetime allowance who are due to retire on, or immediately after, 6th April to postpone taking benefits, or only take benefits up to the standard lifetime allowance, until they have received their temporary reference number from HMRC.

[Click here for article.](#)

ESMA publishes discussion paper on benchmarks regulation.

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

MoJ consultation proposes caps and bans on a variety of fees/charges levied against consumers by claims management companies.

[Click here for article.](#)

Summary of “Independence, confidence and fairness” continued...

However, McDermott warned firms that they should not be looking to the FCA to provide all the answers and firms approaching the FCA should be armed with possible solutions as well as questions.

In conclusion, McDermott said for London to remain the choice destination for global markets the FCA needs to “pursue its wholesale strategy positively, independently and with tenacity.”

[Click here for full speech.](#)

Enforcement Actions and Prosecutions

After a four-month trial a jury has cleared six brokers of Libor rigging.

[Click here for news report.](#)

After publication of the report by Andrew Green Q.C. into the FSA’s enforcement actions following the failure of HBOS, the FCA and PRA have announced their intentions to start investigations into certain former HBOS senior managers.

[Click here for press release.](#)

The FCA has taken enforcement action against five individuals, including one unapproved individual who performed the CF 1 function without approval, and three firms for significant integrity and competence failings in relation to solicitors’ PII (professional indemnity insurance) and other insurance schemes. The management oversight failings throughout the distribution chains contributed to three of the insurers going into administration and being unable to honour the insurance they had offered through cover holders to solicitor customers and other policyholders. This left customers at risk of not being insured. The FCA fined all five individuals a total of £15.5m – the unapproved person was fined just over £1m and also proposed to pay over £13m to three insurers declared in default by the FSCS – and banned four of the individuals. The actions follow joint intervention by the FCA and PRA after concerns were raised about the validity of PII arranged for over 1,300 solicitors’ firms across England and Wales.

[Click here for press release.](#)

Convicted fraudsters, Shinder Gangar and Alan White, have been sent to prison for failing to pay confiscation orders for operating a fraudulent Ponzi scheme, the victims of which lost more than £137m.

[Click here for article.](#)

Former Head of CIO International for JPMorgan Chase Bank NA in London, Achilles Macris, has been fined almost £793k for breach of the forth Approved Persons Statement of Principle – being open and co-operative with the FCA – in relation to Macris’s concerns regarding the synthetic credit portfolio.

[Click here for press release.](#)

Southwark Crown Court has ordered the return of almost £2.65m to investors in a fraudulent collective investment scheme operated by Alex Hope. In addition, Hope was made the subject of a confiscation order under the Proceeds of Crime Act 2002 of almost £167k, which Hope is required to pay within 3 months or face a further 20 months in prison, consecutive to the 7 year prison sentence imposed on him in January 2015.

[Click here for press release.](#)

Joseph Emery, a former investment broker of EM Trade Capital, who conned 9 retirees/pensioners out of £327k by selling worthless carbon credits, has been jailed for two and a half years. Emery will also face a confiscation hearing later this year to try to recover the money defrauded from victims.

[Click here for article.](#)

Other FCA News and Publications

FCA Press Releases

The FCA has issued a statement confirming its plans to clarify whether or not approval under the Senior Manager’s Regime (SMR) for Banks and Insurers is needed for an individual in charge of the legal function within a firm. The FCA plans to publish a consultation making it clear what is required in this area, however this will not be before the SMR comes into force. Therefore, firms are advised to make decisions in good faith based on the published rules and other communications as to whether individuals require approval. Where this advice is followed, “firms will not need to change their approach in the interim.”

[Click here for press release.](#)

The FCA has issued a warning to customers concerning the protections they lose and obstacles they may face if they take out a mortgage offered from outside the UK under the European Electronic Commerce Directive. The warning follows media coverage of a firm relying on this Directive to offer mortgages to consumers within the UK.

[Click here for press release.](#)

Other Publications

[PS16/1](#): Reform of the legacy Credit Unions sourcebook

[CP16/5](#): Handbook changes to reflect the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer agreements

[PS16/3](#): Strengthening accountability in banking: Feedback on CP15/22 and CP15/31; final rules on extending the certification regime to wholesale market activities and interim rules on referencing

[PS16/4](#): Fair, reasonable and non-discriminatory access to regulated benchmarks

[Call for Input](#): the FCA’s approach to the current payment services regime

[CP16/6](#): Complaints against the Regulators

[PS16/5](#): Strengthening accountability in banking and insurance: implementation of SM&CR and SIMR, and PRA requirements on regulatory references

[Call for Input](#): Review of retained provisions of the Consumer Credit Act

[GC16/2](#): Proposal to issue guidance on the FCA’s view of enforcing security under the Consumer Credit Act 1974

[Minutes](#) to the FCA’s MiFID II Trading venue roundtable regarding CP 15/43

