



**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 March the final report in the [Financial Advice Market Review](#) and [guidance](#) on good practice in liquidity management were published, both of which are summarised below. Also in March a number of stakeholders published articles/papers regarding the PSC (persons with significant control) requirements of the Small Business, Enterprise and Employment Act 2015, which come into force on 6th April. From this date all firms will need to maintain a PSC Register and take reasonable steps to identify all PSCs. In addition, from 30th June 2016 PSC information must also be filed at Companies House when a firm next completes its confirmation statement (annual return). Government Guidance regarding PSC register requirements can be accessed [here](#).

The FCA's monthly [Regulation Round-up](#) was published and includes a reminder that the Market Abuse Regulation comes into force in 3 months and an article covering research and due diligence in the investment advice process.

In addition, the latest issue of the FCA's [Policy Development Update](#) (Issue 31) 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.

Email – [emma@gemcompliance.com](mailto:emma@gemcompliance.com)

Website – [www.gemcompliance.com](http://www.gemcompliance.com)

### Main features

- \* Liquidity management for investment firms: good practice
- \* Financial Advice Market Review: Final Report
- \* FCA Speech - "UK FinTech: Regulating for innovation"
- \* Industry News
- \* Enforcement Actions and Prosecutions

### Industry News

High Court rules in favour of complainant in pension transfer case after Pensions Ombudsman, Anthony Arter, ruled against the complainant. The complaint centres around a pension transfer request made to Royal London in 2014, which Royal London refused because of concerns regarding the status of the scheme she would transfer to. The Pensions Ombudsman has 200 similar cases currently on hold to consider.

[Click here for article.](#)

Industry warned by former regulator about the potential mis-selling risks associated with robo-advice models.

[Click here for article.](#)

FOS upholds complaint against insurance broker after it failed to pass on claims history to the new home insurer. An Ombudsman ordered the insurance broker to pay the amount claimed for by the complainant following a house fire, plus £1,300 for distress/inconvenience and poor complaint handling and a further £50 for claims administration. The broker was also instructed to write a letter to the complainant confirming the voidance of the policy by the new insurer because of non-disclosure was the broker's fault.

[Click here for article.](#)

FCA confirms it will look at how the professional indemnity (PI) insurance market is working as part of its FSCS funding review. The FCA is concerned that IFAs don't have much of a buffer for claims with large PI insurance excesses and low capital requirements.

[Click here for article.](#)

Pension transfer code to be reviewed in light of High Court pension transfer case involving Royal London (reported above).

[Click here for article.](#)

Czech Republic-based self-cert lender responds to FCA's self-cert warning to consumers issued in January.

[Click here for article.](#)

**This newsletter contains generic information and has been generated for professional clients and associates of Gem Compliance Consulting Limited only and should not be regarded as advice. We will not be liable for loss, however caused by parties acting on the information contained herein.**

## Liquidity management for investment firms: good practice

This guidance was developed working alongside the PRA and FPC and is aimed at managers of open-ended investment funds in the fixed income sector to help ensure redemption requests can be complied with in differing market conditions. However, there are some underlying principles that could be applied more generally:

- \* Good disclosure of the nature and size of liquidity risks to investors in fund documentation:
  - ➔ the potential impact of low liquidity in portfolio holdings on the volatility of fund investment returns;
  - ➔ the ability of the fund manager to use specific tools or exceptional measures which could affect investors' redemption rights, and an explanation of the situations in which they would be used; and
  - ➔ a description of these tools and measures, and their potential impact on fund investors.
- \* Strong management of liquidity risk using a variety of process and tools including:
  - ➔ periodic review of existing products with changes in liquidity characteristics of securities being a key consideration; and
  - ➔ stress testing to assess the impact of extreme but plausible scenarios on funds. The results are then used to inform investment decisions.
- \* Practices that minimise investor incentives to redeem early such as:
  - ➔ portfolio adjustments following redemption to ensure the desired level of liquidity is retained; and
  - ➔ governance processes that ensure the interests of all investors are protected.
- \* Thorough preparation for the potential implementation of exceptional liquidity tools and measures by having comprehensive manuals detailing the 'when and how' to implement such measures and periodic testing of the measures in a simulated but realistic environment.

So the three areas of focus for firms in relation to liquidity management are: tools, processes and underlying assumptions; operational preparedness; and disclosure.

[Click here for guidance.](#)

## Financial Advice Market Review: Final Report

After launch of the review in August 2015, which examines how financial advice can work better for consumers, the final report has been published.

The Review explored the supply and demand sides of the market for financial advice and guidance, the barriers to providing these services and the potential remedies. The final report contains a number of recommendations, which fall into three categories:

- \* **Affordability** – includes proposals to make the provision of advice more cost effective, allow firms to develop more streamlined services and engage with customers in more effective ways. The report also recommends making the regulatory landscape clearer so firms can deliver “high-quality guidance services” to customers that want to make their own decisions.
- \* **Accessibility** – proposals are aimed at creating better access to advice, increasing consumer confidence in dealing with financial advice and improving customer trust in the advice market. Proposals include: clarifying the help employers can provide without needing to be authorised; incentivising employers to support the financial health of employees; the development of 'rules of thumb' for those that don't have the time/inclination to seek advice; and the use of nudges to encourage customers to seek support/advice at key life stages. The report also recommends publishing a short list of potential new terms for describing advice and guidance, with the final choice being confirmed after market research and consumer testing.

**Continued on page 3...**

## Industry News continued...

FOS rejects complaint from couple claiming, amongst other things, that the investment platform firm failed to declare a conflict of interest relating to their adviser - the adviser that recommended investments in three unregulated collective investment schemes, which became illiquid, had shares in the platform firm. FOS commented that historically advisers were required to hold shares if they wanted to use a platform “but such shares did not give an adviser any controlling or material interest” in the firm.

[Click here for article.](#)

Firm criticised by the Financial Services Consumer Panel in a response to a discussion paper published by the European Supervisory Authorities for not being clear on its website as to whether or not it provides advice. It is reported that the firm's homepage said its “advice is totally unbiased” but in its FAQ section is apparently stated “it doesn't give investment advice, as it is a discretionary investment manager.” The firm in question has since changes its website to reflect the fact that it does give investment advice.

[Click here for article.](#)

FCA writes to a number of providers following its retirement income market study expressing the concerns it has regarding potential breaches of competition law in relation to their pension product distribution arrangements. This action is thought to mirror the Competition and Markets Authority's practice of sending warning letters to firms and requiring the firms to confirm what action they plan to take.

[Click here for article.](#)

Supreme Court rules Deutsche Bank and UBS are to pay tax on bonuses, which bankers took in the form of shares in specially created companies rather than cash in the hope they would be PAYE and NI exempt on redemption.

[Click here for article.](#)

Regulatory responsibility for claims management companies to be transferred to the FCA from the MoJ at a date to be announced in due course.

[Click here for article.](#)

Industry body APFA announces it is in talks with fellow campaigners regarding a proposed limitation period on complaints to FOS after the possibility was ruled out by the FCA and HMT in the Financial Advice Market Review.

[Click here for article.](#)

CEO of HSBC Global Asset Management reports that non-financial services firms are looking to move into the investment distribution arena.

[Click here for article.](#)

Taxation of dividends changes from 6<sup>th</sup> April 2016.

[Click here for more information.](#)

## Financial Advice Market Review: Final Report continued...

- \* Liabilities and consumer redress – the FCA has taken on board comments from the industry that the extent of future liability regarding the provision of advice is a concern, however the FCA and HMT have ruled out a 15-year long stop on firm liability. The unpredictable nature of the FSCS levy was also highlighted as a concern and barrier to effective planning. Proposals include improving information regarding the way in which FOS deals with complaints and promoting best practice, and reform of how the FSCS is funded by: exploring risk-based levies; reviewing funding classes; and investigating wider use of the FSCS's credit facility.

The recommendations will follow various timelines, with some reliant on the development of EU legislation. However, indicative timings of progress for recommendations are included in the report along with related initiatives (e.g. Insurance Distribution Directive and the FCA's Regulatory Sandbox). A number of outcomes will also be tracked to measure success of the project and these are:

- \* "Good availability of affordable, high quality advice and guidance, which consumers at all stages of their lives are able to access to help them with their particular needs.
- \* Greater innovation in the interests of consumers, encouraged by a flexible and well-understood regulatory framework for advice.
- \* A range of channels through which consumers are able to access advice and guidance, including in the workplace, and appropriate flexibility in the way consumers are able to pay for advice.
- \* Consumers engaged with their own financial affairs and so seeking out the advice and guidance they need."

[Click here for final report.](#)

### FCA Speech - "UK FinTech: Regulating for innovation" by Christopher Woolard, the FCA's Director of Strategy and Competition

In his speech Woolard outlines the challenges faced by the regulator in balancing the risks of financial innovation with the creation of opportunities in such a fast-paced, ever-evolving environment.

Woolard talks about Project Innovate and explains the goal for this year is to make the service end-to-end, so "firms that have received initial support from the Hub will have their applications handled by a specialised Project Innovate authorisation process." After authorisation the FCA wants to offer a year of "dedicated supervisory support" to these firms.

On the international level the aim is to increase engagement by putting co-operation agreements in place with overseas regulators to help UK firms expand overseas and "assist non-UK innovators...to enter the UK market."

Another area of focus is the FCA's Regulatory Sandbox where it is hoped "regulatory uncertainties" will be resolved through live testing. The FCA is currently in the process of considering the feedback it received during its Sandbox event in December and plans to have the unit running by late Spring.

RegTech – using new technologies to help meet regulatory requirements – is an area the FCA wants to encourage firms to consider and incorporate within businesses models. Woolard used distributed ledger technology as an example, which "has the potential to revolutionise financial services." The FCA is particularly interested

**Continued on page 4...**

## Industry News continued...

The ICO's improved practical guide to IT security for small firms is now available online.

[Click here for guide.](#)

The ICO is to hold a data protection conference for SMEs on 25<sup>th</sup> April at Birmingham's NEC.

[Click here to register interest.](#)

SFO closes its investigation into allegations of price-rigging in the FX market due to insufficient evidence.

[Click here for article.](#)

Latest version of the Private Equity Reporting Group's Good Practice Reporting Guide for Portfolio Companies has been published.

[Click here for guide.](#)

### Enforcement Actions and Prosecutions

The FCA has fined W H Ireland Ltd £1.2m and restricted its corporate broking division from taking on new clients for 72 days for breach of Principle 3 (management and control) in relation to market abuse systems and controls failings. The firm's failings included: inadequate personal account dealing rules for employees; insufficient controls to prevent leakage of inside information, which it received on a regular basis, from the private to the public side of the business; poor conflicts of interest management; and deficient compliance oversight. The failings were identified by a Skilled Person in August 2013 and in July 2014 a follow-up report was commissioned by the firm to check the extent of compliance with the Skilled Person's recommendations. The second report found that some of the recommendations had not been implemented adequately within the required timeframe.

[Click here for press release.](#)

FCA confirms investments offered by Katherine of Alexandria Ltd, which was set up to produce, market and distribute the film 'Fall of an Empire: Katherine of Alexandria', are likely to constitute a collective investment scheme. As the company is not authorised by the FCA it has breached s.19 of the Financial Services and Markets Act. However, the FCA doesn't believe it would be in the investors' interests to force closure of either the company or investment scheme at this time. However, it has published guidance on the options open to investors.

[Click here for article.](#)

After Michael Ross Curtler, former Deutsche Bank trader, pleaded guilty in the US for his role in manipulating Deutsche's LIBOR submissions, the FCA has banned him from the industry for lacking honesty and integrity.

[Click here for article.](#)

## FCA Speech - "UK FinTech: Regulating for innovation" continued...

in how this technology can be used to help customers meet 'Know Your Customer'/AML requirements more efficiently and effectively and is in discussions with the government and industry on this.

Woolard concludes by saying the FCA needs to "keep pushing forward ... and the Sandbox is the next logical step" as it will provide stakeholders with a controlled environment within which to test and develop/fine-tune products/services and business models.

[Click here for speech.](#)

## Other FCA News, Speeches and Publications

### FCA Press Releases

The National Audit Office has published its report on financial services mis-selling: regulation and redress. [Click here for report.](#)

The FCA and PRA has confirmed to the EBA that it will comply with all the EBA's Guidelines on Sound Remuneration Policies except the application of the limit on awarding variable remuneration to 100% of fixed remuneration, or 200% with shareholder approval, to all firms subject to the Capital Requirements Directive (CRD). [Click here for press release.](#)

The FCA has confirmed it will pilot the publication of claims scorecards on a small number of products in the general insurance sector. The FCA will collect data from firms and publish it in an easily accessible format on its website. The pilot will be launched in summer 2016, last for 12 months and involve the release of data at the start and end of the pilot. The results will be used to see whether any proposals should be developed, which would then be consulted on. [Click here for press release.](#)

FCA issues statement regarding the Senior Managers and Certification Regime, which came into force in March. [Click here for press release.](#)

FCA welcomes action taken by a number of pension providers following its Retirement Income market study to review and strengthen their competition compliance. [Click here for press release.](#)

The FCA and the Australian Securities and Investments Commission (ASIC) sign agreement to support innovative businesses before, during and after authorisation. This agreement means the FCA and ASIC will refer to one another those innovative businesses seeking to enter the other's market. [Click here for press release.](#)

### Other Publications

- \* [DP16/1](#): Ageing population and financial services
- \* [PS16/6](#): Consequential Changes to the Senior Managers Regime
- \* [CP16/7](#): Payment Accounts Regulations 2015 - draft Handbook changes and draft guidance
- \* [FS16/2](#): Feedback Statement on Call for Input: Regulatory barriers to innovation in digital and mobile solutions
- \* [DP16/2](#): CASS 7A and the Special Administration Regime Review
- \* [Occasional Paper No. 13](#): Economics for Effective Regulation
- \* [Occasional Paper No. 14](#): Liquidity in the UK corporate bond market: evidence from trade data
- \* [PS16/7](#): Future regulatory treatment of CCA regulated first charge mortgages
- \* [CP16/8](#): Quarterly Consultation Paper No. 12
- \* [TR16/2](#): Fair treatment of long-standing customers in the life insurance sector
- \* [Minutes](#) of February's MiFID II Trade Association roundtable published

## Enforcement Actions and Prosecutions continued...

Former equities trader at Schroders Investment Management Ltd, Damian Clarke, has now pleaded guilty to nine counts of insider dealing in total – he pleaded guilty to seven in July 2015. Clarke placed trades using inside information he received about significant corporate events. Total profits from his dealings totalled more than £155k.

[Click here for article.](#)

Phillip Boakes, who was convicted and sentenced to 10 years in prison in March 2015 for: two counts of fraudulent trading; three counts of using a forged instrument; and one count of accepting deposits without authorisation, has received a further 730 day's imprisonment for failing to fully satisfy a confiscation order under the Proceeds of Crime Act 2002.

[Click here for article.](#)

The FCA's High Court claim for money to be returned to investors of two investment schemes promoted by Capital Alternatives Ltd, and a number of other firms, continues. The FCA argues the defendants made false and misleading statements to investors.

[Click here for article.](#)

Credit card provider NewDay is to provide over £4m in redress following a business review, which found that some aspects of its charging model were unfair.

[Click here for article.](#)

Former financial adviser, Martin Rigney, has pleaded not guilty to 19 offences, 8 of fraud and 11 of forgery. Rigney is accused of falsifying signatures on investment forms and transferring money to funds without authorisation, costing clients £200k. The trial is to begin in April next year.

[Click here for article.](#)

The Pension Regulator has fined a firm £10k for failing to comply with auto-enrolment requirements in time.

[Click here for article.](#)

### Other FCA Speeches

"The FCA's Competition Powers" by Deb Jones, the FCA's Director of Competition. [Click here for speech.](#)

"Investment Funds, Markets Liquidity and the Investor" by David Lawton, the FCA's Director of Markets Policy and International. [Click here for speech.](#)

