



**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.

The last month has again been a busy month for publications and news with the FCA's consultation paper on MiFID being one of the main developments (see below in Features). It has also published the minutes of the May 16 MiFID roundtable.

In the meantime, the FCA has also confirmed that their website changes are entering into the final stage.

The FCA's monthly Regulation Round-up was published along with the latest issue of the FCA's Policy Development Update (Issue 36).

FOS issued its regular newsletter, no. 135.

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

- \* Consultation Paper CP 16/19 – Markets in Financial Instruments Directive II ('MiFID II')
- \* Policy Statement PS16/9 – Financial Crime Reporting
- \* Industry News
- \* Enforcement Actions and Prosecutions
- \* Other FCA News, Speeches and Publications

## Consultation Paper CP 16/19 – ('MiFID II')

The FCA has issued CP 16/19 which is a further consultation paper on the implementation of MiFID II. This follows an earlier CP (CP 15/43) in December 2015, which primarily related to the background of MiFID II and also new rules on the secondary trading of financial instruments. MiFID II is expected to apply in the UK from 3rd January 2018.

This second paper, (CP 16/19) will impact a wide range of authorised firms including investment advisers, investment managers, stockbrokers and corporate finance/venture capital firms. It provides further guidance on the FCA's proposals regarding the impact and implementation of changes in relation to at least the following areas:

- Position limits and reporting for Commodity Derivatives

## Industry News continued...

FSCS pays out over £1m in respect of advice firm declared in default.

Providers could pay more to FSCS.

High risk pension transfer advice costs advisory firm in FOS decision.

Pensions Ombudsman to get more pro-active in relation to court appeals against decisions.

Falcon Group told to compensate by FOS on advice to invest in unregulated collective investment schemes.

FOS tips balance of probabilities on Tenet consumer complaint.

FOS sees dip in pension transfer issues but rise in SIPP claims.

FOS rules against Openwork adviser in relation to 'speculative' investor.

FOS tells Prudential to compensate clients in relation to an endowment sold in 1997.

FOS accused of ignoring key details in respect of complaints.

FCA says most advisers have less than 5 complaints per year.

The FCA reviewed SIPP providers in advance of the increase of capital adequacy rules.

SIPP boss demands even higher capital adequacy levels for SIPP providers.

Investment Association to amend its Remuneration Principles guidance.

Lloyds to shut branches and reduce staff, claiming as a result of Brexit.

RBS advisers told not to contact 'orphan' clients where RBS has withdrawn providing face to face services for clients with less than £250,000.

Coutts makes appropriate 'suitability' issues provision in financials.

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- Supervision including updated requirements on breaches reporting, and aspects relating to passporting provisions
- Systems and Controls for firms providing MiFID investment services
- Prudential Standards relating to the new investment service of operating an Organised Trading Facility ('OTF')
- Remuneration Arrangements for Sales Staff, with a new SYSC chapter being added
- Whistleblowing (to consolidate various different regulations requirements into one SYSC chapter)
- CASS Sourcebook – amendments to CASS rules primarily to align existing requirements with MiFID II provisions
- Complaint Handling (to implement new rules which will also apply to a wider range of client than currently)
- Fees Manual (in relation to the new activity of operating an OTF)

The paper also has a MiFID navigation guide in relation to the mapping for SYSC at Appendix 2.

Firms which are currently exempt under Article 3 of MiFID may also wish to pay particular attention to the SYSC chapter. These proposals may directly impact those firms, even whilst that same exemption under MiFID II exists. Certain previous SYSC requirements for such firms which were guidance may now become mandatory rules similar to those for common platform firms.

In relation to SYSC changes, the current proposals primarily relate to implementing the following areas of MiFID II and 'cross mapping' to relevant SYSC chapters including Chapter 4 to 10.

- Article 9 – management body
- Article 16 – organisation requirements
- Article 23 – conflicts of interest

The FCA has confirmed that a further Consultation Paper will be issued at a later date before the end of 2016, on proposed Conduct of Business changes, as well as on product governance and the Perimeter Guidance Manual. This will then be followed in 2017 by one single Policy Statement which will cover all aspects of MiFID II implementation rather than individual policy statements to each CP issued.

It is not clear what, if any, impact Brexit will have on the above proposals. However, MiFID II has been under discussion for some time. Therefore current proposals will also likely reflect FCA views on a number of the above areas regardless of EU input.

Therefore it is recommended that firms review the MiFID II consultation papers as soon as possible to enable them to develop implementation plans for relevant rules, but also taking into account current circumstances rather than anticipating any major change in direction at this stage.

The FCA has also recently issued the minutes of its May 2016 MiFID II roundtable discussions which firms may find useful to review. Firms can also register to have these emailed directly.

Responses to CP 16/19 should be submitted to the FCA no later than 28 October 2016 in the manner prescribed.

As these proposals progress, during 2017 Gem Compliance also intends to issue specific MiFID II briefing notes once final decisions on implementation of rules are confirmed and in the run up to implementation.

[Click here for the Consultation Paper](#)

## Policy Statement PS16/9 – Financial Crime Reporting

Following Consultation Paper 15/42 from December 2015, the FCA has issued Policy Statement 16/19 on a new reporting requirement: the financial crime return (REP- CRIM), in order to strengthen the FCA's supervisory position on financial crime.

The report will have to be submitted annually via Gabriel and will enter into force on 31 December 2016 with the first report being due 60 business days after year end.

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## Industry News continued...

Competition and Markets Authority provides feedback on UK banks including demanding that firms make it easier for clients to switch providers.

Keydata boss sues former legal advisers for damages.

Network caught removing mortgage advisers permissions due to lack of activity in relevant sector.

Waiting times for FCA authorisation worsen.

FCA denies reporting requirements too strict.

FCA denies blacklisting whistleblowers.

FCA's Tracy McDermott defends the FCA position on whistleblowers in not treating a small business lobby group concerns as such.

The FCA has confirmed it is to delay the publication of its fundings into the asset management sector.

In the meantime, it confirms it will look at absolute returns funds as part of its thematic review of the asset management industry.

Rory Percival, a key technical expert and public figure at the FCA is set to leave to return to running a consultancy firm.

FCA's gardening leave bill increases.

FCA hires FBI veteran in investigations role.

FCA response on the treatment of whistleblowers and SME Alliance.

HMRC calls time on tax avoidance scheme marketed by Ernst & Young.

MPs call for the breakup of the FCA.

FCA to overhaul how Pension Transfer redress is calculated – consultation to follow.

Life after the FCA – where the regulators turn up next.

Ex-IFA faces probe from ICO regarding email to former clients regarding claims management firm.

Association of Mortgage Intermediaries calls for the FCA to consider exemptions for the SME market in respect of the Senior Managers and Certification Regime.

Insolvency Service shuts down pension liberation scheme.

ABI says it considers too many people are withdrawing savings from existing pensions plan.

Regulator causes funds fees turnaround regarding description of charges.

Couple banned in respect of mishandling affairs of finance company.

Tax evaders face large HMRC fines in respect of offshore assets.

HMRC claims victory in tax avoidance case.

This will apply to firms which are subject to the Money Laundering Regulations (MLRs), including banks, building societies, designated investment firms, investment firms, mortgage lenders, electronic money institutions, full permission consumer credit firms, life insurers, retail investment intermediaries and mortgage intermediaries, but firms will only be required to report REP-CRIM for the areas of their business subject to the MLRs.

The following firms are exempt: Retail investment intermediaries, mortgage intermediaries, investment firms, consumer credit firms and electronic money institutions with revenue of less than £5m. General insurers (GI), GI intermediaries and credit unions have also been excluded in the initial phase.

The report will require firms to provide the following information:

- Operating jurisdictions
- Customer information (types of customers)
- Compliance information (number of suspicious activity reports etc.)
- Sanctions – specific information
- Information on fraud cases

A template of the report is available in the Policy Statement.

[Click here for the Policy Statement.](#)

## Industry News

[Warning notice to advisory firms – FCA concerned about the role of introducers and gives guidance on their expectations of firms when using such routes.](#)

[ESMA has published advice relating to extending AIFMD marketing passporting arrangements for full scope firms to 12 non-EU territories.](#)

[Pensions Regulator warns firms on Auto-Enrolment breaches.](#)

[MPs consider giving Pensions Regulator more powers to avoid another 'BHS' pensions issue.](#)

[Work and Pensions Committee to review Defined Benefit pension regulation.](#)

[Same sex couple to appeal landmark pension case in relation to benefits.](#)

[Standard Life did not mislead pension scheme member on lifetime allowance, Pension Ombudsman rules.](#)

[Advisers face dilemma as Brexit pushes up transfer values.](#)

[Financial Limited faces £90,000 FSCS claim.](#)

[SIPP provider enters into administration amidst buyout.](#)

[Money Advice Service to return £1m to levy payers.](#)

[FOS tells firm to compensate client in relation to pension transfer advice where charges were too high.](#)

[FOS tells adviser to compensate client in relation to Equitable Life pension transfer advice due to the impact of the transfer on Guaranteed Annuity Rates \('GARs'\).](#)

[Judge rules in case of former director of advisory firm, who misappropriated company funds and submitted false business expense claims.](#)

[FSCS declares Propertybourse in default.](#)

[FSCS declares PI insurer in default.](#)

## Industry News continued..

[Passporting a major issue for IFAs in Brexit talks.](#)

[Dissatisfied clients criticise absence of wealth managers action post Brexit.](#)

## Enforcement Actions and Prosecutions

[Pensions Regulator fines professional trustee for failing to prepare chair's statements in three defined contributions schemes.](#)

[Cenkos Securities fined for failure to maintain high standards required for securities sponsor services.](#)

[Land banking firm wound up after it misled investors.](#)

[Entrepreneur spared jail but faces fine for running wine investment whilst banned.](#)

## Other FCA Press Releases, News, Speeches and Publications

FCA gives an update on PPI complaints handling and confirms it believes its proposals on changes, consulted on in November 2015 should be carried forward. It is consulting on amendments to the rules prior to implementation (see CP16/20 above).  
[Click here for press release](#)

FCA publishes its findings from its credit card market survey, and sets out a package of measures, to help consumers take better control of their spending.  
[Click here for press release](#)

## FCA Speeches

Innovation in FinTech: Christopher Woolard, Director of Strategy and Competition at the FCA provided a speech at the London FinTech week at the end of July.  
[Click here for speech](#)

## Publications

[PS 16/21 – Policy Statement in increasing transparency and engagement at renewal in general insurance markets](#)

[FCA Occasional Paper – no 20 – discussing financial stress issues of consumer credit users](#)

[FCA Statement on Review of Insurance Client Money Rules – follow up to CF12/20](#)

[CP 16/20 - Consultation paper on PPI Complaints handling feedback](#)

[FS 16/6 – Finalised Guidance on definition of Payment Account](#)

[FS 16/7 – Finalised Guidance on Payment Account Regulations - packaged accounts](#)

