

REGULATION NEWS

ISSUE 29

February 2017



Welcome to the latest edition of Gem Compliance's monthly regulation newsletter. The aim of the newsletter is to present 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 and PRA's websites for regulatory developments.

World politics continues at a pace. In the US, President Trump is attempting to introduce regulation relaxations at least for US businesses. In the EU and UK, steps continue to be taken nearer to Brexit and Article 50 being triggered, with the House of Lords currently considering the Government's Article 50 proposals. This follows the recent House of Commons vote to support such proposals.

MiFID II implementation plans continue and Gem will be issuing its briefing notes on MiFID II in Q1 of this year. In the meantime, please visit the FCA's dedicated [webpage](#) for the latest developments.

Otherwise, during February, the FCA has issued a selection of consultation papers, policy statements and discussion papers, some primarily in relation to the operations of financial markets. A survey of investment firms with appointed representatives (ARs) has taken place, following a previous similar review of insurance ARs. The FCA website also now houses a [survey asking for feedback on the changes that it has made recently to its website](#). Authorised firms are also reminded of the deadline for FCA fees tariff data submission on 28 February.

The February edition of the FCA's [Regulation Round up](#) has been issued and covers, among other topics: recent supervisory work on practices of firms when acquiring clients from other firms, and a couple of articles on competition. It also gives an update on its Live & Local Roadshows with the most recent event now bringing the program to a close. Please also see 'Other FCA Publications' for a [special edition of the Regulation Round-up](#) covering future funding of the Financial Services Compensation Scheme (FSCS).

The FCA's [Policy Development Update](#) webpage was updated on 24 January 2017. The Financial Ombudsman Service issued its recent newsletter ([no. 139](#)) and the Information Commissioner has also recently issued its monthly [newsletter](#).

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 – natalia@gemcompliance.com

Website – www.gemcompliance.com

Main features

- FCA Speech – What makes good conduct regulation
- Supervision Review Report: Acquiring clients from other firms
- Policy Statement – Changes to Enforcement Process (PS17/1)
- Industry News
- Enforcement Actions and Prosecutions
- Other FCA Publications, Press Releases and Speeches

Industry News

Rolls Royce is to pay £671m to settle bribery and corruption claims, the Telegraph reports. These claims have dogged the company for years. In a recent statement, the group revealed it has reached a provisional deal with the UK and other international regulators over claims it paid bribes to land international deals and was involved in fraud.

[Click here for link](#)

The Financial Services Compensation Scheme (FSCS) has increased the maximum level of compensation for deposits where firms are declared in default from £75,000 to £85,000 with effect from 30 January 2017. The FSCS confirms that firms that are required to disclose to consumers FSCS compensation levels, which includes deposits should ensure such disclosures are updated.

[Click here for article](#)

Enforcement Actions and Prosecutions

Morgan Stanley has been fined \$8m in the US by the Securities and Exchange Commission (SEC) for failing to disclose the risks around inverse exchange-traded funds (ETFs) to advisory clients.

[Click here for article](#)

The former director of an advice firm that failed in 2009 has been handed a 15 year bankruptcy restriction after it emerged he had breached a director disqualification and previous bankruptcy order.

[Click here for article](#)

Coutts Bank has been ordered to return CHF 6.1m (around £5m) in unlawfully generated profits derived from money laundering via its Swiss Bank. Following a year long investigation, the Swiss regulator said the division had exhibited 'serious deficiencies' in its money laundering controls and turned a blind eye to employee concerns.

[Click here for article](#)

The FCA has fined Deutsche Bank AG £163m for failing to maintain an adequate anti-money laundering control framework between January 2012 and December 2015. This is the largest financial penalty for financial controls ever imposed by the FCA. The FCA considered that Deutsche Bank had exposed the UK financial system to the risks of financial crime by failing to properly oversee the formation of new customer relationships. As a result of inadequate controls, the bank was used by unidentified customers to transfer approximately \$10bn in a manner that the FCA considered was highly suggestive of financial crime.

[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

What Makes Good Conduct Regulation - Speech by John Griffith Jones, FCA Chairman, delivered at the Cambridge Judge Business School

Mr Griffith Jones gave a speech on 13 February outlining what he considered was 'good conduct regulation'. He considered that there are five building blocks of this as follows:

- government policy;
- clear objectives and perimeters;
- shared understanding of risk tolerance;
- operational excellence; and
- efficient measurement of outcomes.

Factors he considers are relevant to achieving good conduct regulation include:

- that regulation is appropriate where, left to its own devices, the free market produces an outcome that is not in line with the elected government's policy, and where intervention will produce a better result.
- that the FCA has one overriding strategic objective of ensuring that markets work well, which is supported by three operational objectives of protecting consumers, promoting competition and enhancing integrity. But as these are fairly high level and often difficult to define, that the intention of the FCA's Mission initiative is to provide more clarity on how this can be achieved.
- that the FCA considers it cannot have zero tolerance of risks but it aims to have 'safety nets' to both anticipate risks in advance but also capture these with hindsight.
- that there must be some form of measurement and transparency regarding a regulator's activity, so both failure and success can be identified and assessed and to provide confidence to consumers.

[Click here for the full speech](#)

Supervision Review report – Acquiring clients from other firms

The FCA has conducted a supervisory review on practices of firms when acquiring clients from other firms. It has concluded that, overall, whilst it saw some good practices, it was disappointed that none of the firms assessed were able to consistently show that clients' needs were suitably considered.

It found that while firms focused on the commercial benefits, they did not focus enough on how clients were impacted on the acquisition.

The review specifically identified that newly acquired clients were not given enough information including:

- details of the services offered by the new firm;
- associated levels of charges;
- any difference to the tax status of ongoing adviser charges; and
- how clients could complain about advice given by the original firm where responsibility for historic advice was not taken over by the new firm.

Where a new client agreement was required, firms did not always ensure they had the client's agreement before arranging for charges to be redirected to the new firm's bank account. Some firms also told the FCA of the difficulties they had faced to meet the intended service standards for such clients because of inadequate planning or resources. Instances of conflicts of interest were also identified during the review.

The FCA now expects all firms, where these issues could be relevant, to consider the content of this report and assess whether they need to improve their own practices and procedures.

[Click here for the full report](#)

Enforcement Actions and Prosecutions continued...

Former HBOS adviser, Lynden Scourfield, has been sentenced to 11 years in prison for bribery and fraud. Scourfield, branded a 'thoroughly corrupt and devious man' by the judge, was one of six found guilty of a scam that saw the bank's parent group lose £235m. They used the funds for their own personal benefit. The six were found guilty of bribery and fraud and have been jailed for a combined 47 years and nine months.

[Click here for article](#)

Two city traders have been sentenced for conspiring to defraud a Russian Bank of more than £141m. The series of complex frauds was uncovered following an investigation by the City of London Police's fraud teams.

[Click here for article](#)

The SFO has successfully led a prosecution against four individuals who have been found guilty of conspiracy to make corrupt payments and conspiracy to commit fraud against lenders Barclays and KBC Lease.

[Click here for article](#)

The SFO is considering further enforcement action against a former financial adviser who is currently serving a six year prison sentence for his role in a collapsed biofuel investment scheme. This is after he failed to meet the deadline for a confiscation order.

[Click her for article](#)

The Information Commissioner has issued a penalty notice against Data Supply Company Ltd for the sale of more than half a million customer records without consent which resulted in 21,000 spam texts being issued by a third party.

[Click here for article](#)

The Information Commissioner has issued a penalty notice to Digitonomy Ltd, a Cheshire credit broker, for the issue of millions of spam texts to customers who had not consented to such contact.

[Click here for article](#)

The FCA has issued a decision notice cancelling the permissions of a home finance firm (Church Hill Finance) and an individual as sole trader (Mr Badaloo) for failing to satisfy the suitability Threshold Condition and for breaches under Principle 11 - failing to be open and co-operative with the FCA. This includes not providing information on the records and finances of the firm and also that the individual in question had been convicted of criminal offences of trespassing and theft, which raised concerns on fitness and propriety.

[Click here for the notice](#)

The FCA has issued a final notice in respect of an individual for breach of Principle 11 by failing to submit regulatory returns. This related to a firm in the investment adviser, mortgage and general insurance and protection sector.

[Click here for the notice](#)

The FCA has issued a final notice in respect of an individual and prohibits him from performing a controlled function due to concerns on fitness and propriety in his role as an investment adviser. This included recklessly making statements, promises or forecasts that were misleading, false or deceptive, and for the communication of an unauthorised financial promotion. This followed a conviction for 2 years in January 2015 for introducing investors to a fraudulent investment scheme.

[Click here for the notice](#)

Policy Statement – Changes to Enforcement Process

The FCA has issued final rules in respect of changes to its Enforcement Process (PS 17/1). This follows a previous Consultation Paper ([CP 16/10](#)) following a Treasury review in December 2014 on the transparency, fairness, effectiveness and speed of the FCA's enforcement and decision making processes.

This review made a number of recommendations for improvements. These include the provision of more information to the subject of an investigation about why they have been referred for investigation and providing regular updates throughout the investigation itself.

The changes also allow for a person under investigation to agree certain elements of a case (whether penalty, facts, liability or a combination of these) but contest other elements before the Regulatory Decisions Committee.

The majority of changes to the FCA's rules in the Enforcement Guide (EG) and Decision Procedure and Penalties Manual (DEPP), where not already in place, came into force on 31 January implementing many of these recommendations.

[Click here for the full policy statement](#)

Industry News

The Government's Brexit bill progresses with a majority vote of 384 Members of Parliament voting in favour of triggering Article 50 for the UK to leave the EU. The bill faces a further layer of scrutiny as it is debated in the House of Lords. However, at this stage, it is now expected to become law, which will allow the government to meet its proposed deadline of triggering Article 50 before the end of March 2017.

[Click here for article](#)

The white paper on Brexit has outlined the UK Government's aims for regulation post Brexit including keeping it in line with EU regulation. Although the paper does not provide full details, it provides a broad line on the Brexit strategy and its focus for different sectors. The paper did not provide any conclusions on the key issue of passporting, but indicated that the government will be 'aiming for the freest possible trade in financial services between the UK and EU member States'.

[Click here for article](#)

In February, the Financial Markets Law Committee (FMLC) published a letter to Andrew Tyrie, Treasury Select Committee Chair, that comments on the UK financial services industry in the context of the UK's withdrawal from the EU. The letter includes the recommendation for a transitional period given the key uncertainties that will apply, including in relation to passporting, in the future.

[Click here for article](#)

In the US, President Trump has proposed delaying and reviewing Retail Distribution Review (RDR) type reforms which would have tightened the rules in the US around commission to financial advisers. The 'fiduciary' rule had been scheduled to be implemented in April 2017.

[Click here for article](#)

A joint research report from the British Bankers Association and the Wealth Management Association has revealed that wealth management and private banking costs reached £4.5bn in 2015 mainly due to regulatory compliance requirements. This was due to firms having to update their front and back office systems to ensure that services were compliant with regulations.

[Click here for article](#)

The FCA is increasingly using powers to stop failing advice firms from transferring assets, helping its fight against 'phoenix' firms. The percentage of advisers which have continued to trade at new firms while their old firms left liabilities on the FSCS has decreased.

[Click here for article](#)

Enforcement Actions and Prosecutions continued...

The FCA has issued a warning notice in respect of an individual approved as a CF10 (Compliance Officer) of a firm carrying out pension transfer activity. The FCA was of the opinion that the individual had breached Statement of Principle 6 by failing to use due skill, care and diligence in carrying out the compliance function. This included that the individual had failed to take reasonable steps to inform himself about his obligations as a CF10 and about the specific nature and risks of Enhanced Transfer Value (ETV) advice business. An individual subject to warning notices has the right to make representations to the Regulatory Decisions Committee (RDC) before a decision is taken on whether to issue a final notice.

[Click here for the notice](#)

In addition, there have been a number of recent enforcement actions in respect of consumer credit firms and breaches of Principle 11. These have included cancelling the permissions of such firms, which the FCA considered have breached its Principles – including dealing with the regulator in an open and co-operative manner – by either failing to pay outstanding balances on fees due or submit regulatory returns in a timely manner. In other cases, actions have also included refusals of applications for full authorisation or variations where the firms or individuals in question could not satisfy Threshold Conditions (COND) of full authorisation including suitability.

[Click here for FCA Notices and Decisions](#)

A mortgage broker has had its permissions cancelled due to misleading the FCA on capital adequacy and not being able to evidence how it met its requirements, despite confirming in its regulatory returns that it did.

[Click here for article](#)

The Serious Fraud Office (SFO) has charged Harlequin Group Chairman, David Ames, with three counts of fraud by position. The charges relate to activity between January 2010 and June 2015. The SFO have a page on its website dedicated to Harlequin, which will provide further updates on this case.

[Click here for article](#)

Western Union, the world's biggest money-transfer company, has agreed to pay \$586m and has admitted to turning a blind eye to criminals using its service for money laundering and fraud. It admitted to 'aiding and abetting' wire fraud by allowing scammers to process transactions even when the company realised its agencies were helping scammers avoid detection.

[Click here for article](#)

DeVere UK has voluntarily agreed to immediately cease providing third party companies with transfer value analysis reports (TVAS) following discussions with the FCA. The firm is also currently subject to a Section 166 review commissioned by the FCA. The FCA has not given any reason to date for these actions.

[Click here for article](#)

Other FCA Publications

Following recent research carried out by the FCA, findings conclude that there is new evidence of liquidity in the UK corporate bond market following recent declines.

[Click here for the report](#)

Industry News continued...

The FCA has apologised for the way it handled a complaint about its regulation of the Co-op Bank including delays in the complaint handling process and an inaccurate statement regarding confidentiality around such matters. This followed a review by Complaints Commissioner, Anthony Townsend, who agreed with the complainant about the time taken to deal with the complaint.

[Click here for article](#)

The FCA has agreed to waive a late submission fee charged to a firm, as a result of the firm forgetting to finalise the submission process on a completed GABRIEL return purely in error. The firm complained to the Complaints Commissioner once a fine was levied. Whilst the Complaints Commissioner was unable to uphold the complaint due to wording of the rules, he suggested it could be an exceptional circumstance as it could be seen from the audit trail that it had been a genuine mistake on behalf of the firm.

[Click here for article](#)

The FCA is reviewing its FCA register arrangements following a statement on the level of costs that would be involved to amend an incorrect entry. This follows a complaint upheld against the FCA by the Complaints Commissioner in relation to misleading entries for individuals who were directors of an AR whose Principal was later publicly censured by the FCA. The register incorrectly implied the individuals had held controlled functions on behalf of the Principal, which was not the case and was therefore considered to be misleading, but that the mistake could not be rectified without major cost implications.

[Click here for article](#)

St James Place has been ordered by the Financial Ombudsman Service (FOS) to pay compensation to a client who had Alzheimer's and where the advice given on an ISA transfer was deemed to be unsuitable. FOS considered that the firm's investment process was not strong enough to prove a 'tangible' benefit to the client in the absence of a more specific analysis of his situation.

[Click here for article](#)

The FCA has asked three discretionary fund managers to stop taking in new investment money, a Freedom of Information request disclosed. It named two of the three firms involved but did not disclose the particular reasons why this was implemented.

[Click here for article](#)

The FCA has focused on fee disclosure as part of its follow up review on advice suitability reports. In the FCA's report, it said it was concerned with whether or not investors understood how much they were paying for investing including advice fees. This has also resulted in the recent issue of specific letters to certain firms that had taken part in the review, recommending that such firms should carry out file reviews including reviewing suitability documentation.

[Click here for article](#)

Ciaran Martin, head of the new [National Cyber Security Centre \(NCSC\)](#), states that the UK has been hit by 188 high level cyber security attacks in the last three months, and that hackers have threatened national security. The comments accompany the official opening of the NCSC on 14 February.

[Click here for article](#)

The FSCS has declared 23 pension and investment firms in default during November and December 2016. This comes at a time when the FSCS has also put in place an extra £36m levy on life and pensions intermediation due to a rise in SIPP claims. Eighteen of the firms were investment firms and five came under the life and pensions category.

[Click here for article](#)

In the meantime, the FSCS has also warned consumers to be on their guard against email scams promising high value payments as compensation from the FSCS and asking for personal information in connection with such claims.

[Click here for article](#)

Other FCA Publications continued...

'The FCA has issued a [special Regulation Round up](#) during February. This relates to the future funding of the Financial Services Compensation Scheme and its previous Consultation paper ([CP16 - 42](#)) on this. The newsletter summarises some of the key issues that are currently being consulted on. Consultation closes on 31 March 2017 and all relevant firms are encouraged to consider this special round up and the Consultation Paper so that as much feedback as possible can be provided in respect of the future structure of the scheme. The FCA intends to give feedback on the consultation in Autumn 2017.

The Treasury has published draft Statutory Instruments to implement elements of MiFID II, including changes to the Regulated Activities Order, to introduce new regulated activities under MiFID II including 'operating an Organised Trading Facility'.

[Click here for the draft Statutory Instruments](#)

The FCA has issued a Discussion Paper (DP 17/2) which seeks feedback on how the UK primary capital markets can most effectively meet the needs of issuers and investors. At the same time, it has issued a connected consultation paper ([CP 17/4](#)) regarding changes it is proposing to technical enhancements to the Listing Rules.

[Click here for the Discussion Paper](#)

The FCA has issued a Discussion Paper (DP 17/1) which seeks stakeholder views on the practice of investing in illiquid assets, including property. The paper makes observations on investment managers' immediate actions following the Brexit vote in June 2016, where investors wished to realise investments as a reaction to the vote in less liquid assets such as property. Feedback closes on 8 May.

[Click here for the Discussion Paper](#)

Finalised guidance (FG 17/1) has been issued, which is of relevance to Consumer Credit Firms regarding the issue of default notices in relation to guarantor loans.

[Click here for the Finalised Guidance](#)

The FCA has issued statistics in relation to its recent use of skilled persons' reports.

[Click here for the full report](#)

The Treasury published an original consultation paper on the transposition of the Markets and Financial Instruments Directive ('MiFID II') in March 2015. A further recent paper gives a summary of the responses submitted and the government's response to the consultation. This paper includes draft statutory instruments which give effect to the approach to transposition including:

- the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (referred to as the 'Main Regulations');
- the Financial Services and Markets Act 2000 (Regulated Activities) Amendment Order 2017; and
- the Data Reporting Services Regulations 2017.

The FCA and PRA are in the process of consulting on the necessary changes to the rules to implement MiFID II. In the meantime, the government will make and lay the finalised statutory instruments in early 2017.

[Click here for the consultation paper](#)

Industry News continued...

The Pensions Regulator has warned it will take action against firms that are failing to comply with auto-enrolment. A small number of employers have already been handed County Court Judgements (CCJs) after failing to pay their automatic enrolment fines.

[Click here for article](#)

The Pensions Minister, Richard Harrington, has said the government has to make 'difficult decisions' on the state pension age (SPA). A review into the SPA is being carried out and an issue that may be looked at includes further changes to the SPA in line with changes to life expectancy.

[Click here for article](#)

The Government has said that it may review the current £30,000 level above which individuals must take advice prior to transferring defined benefits schemes. This is linked to related changes, which are being considered to allow individuals under 55 to access 'small' pension pots. These proposals are part of a raft of measures in a [Department for Work and Pensions \(DWP\) consultation paper](#) to improve defined benefit schemes.

[Click here for article](#)

Funds invested in workplace pension schemes will not be considered retail products under the FCA review of the asset management market. On that basis, such funds are likely to avoid extra disclosure requirements, which will be targeted for retail investors.

[Click here for article](#)

Prudential has reported a staggering increase in their service for providing defined benefit TVAS (Transfer Value Analysis Service) reports, which must be obtained when customers wish to consider transferring defined benefit pension plans. This comes after the FCA issued a warning to advise firms about defined benefit transfers, stating a number of firms were failing to meet regulatory standards.

[Click here for article](#)

WH Ireland has appointed Victoria Raffé, former FCA director, as a non-executive director. Ms Raffé has spent the bulk of her career at the FCA, most recently as director of the Authorisations Division.

[Click here for article](#)

Tracy McDermott, former Acting Head of the FCA, is joining Standard Chartered as head of corporate, public and regulatory affairs at the bank.

[Click here for article](#)

National advice firm Towry has been renamed following its £600m acquisition by Tilney Bestinvest in 2016. The combined companies will now simply be called Tilney and the Towry name will disappear.

[Click here for article](#)

Hargreaves Lansdown has admitted breaching company law on historic dividend payments to its shareholders including its founders. The firm said that it broke the law on a 'technical' basis, failing to justify the payment of dividends in company accounts. The firm stressed that the issue would not have any effect on the firm's financial position.

[Click here for link](#)

The Bank of England governor, Mark Carney, has warned 'robo-advice' could create problems for the economy. In a speech, he said that technology used by such firms posed a risk of moving significant numbers of clients towards certain assets at the same time, which can create greater volatility of an asset in the short term.

[Click here for article](#)

In the meantime, Scalable Capital, a 'robo-advice' sector specialist has hit out at the Bank of England's comments on this sector, saying that the attack was misinformed. This takes into account the small proportion of assets currently under such management compared to the asset management industry as a whole and in the context of perceived issues with traditional asset management models, which such new models are aiming to address.

[Click here for article](#)

Other FCA Publications continued...

The European Securities and Markets Authority ('ESMA') has recently issued guidance on its Supervisory Convergence arrangements including its work program for 2017. This includes the co-ordination of the regulation of common themes throughout all EU member states.

[Click here for the full guidance](#)

FCA Press Releases

Express Gifts Ltd, a direct mail order and online business with permission to sell general insurance products, enters into a £12.5m redress scheme agreement with the FCA to provide redress to approximately 330,000 customers who were sold insurance that offered little or no value.

[Click here for press release](#)

FCA Speeches

Peter Andrews, Chief Economist at the FCA gave a speech at a meeting of Cornerstone Research to comment on Shadow Banking. He assesses the risks and rewards of an industry now estimated in the region of £14tn worldwide. He also took the opportunity to define what he considers is meant by the term 'shadow banking' - "credit intermediation by non-banks carried out on and priced on global markets for money and risk."

[Click here for full speech](#)