REGULATION NEWS

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March 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.

Now that Article 50 has been triggered, Brexit has become a certainty but how the UK will access the EU remaining an uncertainty. For now however, it is business as usual.

MiFID II implementation plans continue, with the FCA publishing its first policy statement at the end of March. Gem will be issuing its briefing notes on MiFID II shortly. In the meantime, please visit the FCA's dedicated webpage for the latest developments.

The FCA continues to have issues with fake emails, this time coming from fca.updates@fca.org.uk - the regulator urges users not to open these, as well as those from webmaster@fca.org.uk or press.office@fca.org.uk.

The March edition of the FCA's Regulation Round up has been issued and covers, among other topics: MiFID II authorisation, with a warning that firms should be submitting complete applications for authorisation or variations of permission to the FCA by 3 July 2017, and a discussion paper on Illiquid assets and open-ended investments.

The FCA's Policy Development Update webpage was updated on 3 March 2017.

The Information Commissioner has 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.

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Main features

- GC 17/2: Treatment of politically exposed persons (PEPs) under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
- Inside the mind of a scammer: FCA reveals the tactics investment fraudsters use to deceive over 55s
- CP17/7: Insurance Distribution Directive (IDD) Implementation: Consultation Paper 1
- Culture in financial institutions: it's everywhere and nowhere - Speech by Andrew Bailey, Chief Executive of the FCA
- Industry News
- Enforcement Actions and Prosecutions
- Other FCA Press Releases, Publications, and Speeches

Industry News continued

The FCA has asked the firm Prudential to review their non-advised annuity sales, in order to establish whether customers were sufficiently informed about enhanced annuities and given the opportunity to shop around.
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Following numerous consultations, the Prudential Regulation Authority (PRA) has indicated that it will review its Pillar 2A Capital requirement for challenger banks in order to make them more competitive on the mortgage market.
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A new requirement under MiFID II to report to clients when their portfolio falls by more than 10 per cent is causing confusion among advisers, discretionary fund managers (DFMs) and platforms as it is not clear who should be responsible for the reporting.
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Following the publication of MS15/2.2 (an interim report covering the FCA's asset management market study) in November 2016, the FCA has received more than 140 responses from fund firms pushing back against the FCA's findings.
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Chancellor of the Exchequer Phillip Hammond has opposed the EU's prudential reform proposals for banks which include an introduction of intermediate holding companies for banks with high capital requirements.
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The FCA has revealed that 'advanced fee fraud' is the most common scam it is contacted about. This type of fraud can occur when a consumer is offered a loan with an upfront fee, but the loan never materialises. These scams now make up a third of all the scams logged with the FCA's consumer contact centre.
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The FCA has revealed that 55 per cent of people accessing their pension for the first time in 2016, withdrew the whole amount.
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Personal pensions contributions are on the increase, noting a 20 per cent rise in the year up to 5 April 2016.
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John Cridland, former director-general of the CBI, has recommended in his review of the state pension age that it needs to rise from 67 to 68 between 2037 and 2039. Current timetable for the rise is between 2044 and 2046.
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GC 17/2: Treatment of politically exposed persons (PEPs) under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

The FCA has produced this guidance to give firms certainty on its expectations for how they should treat the varying risks posed by PEPs, a family member of a PEP or other known close associates.

Firms must take a proportionate approach when conducting initial and ongoing due diligence but evidence shows that firms' due diligence measures are not always commensurate with the risks posed by the PEP.

Key points from the guidance:

- A PEP is an individual who is entrusted with prominent public function, other than as a middle-ranking or more junior official.
- Family and known close associates of PEPs (examples of both provided in guidance) are not PEPs themselves purely because of their connection to a PEP.
- The regulations require PEPs, and those connected, to be subject to enhanced scrutiny because FATF (the Financial Action Task Force) recognises that a PEP may be in a position to abuse their public office for private gain and may use the financial system to launder the proceeds of this abuse of office.
- Firms should have suitable risk-management systems and procedures to identify customers (and beneficial owners of customers) as PEPs and to manage the enhanced risks arising from having relationships with PEPs, family members and known close associates.
- The FCA believes there should be relatively few cases where it is necessary to decline business relationships solely because of AML requirements – only where PEPs pose a high money laundering risk.
- Not all PEPs pose the same risk.
- Firms should not apply the same measures to all relationships with PEPs.
- Geographical lower risk indicators include: low levels of corruption, political stability and free and fair elections, free press, politically independent judiciary and criminal justice systems, strong public audit traditions, legal protection for whistleblowers, well-developed registries for land, companies and equities.
- Personal and Professional lower risk indicators include: rigorous disclosure requirements, do not have executive decision-making responsibilities, ceased to be a PEP over 12 months ago.
- Higher risk geographical indicators include, in addition to the opposites of the lower risk factors listed above: armed conflict, non-democratic forms of government, weak state institutions.
- Higher risk personal and professional factors include, in addition to the opposites of the lower risk factors listed above: wealth/lifestyle inconsistent with legitimate sources of income or wealth, subject to credible allegations of misconduct, responsible for/able to influence large public procurement exercises or allocation of scarce government licenses.
- High and low risk indicators have also been included for those connected to PEPs.
- Firms should take account of information on public registers such as beneficial owners registers and those maintained by the Electoral Commission to minimise the burden on customers and avoid duplication of other regimes.
- Oversight and approval of PEP relationships should take place at an appropriate senior management level and be subject to regular reviews.

The FCA has asked for feedback, including from affected consumers, by 18th April 2017 to enable the finalised guidance to be in place by 26th June 2017 – the date the 4th Money Laundering Directive is to be transposed by.

The guidance will be kept under review.

Click here for the full GC

Industry News continued

The FCA will consult in the next three months on rules for the extended senior managers' regime. The rules which currently only apply to banks, will be extended to other authorised firms in 2018.
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Transparency International claims that up to 40 per cent of luxury development properties are being bought by individuals from jurisdictions which have a high risk of corruption or by companies based in secretive havens. The organisation estimates that more than £4.2bn worth of property could be bought with funds of a suspicious source.
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A Loughborough based building society has launched a new mortgage product which would allow students to buy a house which they can live in and simultaneously let out rooms to other students. The mortgage could be up to 100 per cent loan to value, as long as their parents or grandparents use their savings or property to cover 20 per cent of the value.
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The head of the advice community website Panacea Adviser has notified his clients and colleagues of a cyber-attack on his emails, which resulted in phishing emails being sent out from his email address. This is not long after a similar occurrence at Hawksmoor Investment.
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Four wealth managers from all corners of the UK give their view on a second Scottish referendum.
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FCA authorisation waiting times have reduced significantly with figures showing that in the last quarter of 2016, it took on average just 15 weeks for an application to be processed, compared to 25 weeks earlier in the year. The FCA has brought in extra staff to process applications after the maximum processing time in 2016 had jumped to nearly two years.
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More than £3m has been paid out by the Financial Services Compensation Scheme in relation to the default of financial advice firm Blueinfinitas.
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The Royal Bank of Scotland is currently running trials on robo-advice for mortgages and is expected to make a decision by the end of Q3 this year as to whether it will implement the service.
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Meanwhile, the chief investment officer of robo-advice firm Shan Port has said that the move of banks into the robo-advice sector would boost their business rather than take clients away.
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The Royal Bank of Scotland has announced the closure of 30 of its own branches along with 128 NatWest branches as they no longer serve as transactional purposes, but rather act as 'centres for advice'.
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Inside the mind of a scammer: FCA reveals the tactics investment fraudsters use to deceive over 55s

The FCA has revealed some of the tactics that investment fraudsters use to scam users over the age of 55:

- Offers of very lucrative returns
- Masking investments risks
- The use of flattery
- Exclusivity – implying that the individual was chosen for the investment specifically
- Social persuasion - saying that others have invested
- Time-limited offers

Research conducted under the FCA's ScamSmart campaign also showed that only 2 in 5 think that they would be able to spot fraud. This comes as Action Fraud reports the average loss for a fraud victim last year was £32,000.

Click here for the full report

CP17/7: Insurance Distribution Directive (IDD) Implementation: Consultation Paper 1

In 2010 the European Commission began a review of the Insurance Mediation Directive (IMD) and this review resulted in a proposal for a revised directive – the Insurance Distribution Directive (IDD), which UK firms are required to comply with by 23rd February 2018.

The European Commission is still to adopt delegated acts and technical standards, which are subject to technical advice and consultation by EIOPA – including the implementation of the standardised Insurance Product Information Document (IPID) and changes to CASS. Therefore the FCA has split the consultation into two stages and the second consultation paper is expected to be released later this year.

The scope of the IDD is wider than the previous directive and introduces requirements in new areas.

The consultation period for the first CP closes on 5th June 2017 and the FCA aims to publish a policy statement by September 2017. However it is not known at this stage whether it will be a combined policy statement for both consultations.

A Gem briefing note on this topic (GBN 17/1) is also available.

Click here for the full CP

Culture in financial institutions: it's everywhere and nowhere - Speech by Andrew Bailey, Chief Executive of the FCA

Delivered at the HKMA Annual Conference for Independent Non-Executive Directors.

Mr Bailey noted that culture is difficult to define and could be interpreted as both the input and the output of an organisation, but that it is intrinsically linked to trust. The speech then progressed into the area of influencers of culture, noting that culture should be consistent with desired outcomes.

Mr Bailey also illustrated his points by citing two case studies: bankers remuneration and governance and responsibility.

The speech ended with an insight into the role of the FCA. Its aim is to promote good culture with the 'tone from the top' approach, which seeks to ascertain good culture in the leadership of a firm, alongside transparent assessment of firms by the FCA.

Click here for the full speech.

Industry News continued

The firm Prudential has warned that one in seven people retiring this year will be fully reliant on their state pension, as they have not saved anything into a pension pot.
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The uncertainty caused by Brexit has caused the London job market to shrink by almost a quarter. The London Employment Monitor has reported that there have been 23 per cent less jobs available month on month.
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LV has warned that the UK may be on the brink of a pension mis-buying crisis as its research shows that more than half of over-55s will not take financial advice before they retire. This comes only a year after the publication of the recommendations by the Financial Advice Market Review. One of the main reasons for not taking advice was a lack of understanding as to what it could offer.
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Enforcement Actions and Prosecutions

A senior barrister has been fined £1,000 by the Information Commissioner's Office for storing client files on his home computer. The data including information on up to 250 people including children, was accidentally uploaded to the internet when the barrister's husband updated software.
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A former IFA has admitted to defrauding a family friend and 80-year-old pensioner out of more than £50,000. Initially he maintained his innocence, but later admitted to the theft. He has since repaid the money.
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The Supreme Court has ruled in favour of the FCA in the London Whale case on its approach to the anonymity of one of the bankers involved. Mr Achilles Macris was in charge of a team which generated £4.9bn by the end of 2012 and argued that the FCA did not act with sufficient care to ensure his anonymity in publicly available notices. JP Morgan Chase Bank was fined £137.6m over the case.
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HM Revenue & Customs has won a £26m tax avoidance case against film partnership schemes Proteus Film Partnership and Samarkand Film Partnership, involved in the funding of 'The Queen' and the recent remake of 'Oliver Twist'. This decision could potentially have an impact on other similar cases worth £286m.
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FCA Press Releases

Investment managers still failing to ensure effective oversight of best execution

Senior Managers and Certification Regime: one year on

Nick Stace appointed as Non-Executive Director of FCA

New Chair of the Financial Conduct Authority's Smaller Business Practitioner Panel announced

Industry News

Harlequin Property SVG, the overseas real estate investment group that attracted significant investment from British pension investors, has lost its case for extending insolvency proceedings, which brings it closer to liquidation. The firm's chairman is under investigation for tax evasion theft and other criminal activity.
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FOS has seen a 12 per cent fall in complaints against financial advisers in a general decline in complaints in the second half of 2016. Sesame came out on top as the advice firm with the most complaints, with complaints against banks also generally falling.
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The Pensions Regulator achieved a deal with former British Home Stores (BHS) owner Philip Green which will pay the 19,000 members of the BHS pension scheme the same starting pension they would have received initially.
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HM Treasury will go ahead with its proposed changes to the definition of financial advice. "Under the new definition advice must be a recommendation made to a person in their capacity as an investor or potential investor, the recommendation must be presented as suitable for the person to whom it is made, and it must relate to taking certain steps in respect of a particular investment." The new definition will only apply to regulated firms and from 3 January 2018.
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The Association of Professional Financial Advisers is building a case against FOS where it upheld complaints against advisers with regard to focused advice. The Association believes that the Ombudsman has a bias ,which undermines the existence of focused advice.
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Rory Percival, former Financial Conduct Authority technical specialist, has said that the risk of robo-advice has been overplayed and that firms which create the right outcomes for their clients, should not fear the regulator.
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The FCA has issued 39 private warnings to senior executives of financial companies over the last six years, a Financial Times Freedom of Information request has revealed.
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After the FCA announced an end date for PPI claims, advisers have called on the regulator to keep a close eye on fraudulent claims management companies.
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Almost 6,000 people have used LV's fully automated financial advice service since it launched in 2015, although it is not clear how many customers proceeded with the fully automated service and how many switched to the phone-based service after an initial online engagement.
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A Freedom of Information request by FT Adviser has revealed that the FCA has only taken action against 5 firms which failed to pay redress demanded by FOS, versus 195 referred cases.
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Business investment in the UK has slowed down following the Brexit vote. Figures are showing that investment dropped by 1.5 per cent last year, which puts it 6 per cent above the lowest level in 2008.
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FCA Press Releases continued

FCA proposes reforms to the availability of information in the UK equity IPO process

FCA Statement on EMIR 1 March 2017 variation margin deadline

Financial regulators of Japan and UK announce Exchange of Letters on Co-operation Framework to support innovative FinTech companies

Firms continue to fail to meet the FCA's expectations on their use of dealing commission

The Financial Conduct Authority has today confirmed that it will introduce a deadline for making new payment protection insurance (PPI) complaints

Other FCA Publications

The FCA has issued its most recent quarterly consultation paper concerning the following areas of its Handbook:

- DEPP and EG reflecting the FCA's powers following the Bank Recovery and Resolution Order 2016
- the Market Conduct sourcebook (MAR) relating to ESMA's guidelines on commodity derivatives
- SUP and EG arising from the extended Immigration Act 2014 (as amended by the Immigration Act 2016)
- PR 1.2.3R in anticipation of the Prospectus Regulation coming into force and minor amendments to LR Appendix 1, PR Appendix 1 and the Glossary
- REC 3.9 and MAR 5.6, and minor amendments to REC 2.3
- COBS and MCOB to improve firms' communication with consumers - in this chapter, specifically in the area of suitability reports, as these can contain 'over-disclosure' leading to the possibility of the document being too complex for the clients' needs and to update the guidance for a more digitalised approach.
- Regulatory reporting requirements

Consultation replies and comments are due 3 April 2017 for Chapter 5 Q1, and 3 May 2017 for Chapters 2, 3, 4, 5 (Q2 and Q3) 6, 7 and 8.

Click here for the full CP

FCA Speeches

Competition and Innovation – David Geale, Director of Policy, FCA

The view from the regulator: developing our approach - Mary Starks, Director of Competition, FCA

New thinking in regulatory economics - Peter Andrews, Chief Economist, FCA

Efficiency and effectiveness: our approach to primary markets - Christopher Woolard, Executive Director of Strategy and Competition, FCA