REGULATION NEWS

ISSUE 31

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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.

MiFID II/MiFIR implementation plans continue and Gem Compliance will be issuing briefing notes on MiFID II in Q2 of this year. In the meantime, please visit the FCA's dedicated webpage for the latest developments. A summary of the recently issued MiFID II Policy Statement and a 5th Consultation Paper is included in this newsletter. Following the Policy Statement, the FCA has confirmed it is now 'open for business' for any required applications for MiFID II authorisation and/or variations of permissions and is encouraging firms to make early applications but in any case, prior to 3 July 17.

Otherwise this month has been a busy month for FCA publications including the FCA's Business Plan (and Risk Outlook) for 2017/18, and feedback on its Mission Statement. A brief summary of Andrew Bailey's speech at the press conference to launch these documents is included below, with a topic specific newsletter from Gem Compliance on these documents to follow in May.

Whilst not 'regulatory' news, the outcome of the recently announced general election in less than 2 months on 8 June 17 may also need to be assessed for any impact on future regulatory developments. With Parliament being dissolved on 3 May 17, this may also have an impact on the progress of any pending legislation not yet passed by that date and also the implementation of FCA priorities.

The April edition of the FCA's Regulation Round up has been issued and the FCA's Policy Development Update webpage was updated on 7 April 17.

The Financial Ombudsman Service issued its recent newsletter (Issue No. 140), as did the Information Commissioner (April Edition).

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

- CP17/8 – MiFID II Consultation Paper
- PS 17/5 - MiFID II Policy Statement
- GC 17/4 – Financial Advice Market Review (FAMR); Implementation Part 1.
- CP 17/11 – Implementation of the Revised Payment Services Directive
- FCA Speech by Andrew Bailey, Chief Executive of the FCA, at Press Conference for the Publication of FCA Corporate Documents (including Business Plan 2017/18, Sector Views and Mission Statement)
- Industry News
- Enforcement Actions and Prosecutions
- Other FCA Publications, Press Releases and Speeches
- Other Publications

Industry News

A House of Lords committee has proposed that the remit of the FCA should be widened to give priority to tacking financial exclusion. A report stated that the poorest are being excluded from even basic financial services and forced to rely on expensive and substandard products.
Click here for article.

The Bank of England is experiencing its own form of increased regulatory spend with its legal bills tripling to almost £7m over the last three years.
Click here for article.

The Bank of England has issued a Dear CEO letter to PRA regulated banks, insurers and designated investment firms regarding its expectations of firms on contingency planning for Brexit. Although issued to PRA regulated firms, this may also be of interest and general relevance to FCA regulated firms.
Click here for Dear CEO letter.

The Bank of England has published a speech given by Mark Carney, Bank of England Governor, communicating his views on the road to a responsible and open financial system post Brexit.
Click here for speech.

The European Commission has blocked the planned merger between the London Stock Exchange and Deutsche Boerse, arguing that the tie up could have created a monopoly and reduced competition.
Click here for article.

The European Parliament has published a press release announcing its Economic and Monetary Affairs Committee (ECON) has adopted a draft report on the European Commission's proposed regulation amending the European Venture Capital Funds Regulation (EuVECA Regulation) and the European Social Entrepreneurship Funds Regulation (EuSEF Regulation). The intention is to extend the range of managers eligible to set up EuVECA and EuSEF funds and extend the range of companies that such funds can be invested into. The intention is also to make cross border marketing of the funds easier and cheaper.
Click here for article.

The FCA is seeking to hire its first ever dedicated Head of Project Innovate.
Click here for article.

A further 31 financial technology firms have been admitted to the FCA's regulatory sandbox, doubling the number being provided with assistance. It was also noted that fintech hubs outside of London's 'Silicon Roundabout' in Old street were rapidly developing - the Edinburgh-Glasgow corridor and the Leeds-Manchester area.
Click here for article.

CP 17/8 – MiFID II Consultation Paper

The FCA has issued a further MiFID II Consultation Paper (CP 17/8), which is the fifth CP in relation to implementing MiFID II/MiFIR. This consultation paper deals with changes to its decision procedure and penalties manual (DEPP) and enforcement guidance (EG). It also set out the FCA's proposals for new conduct rules dealing with the non-MiFID business of occupational pension scheme firms.

The paper also covers consequential and miscellaneous changes to the FCA Handbook and new guidance on the use of third parties where firms are required to send the FCA financial instrument reference data or commodity derivative position reports.

Chapter 2 of CP 17/8 covers changes to the Specialist Regimes in respect of Occupational Pension Schemes (OPS). COBS 18 currently contains a range of tailored conduct regimes for various types of specialist designated investment business covering both MiFID and non-MiFID business. This includes OPS firms, which are firms that undertake investment management on behalf of a group occupational pension scheme or trust.

COBS 18.8 sets out the requirements for OPS firms. Such firms are outside the scope of MiFID and this remains the case under MiFID II. However, the FCA is now proposing an extension of the MiFID II rules in relation to inducements and research, best execution and taping for OPS firms. Certain MiFID II changes in COBS 11 (dealing and managing) are also to be extended to OPS firms.

Chapter 3 relates to changes to DEPP and EG following MiFID II. The majority of the enforcement powers required by MiFID are already available to the FCA. The main exception to this is the new power to require investment firms, credit institutions and recognised investment exchanges to remove persons from their management boards. CP 17/8 includes proposals to extend DEPP to include this power.

Chapter 4 relates to a few consequential rulebook changes relating to emissions allowances bidding, client assets and reporting to clients.

Feedback on Chapters 3 and 4 is requested by 12 May and Chapter 2 by 23 June.

Click here for consultation paper.

PS 17/5 – MiFID II Policy Statement

The FCA has issued its first Policy Statement on MiFID, with a further policy statement expected to be published by the end of June 2017. PS 17/5 sets out near final rules, which were consulted on in the first and second MiFID II Consultation Papers - CP 15/43 and CP 16/19, respectively. CP 15/43 mainly covered market issues and CP 16/19 mainly covered systems and controls, client assets and commodity positions.

PS 17/5 also covers a small number of issues consulted on under the third, CP 16/29, and the fourth, CP 16/43, consultation papers. The PS also provides an update on the FCA's thinking regarding its proposals for the recording of telephone conversations - covered in CP 16/29.

Certain specific points covered in PS 17/5 are summarised below and include but are not limited to:

- **Taping:** CP 16/29 included consultation on the recording of telephone conversations and electronic communications. As well as the implementation of the specific MiFID II requirements, the FCA proposed requiring MiFID Article 3 firms (mainly being retail financial advisors) to also tape calls. In light of feedback received, this approach is being amended that such firms are required to either tape all relevant conversations or keep a contemporaneous note of all relevant conversations instead.

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Industry News continued

The FCA has reduced its backlog on authorisation applications, with average waiting times reducing dramatically. In Q4 2016, it took an average of around 15 weeks for an application to be determined, down from 25 weeks earlier in the year.
Click here for article.

In a recent case of an ex-JP Morgan manager, Achilles Macris versus the FCA, the Supreme Court found in favour of the FCA. The issue related to an earlier FCA decision notice against JP Morgan Chase Bank. Mr Macris had considered that the report had identified him in its highly critical assessment involving the 'London Whale' trading issues without giving him the chance to defend himself. The recent judgement ruled that none of the terms used by the FCA as synonyms for Mr Macris would have identified him to the general public. The case is also seen to weaken the protection afforded to such individuals under the Financial Services and Markets Act in relation to preserving or defending their reputations.
Click here for article.

The FCA has issued its findings under a Freedom of Information request in relation to its approach to assessing investment advice files for suitability and disclosure.
Click here for FCA's response to FOI request.

Four SIPP providers have failed new FCA capital adequacy requirements, a Freedom of Information request has revealed. The FCA did not say which firms these were.
Click here for article.

Discretionary fund manager, Strand Capital, is to be wound down by its owners and has told the FCA it will apply for a voluntary wind up. Financial statements published recently suggest the firm has faced difficulties in recent months.
Click here for article.

A mastertrust pension scheme, My Workplace Pension, has closed its doors to new business. The mastertrust did not say the reasons for it not accepting new business although the closure follows recent news that the discretionary fund manager, Stand Capital, used by My Workplace pension was closing down.
Click here for article.

Advisers are being warned that the FCA could take action on the use of contingent pricing in relation to defined benefit pension transfers, i.e. that advisers are only charging clients if a transfer goes ahead, as it is considered this could represent a conflict of interest.
Click here for article.

A Freedom of Information request has identified that the FCA has restricted 54 advice firms' permissions from carrying out pension transfers. The FCA has recently expressed a particular concern on overseas pension transfers.
Click here for article.

The FCA and PRA have launched an investigation into the conduct of Barclays Chief Executive, Jes Staley, after he tried to identify a whistleblower.
Click here for article.

The FCA has announced the appointment of John Griffith-Jones, as the new chairman of the FCA's Smaller Business Practitioner Panel.
Click here for press release.

PS 17/5 – MiFID II Policy Statement continued

- **Asset Management study:** In November 2016, the FCA published the interim report of its asset management study. This identified several ways in which asset management services and products could work better for retail and institutional investors. It provisionally proposed a package of remedies to address the issues identified. These remedies have links to both MiFID II and also the forthcoming Packaged Retail and Insurance-based Investment Products Regulation ('PRIIPS') and the FCA has undertaken to ensure that the final packages proposed in this area are consistent with this legislation.
- **Organised Trading Facilities:** A new investment service under MiFID II, the policy statement confirms how the OTF rules will be implemented, as a new chapter of MAR 5A.
- **Principles for Business: Proposal to apply** certain Principles for firms that do not currently apply to eligible counterparty business is being implemented.
- **Commodity Derivatives:** Proposals for a new section of MAR setting out guidance and direction on MiFID II's regime on position limits, position management and position reporting for commodity derivatives. Subject to some minor amendments or clarifications, the proposals are largely due to be implemented as per the consultation.
- **Supervision:** Implementing notification requirements of breaches of regulations under MIFID II are proceeding as per consultation.
- **Systems and Controls:** Previous consultation covered applying certain MiFID II rules to 'Article 3' MiFID exempt firms, as MiFID II requires at least analogous requirements to apply in certain circumstances to such firms. The original proposals consulted on are in the main being implemented.
- **Conflicts of Interest (SYSC 10):** Changing the requirements from taking 'reasonable' steps to identify, manage or prevent conflict of interest steps to taking 'appropriate' steps will be implemented. This will require firms to be more proactive in identifying such circumstances.

Click here for policy statement.

GC 17/4 – Financial Advice Market Review (FAMR) Implementation Part 1

The Financial Advice Market Review ('FAMR) was launched jointly by HM Treasury (HMT) and the FCA in August 2015 to explore ways in which government, industry and regulators could stimulate the development of a market which delivers affordable and accessible financial advice and guidance to everyone, at all stages of their lives.

In its final report from March 2016, FAMR set out 28 recommendations intended to tackle the barriers to consumers accessing advice and guidance. Recent communications from the FCA outline the progress made on each of these 28 recommendations. In addition, GC 17/4 has been issued, which proposes to address four of these recommendations and provides guidance to:

- **Chapter 2**: support firms offering 'streamlined advice' on a limited range of consumer needs;
- **Chapter 3:** provide clarity on the standard types of information required as part of the fact-find process and sets out key considerations for relying on third party fact-find information;
- **Chapter 4:** support firms offering services that help consumers make their own investment decisions without a personal recommendation (non-advised services); and
- **Chapter 5**: along with the Pensions Regulator, provide a new factsheet that sets out what help employers and trustees can provide on financial matters without being subject to regulation.

The guidance also gives a number of practical examples in each of the chapters outlining what the FCA consider would demonstrate good practices.

In relation to streamlined advice services, this includes that firms could use their initial analysis to put in place a 'filtering' procedure at the start of the advice process to filter out those clients where streamlined advice would not be appropriate.

Continued in left-hand column of page 4

Industry News continued

Barclays dropped plans for a new outsourced whistleblowing system just weeks before the issue arose regarding its CEO trying to identify a whistleblower.
Click here for article.

The Bank of England has been implicated in the LIBOR rigging scandal by a recording uncovered by BBC Panorama.
Click here for article.

Barclays Wealth and Investment Management has undertaken an internal suitability review of advice provided by its former financial planning business and is offering clients redress where advice has been deemed unsuitable. The review covers advice relating to investment products between 2005 and 2011.
Click here for article.

Coutts & Co has completed its suitability review two and a half years after starting it in 2014. The review ended in December 2016, with total costs remaining within the £200m provision set by the Bank.
Click here for article.

A mother and son have been charged over an attempted £140k insurance fraud. They conspired to fake the mother's death in Zanzibar in an alleged attempt to claim £140k of life assurance. The insurer referred the case to the City of London's Police Insurance Fraud Enforcement Department in late 2016.
Click here for article.

The payday loan firm, Wonga, has reported that it has suffered a data breach, which may have affected up to 245,000 customers in the UK. The firm said it was urgently investigating illegal and unauthorised access to the personal data of some customers.
Click here for article.

German authorities have confirmed that the recent bombing of the Borussia Dortmund FC bus was considered to be an attempt at market manipulation.
Click here for article.

The clients of failed wealth management firm, Arjent Ltd, continue to be in limbo as the FCA blocks the transfer of the remaining client accounts to Beaufort Securities. The reason for this is currently unknown. At present a payment of £25k for the client accounts due by Beaufort to Arjent is still outstanding and Beaufort's discretionary permissions were restricted by the FCA in 2016. However it is not known if either of these situations are connected to the delay.
Click here for article.

The FSCS has stepped in to protect members of Yoker Credit Union Ltd which has stopped trading. The credit union is now in default and is unable to repay deposits to its 1,200 members.
Click here for article.

The FSCS has warned of a potential supplementary levy later on in 2017 for life and pensions advisers. However, at present the total current levy has fallen £15m due to a reduction in costs of SIPP provider related claims.
Click here for article.

Consumers could be in line for compensation as the FSCS declares 19 firms in default. At least 12 are likely to fall into the investment or life and pensions categories funded by advisers. It also includes two firms which were asked by the regulator in 2016 to voluntarily stop pension switching and transfer business.
Click here for press release.

GC 17/4 – Financial Advice Market Review (FAMR) Implementation Part 1 continued

The guidance also covers disclosure on the nature of services and warns advisers regarding ongoing responsibilities to evidence suitability under streamlined advice. It also considers the position on non-qualified advisers assisting in this process.

In relation to non-advised services, a further outcome is that the Regulated Activities Order (RAO) will be amended to reflect a narrower interpretation of where advice is regulated advice, as this will only occur where a personal recommendation is made. This brings the RAO definition in line with the current definition under the original MiFID requirements and reflects the above guidance in Chapter 4 of GC 17/4 regarding non-advised services. This may also then impact on whether a firm needs authorisation by the FCA for advice. Chapter 4 of GC 17/4 provides guidance on whether advice is regulated advice or generic information or guidance.

Feedback on Section 4 is required by 23 May and for Sections 2, 3, and 5 – 11 July. A further consultation (Part 2) will be issued in summer 2017.

Responses to both consultations are due to be in place before the end of 2017 to coincide with MiFID II implementation but firms will be able to use such finalised guidance once it has been published.

Click here for guidance consultation.
Click here for progress report.

CP 17/11 – Implementation of the Revised Payment Services Directive

The FCA is consulting on its approach to applying the Payment Services Regulations 2017. The 2nd EU Payment Services Directive ('PSD2') is required to be in place in the UK by 13 January 2018. HMT will transpose PSD2 into the Payment Services Regulations 2017 (PSRs 2017), which will replace the Payment Services Regulations 2009.

The FCA will continue as the competent authority responsible for authorising and supervising Payment Service Providers (PSPs) under the new legislation. The Payment Services Regulator will also be responsible for certain aspects relating to payment systems.

The consultation paper proposes a revised 'Approach Document', which sets out the FCA's approach to applying the new regulations and also the amended Electronic Money Regulations and will replace existing guidance. The revised Approach Document also includes some proposed clarifications on existing guidance and some new guidance, including in response to the previous Call for Input to the existing approach to the current payment services regime.

Proposals include changes to the Perimeter Guidance Manual on payment services within scope and also new directions that will apply to providers of 'excluded services' (as defined). This will also bring about new categories of payment services being introduced and therefore an increase in the number of firms that will need to be authorised or registered. It will also include changes to:

- The authorisation or registration process;
- Conduct of business and complaints handling rules for PSPs;
- Regulatory reporting in relation (amongst other items) to complaints and fraud; and
- the FCA's approach to supervising PSPs.

Relevant firms are encouraged to review this CP to identify if they are caught by any new definitions or perimeter of 'payment services' and for existing firms, to identify what changes need to be implemented prior to PSD 2 being implemented.

Responses are required by 8 June.

Click here for consultation paper.

Industry News continued

The Chief Executive of the Financial Ombudsman Service ('FOS'), Caroline Wayman has indicated that if advisers follow FCA guidance on defined benefit transfers, and give suitable advice in the customers' best interests, this should help them avoid complaints on such transfers in the future.
Click here for article.

FOS has instructed Compass Wealth Management Consultants Ltd to pay compensation to a client despite the intermediary arguing it only gave the client information and not advice regarding the encashment of a bond, as the Ombudsman did not believe that the adviser only offered information.
Click here for article.

FOS rules that an adviser should compensate a client for advising that a SIPP could be used to invest in residential property. There had been a lack of clarity on the use of the property at the time, and the event in question arose in 2006 around the same time that the Chancellor of the Exchequer reversed anticipated views that SIPPs could be used for such investments.
Click here for article.

FOS has confirmed that Aegon cannot demand personal pension funds back from a client whose plan had received a payment in respect of a terminal bonus, which he was no longer eligible for due to a fund switch.
Click here for article.

An adviser firm has been criticised for failing to spot the 'fairly obvious financial problems' of a client following a change in circumstances and after giving financial advice, including on mortgages, in the past.
Click here for article.

Digital experts have warned that hackers could increasingly target financial advice firms now that retail banks are increasing their expenditure on cyber security to protector customers' funds.
Click here for article.

The Royal Mail intends to close its defined benefit pension scheme next year after consulting with its members about its future.
Click here for article.

Lloyds has set up a £100m compensation scheme for victims of the small business fraud by HBOS manager, Lynden Scourfield, who was jailed for 11 years on fraud charges in February 2017. The bank has come under fire for being slow to react to the fraud, which caused a number of victims to file for bankruptcy.
Click here for article.

A recent study by US based consultancy, Integrity Research, has provided insight on the cost of analyst research for fund mangers. This showed that investment banks charge on average £60,000 annually for complete access to their analyst research.
Click here for article.

The Investment Association has launched a consultation on standardising the disclosure of charges and transaction costs.
Click here for article.

A number of leading wealth management boutique firms are considering pooling their resources to pay for research after MiFID II comes into force due to the changes in relation to dealing commission.
Click here for article.

FCA Speech by Andrew Bailey, Chief Executive of the FCA, at Press Conference for the Publication of FCA Corporate Documents (including Business Plan 2017/18, Sector Views and Mission Statement)

The FCA published five documents on 18 April - its Mission, its Sector Views, Business Plan 2017/2018, its annual consultation on fees for 2017/2018 and feedback statement to its Mission Consultation.

Mr Bailey considered that a number of these represented a big step forward, both in explaining how the FCA sees its role and in its transparency. He stated that the FCA's Mission is to serve the public interest, and to add public value through its contributions to society.

The FCA operates on a big landscape, some 56,000 firms under its regulation is one indicator. The Mission statement sets out a framework that underpins its decision making including decisions on how it prioritises issues and across different sectors. Mr Bailey stated that the FCA cannot remove all harm from markets or operate a zero failure regime and that at times it has to make judgements but that these judgements need to be transparent.

The Business Plan explains how the FCA intends to achieve its statutory objectives and this commences with the Risk Outlook, which sets the content for its plan and how it decides upon its priorities. This is also broken down into views on different sectors, which gives a view on how each sector is performing, and the issues and developments that are being seen in that sector.

Mr Bailey confirmed that the UK's decision to leave the EU has created uncertainty for both the UK's financial industry and the FCA. In the meantime, the FCA is continuing to implement EU legislation that will come into force before the UK leaves the EU, and Brexit forms an obvious part of its Plans including supporting the government in implementing this over the next 12 – 24 months.

Other areas identified for focus include the following, some of which have also appeared in previous business plans:

- firms culture and governance;
- financial crime and anti-money laundering;
- technological change and resilience;
- treatment of existing customers;
- consumer vulnerability and access to financial systems;
- and sector specific, new areas including retail areas, such as motor finance and debt management activities, and also reliance on and the robustness of the fund administration/custodian sector.

A separate Gem Compliance briefing note will be issued providing more detailed feedback on the Mission Statement, Business Plan and Sector Views.

Click here for speech.

Other FCA Speeches

Innovating for the future: Speech by Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered at the Innovate Finance Global Summit.
Click here for speech.

The expanding scope of individual accountability for corporate misconduct: Speech by Mark Steward, Director of Enforcement and Market Oversight at the FCA, delivered at the New York University Program on Corporate Compliance and Enforcement. This included the view that the Senior Managers Regime does not mean that there will be an end to action against firms, including heavy financial penalties.
Click here for speech.

Keeping up with the credit sector: the FCA's views on the market today. Speech by Jonathan Davidson, Director of Supervision – Retail and Authorisations - at the Credit Summit in London.
Click here for speech.

Industry News continued

New City Initiative ('NCI') has called for a review of MiFID II rules following the Brexit vote. Should the rules be implemented as originally anticipated, it considers this could put the UK at a disadvantage post Brexit.
Click here for article.

HMRC has launched a new tax fraud hotline for the public to report tax fraud and evasion.
Click here for article.

HMRC has lost an appeal against Sippchoice regarding its role in a potential 'pension liberation' exercise and scheme investments in Imperium Enterprises. This also relates to the due diligence that SIPP providers are expected to carry out and evidence regarding underlying investments.
Click here for article.

HMRC has said that it is to probe 'concerning' in-specie contribution assets, which are being invested into pension schemes and gaining tax relief.
Click here for article.

Enforcement Actions and Prosecutions

Coutts has been fined the equivalent of around £700k by the Hong Kong banking regulator for breaking anti-money laundering regulations. The Hong Kong Monetary Authority said that the private banking arm did not establish effective controls to determine if clients were politically exposed persons during April 2012 and June 2015.
Click here for article.

The FCA has banned and imposed financial penalties on two former Worldspreads Ltd employees for engaging in market abuse. The firm, which operated a spread betting business, collapsed in March 2012. The firm's former Chief Financial Officer, Niall O'Kelly, and former Financial Controller, Lukhvir Thind, have been permanently banned from performing any function relating to regulated activity.
Click here for press release.

The FCA has fined Christopher Niehaus, a former investment banker, £37,198 for sharing confidential information over WhatsApp. The FCA found that Mr Niehaus failed to act with due skill, care and diligence.
Click here for press release.

The FCA announced that Tesco plc and Tesco Stores Ltd has agreed that they committed market abuse in relation to a trading update in August 2014. This gave a false or misleading impression about the value of publicly traded Tesco shares and bonds. Tesco has agreed to pay compensation to affected investors - the total amount of compensation that may be payable under the scheme is approximately £85 million, plus interest.
Click here for press release.

The FCA has also issued a number of final notices in relation to breaches of Principle 11 by Consumer Credit firms, many of which have led to the firm's cancellation.
Click here for press release.

The head of a charity, Yateley Industries for the Disabled, has been fined £6,500 for failing to provide information to the Pensions Regulator despite being pursued for the information for more than 18 months.
Click here for article.

Other FCA Publications

CP 17/9 - PSR regulatory fees 2017/18

CP 17/12 - FCA Regulated fees and levies: rates proposals 2017/18

CP17/10 - Consultation on persistent debt and earlier intervention remedies

DP17/3 - Discussion Paper on distributed ledger technology

Minutes - FCA Board meeting in February 2017

OP17/26 - Occasional Paper No. 26: From advert to action: behavioural insights into the advertising of financial products

Skilled Persons Panel – as at 1st April 2017

FG17/3 - Primary Market Bulletin No. 17

Minutes - FCA for MiFID II Trade Association Roundtables.

Guidance – to clarify meaning of 'durable medium'

Feedback – following the FCA's Annual Conduct Meetings (ACM's) with large wholesale banks. (May also be of interest to any FCA regulated firms.)

Handbook Notice No. 42, March 2017 - Includes feedback on proposal to extend the TC time limits to obtain relevant qualifications for certain activities from 30 to 48 months.

Non-FCA Publications

The European Securities and Markets Authority ('ESMA') has issued a public consultation paper on the operations of the European Supervisory Authorities. Feedback is requested by 16 May 2017.
Click here for consultation paper.

The Institute of Chartered Secretaries and Administrators ('ICSA') has issued revised guidance on model terms of reference for audit committees of companies seeking to comply fully with the requirements of the UK Corporate Governance Code.
Click here for revised guidance.

The British Banking Association ('BBA') has issued guidance on the short selling requirements in the transaction reporting regime under the MiFIR.
Click here for guidance.

The Pensions Regulator has issued updated Automatic Enrolment detailed guidance from April 2017 aimed at large employers and industry advisers.
Click here for guidance.

The European Commission published its action plan setting out a strategy to strengthen the EU single market for retail financial services. The action plan seeks in particular to harness the potential of digitalisation and technological developments ('FinTech') to improve consumer access to financial services across the EU.
Click here for action plan.

HM Treasury has issued its Regulatory Innovation Plan, showing how financial services regulators are ensuring their approach to regulation supports innovation.
Click here for Regulatory Innovation Plan.

On 7 April 2017 the Court of Appeal handed down judgment in Lejonvarn v Burgess and Anor [2017] EWCA Civ 254. This upheld an earlier adjudication in February 2016 relating to the duty of care that providers of professional services owe. This original case serves as a salutary warning to those providing professional services to consider how they are holding themselves out, whether to offer free advice (even to those they consider to be close friends) and to ensure terms are agreed.
Click here for a summary of the initial judgment

Enforcement Actions and Prosecutions continued

The Information Commissioner's Office ('ICO') has fined a finance brokerage firm, Monevo Ltd, £44k for sending unsolicited direct marketing texts. An investigation, prompted by numerous complaints from the public, found that the firm had sent 44,172 marketing texts without obtaining prior consent from the recipients and using data obtained from competition and money saving websites, which had not indicated that this is how the data would be used.
Click here for article.

The director of a claims management company has been banned by the Insolvency Service and will not be permitted, either directly or indirectly, to be involved in the promotion, formation or management of a company for 10 years after misleading customers and breaching government rules.
Click here for article.

The Insolvency Service has banned a former adviser from being a director for nine years for 'misuse of position' after his now collapsed IFA gave advice, which led to over 300 clients investing £12m into unregulated high risk Storepods investments.
Click here for article.

The Pensions Regulator has secured its first criminal conviction against a legal firm of Ashley Wilson Solicitors LLP, and its managing partner, for failing to co-operate with the regulator's investigations into an unconnected potential pension scam.
Click here for article.

Two former Barclays traders have been acquitted at their second trial on charges of Libor rigging after the jury in the first case failed to reach a decision. Stylianos Contogoulas and Ryan Michael Reich were found not guilty of conspiracy to defraud. Of the 19 individuals to face UK criminal charges over LIBOR manipulation, five have been successfully prosecuted.
Click here for article.

A court has refused applications by the founder of the failed investment firm, Keydata, to call a series of witnesses to his upcoming hearing. The FCA previously fined Stewart Ford (and others) in relation to the collapse of Keydata. Mr Ford is fighting his fine and had attempted to call witnesses from the FCA, FSCS and also the Luxembourg regulator but this was refused by the court.
Click here for article.

Shell has admitted it dealt with a convicted money-launderer when negotiating access to an oil field in Nigeria. It comes after emails were published showing Shell negotiated with Dan Etete, who was later convicted of money laundering in a separate case.
Click here for article.

The FCA has announced that it is investigating the events surrounding the discovery of misconduct within the Reading-based Impaired Assets team of HBOS. This resumes an investigation that was placed on hold previously at the request of the Police pending the outcome of investigations and any resulting prosecutions, which have now taken place. The FCA's investigation is focusing on the extent and nature of the knowledge of these matters within HBOS and its communications with the regulator after the initial discovery of the misconduct.
Click here for press release.

Following an earlier warning issued in mid-February, wealth manager, Collins Ward Capital Management, has had its regulatory permissions revoked by the FCA over late-payment of fees. The FCA considered the firm had not been open and co-operative in its dealing with them.
Click here for article.