REGULATION NEWS| ISSUE 8 MAY 15

GEM Compliance Consulting

Welcome to the latest edition of Gem Compliance's monthly regulation newsletter. The aim of the newsletter is to tailor industry news in an easily digestible format. As such, not all sources of industry information and FCA publications (and no PRA publications unless specified) will be covered. Therefore clients and associates of Gem Compliance should periodically check the FCA's website for other developments.

In keeping with last month another record fine was levied against a large firm for rate manipulation in May and the FCA shared its views on prudential supervision and Project Innovate with the industry. The FCA has also confirmed firms will need to start complying with all the rules associated with implementation of the Alternative Dispute Resolution Directive from July 2015.

There have been significant developments outside of FCA regulation in May causing: a ban on corporate directors; changes to contractual relationships and the way products/services should be sold; and greater statutory protection for consumers from unfair contract terms.

The FCA's monthly Regulation Round-up was issued, which you can access here. The FCA's latest Policy Development Update (Issue 22), which provides a list of recent and upcoming publications, was also released and can be accessed here.

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

- TR15/5: Provision of Premium Finance to Retail General Insurance Customers
- TR15/6: Handling of Insurance Claims for Small and Medium-sized Enterprises (SMEs)
- Alternative Dispute Resolution Update
- MS15/1.1 Investment and Corporate Banking Market Study: Terms of Reference
- Small Business, Enterprise and Employment Act 2015
- Consumer Rights Act 2015 (CRA)
- Industry News
- Other FCA News
- FCA Speeches
- Enforcement Actions and Prosecutions

Industry News

FSCS announces final total levy of £319m and life and pensions intermediation sub-class is hit hard because of claims relating to SIPPs.
Click here to access article.

Calls for new FSCS sub-class for unregulated investment advisers after announcement of a £100m levy for the life and pensions intermediation sub-class.
Click here to access article.

Law firms urge advisers to urgently review data protection procedures after the Court of Appeal ruled that financial loss doesn't need to be shown to claim compensation in relation to a data breach.
Click here for article.

The Investment Association urges fund managers to publish a "client-focused" document disclosing pay policies and how the interests of investment teams are aligned with clients' interests in order to mitigate the growing reputational risk associated with the secrecy around fund managers' pay.
Click here for article.

John Barras, Deputy Chief Executive of the Wealth Management Association, has said the FCA's Project Innovate may create more opportunities for cyber criminals, which firms will need to be aware of.
Click here for article.

Hector Sants to lead a review commissioned by the British Bankers' Association on the competitiveness of the UK banking industry.
Click here for article.

Pensions Freedoms announced at the 2014 Budget caused a surge in complaints regarding annuity policies that locked retirees into an income for life, but 8 in 10 are being dismissed by FOS.
Click here for article.

TR15/5: Provision of premium finance to retail general insurance customers

The FCA reviewed the customer journey for online sales of home and car insurance, by 13 insurers and 30 insurance intermediaries, up to the point where payment details are required.

The FCA found that information is not provided in a clear or easily understood way to enable customers to make an informed decision about whether to pay upfront or in instalments. In some cases it wasn't clear there was a difference in the cost.

The FCA also found that in some cases: credit agreements weren't provided early enough; the name of the credit provider or details of the relationship between the broker and provider were not disclosed; and it wasn't made clear that a fee would be charged.

The FCA expects firms to consider the findings and take action where necessary.

Click here to access thematic review.

TR15/6: Handling of insurance claims for Small and Medium-sized Enterprises (SMEs)

The FCA conducted a review into how claims from SMEs were handled and to understand the role that different firms played in the claims handling process. The review was conducted with five insurers, ten insurance intermediaries and ten loss assessing firms, and involved interviewing senior management and individuals involved in claims handling and a review of claims files. The FCA found:

- a gap between SME expectations and the service received;
- an overall poor perception of the claims handling experience;
- ineffective management of claims handling;
- poor communication between the different parties involved in the claims handling process; and
- a significant number of cases where the sums insured were below the loss incurred.

The FCA has said it will engage with firms and other stakeholders within the industry to discuss the findings of this review, its expectations and changes that may be required.

Click here to access thematic review.

Industry News Continued…..

Although the Upper Tribunal upheld the FCA's decision to fine and ban financial adviser, Clive Rosier, an Upper Tribunal judge has since described the FCA's publication of the decision notice to be "deeply disappointing and troubling." The judge also felt the FCA's handling of Rosier's complaint was below standard. The FCA failed to obtain Rosier's approval for the final version of the press release, which contained a quote from Rosier, and also failed to escalate Rosier's complaint appropriately. The judge has called on the FCA to strengthen its procedures relating to the publication of decision notices.
Click here for article.

Investment Association publishes statement of principles for investment managers.
Click here to access statement of principles.

PRA Chief Executive, Andrew Baily has made a speech at Cambridge University concerning the identification of risk in financial markets and appropriate responses.
Click here to access speech.

Enforcement Actions and Prosecutions

Philip Saini, who was convicted of 6 counts of insider dealing, has been sentenced to 528 days in prison for failing to pay in full a confiscation order for £465k. Commenting on the case the FCA said, "This outcome should serve as a warning to those considering committing insider dealing."
Click here to access article.

As part of an FCA investigation, three individuals have been charged with insider dealing in relation to trading of shares in Logica PLC.
Click here to access article.

Paul Reynolds, formerly of Apsire Personal Finance Ltd, has been fined £290k and banned from performing any controlled function. The FCA took action for failings concerning the sale of, and recommendations in relation to, complex and high-risk investment products to clients, many of whom had little or no investment experience.
Click here to access article.

FCA fines Barclays over £284m (with early settlement discount) for inadequate and ineffective controls in relation to its FX business. This is the largest fine posed by the FCA or the FSA. The control and culture failings meant risks associated with confidentiality, conflicts of interest and trader conduct were not properly managed or challenged. Some front-office managers were aware of and/or were involved in the manipulation of FX rates.
Click here to access article.

Alternative Dispute Resolution Update

Changes consulted on last year regarding implementation of the EU's Alternative Dispute Resolution Directive will come into force on 9 July 2015 for complaints received on or after that date. The main changes are:

The Financial Ombudsman Service (FOS) will be able to consider complaints before the firm has investigated if both the firm and the consumer consent.

The current time limits will be preserved but will allow firms to give consent for consideration of a complaint by the FOS if it is referred outside the time limits. (Firms will need to use prescribed wording to waive the time limits.)

The definition of 'eligible complainant' will be extended to individuals categorised as professional clients and eligible counterparties, and acting outside of trade/business/profession.

All firms should review their procedures and check their FOS-exempt status in relation to annual fees and levies.

Click here for more information from the FOS.

MS15/1.1 Investment and corporate banking market study: Terms of reference

In response feedback to its wholesale sector competition review, the FCA has now launched its market study of investment and corporate banking. It will examine issues around choice of banks and advisers for clients, transparency of the services provided by banks, and bundling and cross-subsidisation of services.

The FCA plans to publish an interim report at the end of the year and a final report in Spring 2016. If it is found that competition isn't working well, the FCA may have to intervene to promote effective competition.

Click here to access terms of reference.

Other FCA News

- **FCA pilots new firm webpages** – in response to feedback on its website, the FCA has developed a new section for firms, which is currently being piloted. The changes mean firms are directed to relevant content and the information is presented in a clearer and more concise way.
  For more information and access to the new site, please click here.

- **FCA RDR Adviser Charges and Services Webinar** -
  Click here to register for access to webinar

- **FCA publishes Market Abuse Regime (MAR) one-minute guide on its website along with a webinar** -
  Click here to access one-minute guide.
  Click here to register for access to webinar.

- **FCA Data Bulletin: Issue 3, May 15** – As well as some interesting statistics (such as the wholesale and investment management sector received the largest number of approved person attestations) Issue 3 contains some noteworthy comments regarding the approved person application process and the use of attestations and skilled person reports as enforcement tools.

Enforcement Actions and Prosecutions Continued…..

Tribunal upholds the FCA's decision to fine and ban the director of Bayliss & Co (Financial Services) Ltd for failing to comply with regulatory obligations in relation to: client information gathering and production of suitability reports; complaints handling complaints; and promotion of unregulated collective investment schemes.
Click here to access article.

Court of Appeal judge rules against FCA and upholds previous ruling that former JP Morgan Chase banker, Achilles Macris, was identifiable in the FCA's highly critical reports regarding the 'London Whale' trading fiasco.
Click here to access article.

The Upper Tribunal has found the FCA's fine against former NED, Angela Burns, for failing to disclose conflicts of interest associated with working with two mutuals, as excessive (at £155k) and has reduced this by 87%. However, the FCA's ban remains in place preventing Burns from performing any role in a regulated firm.
Click here to access article.

FCA publishes decision notices against three former members of Keydata's senior management stating fines ranging from £200k to £75 m and banning all three from performing any role in regulated financial services. All three have referred the decisions to the Upper Tribunal.
Click here for article.

FCA Speeches

"Overview of the FCA prudential approach," by Nausicaa Delfas, Director of Specialist Supervision at the FCA, speaking at the FCA's Prudential Supervision Forum.

Prudentially regulating over 24,000 firms, the FCA is Europe's largest prudential regulator. As with conduct supervision, its approach to prudential supervision goes beyond an analysis of the financials and also focuses on systems and controls, governance and risk management – how well firms understand the risks associated with its business and how well they can manage the risks. The FCA's prudential rules are not meant to prevent firms from failing but to minimize the effects of failure on consumers and the wider market. As a result, client money and assets supervision is conducted by a dedicated department.

Prudential classification of firms is similar to conduct classification; P1 and P2 firms – those with a significant number of customers and relationships with market participants – are proactively supervised, and P3 firms are reactively supervised. For all firm types, the FCA relies on a combination of data and notifications from a variety of sources to alert it to actual/potential problems within firms. Where alerts are triggered the FCA will aim to respond quickly to minimize deterioration within the firm.

The FCA acknowledges that when firms enter difficulties there is a risk to client money, therefore its specialist division is trained to identify warning signs and intervene quickly where necessary.

Prudential and conduct issues are linked; poor conduct can have prudential consequences – redress, fines and the

(continued overleaf)

Small Business, Enterprise and Employment Act 2015

The Act received Royal Assent on 26 March 2015, and makes important changes to the law applying to UK companies. The new law is designed to, inter alia, continue delivering trust and transparency by deterring illegal activity such as money-laundering and tax evasion.

Key changes and dates are as follows:

- **Shadow directors** - the general duties of directors will apply to shadow directors from 26 May 2015.
- **"Bearer shares"** - prohibited from 26 May 2015, with a nine months' transitional period for existing bearer shares.
- **Corporate directors to be prohibited** - from October 2015, with a 12 months' transitional period for existing corporate directors. Exceptions are available for some firm types.
- **Unquoted companies** – to establish and maintain a register of individuals with significant control from January 2016 and details of these people are to be provided to Companies House annually from April 2016. Significant control is where an individual, alone or in concert:
  - owns more than 25% of the company's shares;
  - holds more than 25% of the company's voting rights;
  - exercises or has the right to exercise significant influence or control over the company and/or the board.
- **Annual "confirmation statements"** - to replace annual returns from April 2016.
- **Location of registers** - private companies to be able to keep their statutory registers at Companies House, instead of having to keep their own registers from April 2016.

Click here to access the Act

Consumer Rights Act 2015 (CRA)

This Act consolidates eight pieces of 'consumer' protection legislation into one legal instrument, makes changes to contractual relationships and affects how products/services should be offered to consumers.

Some key changes for firms to be aware of:

- The wider definition of consumer may catch consumers with a business element or purpose (e.g. individuals that are classed as professionals or eligible counterparties), and places the burden of proof that an individual is not a consumer with the firm.
- The non-exhaustive list of potentially unfair terms from the UTCCRs – Unfair terms in Consumer Contracts Regulations, contains some new terms. Some exemptions to this 'grey list' are available for financial services, however firms should exercise caution when considering applying them.
- The existing test for unfair terms has been coupled with a new test of prominence for terms specifying the subject matter of the contract and/or price. Firms must ensure the relevant terms are brought to the customer's attention in such a way that an average customer would be aware of them. The Act increases the ability of courts to intervene within consumer contracts by widening the scope of previous legislation to all business-consumer contracts, regardless of whether the contract was individually negotiated or not.
- Courts must judge the fairness of terms of business in cases where neither party has raised fairness as an issue.
- Oral or written statements about a product/service could be binding where customers use these to decide whether or not to enter into a contract, therefore "entire agreement" clauses will need to be reviewed. Other communications concerning the rights and obligations of parties under the contract, or restrictions to the firm's liability are also brought with the scope of the fairness test.

The majority of these changes are due to come into force across the UK in October 2015, with some provisions coming in earlier. However there are some separate rules for Scotland.

For Financial Services firms the new provisions will apply alongside industry-specific rules. However, where stricter rules are already in place these will take precedence over the Act. The changes in the forthcoming Act have caused the FCA to withdraw a number of publications from its website.

The advice to firms is to review contract terms and communications with clients by October.

Click here to access the Act.

cost of investigations – and prudential issues can drive poor conduct – over-charging, cost cutting, over-playing the benefits of products.

Click here to access speech.

"The FCA and innovation," speech by Christopher Woolard, Director of Strategy & Competition

The FCA's Innovation Hub was set up in October 2014 and since then has received over 170 requests for support. The Hub has two functions; help firms with genuine innovation to navigate the rules and change policies/processes to help further innovation. Follow-up with firms found 83% rated the service as god/excellent and 89% thought the promptness of its response was good/excellent.

The FCA is currently looking into feedback regarding the testing of products/services with customers before obtaining authorisation/the correct permissions. The current regulatory regime prohibits the conducting of any regulated activity without authorisation/legitimate exemption, therefore the FCA is exploring how it could develop a new approach to support testing innovations at an early stage but ensuring the right degree of protection remains in place.

The FCA is considering trialling the Hub's 'informal steer' approach, which aims to provide guidance to innovator firms quickly, in other parts of the FCA and will issue a Call for Input in Autumn to help it understand the barriers to digital and mobile financial services innovation.

Click here to access speech.

FCA's Views on Insistent Clients

The FCA's Technical Specialist Rory Percival, talks about insistent clients at Morningstar's conference this month. Three steps are recommended:

- Provide advice in a concise manner, emphasising the need to ensure the client's understanding of the recommendations;
- Where the client desires to take another course of action to the recommended one, the adviser should make clear the risks associated with the client's desired route; and
- If the client decides to go ahead with their desired course of action, advisers must be clear that this was not their recommendation.

Percival advised that documentation is key to demonstrating the route of the conversation through all three steps. Percival also said "We're (the regulator) saying you can transact against your advice, but you have to make your advice very clear." However, many industry professionals report a different view being given by the regulator regarding insistent clients.

Click here to access article.