REGULATION NEWS

ISSUE 40

January 18

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.

This is the first Gem newsletter of 2018 and also following the implementation of MIFID II/MIFIR. Firms should be aware that the FCA has updated a number of their corporate forms, including controller application forms, on its website and so that firms should ensure that they use post MiFID II/MIFIR compliant forms where required. The Packaged Retail and Insurance Based Investment Products Regulation ('PRIIPs') has also been introduced at the start of January. The 2nd EU Payment Services Directive ('PSD 2') has also been implemented in January.

The January edition of the FCA's Regulation Round up has been issued and the Policy Development Update page was last updated on January 12th. Otherwise a small number of consultation and policy statements have been issued during the period, but no FCA speeches to report, possibly due to a quieter seasonal period.

The FSCS has also issued its January newsletter and its annual business plan for 2018/2019.

The ICO's most recent update can be found here and its latest enforcement actions against firms 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

- PS 18/1 - Insurance Distribution Directive ('IDD') implementation
- FCA Dear CEO letter on Contracts for Differences following thematic review.
- FCA Press Releases and Other Publications
- Enforcement Actions and Prosecutions
- Industry News

PS 18/1 - Insurance Distribution Directive ('IDD') implementation

The FCA has issued its third policy statement (PS 18/1) setting out near final rules (but not final rules) for the implementation of the Insurance Distribution Directive. The most recent policy statement responds to feedback the FCA received on CP 17/33 (the third CP) as well as feedback on certain matters deferred from CP17/23 (the 2nd consultation) and feedback on IDD related matters in previous quarterly consultation papers, CP17/32 and CP17/39.

Industry News (continued)

A group of fund managers are lobbying the Treasury to ensure that there are no hefty tax bills in the wake of Brexit.
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The FCA is looking for a new head of financial advice following the retirement of Linda Woodall. Ms Woodall was planning to retire after leaving her position as director of life insurance and financial advice over the festive period. She held the post for two years, during which she oversaw work on the financial advice market advice review ('FAMR') and due diligence standards at advice firms.
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The Complaints Commissioner ('CC") has expressed concern regarding the lack of progress the FCA has made in setting up a review into the way its predecessor (the FSA) regulated the Connaught Income Series 1 Fund. Fines were levied in respect of operators of the fund however at this stage, the CC felt the review had not also focused on whether there had been any regulatory failings involved.
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Analysis by Citywire has identified that number of FCA fines has fallen to its lowest level since the financial crisis. Despite an increase in fine levels, the number has reduced to its lowest level this decade.
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The FCA has expressed concerns as to whether consumers are made aware of the different levels of compensation offered by annuities and pension drawdown under the FSCS scheme. Annuities are fully covered but drawdown products, as investments, are subject to restricted cover. The FCA stressed the importance of making information available for consumers in a clear and succinct format.
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Savers on average earnings will need to build a pension pot of more than £300,000 to maintain their current lifestyle in retirement according to research from Aegon.
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A general data protection working group has claimed that formal agreements will allow advisers to refuse clients requests to erase their details, bearing in mind the risk of potential claims in the future.
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Hargreaves Lansdown removed 296 trusts for failing to comply with PRIIPS. Of these, around 200 were predominately US domiciled funds and of the others, the vast majority is expected to have appropriate documentation in place shortly and come back onto the platform.
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The current PS summarises, amongst other things:

- the FCA's approach to the IDD delegated Acts (Chapter 2)
- changes to the distribution of insurance-based investment products ('IBIPS') including Inducements (Chapter 3), suitability and appropriateness (Chapter 4) and information and product disclosure (Chapter 5).
- changes to rules that apply to life and non-investment insurance business including conflicts of interest (Chapter 6), product oversight and governance (Chapter 7), perimeter guidance (Chapter 8), and regulatory processes (Chapter 9).

Generally, the FCA is implementing the proposals consulted on with only minor changes. Detailed summaries on the main changes arising from the IDD and previous CP's have been included in previous Gem newsletters (including August and December 2017) and also briefing notes GBN 17/1, 17/3 and 17/4 which are also available on our website.

Relevant firms should review these newsletters and the current policy statement to identify if any of their 'products' or 'services' are in scope of the legislation and if so, to ensure that they are planning appropriately for implementation.

The original date of implementation of the IDD in the UK is 23 February 2018, however over the last month, there has been regulatory activity within the EU with the proposal to postpone the implementation deadline on an exceptional basis, until October 2018, given the lack of time between certain final rules being made and the target date for compliance. This will be determined by the EU Commission to which the FCA website also refers readers to for any current updates. As at the date of this newsletter, no confirmed decision has been publicised and therefore relevant firms should be continuing to plan accordingly for implementation from 23 February unless advised otherwise. The near final rules also include provision for firms to comply with the rules earlier if ready to do so.

FCA Dear CEO letter on Contracts for Differences following thematic review

The FCA has issued a 'Dear CEO' letter to providers and distributors of contract for difference ('CFD') products. It has also updated its webpage on CFDs to refer to the letter.

The letter reminds that CFDs are high-risk, complex financial products and refer to its recent review of this market, under which it assessed the conduct of 19 firms providing a CFD service and 15 firms that distribute such a product (either on an advisory or discretionary basis) and deal with the end consumer. The FCA reviewed processes, policies, controls and oversight arrangements at the firms and then compared these against relevant requirements in the FCA Handbook. This included the Principles for Businesses, Conduct of Business sourcebook and the Senior Management Arrangements Systems and Controls sourcebook.

To evaluate firms against good market practice, the FCA used its regulatory guide on the responsibilities of providers and distributors for the fair treatment of customers ('RPPD').

The review uncovered areas of serious concern, which the FCA is now seeking to highlight to firms across the industry, regarding:

- target market identification and aligning this to the product;
- communication, oversight and challenge on the part of providers;
- providers' process for taking on new distributors and distributors' management of conflict of interest;
- use of management information and key performance indicators;
- and client categorisation and remuneration arrangements.

Relevant firms must consider the issues raised and consider whether they are complying with FCA requirements. In particular, the FCA considers they need to improve on a number of oversight and control arrangements. The FCA intends to carry out further work on these topics and may ask firms to take part in follow up assessments. The FCA also advises firms to pay specific attention to the FCA's new Product Intervention and Product Governance sourcebook ('PROD') which came into force in January 2018 as part of MiFID II implementation.

Industry News (continued)

Buy-to-let investors with certain criminal convictions will be banned from renting out property from April under new government rules.
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SIPP providers have seen investment managers insist on Legal Entity Identifier ('LEI') codes to allow them to trade on behalf of clients post MIFID II. Some investment managers have refused to accept alternatives. 'Legal entities' are required to have such numbers as clients however SIPPs are not typically classed as legal entities.
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The Pensions Ombudsman has rejected a claim from a complainant that an adviser should have prevented a carbon credit scam. The claim related to investments made by a small self-administered scheme (SSAS) and the complainant alleging that the SSAS administrator did not carry out due diligence on the complainant's adviser.
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The Pensions Administration Standards Association ('PASA') has created a pensions transfer working group, with the goal of producing better, faster outcomes for members. The objective of the standards body is to identify current issues and potential solutions relating to the administration of defined benefit (DB) trust-based pension transfers.
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Investors duped by an online investment scam have seen their losses rocket over the last five years. According to Action Fraud, the amount of money investors have lost through 'binary options' which target investors through social medial has increased by 400% in the last six years from £6,200 to £27 million. The sector is currently not supervised by the FCA but this will change at the start of this year.
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JP Morgan is being sued by the Nigerian government for $875 million (£660 million) for allegedly being the middleman in an illegal oil deal, making payments to a convicted money launderer. JP Morgan is being accused of being 'grossly negligent' when it handed over the funds 'without proper application or regard to its obligations'.
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A lack of full client records is posing challenges for the administrators of failed wealth management business Strand Capital.
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FSCS admits Arch Cru investor compensation errors. This has resulted in around 1,075 claimants being under paid a total of just under £800,000 with a further 992 consumers being overpaid, a sum of around £700,000 which the FSCS is now seeking to reclaim.
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The FCA has told a financial advice firm to cease all regulated activity after it broke a voluntary agreement with the regulator. Bank House Investment Management has also been told not to dispose of or diminish the value of any of its assets without the FCA's consent. This comes after the firm reached a voluntary agreement with the FCA to cease any activity relating to pension switches or transfers into SIPPs but carried out 78 transactions anyway.
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The FSCS expects the likely costs in relation to the failure of wealth firm Strand Capital to be in the region of around £6m.
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FCA Press Releases

Charles Randell has been appointed as the new Chair of the Financial Conduct Authority. Mr Randell will start his 5-year term in April. In the aftermath of the financial crisis, as a lawyer, Mr Randall advised HM Treasury on the resolutions of the Northern Rock, Bradford and Bingley and the Icelandic banks, as well as the government's investments into RBS and the merged Lloyds/HBOS and the Asset Protection Scheme.
Click here for press release

The FCA has published a list of 94 firms without FCA authorisation that it understands to be offering binary options trading to UK consumers. The FCA has said that many of these firms claim to be based in the UK but appeared to be using false addresses whilst operating from overseas. This also follows findings and concerns arising from the FCA's thematic review into the Contract for Difference ('CFD') market referred to earlier.
Click here for press release
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Other publications

The FCA issued minutes of its Board meeting from 9th November 2017.

CP 18/1 – Consultation on Aligning the Financial Services Compensation Scheme levy time period

CP 18/2 – Consultation on the FSCS Management Expenses levy limit

PS 17/28 – Handbook changes to reflect the application of the EU Benchmarks Regulation

FCA statement on ESMA's ongoing work on possible product intervention measures applicable to retail and binary option products.

EBA guidelines on Operational and Security Risks under PSD 2.

FCA statement on UK EU withdrawal

FCA response to ESMA's public statement on LEI's and temporary measures being permitted for six months from January 2018.

FCA statement on the European Commission's announcement regarding a proposal to delay the implementation of the Insurance Distribution Directive to October 2018.

Statement on transitional arrangements for trading venues under MIFIR Article 54(2). Transitional arrangements under Article 36 regarding exchange traded derivatives under which open access requirements can be delayed until 2020 permitted for the trading venues ICE Futures Europe and the London Metal Exchange.

Enforcement Actions and Prosecutions

Defendants sentenced in FCA prosecution of £1.4m investment scheme. Commenting on the case, Mark Steward, Director of Enforcement and Market Oversight at the FCA said that the perpetrators of the scheme repeatedly misled investors for their own gain and that the FCA is committed to ensuring that the operators of unauthorised investment schemes are brought to justice and are made accountable for their misconduct.
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The US Department of Justice has filed criminal charges against former Barclays trader Robert Bogucki, who is accused of allegedly de-frauding Hewlett-Packard by front running a £6 billion options order prior to its takeover of Autonomy.
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HSBC has agreed a settlement with the US Department of Justice (DoJ) for rigged currency transactions which includes payment of $101.5m (£72.7m). The deal ended criminal procedures against the company and related to the investigation into HSBC's historical foreign exchange sales and trading activities in its global markets business.
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Industry News (continued)

Kent based wealth firm Full Circle Asset Management has gone into administration after being ordered by a court to pay out damages in compensation for a client.
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Former football stars, David Beckham, Gary Lineker and Wayne Rooney are some of the 81 celebrities and sports stars who face hefty bills after losing their legal appeal for tax relief from a film investment scheme, Ingenious Film Partners 2 LLP.
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Concerns have been raised about how HMRC handles data after a recent court case revealed the taxman does not always keep all evidence on taxpayers' filings.
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The pensions industry has criticised a solution from NEST to solve its inheritance tax problem. Currently the pension scheme is the only one where trustees do not have full discretion when deciding who should receive a lump sum death benefit from a member's pension arrangement.
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A former UBS trader is challenging the FCA's decision to ban him, alleging that his Libor-related conduct was 'mandated by senior managers'. Arif Hussein denied honesty and reckless behaviour in an ongoing civil case.
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The Financial Ombudsman has rejected Lloyds Bank's argument that their adviser would have clearly explained the risks of a fund to a client.
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An adviser without pension transfer permissions has been told to compensate a client they offered to help switch to a scheme offering access to cash at age 55. The client approached Lawson Financial Management ('LFM') in August 2015 to arrange for the transfer of his pension benefits to an alternative arrangement, but by that time, all advice on defined benefit to defined contributions transfers had to be provided or checked by a pension transfer specialist. LFM did not have the relevant permission and FOS ruled that the firm should have known this when the client approached them for assistance. The error in agreeing to do this lead to delays for the client in obtaining benefits.
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A Barclay's Bank insider, Jinal Pethad, who helped cyber criminals launder hundreds of thousands of pounds stolen using a Trojan horse computer virus is facing jail. He opened more than half of the 199 sham accounts used to handle money taken from a series of UK companies over a two-year period.
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Welsh IFA Bartholomew Hawkins has stopped defined benefit pension transfer advice following a meeting with the FCA. The firm confirmed the action following the FCA visit which related to pension transfer advice given to British Steel Pension Scheme members, a focus of the FCA in recent months.
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In the meantime, 21 advice firms did not respond to the FCA's invitation, which was not mandatory, to training sessions on DB transfer advice on the back of the British Steel pension issues. It is noted that some of these invited had limited pension transfer advice permissions which meant that they couldn't give pension transfer advice.
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Enforcement Actions and Prosecutions (continued)

The FCA stopped an unlawful foreign exchange investment scheme. The scheme took in at least £1.2 million from 65 investors but none of the investments funds were ever used in foreign exchange trading or any other type of investment. It was declared that Noerus Investments Ltd, an unauthorised company based in Cyprus and other persons carrying on business under the name of Noerus Capital unlawfully promoted and purposed to operate a managed foreign exchange trading facility in contravention of FSMA.
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The FCA has imposed a financial penalty of £250,000 on former RBS interest rate derivatives trader, Neil Danziger and prohibited him from performing any function in relation to any regulated activities. The FCA found that Mr Danziger was knowingly concerned in RBS's failure to observe proper standards of market conduct in relation to, amongst other things, manipulation of LIBOR rates.
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An accountant, his wife and their financial adviser are due to stand trial for their alleged roles in laundering nearly $2.5m (£1.84m) from the Government of Bermuda. Jeffrey Bevan, Samantha Bevan, their friend Joel Ismail and financial adviser Paul Charity all deny the charges. They deny transferring funds knowing or suspecting it to represent the proceeds of criminal conduct of funds stolen from the Government.
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The FCA has banded a former IFA who was previously jailed for defrauding clients of £3m. Alok Dhanda, who was director of Newcastle based Dhanda Financial, was jailed for admitting to 37 counts of fraud over a 7-year history. This related to promises to invest client funds in an Indian property scheme when instead he used the funds to pay off personal debts. The FCA has issued a final notice concluding that on the basis of a warning and decision notice, it considered that Dhanda was not a fit and proper person to perform any function in relation to any regulated activity.
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Industry News

The Bank of England has been researching the possibility of launching its own digital currency to rival bitcoin but fears about the impact on the industry means it has no current plans to do so.
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The FCA waded into the bitter battle between activist investor Sir Christopher Hohn and the London Stock Exchange. The move followed LSE's extraordinary meeting in which Hohn's attempts to hasten chairman Donald Brydon's departure ultimately failed. In a statement, the FCA's CEO, Andrew Bailey, called for an 'orderly process of succession of the CEO and then the chairman as set out by the Board'.
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The Chairman of the FCA's institutional disclosure working group ('IDWG') has apologised to the Investment Association ('IA') for a perceived slur on the trade body in a newspaper interview. He has also denied he is 'biased against the investment industry and denied accusing Schroders and the IA of not being 'wholly engaged' in the regulators asset management market study.
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The FCA working group tasked with creating a template for how funds that manage people's pensions disclose the impact of charges on retirement income, is considering a more radical solution. It has indicated that the template it created could be split into multiple templates for different asset classes.
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A pension fund manager, Ian Woodall has been accused of stealing £1m from one of the richest local authorities, Westminster City Council, by siphoning off funds to private accounts but may not be fit to stand trial.
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Industry News (continued)

The FCA gave advisers 24 hours to reply to information requests on pension transfers from the British Steel Pension Scheme ('BSPS').
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The FCA will address concerns raised about its register after the database was attacked for being too difficult for consumers to use. The recent BSPS controversy has brought consumers frustrations over the FCA register to light, with many pointing out it is difficult to find whether a firm has stopped advising on defined benefit pension transfers.
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The trial of former British Home Stores ('BHS') owner Dominic Chappell, being brought by The Pensions Regulator ("TPR") started this month. Mr Chappell has been convicted of failing to provide information and documentation during the investigation into the sale of the collapsed retailer from Philip Green's Arcadia Group. The TPR has also opened an investigation into the sale regarding a £571m pension scheme deficit.
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The Pensions Regulator ('TPR') is closely involved in discussions with Carillion and the trustees of its defined benefit schemes following the company going into administration. This is likely to involve discussions regarding the Pension Protection Fund ('PPF') being used as a 'last resort' to protect members pensions.
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The CISI has said that it is ready to step in and replace the Financial Conduct Authority's register arrangements in 2018 given the feedback received in relation to consumers trying to use the register to find qualified advisers to advise on such things as the British Steel Pension Scheme.
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Zurich has failed to persuade FOS with their argument that a couple who bought reviewable life policies should deal with the consequences. A couple complained that they were mis-sold reviewable whole of life policies by Zurich Assurance Ltd in 1993 when they were in their 20's. The fact find showed that the couple were concerned to take out mortgage cover and in the end that the policies were surrendered shortly before the 10th anniversary of the policy. The firm had previously rejected a complaint from the couples whose mortgage would therefore be left uncovered after this period.
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The Chief Ombudsman at FOS, Caroline Wayman, has predicted the use of customer data by the financial services industry could be the next cause of large numbers of complaints after payment protection insurance issues reduce. The greater use of client data makes it easier to access financial services but she warned this also came with drawbacks.
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A retiree who claimed Royal London had incorrectly interpreted the terms of his annuity policy has lost his appeal at the Pensions Ombudsman.
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Advisers will have to pay out over an advice firm that had been accused of holding 'clear conflicts of interest' by FOS after it was declared in default. In total, 12 complaints against Cumulus Investment Management related to advice given to clients to transfer their pensions into an Eastern European property fund, which shared directors with the advice firm.
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