REGULATION NEWS| ISSUE 1 OCT 14

GEM Compliance Consulting

Welcome to the first 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.

October 14 saw the launch of the FCA's new online notifications system, Connect, and the introduction of a new publication called the Data Bulletin. The FCA's monthly Regulation Round-up was issued, which you can access here, along with September's Policy Development Update, which provides a list of recent and upcoming publications, and can also be accessed here.

The FCA will also continue its Business Risk Awareness Workshops (BRAWs) focussing on North East and North Yorkshire until the end of the year and London North and East in April 2015.

Developments to the Draft Pensions Bill have dominated the industry press this month, particularly the cut to tax liability on death.

We hope you find this round-up 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

- PS14/13 – Changes to regulatory reporting: adviser charging and product sales data, including feedback to CP14/5 and final rules
- FCA Speech – Patrick Spens, Head of Market Monitoring, "Surveillance: The FCA's expectations and toolkits"
- FCA AIFMD Reporting Guidance
- Details of recent FCA enforcement action

Industry news

New Connect System

From October 2014 Connect replaces the FCA's ONA system for all applications except passporting applications. Existing users should have received activation emails for Connect and multiple-accounts users should find all their active firm accounts migrated over.

Click here for more information

Publication of Complaints data for H1 2014

The FCA published information regarding the complaints received by regulated firms for the first half of 2014.

- 2.36m complaints were received by regulated firms in the first half of 2014, a drop of 5% compared to the number received for H2 2013.
- PPI complaints dropped 11% compared to the previous half year.
- Total redress paid in the first half of 2014 was £2.34bn, a decrease of 12% on H2 2013.

Click here for more information

New FCA Publication – Data Bulletin

In this publication the FCA plans to present to industry stakeholders with a summary of the data it has collected and also look at what questions have been asked of them.

Click here for more information

FCA's Investment Fraud Campaign

Using funds recovered from the proceeds of crime the FCA has launched a national campaign to warn people about investment fraud and how to spot a potential scam. Those thought to be most at risk of investment fraud are individuals in retirement who are actively seeking investment.

Click here for more information

Update on European Data Protection Regulation

The latest discussions on the proposed Data Protection Regulation may result in firms not needing to notify consumers that their personal data has been lost if its encrypted.

Click here for more information

PS14/13 – Changes to regulatory reporting: adviser charging and product sales data, including feedback to CP14/5 and final rules

CP14/5 proposed a number of changes to the RMAR and annual questionnaire for Authorised Professional Firms (APFs). It also consulted on a minor change to the submission of the Product Sales Data (PSD):

- RMAR changes:
  - Add contents of interim technical note to Handbook;
  - Simplify the form's field labels and streamline the form;
  - Require RMA-K to be completed annually rather than every 6 months;
  - Allow firms to complete RMA-K on a cash or accruals accounting basis; and
  - Retire section L.
- APF annual questionnaire: reduce the number of questions by around 75% and add the questionnaire to GABRIEL.
- Remove the PSD reporting requirement for firms that have not made any relevant sales during the period to report a nil return.

FCA will proceed with its original proposals and, in view of the feedback will also:

- Further update the Handbook in response to technical queries raised during the consultation process; and
- Remove the requirement to report a breakdown of adviser charges into those facilitated by a product provider and those by a platform service provider.

Click here to access PS

FCA Speech - Surveillance: The FCA's expectations and toolkits

Speech by Patrick Spens, Head of Market Monitoring at the BBA's Market Abuse Conference

The FCA receives around 13m transactions reports a day (which will increase to between 15 and 20m with the implementation of MiFID II) but believes it should be receiving more Suspicious Transaction Reports (STRs) than the 1,500 a year it currently receives, particularly from some areas of the market (e.g. inter-dealer brokers). The FCA places great importance on these reports, particularly those relating to fixed-income and other non-equity asset classes.

Spens confirmed that market abuse remains a high priority for the FCA and stated its commitment to using all its powers where it identifies firms falling short of their obligations. Spens also issued a specific warning to fixed-income traders, who should expect a letter shortly from the regulator asking for three near-misses for fixed income STRs and their reasons for not sending them.

Click here for full speech

Industry news continued……..

UCITS V

ESMA has issued a Consultation Paper regarding two technical issues, referred to it by the EC, in relation to UCITS V. The issues concern insolvency protection of UCITS assets when safekeeping is delegated (focus is on segregation of UCITS assets from other assets) and the independence requirements for the relationship between the UCITS management company and the depositary.

Click here for more information

Upcoming FCA Thematic Review

FT Adviser reports the FCA will launch a thematic review on due diligence for retail investment advice later this year, with results to be initially reported next year. It is reported that Rory Percival, technical specialist at the FCA, stated that "of all the cases we have looked at over the last 4-5 years pretty much 100% of unsuitable advice cases came back with one of three answers, one of which was inadequate due diligence."

Click here for full article

FCA to Consider Rules and Guidance Regarding Pension Transfers

FT Adviser reports that the FCA has confirmed it is "considering (its) rules and guidance on pension transfers in light of the new pension flexibilities announced in this year's Budget." Pensions experts told FT Adviser that they expect the review to result in an intensification of the rules meaning that advisers would need to hold relevant permissions and qualifications for all pension transfers (currently if the purpose is to crystallise benefits the FCA don't currently require the adviser to hold a pension transfer qualification or the firm to hold the relevant permission.

Click here for full article

New Capital Standards from FSB

The FSB has put forward plans that will require non-bank lenders such as hedge funds to provide a minimum level of capital when borrowing money from banks in order to reduce the global shadow banking risk.

Click here for full article

FOS Makes U-turn Decision

In the wake of a judicial review by the firm in question, FOS has made a u-turn on a decision it made against a SIPP provider relating to an investment made by a customer of that firm on the advice of a third party. However, experts have questioned whether FOS is able to retract a decision that has been accepted by a consumer, after which it is final and binding on both parties. The firm was accused of failing to to carry out adequate due diligence and allowing a customer to invest in an unregulated investment in 2011 when the holding company went into administration in 2012.

Click here for full article

FCA AIFMD Reporting Guidance

The FCA has published information/guidance relevant to AIFMs regarding SUP 16.18 (or AIFMD Annex IV) reporting requirements.

Some key points for UK AIFMs are as follows:

- Two reports (AIF001 and AIF002) must be used to provide the required information;
- Product Reference Number must be used to identify each AIF;
- Alternative identification codes are also required;
- GABRIEL development to enable submission of AIF001 & AIF002 commenced on 20 October and once live the FCA will only accept AIF001 & AIF002 reports via GABRIEL;
- Firms are required to verify that AIF001 & AIF002 reporting functionality is correct; and
- AIFMs required to complete a quarterly report (full scope firms) for the period to 30 September 2014 must contact the FCA as soon as possible.

The guidance also addresses other issues such as the 'following quarter rule' and reporting in relation to funds of funds, feeder AIFs and umbrella structures.

It should be noted that the frequency and complexity of AIFMD reporting may depend upon whether or not a firm is a full scope firm, the type of investment fund, the size of AUM and whether the AIF is leveraged or not.

Click here for guidance

FCA Enforcement Action

- Paul Garard Cole, former Treasurer and Head of Tax at Morrison's: charged with two offences of insider dealing.
  Access final notice here

- Former directors of Pritchard Stockbrokers: fined a total of £24.5k (after evidence of financial hardship presented) for CASS breaches/failures.
  Access final notices here

- Tesco: notified by the FCA that it is under investigation following its admission that it overstated its half year profit guidance by £250m (now reported to be by £263m).
  Access FT article here

- Paul Reynolds of Aspire Personal Finance Ltd: fined £290k and banned for improper conduct relating to the sale of high risk investment products to retail clients.
  Access decision notice here

Industry news continued……..

FCA Speech - The future of Payment Systems and the PSR

In speech at the BBA in London, Hannah Dixon, MD of the new Payment Services Regulator (PSR), outlines the future of the payment services industry and describes the type of regulator the PSR will be. Currently the PSR expects to regulate big UK interbank schemes and the major credit card schemes operating in the UK. Dixon claims the PSR will be an economic and evidence-based regulator, akin to those in the utility industries. CP due out in November.

Click here for full speech

FCA Speech - Getting the Right Investor Outcomes

Will Amos, the FCA's Director of Wholsesale Banking and Investment Management, spoke about their new Fund Authorisation and Supervision Team, which will take responsibility for regulated funds from the point of authorisation until their termination or closure. This will ensure consistent investor outcomes throughout the product lifecycle and the identification of risks before they are given a chance to negatively impact investors.

Click here for full speech

Abolishment of 'Death Taxes' on Unused Pension Savings

From April 2015 DC pension savers will be able to pass on surplus funds to a nominated beneficiary when they die without those funds being subject to a 55% tax charge. The nominated beneficiary will be able to access those funds flexibly, at any age and will only be liable for tax at their marginal rate if the pension holder was 75 or over. Final rules and confirmation of unresolved elements of the pension reforms are expected in the Autumn Statement in December.

Access full article here

New Criminal Market Manipulation Offences

HMT is consulting on the extension of new criminal market manipulation offences that now apply to LIBOR to seven other 'benchmark' rates governing foreign exchange, swaps and commodities transactions, e.g. SONIA, RONIA, and WM/Reuters 4pm London Fix. The Government hopes to have the new regime in place by the end of the year.

Access consultation here