



**Welcome** to the second 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.

The main regulatory hot topics for November are complaints handling; financial crime; continued fall-out from the Draft Pensions Bill; and conduct of those involved in the provision of investment services, such as investment management. November has also seen numerous enforcement actions and prosecutions.

The FCA's monthly Regulation Round-up was issued, which you can access [here](#), along with the FCA's latest Policy Development Update, which provides a list of recent and upcoming publications, and can also 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.

Email – [emma@gemcompliance.com](mailto:emma@gemcompliance.com)

Website – [www.gemcompliance.com/index.html](http://www.gemcompliance.com/index.html)

## Main features

- PSR's first consultation paper on their regulatory framework (CP14/1)
- FCA's thematic review on complaint handling (TR14/18)
- FCA's thematic review on money laundering and sanctions risks (TR14/16)
- FCA's thematic review on bribery and corruption risk (TR14/17)
- FCA investor warning regarding Emmitt plc shares
- New FATF guidance published
- FCA's Innovator Hub launched
- Other FCA publications

## Industry news

- SIPP market divided over judicial review by industry trade body into new capital adequacy rules to be brought in by the FCA.  
[Click here for full article.](#)
- There has been an increase in annuity complaints to FOS following the Budget in March. 552 complaints were received following the announcement, which was more than double received for the same period in 2013.  
[Click here for full article.](#)
- The Competition and Markets Authority has confirmed it is to launch an inquiry into account switching, lending to businesses and the lack of competition from smaller competitors.  
[Click here for full article.](#)
- IoM to increase state pension age to 74 for anyone born after 2011. The review of the IoM's social security and national insurance schemes includes 6 other recommended reforms including a flat rate single-tier pensions system and reduced rates for employer NICs.  
[Click here for article.](#)
- FCA reveals its forthcoming consultation on the EU's Alternative Dispute Resolution Directive (ADR) will not cover the issue of a 'long-stop' for financial services complaints.  
[Click here for article.](#)
- FTAdviser reports that the FCSC and FCA are in talks regarding a review of the scheme's funding model. The New Wealth Management Association is working with both bodies on "what a review will look like after the election and going into 2016."  
[Click here for article.](#)
- The Treasury has opened a consultation proposing to extend the new Senior Persons Regime in banking to senior managers at UK branches of foreign banks and investment firms.  
[Click here for consultation paper.](#)
- Following the merger of the Investment Management Association with the Association of British Insurers an updated version of the Principles of Remuneration has been published, which now states that "variable allowances are inconsistent with the spirit of simplicity, clarity and pay for performance" and should not be included as part of directors' fixed pay.  
[Click here for updated principles.](#)

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## CP14/1 - A new regulatory framework for payment systems in the UK

In its consultation paper the new Payment Services Regulator (PSR) sets out how it will regulate the £75 trillion industry. The core proposals are reported as follows:

- Creation of Payments Strategy Forum;
- Increased transparency and disclosure regarding the ownership, control and governance of payments systems to involve service users in the decision-making and to minimise conflicts of interest.
- Operators must have objective, risk-based and publicly disclosed access requirements;
- Greater transparency for those seeking indirect access to interbank payments systems through disclosure requirements; and
- High-level behavioural expectations through three principles: act in an open and co-operative way with regulators; be compliant; and manage business and financial risks effectively.

The consultation period closes on 12<sup>th</sup> January 2015 and two market reviews will be launched in April 2015 – one to evaluate ownership and competition in the current infrastructure and the other to look at how indirect access is provided.

[Click here for consultation paper.](#)

## TR14/18 - Complaint Handling

The FCA's thematic review (TR) aimed to identify barriers to effective complaint handling and to work with the industry to propose solutions. 15 major retail financial firms were assessed, and the results were discussed and considered at an FCA-chaired working group made up of the participant firms and five trade bodies. Views from FOS and other consumer groups were also sought. The review identified the following issues:

- Impact on customers is not always considered when designing new processes and procedures;
- Definition of complaint was not always understood by staff;
- Inconsistent approach to redress, particularly distress and inconvenience payments;
- Narrow approach taken to root cause analysis; and
- Weaknesses in management information effecting accuracy and interpretation.

The working group also made recommendations on how complaints procedures could be improved:

- Complaint telephone lines on basic rate;
- Extending the next business day rule;
- Removing the non-reportable complaints rule so that all complaints need to be reported;
- Reviewing the bi-annual complaints return to include more consumer centric information; and
- Reviewing the publication of firm complaints.

The definition of a complaint and the 8 week resolution timeframe are also being reviewed.

The FCA is reviewing the package of recommendations and will consult on policy changes later this year. In the meantime all firms should evaluate their complaints procedures against the findings in the report.

[Click here for thematic review.](#)

## Industry news continued...

- European Commission gives support to UEFA's Financial Fair Play regulations but has not given formal backing. The rules requiring European clubs to break-even over a three-year period or face being banned from the Champions League or the Europa League, have been challenged by a football agent who claims they infringe competition law.  
[Click here for article.](#)
- Bank of England publishes its approach to dealing with lenders in financial difficulty and says "failure of these firms" "should not impact the rest of the system and taxpayers should not bear the cost."  
[Click here for approach document.](#)
- FCA and PRA publish papers setting out proposed changes to the regulation of with-profits business in the UK. The FCA's paper provides feedback on the conduct issues in the FSA's CP12/13 - Transposition of Solvency II Part 2 - and the PRA's paper sets out its approach to prudential regulation of with-profits business.  
[FCA Feedback Statement, PRA Paper](#)
- Financial Reporting Council (FRC) to review corporate succession planning guidance next year following investor concerns over the way some companies handle appointments. The discussion paper due out next spring will call for a clear and consistent policy for appointments to the board and senior management roles.  
[Click here for article.](#)
- The International Monetary Fund (IMF) has recommended that sovereign bonds include two amendments to the typical legal wording of future debt restructurings following litigation in the US courts. The first will clarify that the 'pari passu' clause does not mean that holdouts need to be paid in full before making any payments on restructured debt holders. The second will enable a supermajority of 75% to bind other creditors in a restructuring.  
[Click here for article.](#)
- Bank of England broadens scope of Sterling Monetary Framework to include broker dealers deemed critical to the stability of the UK financial system and central counterparties operating in UK markets, which are authorised by European regulators.  
[Click here for press release.](#)
- The Pensions Regulator has issued fixed penalties of £400 to three employers for failing to meet their auto-enrolment duties and 163 compliance notices providing deadlines by which action needs to be taken.  
[Click here for full article.](#)
- Financial Services Consumer Panel has issued a discussion paper claiming the investment industry was "awash with conflicts of interest, poor governance, a lack of transparency and product complexity." The panel calls for the introduction of a new single investment charge covering all expenses to resolve the long-standing problems of cost opacity.  
[Click here for article.](#)

## TR14/16 - Managing Money Laundering and Sanctions Risk

This Thematic Review (TR) looked at the response of small banks to the 2011 AML review specifically focussing on high-risk customers, PEPs (Politically Exposed Persons), correspondent banking, and financial sanctions systems and controls. The FCA found weaknesses in the AML systems and controls of most of the banks assessed. A third of banks were found to have inadequate resources and staff often had weak knowledge of AML risks. Four of the banks will limit their business activities until weaknesses in relation to high-risk customers are corrected and three banks have had to instruct skilled persons. Enforcement actions have started against two of the six banks.

[Click here to access thematic report.](#)

## TR14/17 - Managing Bribery and Corruption Risk in Commercial Insurance Broking

The FCA has published an update following the FSA's review of ABC (anti-bribery and corruption) systems and controls in commercial insurance intermediaries carried out in 2010. The FCA has found that overall intermediaries are not sufficiently managing the ABC risks posed to their firms. The FCA has proposed updates to its Financial Crime Guide, [GC14/7](#), to take account of its findings in TR14/16 and 17, and has said the proposals will be relevant to all firms subject to the high-level SYSC rules (SYSC 3.2.6R and SYSC 6.1.1R).

[Click here to access thematic report.](#)

## New FATF Guidance Published

New guidance from the Financial Action Task Force (FATF) has been published to help governments comply with recommendations 24 and 25 concerning transparency and beneficial ownership of legal persons and legal arrangements.

Commenting on the guidance FATF said "the misuse of corporate vehicles could be significantly reduced if accurate information regarding both the legal owner and the ultimate beneficial owner, the source of the corporate vehicle's assets, and its activities were readily available to the authorities." The UK government is consulting on proposals to create a public list of those who are beneficial owners of companies, known as the 'people with significant control' (PSC) register.

[FATF Guidance, Government CP](#)

## FCA launches Innovator Hub

November sees the launch of the FCA's Innovator Hub for regulated and non-regulated firms. Designed with the FCA's competition objective in mind, the aim of the Hub is to "encourage innovation in financial services in the interests of consumers by supporting innovator businesses with a range of support services." These support services include:

- A dedicated team and contact for innovator businesses;
- Assistance in understanding and applying the regulatory framework;
- Assistance with applying for and obtaining authorisation, where necessary; and
- A dedicated contact for up to a year after authorisation of an innovator business.

For more information click [here](#).

## FCA issues investor warning

The FCA has issued a warning to potential investors after being made aware that individuals are being encouraged (some through a cash-back incentive) to transfer money from work place pension schemes into a SIPP and use the money to buy shares in an AIM listed company, Emmitt plc. To date the scheme has seen 60-100 investors invest, with some having invested 100% of their pension assets in Emmitt plc shares.

[Click here for press release.](#)

## Industry news continued...

• FCA's Rory Percival reveals that fund management charge disclosure will form part of the upcoming advice due diligence review. Also, in response to questions concerning long and time consuming suitability reports at a conference organised by the Chartered Accountants in England and Wales, Percival suggested "shorter, more personalised letters to clients, with the more generic information provided in an index."  
[Click here for article.](#)

• It is proposed that PSD2 (Payment Services Directive 2) will require banks and other payment service providers to submit regular updates on the security risks facing their organisation and the steps taken to mitigate them. These measures are contained in the latest draft of the directive, published in October 14. The Council and European Parliament are still to reach a consensus on the draft proposals before they can be fixed into EU law.  
[Click here for draft directive.](#)

## Enforcement Actions and Prosecutions

• FCA fines Yorkshire Building Society £4.1m for failures by call handling staff in dealing with customers experiencing payment difficulties, which led to significant delays causing customers to incur increased fees and associated interest.  
[Click here for article.](#)

• FCA fines Sesame just under £1.6m for employing a tender process where it asked advisers what services they were prepared to pay the Group for. The FCA considered this process "effectively undermined the ban on commission payments brought in by the RDR."  
[Click here for article.](#)

• FCA to discontinue its investigation into Tesco after the Serious Fraud Office announced it has opened a criminal investigation into Tesco's accounting practices.  
[Click here for article.](#)

• The FCA has tipped off Scottish police to a fraudulent short-term investment scheme run by a former AR of Sense Network. Police began looking into Midas in August. The investigation concerns an unauthorised deposit taking scheme, which Sense and therefore Midas didn't have permission to operate.  
[Click here for article.](#)

• The FCA has finished its investigation into Partnership Life Assurance Company Limited for breaches in relation to conflicts of interest and has confirmed no further action will be taken. The firm was referred to the FCA's enforcement division last year regarding a suspected inducement in a distribution agreement.  
[Click here for article.](#)

• The former CEO and two directors of Swinton Group Limited have received fines (totalling £928k) and bans in relation to "an aggressive sales strategy adopted by the firm which led to the mis-selling of insurance add-ons."  
[Click here for article.](#)

• John Dickinson, former adviser at investment firm Foresters has been ordered to pay fines and redress totalling more than £66k by Exeter Crown Court, after stealing almost £36k from a client.  
[Click here for article.](#)

### CP14/23 - Restrictions on the retail distribution of regulatory capital

**instruments** - On 1<sup>st</sup> October 2014 the FCA introduced a temporary restriction relating to contingent convertible securities (CoCos) and this CP (consultation paper) seeks to make these rules permanent. The CP also proposes new requirements for the sale of mutual society shares to ordinary retail investors.

The consultation period closes on 29<sup>th</sup> January 2015 and the CP can be accessed [here](#).

**CP14/24 - Changes in Workplace Personal Pension Schemes** - The proposals in this CP have been put together with the Department for Work and Pensions and the Pensions Regulator and is to ensure workplace pension schemes are high quality and good value. The measures include:

- new governance standards;
- a proposed charge cap on default funds;
- the banning of certain charging practices; and
- measures to improve the disclosure of costs and charges.

The consultation period closes on 31<sup>st</sup> December 2014 and the CP can be accessed [here](#).

**PS14/14 - CRD IV – Changes to EBA high earners and benchmarking information reports, including feedback to CP14/19 and final rules** - The European Banking Authority (EBA) issued final guidelines regarding data collection for high earners and remuneration benchmarking in July, amending the existing template and requesting more detailed information. The FCA and PRA consulted on changes to rules in CP14/19 and have decided to proceed as originally proposed.

The new rules will come into force on 7<sup>th</sup> November 2014 and the policy statement can be accessed [here](#).

**PS14/15 - Removing the Transparency Directive's requirement to publish interim management statements - Including feedback on CP14/12 and final rules** - The FCA is to proceed with its proposal to remove the requirement under the Transparency Directive to publish interim management accounts with effect from 7<sup>th</sup> November 2014. The change will affect issuers of shares admitted to trading on a regulated market where the UK acts a home member state and the FCA's Disclosure and Transparency Rules apply.

The policy statement can be accessed [here](#).

## FCA Speeches

**Economics, technology and data – redefining the future of conduct regulation, by Martin Wheatley, FCA CEO** - Wheatley talks about the importance of behavioural economics, data and technology in relation to: price caps; GI add-ons; cash savings; and overdrafts. Click [here](#) for the full speech.

**Regulating in a recovery, by John Griffiths-Jones, FCA Chairman** - Griffiths-Jones comments on a 4-point plan for future conduct regulation: structure; clarity; effectiveness; and continuous improvement. Looking ahead to April 2015 when the proposed changes to the pensions regime come into effect, Griffiths-Jones said the need for consumer protection was increasing rather than diminishing, and confirmed, in respect of more detailed rules, that less is more. Click [here](#) for the full speech.

**The vital relationship between the regulator and the advisory industry, by John Griffiths-Jones, FCA Chairman** - Griffiths-Jones detailed the key messages he received from the advisory community after first arriving at the FCA: advisers want to do the right thing; they don't want to get into trouble; but the rules are complicated and access to the FCA is needed to understand aspects of regulation including new rules. Griffiths-Jones acknowledged the third point and confirmed that this was something the FCA has tried to resolve. The FCA is looking for professionalism from the advisory community and when assessing firms will focus on the firm's: business model; culture; operational procedures; and practical commitment to TCF. Click [here](#) for the full speech.

## Enforcement Actions and Prosecutions continued...

- A third individual named in the FCA's Operation Tabernula has pleaded guilty to 8 instances of insider dealing, which resulted in profits of £250k. Julian Rifat, a former senior execution trader at Moore Capital Management Ltd will be sentenced in the New Year. The FCA is currently prosecuting 8 other individuals for insider dealing. [Click here for article.](#)
- FCA fines five banks a total of £1.1 billion for failings in relation to G10 spot FX trading operations and announces industry-wide remediation programme to drive up standards across the markets, implementation of which senior management will need to attest to. The banks fined so far are: Citibank N.A.; JP Morgan Chase Bank N.A.; RBS; and UBS AG. The investigation into Barclays is ongoing. [Click here for article.](#)
- The FCA has fined Chase De Vere Independent Financial Advisers Limited £560,000 (with early settlement discount) for failures concerning the sale of Keydata products. The firm did not research the products well enough to understand the risks they posed to customers and did not ensure that its advisers understood those risks. [Click here for article.](#)
- Cheshire financial adviser Geoffrey Fincher sentenced to two years in prison after pleading guilty to 22 charges including fraud. Fincher pretended to invest client money but instead pocketed it. The police investigation began after the FCA suspended him and his firm in December 2013. [Click here for article.](#)
- Former investment director of Imperial Consolidated Group, William Godley, has been ordered to pay a confiscation order of £1.5m. Godley was convicted in 2010 for conspiracy to defraud and has 6 months to pay. [Click here for article.](#)
- RBS and its subsidiaries, NatWest and Ulster Bank, have been hit with a £42m fine from the FCA and a £14m from the PRA over an IT crash two years ago that left 6.5m customers without access to their accounts for several weeks. The cause of the crash was a software compatibility problem following a system upgrade. [Click here for article.](#)
- Claims Management Company, EMC Advisory Services Ltd, fined £70,000 by the ICO (Information Commissioner's Office) after being responsible for making nuisance calls, which led to 630 complaints to the ICO and Telephone Preference Service (TPS) between 1/3/13 to 28/2/14. The firm is also the subject of an on-going MOJ investigation after being reported by a Newcastle-based IFA for submitting a number of complaints "without foundation and built on a premise of fabrication." [Click here for article.](#)

