



Welcome to the fifth 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.

This month saw regulatory activity return to normal levels following the seasonal break, with the publication of the FCA's [2nd data bulletin](#) and a speech entitled Regulatory Challenge, by the FCA's Director of Enforcement and Financial Crime, Tracey McDermott. In her speech McDermott talks about the role of the regulator from a supervisory perspective and the role of firms' compliance officers. McDermott also touches on conduct risk and effective de-risking. For more information and a link to the speech, see page 3 of this issue.

February also saw Aviva Investors fined £17.6m for failing to properly manage conflicts of interest inherent in a particular management approach, which led to £132m being paid in compensation to a number of funds.

The FCA's monthly Regulation Round-up was issued, which you can access [here](#), along with the FCA's latest Policy Development Update (Issue 19), 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.

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Main features

- * TR15/1: Asset Management firms and the risk of market abuse
- * FS15/1: Discussion on the use of dealing commission
- * "The Regulatory Challenge" - speech by the FCA's Director of Enforcement and Financial Crime, Tracey McDermott
- * Occasional Paper No. 8: Consumer Vulnerability
- * Enforcement Actions and Prosecutions
- * Other FCA News and Publications

Industry News

On 31st January the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 came into force. The aim of the regulations is to "simplify the registration process and reduce the time that a company might have a proposed name rejected by the register."

[Click here to access the legislation.](#)

Gillespie McAndrew reports that a recent case in England (Bieber V Teathers) has confirmed that email correspondence may constitute a binding contract, unless it carries the caveat, 'subject to contract'. Michael Cox, senior solicitor at the firm, reminds readers that "only outline terms need to be agreed for a contract to be formed."

[Click here for article.](#)

Trade body, the Association of Member-Directed Pension Schemes, has been refused permission for a judicial review regarding the FCA's new capital adequacy rules for SIFPs. The trade body believes the use of assets under administration as a basis for calculating capital adequacy is flawed. However, it has been working with the FCA to resolve the administration problems associated with using assets under administration.

[Click here for article.](#)

Government announces extension to advice exemption for those with small DB pensions nearing retirement wishing to transfer to DC schemes to take advantage of pension freedoms.

[Click here for article.](#)

Legal Ombudsman is now accepting complaints about CMCs (Claims Management Companies) after 9,000 were made to the regulator last year. It will be able to order compensation and refunds, and provide other forms of redress where poor conduct is identified.

[Click here for article.](#)

UK Structured Products Association introduces new set of risk ratings.

[Click here for article.](#)

In a speech at a Thesis Asset Management conference, the FCA's technical Specialist, Rory Percival warned about too much standardisation in suitability reports and a lack of personalisation. Percival added that methods of improving personalisation include "free text" in the fact-finder and removing template objectives from suitability reports. Percival also mentioned that firms' business models continue to be an area of interest for the FCA.

[Click here for article.](#)

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TR15/1: Asset management firms and the risk of market abuse

This review looked at how 19 asset management firms control the risks of insider dealing, improper disclosure and market manipulation, however, its primary focus was equities and insider dealing. The key findings were as follows:

- * **Managing the risk that inside information could be received but not identified** - Firms generally had effective policies to identify and control inside information in clear situations, however practices to avoid inside information or identify its receipt when it is not expected to be received were often informal and inconsistently applied.
- * **Controlling access to inside information and managing the risk of improper disclosure** - All firms had a policy to limit the sharing of inside information to those who need to know it, however, only a minority of firms monitored the effectiveness of this policy.
- * **Pre-trade controls to prevent market manipulation and insider dealing** - Firms generally had good pre-trade controls to reduce the risk of market abuse. All except two firms used a block or warning prompt to prevent trading of securities that had been restricted due to the possession of inside information.
- * **Post-trade surveillance** - Only two firms demonstrated post-trade surveillance that effectively highlighted and properly investigated potentially suspicious trades. In some firms effective investigation of potentially suspicious transactions was difficult due to a lack of documentation and poor awareness of front office research activity.
- * **Personal account dealing policies** - All of the firms had a personal account dealing policy.
- * **Training** - All except one firm conducted training to ensure employees' understanding of market abuse rules was up to date and included discussions on recent market abuse cases.

In summary, for most firms further work is needed to manage all material risks effectively, in particular the risk of receiving inside information at all steps of the investment process and post-trade surveillance.

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

FS15/1: Discussion on the use of dealing commission

This paper provides the feedback to the discussion paper published in July 2014 concerning dealing commission. The original paper also sought industry views on ESMA's draft advice, which was finalised in December, therefore this paper also summarises ESMA's finalised guidance and the FCA's view on it.

ESMA will allow an investment manager to purchase research provided if it is paid for either:

- * directly by the firm out of its own resources; or
- * through a 'research payment account' funded by a specific, separate charge to their client, which is agreed and disclosed upfront. The charge must be based on a research budget set by the firm, and cannot be linked to execution volumes or value (i.e. dealing commissions or spreads).

Under the second proposal, clients will also receive periodic disclosures on the total amount actually charged for research and how revenues have been used from the research payment account, with the option to request a more detailed summary of payments made to research providers and the goods and services received.

Investment firms providing both execution and research services to a portfolio manager should identify a separate fee for the execution service, with any additional goods and services subject to a separate charge that is not influenced by levels of payment received for execution.

The FCA considers the proposals "will lead to better outcomes for investors." The FCA also believes it will "better align their (portfolio managers') incentives to control costs and procure research in the best interests of their customers, and will improve competition in the market for research."

The FCA states it will publish further information including a consultation paper on its overall implementation of MiFID II by late Q4 2015.

[Click here to access feedback statement.](#)

Industry News Continued.....

International Working Group on Data Protection in Telecoms has published a paper providing guidance on the privacy and security risks that organisations must address before allowing employees to connect to corporate networks using personal devices, such as tablets and smart phones.

[Click here to access paper.](#)

Government is to make market manipulation and insider dealing in relation to energy markets criminal offences under new regulations that come into force from April. If found guilty, offenders could receive a maximum of 2 years imprisonment.

[Click here for article.](#)

ESMA publishes finalised technical guidance on a number of delegated acts under the Market Abuse Regime (MAR).

[Click here to access the guidance.](#)

The Investment Association is seeking views on proposed changes to its guidance on how to calculate specific fund costs and display charges.

[Click here for article.](#)

European Commission publishes a CP concerning the Prospectus Directive, and is inviting comments by the 13th May on a number of aspects, such as content of and triggers for the provision of a prospectus and exemption thresholds. The EC plans to publish proposals in the second half of 2015.

[Click here for consultation paper.](#)

Adviser warns the industry to be vigilant to emails purporting to be from clients following a recent attempt by hackers to gain control and access client funds.

[Click here for article.](#)

APFA head revives talks with FCA regarding the introduction of a 15-year long-stop for advisers and confirms a decision can be expected later this year.

[Click here for article.](#)

DWP publishes framework document for automatic transfers.

[Click here for framework document.](#)

Pensions Regulator publishes CP offering guidance to DB trustees regarding how to deal with member transfer requests.

[Click here for consultation paper.](#)

Government appoints Anthony Arter as the new Pensions Ombudsman.

[Click here for press release.](#)

Insurance Act receives royal assent and comes into force on 12 August 2016.

[Click here to access Act.](#)

Treasury confirms where £450m of FCA Libor fines were sent.

[Click here for article.](#)

Commenting on the upcoming pension reforms the FCA's Director of Policy, David Geale, said "the FCA did not have a particular suite of retirement products that it wants to see developed in response to the pension changes." Geale also warned that "greater choice for consumers could lead to an increase in risk and the need for guidance or advice."

[Click here for article.](#)

“The Regulatory Challenge” - speech by FCA’s Director of Enforcement and Financial Crime, Tracey McDermott

In the current environment of complex products, commercial pressures and accidental/deliberate wrong doing, the roles of the regulator and compliance officer are challenging. The regulator exists to set and enforce standards, but also to push firms and show them what good and bad looks like. The FCA “is, in part (a firm’s) conscience and policeman - to check that you are doing what you say you will do and to hold you to account when you don’t.” In her speech McDermott states that the role of the compliance officer mirrors the role of the regulator and hopes that officers are performing the roles mentioned above within their firms.

On the topic of de-risking, McDermott highlights the risks of a tick-box and blanket approach in relation to AML requirements, and urges firms to use their “common sense and judgement” to prevent customers being adversely impacted.

The FCA believes that the regulator and firms have a shared objective of reducing the size of compliance teams, and possibly the regulator. However, the nature and management of conduct risk in today’s market is such that jobs are safe for the moment.

In conclusion, McDermott confirms that the job of compliance “is not to design new processes and controls, it is to force the board to ask the difficult questions.”

[Click here to access the speech.](#)

Occasional Paper No. 8: Consumer Vulnerability

The paper aims to:

- * broaden understanding and stimulate interest and debate around vulnerability;
- * provide practical help and resources for firms in developing and implementing a vulnerability strategy; and
- * show examples of good practice in the way some firms treat consumers in vulnerable circumstances.

The paper also highlights a number of cases where consumers have not received fair treatment from their firms. The FCA reports that some consumers have been put at risk of further detriment because of a “computer says no” approach.

To assist firms further, the FCA has published a video on its website where industry stakeholders discuss vulnerability issues.

[Click here to access press statement and video.](#)

Other FCA News and Publications

- * PS15/3: Final rules for independent governance committees, including feedback on CP14/16 - relevant to firms that provide workplace personal pension schemes and firms that support such firms. [Click here to access policy statement.](#)
- * FCA announces changes to the reporting of annual accounts – [click here for press statement.](#)
- * PSR confirms Payments Strategy Working Group participants – [click here to access press statement.](#)
- * FCA announces a post-implementation review of the crowd-funding regulatory framework is scheduled for next year - [click here for article.](#)
- * FCA announces plans to investigate competition in the investment and corporate banking sector - [click here for press statement.](#)
- * FCA confirms GABRIEL issues for AIFMs are resolved - [click here to access AIFM reporting webpage.](#)
- * FG15/3 - Version 3.1 of the Transaction Reporting User Pack (TRUP) - [click here to access finalised guidance.](#)
- * FS15/2: Wholesale sector competition review 2014-15 - [click here for feedback statement.](#)
- * FCA announces new chairs of the Practitioner Panels - [click here for press statement.](#)
- * FG15/2 – Primary Market Bulletin No. 10 - [click here to access the bulletin.](#)
- * CP15/5: Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms - [click here to access consultation paper.](#)

Enforcement Actions and Prosecutions

FCA reports that Alex Hope, convicted of defrauding investors of money and operating a collective investment scheme without authorisation, has been sentenced to 7 years’ imprisonment. His co-defendant, Raj Von Badlo was sentenced to 2 years’ imprisonment.

[Click here for article.](#)

By the end of 2014, the Pensions Regulator had fined almost 170 employees for failing to comply with their auto-enrolment duties.

[Click here for article.](#)

Financial adviser escapes imprisonment but is given 250 hours community service and instructed to wear an electronic tag for 6 months, after duping a couple into writing a cheque for £35k to invest in a company and paying it into his own account.

[Click here for article.](#)

Bank adviser arrested for stealing £123,000 from a customer account by using the details to order a new debit card and PIN number. The adviser also used her position to remove blocks on the account when the bank became suspicious of the unusual spending activity.

[Click here for article.](#)

Sippcentre (now known as Investcentre) ordered to pay £13k in compensation by the Pensions Ombudsman to a client for delaying the transfer of his pension by 4 weeks.

[Click here for article.](#)

Financial consultant, John Field, of Meads Financial Consultants (an AR of Sesame between 1994 and October 2013) has been sentenced to 4 years in prison for defrauding nearly £1m from 36 clients between 2005 and 2013.

[Click here for article.](#)

FCA fines Aviva Investors £17.6m (with a 30% early settlement discount) for conflicts of interest failings that led to £132m of compensation being paid out. Between August 2005 and June 2013, the asset manager employed a side-by-side management strategy, whereby funds that paid differing levels of performance fees were being managed by the same desk, which created an incentive for traders to favour one fund over another. In May 2013, two former traders were found to be delaying the booking of, and improperly allocating, trades. An investigation found that 8 funds had been adversely impacted and compensation was paid. Although the firm operated a ‘three lines of defence model’ it was not effective and led to weaknesses in the management model being exploited for personal gain.

[Click here for press statement.](#)

Following an FCA investigation into insider dealing, the former Group Reporting and Financial Planning Manager of PLC, Ryan Tony Willmott, has appeared in court charged with three offences of insider dealing in relation to trading in the company’s shares between May and June 2012. Meanwhile, the FCA continues to pursue the prosecution of 8 others for insider dealing.

[Click here for press statement.](#)

