



**Welcome** to the sixth 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.

March has been a hive of activity with publication of the Budget and the issue of a number of FCA papers ahead of the pension reforms and new financial year. The FCA reports that the number of firms it regulates has increased by 280%, following the transfer of consumer credit regulation to the FCA, to 73,000 firms. It has therefore had to alter its operational strategy to ensure the most effective use of its resources.

In its Business Plan for 2015/16, the FCA has set 5 key priorities: wholesale market integrity; consumer protection; individual accountability; international issues; and its people. The FCA has also published its consultation rates for regulatory fees and levies for 2015/16 and encourages firms to use the [online calculator](#) to estimate total annual fees for the next year.

The FCA's monthly Regulation Round-up was issued, which you can access [here](#), along with the FCA's latest Policy Development Update (Issue 20), 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

- \* TR15/2: Structured Products: Thematic Review of Product Development and Governance
- \* FG15/4 - Social Media and Customer Communications:
- \* GC15/1 Risks to Customers from Performance Management at Firms
- \* CP15/13: General Insurance Add-ons Market Study
- \* Combined Business Plan 2015/16 and Risk Outlook
- \* CP15/14: FCA Regulated Fees and Levies: Rates Proposals
- \* DP15/3: Developing our Approach to Implementing MiFID II Conduct of Business and Organisational Requirements 2015/16
- \* PS15/4: Retirement Reforms and the Guidance Guarantee
- \* PS15/5: Final rules for Charges in Workplace Personal Pension Schemes and Feedback on CP14/24
- \* CP15/7: Proposed Changes to our Pension Transfer Rules
- \* "From intellectual certainty to debate" – Speech by FCA Chief Executive, Martin Wheatley
- \* "Nothing to fear from high standards" – Speech by FCA Chief Executive, Martin Wheatley

## Industry News

ESMA publishes revised work programme for 2015 following cuts to its budget. Work that has been deprioritised includes the development of technical standards and advice guidance for Benchmark Regulation, CSDR and MiFID II.  
[Click here for article.](#)

Advisers warned against undermining the independence of Pension Wise in a framework document published by the Treasury, the Association of British Insurers and the National Association of Pension Funds.  
[Click here for article.](#)

Tyrie comments on the PCBS's proposals for increased scrutiny of FCA referrals for enforcement action and settlements with firms.  
[Click here for article.](#)

HMT has confirmed that the Senior Managers and Certification Regime for the banking sector will begin on 7<sup>th</sup> March 2016.  
[Click here for press statement.](#)

EBA publishes draft guidelines on remuneration policies under CRD IV, which clarifies how the rules should be interpreted. The guidelines remove the proportionality principle for smaller firms. Therefore the FCA strongly urges firms to consider the potential impact of the rules, even though they are not final yet.  
[Click here for guidelines.](#)

HMT publishes CP on the legislative implementation of MiFID II.  
[Click here to access consultation.](#)

Serious Crime Act 2015 received Royal Assent in March, which amongst other things, amends the Proceeds of Crime Act 2002 - to provide protection from civil liability to any party that makes a disclosure of money laundering and request for consent in good faith - and the Computer Misuse Act 1990 – to ensure sentences for attacks fully reflect the damage caused.  
[Click here to access the Act.](#)

EBA issues opinion on crowdfunding.  
[Click here to access opinion paper.](#)

The ICO reports that some cookies will remain on devices until the year 9999, and 6% of UK websites it has reviewed are still failing to provide the required cookies disclosure to enable consumers to make an informed decision on whether to allow cookies to be placed on their devices. The ICO is in the process of writing to these firms before deciding what action to take.  
[Click here to access survey report.](#)

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## TR15/2: Structured Products: Thematic Review of Product Development and Governance

The FCA's review on structured products, which can range from straightforward alternatives to cash deposits to highly complex investments, involved collation of information from research with retail customers and supervision work from both retail and wholesale firms. The FCA found that:

- \* Retail customers find it difficult to understand complex features, which are common to many structured products; and
- \* Weaknesses in the product design and governance of such products in some firms.

Two forthcoming European directives (PRIIPS and MiFID II) will impose detailed requirements on firms manufacturing and distributing structured products to retail clients. In the meantime, the FCA will continue to monitor the structured product market to check whether firms are meeting the current requirements. The FCA has said all firms operating in this market should review their current approach against this review and the FCA's Principles, rules and guidance. Should the FCA's concerns remain it may seek to impose further 'enforcement action', intervene in product disclosure and marketing, or seek to limit marketing to certain groups of consumers.

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

## FG15/4 - Social media and customer communications: The FCA's supervisory approach to financial promotions in social media

This finalised guidance follows the proposed guidance issued in August 2014 regarding the FCA's approach to financial promotions in social media. Following feedback, the finalised guidance should provide greater clarity in a number of areas, such as: re-tweets, forwarding and sharing; inserting images, 'click-through' approach; #Ad; and 'in the course of business' communications.

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

## GC15/1 Risks to customers from performance management at firms

Following on from previous FCA work on financial incentives the FCA has produced a guidance consultation regarding performance practices. The FCA accepts that there will be some pressure associated with meeting targets and corporate objectives but warns that "an undue level of pressure is likely to further increase the risks to customers" such as mis-selling. Therefore, the aim of the proposed guidance is to assist firms in managing the risks associated with performance management by providing examples of good and poor practice instead of rather than detailing how firms should manage the risks of performance management. The FCA expects all firms to consider:

- \* how their approach to performance management may increase the risk of mis-selling;
- \* whether their governance and controls are adequate; and
- \* take action where required to ensure the risks are adequately managed.

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

## CP15/13: General Insurance Add-ons Market Study – Proposed Remedies: banning opt-out selling and supporting informed decision-making for add-on buyers

In response to a market study on general insurance add-ons the FCA proposes a ban on any add-on sales of regulated or unregulated products offered alongside financial primary products, e.g. legal expenses with home insurance. The ban should ensure customers are able to make an informed decision on whether they need or want certain add-ons. The FCA also wants firms to provide "more appropriate and timely information" to customers and is encouraging firms to introduce the most common add-ons earlier in the sales process and to provide the annual price of add-ons rather than the monthly cost.

[Click here to access consultation paper.](#)

## Enforcement Actions and Prosecutions

KPMG fined £390k by the Financial Reporting Council for two separate cases of conflicts of interest relating to partner interests in client firms.

[Click here for article.](#)

Paul Coyle, former Group Treasurer and Head of Tax at Wm Morrison Supermarkets plc, has been sentenced to 12 months in prison for insider dealing in relation to buying shares in Ocado Group plc. Coyle was privy to information relating to a proposed joint venture between Morrisons and Ocado and used this to his own advantage. Coyle has also been ordered to pay £15k towards prosecution costs and given a confiscation Order for just over £200k.

[Click here for article.](#)

FCA fines Bank of Beirut (UK) Ltd £2.1m and also fines two approved persons (the former Compliance Officer and the internal auditor £19,600 and £9,900, respectively) for providing the FCA with mis-leading information after being instructed to address issues relating to its financial crime systems and controls. The FCA has also stopped the firm from taking on new customers from high-risk jurisdictions for 126 days.

[Click here for article.](#)

The Upper Tribunal has upheld the FCA's decision to fine Tariq Carrimjee, who was responsible for compliance oversight at Somerset Asset Management LLP £89k for failing to act with due skill, care and diligence by failing to escalate the risk that a client (Rameshkumar Goenka – fined approximately £6m in November 2011 for market abuse) might have been intending to engage in market manipulation. However, the tribunal did not uphold the decision that Mr. Carrimjee acted without integrity.

[Click here for article.](#)

Philip Boakes sentenced to 10 years imprisonment for defrauding investors of £3.5m by using false instruments and accepting deposits without authorisation. The sentencing follows earlier FCA prosecution.

[Click here for article.](#)

Former chief executive of Gracechurch Investments Ltd, Sam Kenny, has been fined £450k and banned from holding a position in the financial services industry for poor sales practices, unsuitable advice and withholding information from and providing inaccurate information to the FCA. In December 2012, as part of the same investigation the FCA banned the former Compliance Officer from holding a position in the financial services industry and would have fined him £175k had it not been for financial hardship.

[Click here for article.](#)

FCA fines former Compliance Director of Financial Ltd, Stephen Bell, £33.8K (with early settlement discount) and bans him from performing the compliance oversight function for inadequate systems and controls in relation to the recruitment, training, monitoring and control of its ARs and CF30s, for which he was responsible.

[Click here for article.](#)

The FCA has banned former trader at Rabobank, Paul Robson, from the UK financial services industry for lacking honesty and integrity after pleading guilty in the US for his role in manipulating LIBOR submissions.

[Click here for article.](#)

In its Business Plan the FCA talks about its activities and strategy for 2015/16, which will include work and focus in the following areas:

- \* Wholesale market integrity: disclosure and conflicts of interest;
- \* Inducements and conflicts of interest;
- \* Performance management;
- \* How the market and businesses adapt to changes in the pensions sector;
- \* Board involvement in IT resilience and risk;
- \* The role of appointed representatives in the GI distribution chain;
- \* Post authorisation review of funds;
- \* Firm culture and accountability of individuals; and
- \* Asset management sector.

Unfair contract terms have been flagged by the FCA in its Risk Outlook and its Business Plan also provides more detail on the two divisions that will undertake its supervisory and authorisations work.

A short video covering the Business Plan has been produced, alongside the paper.

[Click here to access combined paper and video.](#)

### CP15/14: FCA Regulated fees and levies: rates proposals 2015/16

The FCA's Annual Funding Requirement (the amount needed to carry out the activities as detailed in its Business Plan in 2015/16 is £35.2M, an increase of £7.9% on last year. Minimum fees will increase by 8% on last year to £1,084. The FOS general levy has been frozen and the case fee and number of free cases also remains the same as 2014/15.

The MAS levy will also remain the same as last year, however the amount firms need to contribute will be 2.5% lower because of the voluntary contribution from the energy and water industries.

The FCA is required to recover the cost associated with Pension Wise from authorised firms through the Pensions Guidance Levy, which has been previously consulted on. The feedback is included in this consultation paper (CP). HMT has instructed the FCA to raise £39.1m for the cost of Designated Guidance Providers and the FCA's levy collection costs, and £600k for developing and monitoring the guidance standards.

The costs of setting up the PSR are ring-fenced from the AFR and other general operational costs, and will be recovered from the payment system operators designated by HMT. Consultation rates for these costs are detailed in chapter 10 of this CP.

The online Consultation Rates Calculator is now available on the FCA's website and firms are encouraged to use this to estimate their total regulatory fees for 2015/16. However, firms should note that the calculator doesn't include calculations for the FSCS's interim levy for the life and pensions intermediation sub-class and consultation rates could vary materially to final rates, which are due to be published in June/July 2015.

[Click here to access consultation paper.](#)

### DP15/3: Developing our approach to implementing MiFID II conduct of business and organisational requirements

This paper explores the "policy choices" the FCA needs to make to implement the changes/new rules in conduct of business standards and organisational requirements, and in relation to risks within the wholesale market. The FCA plans to consult on changes to its rules in later in 2015 with a view to publishing final rules in 2016.

[Click here to access discussion paper.](#)

## Enforcement Actions and Prosecutions continued...

Julian Rifat, former senior execution trader and portfolio strategist at Moore Europe Capital Management LLC, has been sentenced to 19 months imprisonment, fined £100k and ordered to pay £159k in costs for an insider dealing case brought by the FCA as part of Operation Tabernula.

[Click here for article.](#)

Two former directors of TailorMade Independent Ltd have been and banned from holding senior positions in the UK financial services industry (and would have been fined £93,800 and £84k if it weren't for financial hardship) for: failing to ensure the firm assessed the suitability of investments made through SIPPs for its customers; failing to ensure the firm identified and effectively managed conflicts of interests; and for failing to properly oversee the firm's compliance function.

[Click here for article.](#)

The FCA has won the Court of Appeal Case regarding two investment schemes, which the FCA argued and High Court ruled were collective investment schemes promoted and operated by firms without the appropriate authorisation.

[Click here for article.](#)

Capita Financial Managers to be formally investigated by the FCA for its role in the failed Connaught funds.

[Click here for article.](#)

Final notice issued for Alberto Micalizzi confirming a fine of £2.7m and a ban from performing any function in relation to a regulated activity after the deadline to seek an oral hearing as part of the appeal process lapsed. The former CEO of Dynamic Decisions Capital Management Ltd was found guilty of concealing and misrepresenting the true value of the DD Growth Premium Master Fund to investors after it suffered losses amounting to roughly 85% of its value.

[Click here for final notice.](#)

## Other FCA News, Speeches and Publications

### News:

FCA and DWP publish joint call for evidence on disclosure of transaction cost information for workplace pensions schemes.

[Click here for press release.](#)

FCA re-launches ScamSmart ahead of the new pension freedoms.

[Click here for press release.](#)

FCA Prudential Supervision Forum – 13 May 2015 for solo-regulated firms.

[Click here for more information.](#)

FCA confirms it will proceed with recommendations from its retirement income market study.

[Click here for press release.](#)

## PS15/4: Retirement reforms and the guidance guarantee

The FCA is publishing new rules to provide additional protection to retirees ahead of the pension reforms in April. By asking consumers relevant questions regarding access to pension savings, the new rules require firms to flag specific risks to customers and give them appropriate risk warnings. There is no consultation period for these rules to enable them to come into force (on 6<sup>th</sup> April '15) before the pension reforms. However, the FCA will consult in the summer on whether to retain, modify or add to these rules.

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

## PS15/5: Final rules for charges in workplace personal pension schemes and feedback on CP14/24

These rules implement the proposed charge cap on default funds for automatic enrolment. They also ban the use of differential charges based on contribution status, and from paying commission and certain other types of remuneration to advisers for services not initiated by scheme members in workplace personal pension schemes. The rules come into effect on 6<sup>th</sup> April 2015 (or the date from which a scheme becomes a Qualifying Scheme).

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

## CP15/7: Proposed changes to our pension transfer rules

This consultation paper covers the changes to the pension transfer rules. The FCA currently regulates advice on transfers but the Government's new rules will bring advising on the conversion or transfer of safeguarded pension benefits into flexible benefits a regulated activity and therefore within the FCA's remit. The FCA proposes to:

- \* amend our rules to incorporate the new specified activity of advising on conversions or transfers of safeguarded benefits to flexible benefits, and
- \* require that all advice on Defined Benefit (DB) to Defined Contribution (DC) pension transfers be provided or checked by a Pension Transfer Specialist.

[Click here to access consultation paper.](#)

## “From intellectual certainty to debate” – speech by FCA Chief Executive, Martin Wheatley

Wheatley highlights the connection between wholesale and retail markets and explains how events in wholesale markets can significantly impact retail customers. As such, Wheatley comments that to some degree wholesale priorities should be assessed against the FCA's consumer protection mandate as well. Wheatley briefly speaks about the Fair and Effective Markets Review, grey areas in FX trading and transparency under MiFID II.

[Click here to access speech.](#)

## “Nothing to fear from high standards” – speech by FCA Chief Executive, Martin Wheatley

Wheatley's speech is centred around the latest publications on the Senior Managers Regime and individual accountability, for which final rules are due out by the summer with key deadlines of February (for grandfathering applications) and March (for full launch) next year. Wheatley stated “the core ambition here is to make sure that where a firm contravenes a regulatory requirement, in an area for which a senior manager is responsible, it will be up to that manager to satisfy regulators that they took reasonable steps to prevent the contravention happening.” Wheatley confirms that it is difficult to be prescriptive about the steps individuals are expected to take but some are obvious: “behave with integrity; delegate appropriately; make sure you understand your business area; and comply with common law, existing rules and legal obligations.” Wheatley confirmed the FCA is consulting on further guidance in this area.

[Click here to access speech.](#)

## Speeches:

Consumer Credit and the FCA: one year on – speech by Martin Wheatley, FCA Chief Executive.  
[Click here for speech.](#)

The Evolution of the Mortgage Market – speech by Linda Woodall, director of mortgage and consumer lending.  
[Click here for speech.](#)

The defining challenge of our time - speech by Martin Wheatley, FCA Chief Executive regarding the upcoming changes to pensions.  
[Click here for speech.](#)

## Publications

FCA launches new webpage providing guidance on fund authorisation and supervision.  
[Click here to access webpage.](#)

FCA updates its MiFID review webpages.  
[Click here to access the update webpages.](#)

CP15/9: Strengthening accountability in banking: a new regulatory framework for individuals.  
[Click here to access consultation paper.](#)

Occasional Paper No. 9: Two plus two makes five? Survey evidence that investors overvalue structured deposits.  
[Click here to access paper.](#)

CP15/8: Quarterly Consultation Paper No. 8 – the FCA is proposing:

- \* Minor changes to CASS and CONC;
- \* Changes to remuneration reporting submission method – the FCA suggests submission should be via Gabriel and would also like to make some minor changes to formatting and associated guidance; and
- \* Changes that impact AIFMs and AIF depositories – proposed changes are mainly to FUND.

[Click here to access consultation paper.](#)

CP15/11: Implementation of the Transparency Directive Amending Directive (2013/50/EU) and other Disclosure Rule and Transparency Rule changes.

[Click here to access consultation paper.](#)

CP15/12: Pension Wise – recommendation policy – Proposed FCA policy for making recommendations to designated guidance providers and the Treasury.  
[Click here to access consultation policy.](#)

PS15/7: Feedback and policy statement on CP14/21 in relation to joint sponsor proposals.  
[Click here to access policy statement.](#)

