



# Enforcement Focus



July 2019

Please click on either option below to learn more about recent enforcement cases handled by the FCA...



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**Market Abuse**  
Enforcement Actions

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**General FCA**  
Enforcement Actions

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Please call us if you would like to discuss any of these cases in more detail.

Newgate Compliance  
Limited

Contact us:

☐ [email](#); or

☐ 020 3696 8750

# Market Conduct

## What is the Code of Market Conduct?

The Code of Market Conduct provides guidance on FCA's implementation of the Market Abuse Regulations. It offers assistance in determining whether or not behaviour amounts to market abuse. The Code applies to all who use the UK financial markets.

Behaviour which could constitute market abuse is summarised below:

1. *Insider dealing* - an insider deals or attempts to deal in qualifying investments or related investment on the basis of inside information relating to the investment in question;
2. *Improper disclosure* – an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties;
3. *Manipulating transactions* – trading, or placing orders to trade, that gives a false or misleading impression of the supply of, or demand for, one or more investments, raising the price of the investment to an abnormal or artificial level
4. *Manipulating devices* - behaviour which consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;
5. *Dissemination* – behaviour which consists of the dissemination of information that conveys a false or misleading impression about an investment or the issuer of an investment where the person doing this knows the information to be false or misleading; or
6. *Misleading behaviour and distortion* - which gives a false or misleading impression of either the supply of, or demand for an investment; or behaviour that otherwise distorts the market in an investment.

Penalties can vary from public censure to imprisonment.

For further information please see the Code which is located in the FCA Handbook. *Code of Market Conduct* <http://fsahandbook.info/FSA/html/handbook/MAR/1>

**If you have any suspicion of market abuse, please speak to your Compliance Officer as soon as possible.**

## Selection of Recent Market Abuse Enforcement Actions

The following section shows the recent market abuse enforcement actions taken by the FCA. Please continue to keep up to date with market conduct by regularly visiting the FCA website. <http://www.fca.org.uk/firms/markets/market-abuse>

There have been no recent market abuse enforcement actions taken by the FCA.

## General FCA Compliance, High Level Principles and Approved Person Primer

**FCA Objectives** - The FCA has an overarching strategic objective of ensuring that relevant financial markets function well. To support this it has three operational objectives: to secure an appropriate degree of protection for consumers; to protect and enhance the integrity of the UK financial system; and to promote effective competition in the interests of consumers.

**FCA Principles for Business** - The FCA have 11 high level principles that underpin their approach to regulation of firms.

1 Integrity	A firm must conduct its business with Integrity.
2 Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
3 Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A firm must maintain adequate financial resources.
5 Market conduct	A firm must observe proper standards of market conduct.
6 Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.
7 Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9 Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10 Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
11 Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

**Principles for Approved Persons** - Approved Persons are required to comply with Statements of Principles for Approved Persons which describe the conduct that the FCA requires and expects of the individuals it approves. All Approved Persons are required to act with: integrity; due, skill care and diligence; observe proper standards of market conduct; deal with FCA in an open and cooperative way. Those holding significant influence functions also have further responsibilities to ensure that their business units are organised and controlled; they manage their business with due skills, care and diligence; and that they ensure compliance with regulations.

## **Selection of FCA Enforcement Actions**

The following is a selection of recent FCA enforcement actions where undue risk has been posed to FCA Objectives and firms and individuals have fallen short of FCA's standards.

### **FCA fines Bank of Scotland (BOS) for failure to report suspicions of fraud at HBOS Reading**

The Financial Conduct Authority ("FCA") has fined BOS £45,500,000 for failures to disclose information about its suspicions that fraud may have taken place at their Reading location amongst the Impaired Assets (IAR) team. The FCA found that BOS had failed to be open and cooperative as well as failing to appropriately disclose information to the regulator (which at the time was the FSA).

In early 2007, BOS identified suspicious conduct in the IAR team – the Director at the Reading branch, Lynden Scourfield, had been sanctioning limits and additional lending facilities beyond the scope of his authority for at least three years without being detected.

On numerous occasions over the following two years, BOS failed to properly understand and appreciate the significance of this information despite clear warnings that fraud may have occurred. At no stage was all the information properly considered, nor is there any evidence that anyone realised or thought about the consequences arising from their failure to inform the authorities.

Finally in July 2009 BOS provided the FSA with full disclosure in relation to its suspicions, including the report of the investigation it had conducted in 2007. The FSA then reported the matter to the National Crime Agency.

Six individuals were sentenced in 2017, following an investigation by the Thames Valley Police, for their part in the fraud committed via BOS' IAR.

Commercial lending was and is still largely unregulated, as such the conduct of business rules and complaints handling rules didn't apply. BOS were, however, required to be open and cooperative with the FSA. The FSA would reasonably have expected to be notified by BOS when the suspicions of fraud arose in May 2007. The delay also risked prejudicing the criminal investigation.

The FCA have also banned four individuals from working in the financial services due to their role in this situation: Lynden Scourfield, Mark Dobson, Alison Mills and David Mills.

<https://www.fca.org.uk/news/press-releases/fca-fines-bank-scotland-failing-report-suspicions-fraud>

### **Pound to Euro Exchange rates**

With the weakening value of the pound to euro exchange rate, firms are reminded to ensure it maintains sufficient regulatory capital at all times. Capital requirements under FCA rules are expressed in EUR which should be converted to GBP for UK firms.

Please contact us if you require any further information on meeting your prudential requirements.

## **Eleven week trial brought by the FCA culminates with two found guilty of insider dealing**

Two individuals, Fabiana Abdel-Malek and Walid Choucair, were each sentenced to 3 years imprisonment in respect of five offences of insider dealing. Ms Abdel-Malek used her position as a senior compliance officer at the investment bank UBS AG to identify inside information which she passed to her family friend, Mr Choucair, using a variety of pay-as-you-go mobile phones. Mr Choucair is an experienced day trader of financial securities.

Ms Abdel Malek's role as compliance officer at UBS gave her the ability to access inside information relating to the proposed takeovers of five companies. She then disclosed this information to Mr Choucair, who traded in the shares of the target companies:

- Vodafone Group Plc's acquisition of Kabel Deutschland Holding AG (June 2013)
- Essex Property Trust Inc's acquisition of BRE Properties Inc. (November-December 2013)
- LG Household & Healthcare Ltd's potential acquisition of Elizabeth Arden (April 2014)
- American Realty Capital Partners' potential acquisition of NorthStar Realty Finance Corporation (April 2014)
- Energy Transfer Equity LP's potential acquisition of Targa Resources Corporation (June 2014)

Mr Choucair dealt, using Contracts for Difference (CFDs), in anticipation of a press article or company announcement causing the target company's share price to significantly rise, and following this Mr Choucair would start to close his positions. Mr Choucair made a profit of approximately £1.4 million from the trading that was the subject of the five charges.

<https://www.fca.org.uk/news/press-releases/two-found-guilty-insider-dealing>

## **High Court consents to order for an unauthorised firm and its directors to pay restitution to consumers affected by unauthorised collective investment scheme.**

Samuel Golding, Shantelle Golding, of Digital Wealth Limited and Outsourcing Express Limited will pay funds raised by the unauthorised investment schemes they operated and held by them to the FCA for distribution to investors. The FCA investigation commenced in September 2017 and the FCA took enforcement action almost immediately in an attempt to preserve consumer funds.

The schemes supposedly involved the online purchase of wholesale goods from China with the intention to sell onwards and unrealistically high returns were promised – in some cases a 100% return of the investment amount. In reality no significant trading was conducted and the schemes relied on the continuous flow of new investors to fund existing investors' returns. Not only was the scheme itself unauthorised but there was also illegal deposit taking. Collectively the schemes raised just over £15m from over 1,000 individual accounts.

£9.25m of the £15m raised was paid out to investors as returns and the defendants themselves spent approximately £2.7m to fund a lavish lifestyle. The Court order confirms that Mr and Mrs Golding will pay all funds held by them to the FCA for distribution to affected consumers.

<https://www.fca.org.uk/news/press-releases/unauthorised-firm-and-directors-pay-restitution-consumers>

## **FCA reveals sixth conviction in Operation Tabernula: Richard Baldwin's conviction for money laundering.**

Operation Tabernula is one of the FCA's largest and most complex insider dealing investigations. Mr Baldwin was a business partner of Andrew Hind; Mr Hind was convicted alongside Martyn Dodgson in May 2016 of conspiracy to insider deal. To help Mr Hind and Mr Dodgson receive some of the proceeds of the conspiracy, Mr Baldwin set up a company in Panama and opened the company bank account in Zurich. In October 2007, Mr Baldwin used false invoices to receive £1.5million into the company account and then dissipated the money over the course of the next 18 months using his other Panamian companies and off-shore accounts.

The FCA also brought contempt of court proceedings for his breach of a Restraint Order made in June 2011 preventing him from disposing of, dealing with or diminishing the value of any of his assets within or outside of England & Wales. Within a fortnight of being notified of the Restraint Order, Mr Baldwin had flown twice to Geneva and withdrawn £114,000 in cash and liquidated assets worth more than £82,500. Baldwin also went on to access safety deposit boxes in Switzerland and England and failed to repatriate assets to the UK. He admitted his contempt of this restraining order on 13 November 2015.

Mr Baldwin was tried in his absence and remains at large. An arrest warrant along with a European Arrest Warrant have been issued for his arrest to be brought before the Court for sentencing.

<https://www.fca.org.uk/news/press-releases/richard-baldwin-conviction-money-laundering>

## **ICO announces intention to fine Marriot International Inc £99m+ under GDPR for data breach**

In November 2018, Marriott informed the ICO of a cyber incident. The vulnerability began when the systems of the Starwood hotels group were compromised in 2014. Marriott subsequently acquired Starwood in 2016. Over the course of the incident, personal data contained in approximately 339 million guest records were exposed. This included 30 million records of residents of 31 countries in the EEA and 7 million records of UK residents.

The ICO's investigation found that Marriott failed to undertake sufficient due diligence when it bought Starwood and should have done more to secure the systems. Marriott has subsequently co-operated with the ICO investigation and made improvements to its security. The intended fine totals £99,200,396.

<https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/07/intention-to-fine-marriott-international-inc-more-than-99-million-under-gdpr-for-data-breach/>

## **British Airways to be fined £183.39m by ICO for data breach under GDPR**

The ICO were notified by British Airways (BA) in September 2018 of a cyber incident which involved traffic to the BA website being diverted to a fraudulent site where customer details were harvested. The attackers were able to access the personal data of approximately 500,000 customers since June 2018.

The ICO found that log in details, card payments as well as travel booking details with name and address information were accessed. Information Commissioner, Elizabeth Denham, spoke of the 'clear' nature of the law and warned that 'when you are entrusted with personal data you must look after it'. The intended fine totals £183.39m.

<https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/07/ico-announces-intention-to-fine-british-airways/>

## **Raphaels Bank given joint fine of £1.89m by FCA and PRA as a result of outsourcing failing**

Raphaels Bank, one of the UK's oldest independent banks, has received two fines: the first from the FCA of £775,100 and the second from the PRA of £1,112,152. The fine relates to its failure to manage its outsourcing arrangements properly between April 2014 and December 2016.

Raphaels is a retail bank whose payment services division (PSD) operates in both the UK and Europe offering prepaid card and change card programmes. The PSD relied on outsourced service providers to perform certain critical functions of the card programmes, including the authorisation and processing of card transactions.

There were not adequate processes to enable Raphaels to understand or assess either business continuity or the disaster recovery arrangements of the outsourced service providers, and this posed a risk to Raphaels' operational resilience and also exposed the customers to a serious risk too.

A technology incident occurred on the 24th December 2015 whereby over an 8 hour period there was a complete failure of the authorisation and processing services it provided to Raphaels. During the failure 3,367 customers were unable to use their prepaid cards and 5,356 attempted customer card transactions were rejected. Seasonal workers, who were dependant on their cards to receive their wages, were among those most impacted.

The failings were seen as a direct consequence of deep flaws in Raphaels' overall management and oversight of outsourcing risk from the Board level down. The FCA and PRA investigation had identified weaknesses that Raphaels should have been aware of since April 2014 and this is reflected in the fine received.

<https://www.fca.org.uk/news/press-releases/fca-and-pra-jointly-fine-raphaels-bank-1-89-million-outsourcing-failings>

## **FCA publishes their final report in relation to RBS' Global Restructuring Group**

The FCA's final report relates to their investigation into the Royal Bank of Scotland's (RBS) treatment of small and medium-sized enterprise (SME) customers, that were transferred to its Global Restructuring Group (GRG).

In an update provided in July 2018 the FCA spoke of the serious concerns it had identified in the independent review and how, as a result, there was a need to launch a comprehensive and forensic investigation to look for the possibility of action to be taken against RBS itself or the senior management involved.

It is important to keep note of the fact that the FCA's power to take action was limited by the fact that the majority of the GRG's business was unregulated, even where mistreatment of customers had been identified and accepted.

Having considered all the evidence, the FCA came to the conclusion that its powers to discipline for misconduct did not apply in this instance and that any attempt to take action in relation to the senior management's lack of fitness and propriety would have lacked reasonable prospects of success. The FCA were also unable to find evidence that RBS artificially distressed and transferred otherwise viable SME business to GRG to profit from their restructuring or insolvency.

This final report lays out this decision in more detail.

<https://www.fca.org.uk/news/press-releases/fca-publishes-final-report-relation-rbs-grg>