



# Enforcement Focus



May 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 publishes Decision Notices against three firms and five individuals for acting without integrity and misleading the FCA**

The following information is a useful demonstration of the FCA's position on unsuitable advice and lack of integrity.

On 9th May the FCA published Decision Notices in respect of three firms and five individuals.

- 1) Financial Page Ltd (in liquidation) - Public censure
  - 2) Henderson Carter Associates Limited (in liquidation) - Public censure
  - 3) Bank House Investment Management Limited) - Penalty of £311,639
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- 1) Andrew Page (Director of FPL) - Prohibition and penalty of £321,033
  - 2) Thomas Ward (unapproved de facto director of FPL) - prohibition and penalty of £416,558
  - 3) Aiden Henderson (Director of HCA) - Prohibition and penalty of £179,179
  - 4) Robert Ward (Director of BHIM) - Prohibition and penalty of £88,100
  - 5) Tristan Freer (Director of BHIM) - Prohibition and Penalty of £52,725

All five individuals as well as Bank House Investment Management have referred their decision notices to the Upper Tribunal, hence any findings are provisional and the proposed action outlined in the Decision Notes will have no effect until the Upper Tribunal has decided on the case.

With regards to the firms, the FCA is of the opinion there was little meaningful oversight and involvement in the advice provided to customers in their name, as well as the fact that important functions were outsourced to unauthorised third parties.

In total, 2,004 customers invested approximately £76 million of their pension assets.

The four directors (not including Thomas Ward who was de facto) should, according to the FCA, have known that the products which were high risk illiquid assets were unlikely to be suitable for retail customers but acted recklessly by ignoring the obvious risks. The directors also provided false and/or misleading information to the FCA thus acting dishonestly, in some cases on more than one occasion.

Thomas Ward acted as an unapproved de facto director for FPL. He was not approved by the FCA to do so and acted without integrity. In his role Mr Ward disregarded the interests of FPL's customers and also showed a willingness to enrich himself at their expense. Furthermore the FCA considers that deliberate steps were taken to control and influence information disclosed by FPL to the FCA, also encouraging Mr Page to withhold important information and draft communications that were deliberately false and/or misleading.

<https://www.fca.org.uk/news/press-releases/fca-fines-ubs-ag-276-million-transaction-reporting-failures>

## **FCA wins in case against unauthorised forex firm**

On 14<sup>th</sup> May 2019, following an application made by the FCA, the High Court declared that both Xcore Capital Limited (Xcore) and Mr Jonathan Chitty had carried out an unauthorised investment scheme taking over £1 million from investors. It transpired, however, that only a small amount of this money was ever used for trading and instead was paying for a Mayfair office, wages of the brokers and Mr Chitty's lifestyle. Mr Chitty's personal spending included £102,000 on cryptocurrencies, £58,000 on luxury goods, £24,000 on a Rolex watch and £20,000 towards his wedding.

The High Court Order stated that the scheme was run by Xcore without the necessary FCA authorisation, and that Mr Chitty was aware of this whilst partaking. Both Xcore and Mr Chitty were required to pay the FCA £917,231 – which is the full value of all outstanding sums owed to the scheme's investors. Both Xcore and Mr Chitty are still bound by a High Court decision of the 20 November 2018 freezing their assets and an order to stop selling investments regulated by the FCA.

<https://www.fca.org.uk/news/press-releases/fca-wins-case-against-unauthorised-forex-firm>

## **Standard Chartered Bank fined £102.2 million for poor AML controls**

This fine is the second largest financial penalty ever imposed by the FCA for AML control failings. It follows the FCA's investigation into two areas of Standard Chartered's Business identified by the bank as higher risk: its UK Wholesale Bank Correspondent Banking business and its branches in the United Arab Emirates (UAE).

Serious and sustained shortcomings were discovered by the FCA regarding Standard Chartered's AML controls in relation to customer due diligence and ongoing monitoring. Standard Chartered had failed to establish and maintain risk-sensitive policies and procedures as well as failing to ensure that its UAE branches were applying UK equivalent AML and counter terrorist financing controls in line with the Money Laundering Regulations 2007.

The FCA also found significant shortcomings in Standard Chartered's own internal assessments of the adequacy of its AML controls, as well as its approach towards the identification and mitigation of material money laundering risks and escalating those risks. Examples of these failings include:

- opening an account with 3 million UAE Dirham in cash in a suitcase (just over £500,000) with little evidence that the origin of the funds had been investigated;
- failing to collect sufficient information on a customer exporting a commercial product which could, potentially, have a military application. This product was exported to over 75 countries, including two jurisdictions where armed conflict was taking place or was likely to be taking place; and
- not reviewing due diligence on a customer despite repeated red flags such as a blocked transaction from another bank indicating a link to a sanctioned entity.

These failings exposed the bank to the risk of both breaching sanctions and increased their risk of receiving and/or laundering the proceeds of crime.

Furthermore, US authorities have also now taken action against the Standard Chartered group for significant violations of US sanctions laws and regulations.

<https://www.fca.org.uk/news/press-releases/fca-fines-standard-chartered-bank-102-2-million-poor-aml-controls>

## **Update on the independent investigation into London Capital & Finance**

On the 23rd May HM Treasury announced details of the independent investigation into London Capital & Finance (“LC&F”) to be commissioned by the FCA. On 28th March the FCA Board decided there should be an investigation by an independent person, a role which has now been appointed to Dame Elizabeth Gloster, into the issues raised by the failure of LC&F. LC&F was a mini-bond issuer which entered into administration in January 2019. Four individuals were arrested as part of the Serious Fraud Office (SFO) investigation into LC&F.

The FCA investigation should cover questions in two key areas:

1. Whether the existing regulatory system adequately protects retail purchasers of mini-bonds from unacceptable levels of harm; and
2. The FCA’s supervision of LC&F.

The FCA will also contribute to other reviews announced by HM Treasury in relation to mini-bonds and similar securities.

<https://www.fca.org.uk/news/statements/update-independent-investigation-london-capital-finance>

## **FCA fines UBS AG £27.6 million for transaction reporting failures**

This fine relates to UBS AG’s failure to ensure the information they provided to the FCA regarding approximately 86.67 million transactions was complete and accurate. It also erroneously reported 49.1 million transactions to the FCA which were not reportable.

The FCA also found that UBS AG had failed to take reasonable care when responsibly organising and controlling its affairs with respect to transaction reporting. The failings related to aspects of its change management processes, its maintenance of reference data used for reporting and how it tested the accuracy and completeness of transactions reported to the FCA.

<https://www.fca.org.uk/news/press-releases/fca-fines-ubs-ag-276-million-transaction-reporting-failures>

## **Goldman Sachs International (“GSI”) fined £34.3 million for transaction reporting failures**

The fine relates to GSI’s failure to provide accurate and timely reporting relating to 220.2 million transaction reports over a nine and a half years period between November 2007 and March 2017. GSI failed to ensure that it had provided complete, accurate and timely information in relation to approximately 213.6 million reportable transactions and also erroneously reported 6.6 million unreportable transactions.

The FCA also found that GSI failed to take reasonable care in respect of its transaction reporting with regards to organising and controlling its affairs responsibly and effectively.

To date, the FCA has fined 13 other firms for MiFID transaction reporting breaches: UBS AG, Merrill Lynch International (MLI), Deutsche Bank AG, Royal Bank of Scotland (RBS), James Sharp & Co, Plus500UK, City Index Limited, Société Générale, Commerzbank AG, Instinet Europe Limited, Getco Europe Limited, Credit Suisse and Barclays Capital Securities Limited and Barclays Bank Plc.

<https://www.fca.org.uk/news/press-releases/fca-fines-goldman-sachs-international-transaction-reporting-failures>

## **Risk management services to asset managers**

Due to the continued regulatory focus on risk, fund managers are now seeing the benefit of delegating / outsourcing their risk management needs to a 3rd party provider, such as RiskCap International.

RiskCap International provides a fully independent risk management service to fund managers. The benefit in this outsourcing relationship, is that it enables a firm to fully concentrate on managing the fund, as well as saving on unnecessary expenditure and HR issues. RiskCap International's service offering is flexible and can be tailored to suit a firm's current or future investment risk needs. Remember, when it comes to risk management, fund allocators and family offices are demanding greater accountability and increased transparency. It would be worth meeting Mr. Cantlie, the London director just to hear what the firm can offer: [ccantlie@riskcap.com](mailto:ccantlie@riskcap.com) or (M) +44 (0)7860968427, (T) +44(0)207 839 9742. See [RiskCap brochure](#).

Further information on RiskCap International: [www.riskcap.com](http://www.riskcap.com).