

## Code of Market Conduct Primer

September 2014 – please note this issue’s cases, particularly for those Newgate clients that undertake marketing of UCIS. The actions by the FCA are in line with the results of a FCA thematic review and numerous warnings that the regulator has issued that concern the number of retail investors that have been found to have invested into unregulated funds.

### What is the Code of Market Conduct?

The Code of Market Conduct provides guidance on FCA’s implementation of the Market Abuse Directive. 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. *Misuse of information* –behaviour which is based upon information which is not generally available but which would affect an investor’s decision about the terms on which to deal
4. *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
5. *Manipulating devices* - behaviour which consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;
6. *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
7. *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.
8. *Requiring or encouraging* - another person or persons to engage in behaviour which, if engaged in, would amount to market abuse

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

### 1. Barclays Bank Plc (Sep 2014) – Client Asset Failings

<http://www.fca.org.uk/your-fca/documents/final-notices/2014/barclays-bank-plc-sept-2014>

- In a high profile case, Barclays Bank Plc (“Barclays”) has been fined £38m for failing to properly protect client assets worth £16.5 billion. This is the highest ever fine imposed by the FCA or any of its predecessors.
- The regulator has completed a number of previous enforcement actions, fines and industry-wide warnings in respect of firms that have failed to protect their client’s assets.
- Between 2007 and 2012, the Investment Banking Division of Barclays had significant weaknesses in its systems and controls when dealing with its custody assets. This was compounded by flaws in account naming or incorrect data that suggested assets belonged to Barclays instead of its clients!
- Tracey McDermott, FCA director of enforcement and financial crime, said: 'Barclays failed to apply the lessons from our previous enforcement actions, numerous industry-wide warnings, and exposed its clients to unnecessary risk. All firms should be clear after Lehman that there is no excuse for failing to safeguard client assets.'

The FCA’s Rules are there to protect client assets if a firm becomes insolvent. Barclays failed to properly apply these rules when opening 95 custody accounts in 21 countries. As a result, Barclays’ records did not correctly reflect which company within its Investment Banking Division was responsible for the assets in the accounts. Barclays also failed to set up appropriate legal arrangements with these companies.

Barclays agreed to settle at an early stage, qualifying for a 30% discount. Without this, the FCA would have imposed a penalty of £53,921,619’.

### 2. Craig Cameron (August 2014) – Promotions of Unregulated Collective Investment Schemes

<http://www.fca.org.uk/your-fca/documents/final-notices/2014/craig-stuart-cameron>

- The FCA has fined Craig Cameroon £350,000 and banned him from any involvement in an FCA authorised firm after they found that he lacked honesty and integrity in relation to promotions of three unregulated collective investment schemes.
- Between 2003 and 2009, Mr Cameroon was a director of Burlington Associates Limited. He set up three high risk unregulated collective investment schemes (“UCIS”) investing in property assets in Eastern Europe.
- These schemes are not eligible to be promoted to retail investors, however Cameroon promoted them to thousands of retail investors of which around 800 invested over £30m into the three UCIS. The schemes subsequently became insolvent and failed.
- Cameroon arranged for another advisory firm to check investors eligibility and send out promotional materials (a distributor) knowing that this created a risk of the UCIS being sold to investors who were not suitable.
- **This is the third action against directors / partners / senior individuals in firms who have failed to adequately oversee the roles of their firms in UCIS sales.**

### 3. Deutsche Bank (August 2014) – Transaction reporting

<http://www.fca.org.uk/your-fca/documents/final-notice/2014/deutsche-bank-ag>

- The London Branch of Deutsche Bank AG has been fined £4.7m for failing to properly report equity swaps (Contract for Differences transactions) between Nov 2007 and April 2013.
- The FCA had previously issued Deutsche with a private warning in relation to reporting of transactions and the size of the fine reflects the very large number transactions that were misreported (29 million).
- Tracey McDermott, the FCA's director of enforcement and financial crime, said:  
"Effective market surveillance is critical to maintain the integrity of our markets and depends on accurate and timely reporting of transactions. Deutsche is a major market participant responsible for reporting millions of transactions every year. We have repeatedly highlighted the importance of accurate transaction reporting and taken enforcement action against a number of firms. There is simply no excuse for Deutsche's failure to get this right. Other firms should be in no doubt about our continued focus on this issue."

### 4. Shah x3, Saini, Mustafa, Patel, Joseph (September 2014) – Insider Dealing

<http://www.fca.org.uk/news/insider-dealers-ordered-to-pay-32m-in-confiscation>

<http://www.telegraph.co.uk/finance/financial-crime/9432847/Six-jailed-over-insider-trading-in-JP-Morgan-and-UBS-print-room-case.html>

- On 15 September 2014, the FCA got confiscation orders for assets owned by individuals from an insider trading ring. This follows earlier cases in 2012 where the six individuals were sentenced to imprisonment for between 18 months and 4 years. Not only did the FCA seek imprisonment for the individuals, they subsequently successfully sought to confiscate the proceeds from the insider dealing.
- The insider ring operated by having individuals working in the print rooms of JP Morgan and UBS where they had access to sensitive information as a result of undertaking printing for various departments of the firms. They then used the information to undertake inside trades in 6 companies.

### 5. Peter Carron (September 2014) – Approved Person failings – non-disclosure and transparency

<http://www.fca.org.uk/news/financial-adviser-banned-and-fined-300000>

- Peter Carron has been fined £300,000 and banned from performing any function related to regulated activities in financial services.
- Mr Carron was a senior partner in St James's Place Wealth Management Plc and he advised 11 clients to invest a total £2.4m into three companies. The clients then lost £2.2m from the investments when the companies went into liquidation.
- Mr Carron had failed to inform the clients that he was a director and majority shareholder in each of the three firms. He compounded this by continuing to reassure investors and advise them to make investments into the companies even though he knew the companies were in financial difficulties. He did not assess whether the investments were suitable for the investors' needs or alert them to potential risks.
- This obviously showed a lack of honesty and integrity.