



Enforcement Focus



July 2018

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



Market Abuse
Enforcement Actions



General FCA
Enforcement Actions

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 market abuse enforcement actions taken by the FCA since our last enforcement focus in July. 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>

The FCA secures confiscation orders against convicted insider dealers totalling 1.69 million - May 2018

The two defendants, Martyn Dodgson and Andrew Hind, who were convicted of conspiring to insider deal by the FCA in 2015, have had confiscation orders brought against them. The total amounts to be confiscated relate to both the 5 stocks involved in their conviction and a further 23 stocks that the FCA asserted amounted to insider dealing.

The original criminal investigation was conducted in conjunction with the National Crime Agency, and Operation Tabernula was the FCA's largest and most complex insider dealing investigation. Mr Dodgson used his senior position at Morgan Stanley, Lehman Brothers and Deutsche Bank to pass insider information to Mr Hind, who used the information to cause trades to be placed for both their benefit. Following a three month trial, and despite the elaborate strategies they had employed in an attempt to hide their activities, the Defendants were convicted in May 2016. Mr Dodgson was sentenced to 4 and a half years imprisonment and Mr Hind to 3 and a half years imprisonment for the conspiracy they operated between 1 November 2006 and 23 March 2010. Mr Dodgson's sentence is the longest ever handed down for insider dealing in a case brought by the FCA.

A total of £1,698,757 will be confiscated within three months, otherwise Mr Dodgson and Mr Hind will face a further seven and a half years and a further five and a half years imprisonment respectively.

<https://www.fca.org.uk/news/press-releases/two-convicted-insider-dealing-operation-tabernula-trial>

<https://www.fca.org.uk/news/press-releases/insider-dealers-sentenced-operation-tabernula-trial>

<https://www.fca.org.uk/news/press-releases/fca-secures-confiscation-orders-totalling-1-69-million-against-convicted-insider-dealers>

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.

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| 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.

Barclays Group CEO Mr James Staley fined £642,430 by the FCA and PRA for handling of an anonymous whistle-blower letter – May 2018

An anonymous letter containing a variety of allegations, some of which related to Mr Staley, was received by Barclays in June 2016, claiming to have been sent by a Barclays shareholder. Due to this conflict of interests Mr Staley should have refrained from further involvement in the matter, however he went on to take steps attempting to identify the author. Mr Staley failed to consult with the appropriate individuals with the expertise and responsibility for whistleblowing in Barclays or receive confirmation from them that his intended actions were permissible.

As such Mr Staley's actions were found to be in breach of the Individual Conduct Rule 2, the requirement to act with due skill, care and diligence. The investigation, which was the first case brought under the Senior Managers Regime by the FCA and PRA, found that Mr Staley made serious errors of judgement and as such a penalty of 10% of Mr Staley's relevant annual income was imposed. Mr Staley agreed to settle at an early stage thus received a 30% stage one discount under the Authority's executive settlement procedures, but had he not the full combined fine would have been £917,800. Furthermore, Mr Staley has been censured by the regulators' Final Notices publication.

In addition, Barclays is now subject to special requirements demanding annual reports to the regulators noting its handling of whistleblowing, with Senior Managers responsible for the relevant systems and controls having to provide person attestations. These measures relating to whistleblowing are the first of their kind to be applied to a regulated firm and Barclays has agreed to the requirement which will apply to all cases until the end of 2020.

<https://www.fca.org.uk/news/press-releases/fca-and-pra-jointly-fine-mr-james-staley-announce-special-requirements>

FCA publishes Decision Notice banning Darren Newton for misappropriation of client money - May 2018

The decision is being disputed by Mr Newton who has referred the matter to the Upper Tribunal, and as such the decision notice will not have effect pending the Tribunal's determination.

The FCA's case is that Mr Newton purchased First Step using client money from the accounts of First Step rather than his own funds between 18 October 2013 and 28 May 2014. He directed or allowed £322,500 to be transferred to Christine Whitehurst, whom along with her husband was banned by the FCA in October 2017 for dishonestly misappropriating money from First Step.

The FCA considers that Mr Newton acted in full awareness of the fact that the monies from First Step should not have been used in this manner and were paid when First Step had a £6 million client money shortfall. First Step went into administration on 28 May 2014 by which time it had accrued a client money shortfall from over 4,000 customers totalling £7,156,036.

<https://www.fca.org.uk/news/press-releases/darren-newton-banned-fca-misappropriating-client-money>

FCA fines Canara Bank £896,100 and imposes a 147 day restriction for failings in their anti-money laundering systems – June 2018

The FCA found that Canara Bank had failed to maintain robust AML systems and controls, and that such failures were systemic thus affecting almost all levels of its business and governance structure including: Senior Management; Governance/Oversight; three Lines of Defence; Money laundering reporting function; and AML systems and controls.

These failures took place between 26 November 2012 and 29 January 2016 and included a failure to implement remedial action to sufficiently amend the identified weaknesses and control gaps, despite having been notified of the shortcoming in its AML systems and controls following an FCA thematic visit. Canara had informed the FCA that the identified weaknesses had been remedied, however this was not the case. Failings included not undertaking risk assessments or sanctions checks, limited evidence of AML risks being taken into account when processing trade finance transactions.

Therefore, Canara breached Principle 3 of the FCA's Principles for Businesses (taking reasonable steps to organise its affairs responsibly and effectively, with adequate risk management systems).

Canara agreed to resolve the case so qualifies for a 30% discount. Therefore, a financial penalty of £896,100 was imposed upon them along with a 147 day restriction from accepting deposits from customers who do not already hold a deposit account (without reduction the impositions would have been for £1,280,175 and 210 days).

<https://www.fca.org.uk/news/press-releases/fca-fines-and-imposes-restriction-canara-bank-anti-money-laundering-systems-failings>