



Enforcement Focus



September 2015

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

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Market Conduct

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 other-wise 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

Since Newgate's previous Code of Market Primer in June, there have been a number of market abuse enforcement actions which we have included below.

Lee Stewart (July 2015) - FCA bans former Rabobank Trader for LIBOR fraud

<http://www.fca.org.uk/news/fca-bans-former-rabobank-trader-lee-stewart-following-libor-fraud>

The FCA have banned Lee Stewart a former trader at Rabobank from working in the UK financial services industry for lacking honesty and integrity. Mr Stewart pleaded guilty to a charge of fraud in the US for his role in the conspiracy to manipulate Rabobank's UD Dollar LIBOR submissions.

This follows the US conviction and subsequent FCA ban of another Rabobank trader, Paul Robson, for the same offence back in March 2015.

The ban further reinforces the FCA's expectations that individuals and firms take responsibility for ensuring market integrity and reminds them of the consequences if they fall short of the standards expected.

To date the FCA has issued 14 warning notices related to interest rate benchmarks, and continues wider investigations into individuals conduct into LIBOR misconduct.

Tom Hayes (August 2015) - Former trader jailed for 14 years over LIBOR rate-rigging

<http://www.telegraph.co.uk/finance/financial-crime/11767437/Libor-trial-Tom-Hayes-found-guilty-of-rigging-rates.html>

As no doubt Newgate clients are aware, given the high profile of the case, a former city trader, Tom Hayes was found guilty on the 3rd August at Southwark Crown Court of manipulating global LIBOR interest rates.

Mr Hayes is the first individual to face trial by jury for manipulating the rate, used as a benchmark for trillions of pounds of global borrowing and lending. The case brought by the Serious Fraud Office argued he was at the centre of a network of traders at 10 firms conspiring to manipulate the LIBOR benchmark. The jury unanimously found Mr Hayes guilty of eight counts of conspiracy to defraud.

The Court heard that Mr Hayes had rigged LIBOR rates daily for nearly four years while working in Tokyo for UBS, then Citigroup from 2006 to 2010.

Mr Hayes could also be extradited to the US, an eventuality he had tried to avoid by initially admitting to the offences to the UK authorities, before changing his arguments later in the case to plead not guilty.

FCA secures High Court Judgment awarding injunction and over £7 million in penalties against five defendants for market abuse (August 2015)

<http://www.fca.org.uk/news/fca-secures-high-court-judgment-awarding-injunction-and-over-7-million-in-penalties>

The High Court held that the FCA is entitled to permanent injunctions and penalties totaling £7,570,000 against Da Vinci Invest Ltd, Mineworld Ltd, Mr Szabolcs Banya, Mr Gyorgy Szabolcs Brad and Mr Tamas Pornye for committing market abuse. The defendants were found to have committed market abuse in relation to 186 UK-listed shares using a manipulative "layering" trading strategy.

The FCA took action to stop the abuse in July 2011. Four of the five defendants were incorporated or resident abroad in Switzerland, the Seychelles and Hungary.

The manipulative behaviour consisted of an abusive trading strategy known as "layering", involving the entering and trading of orders in relation to shares traded on the electronic trading platform of the London Stock Exchange ("LSE") and multi-lateral trading facilities ("MTFs") in such a way as to create a false or misleading impression as to the supply and demand for those shares and enabling them to trade those shares at an artificial price.

FCA secures High Court Judgment awarding injunction and over £7 million in penalties against five defendants for market abuse (August 2015) - CONT.

The defendants typically used a mixture of large and small orders entered on one side of the LSE's order book to create a false impression of supply or demand in a particular stock. These orders were not intended to be traded. The large orders were carefully placed at prices close enough to the best bid or offer prevailing on the LSE at the time to give a false impression of supply and demand, but far enough away to minimise the risk that they would be traded. The small share orders (typically around 100 shares) were used to improve the best bid or offer price. As the price improved, further large orders were strategically placed at prices close to the new best bid or offer in order to support the improved price. In this way the defendants systematically sought to manipulate the share price up and down.

Once the price had been moved to an advantageous level, the defendants initiated a trade on the other side of the order book in order to profit from the price movement that they had created. The large "layered" orders, which were never intended to trade and which were used to stimulate the price movement of the relevant shares, were then cancelled and the process would start over again, typically aimed at moving the share price in the opposite direction. In this way the defendants' actions consistently resulted in them buying shares at lower prices and selling shares at higher prices than would have been the case had the strategy not been employed.

The defendants accessed the relevant trading platforms via Direct Market Access (DMA) services offered by certain brokers. The defendants traded in CFD's rather than directly in shares, the price of which precisely matches the price of the underlying share. The nature of the CFD/DMA accounts was such that the defendants knew that CFD orders placed with the DMA providers would immediately and automatically result in the placement of equivalent orders in the underlying shares on the relevant trading platform, so as to affect the underlying share price.

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.

Cash Genie (July 2015) - Payday lender to repay £20 million in redress

<http://www.fca.org.uk/news/cash-genie-redress-unfair-practices>

Payday lender Ariste Holding Limited, trading as Cash Genie, has entered into an agreement with the FCA to pay £20 million in redress to more than 92,000 customers as a result of unfair lending practices highlighted and brought to the attention of the FCA by the firm itself.

An independent review of past business from its launch in September 2009 found a number of serious failings causing detriment to customers. These included;

- Unfair charges for switching customers to a sister debt collection firm when there was no cost to the firm in making the switch;
- Charging fees it was not entitled to;
- Refinancing or rolling over loans without a customers' request or consent or assessing their current situation;
- Banking information that customers had provided on websites that were trading styles of Ariste Holding Limited when they applied for a loan was used to take payment for existing Cash Genie loans without customers' informed consent;
- Failure to send annual statements to customers who had not repaid their loans after 12 months. The firm should not subsequently have applied further fees or interest to accounts.

Linda Woodall Acting Director of Supervision – Retail and Authorisations at the FCA said:

"We have been encouraged that Cash Genie has been working with us proactively and openly to put things right for its customers after these issues were reported. We expect all firms to notify us of any unacceptable past or current practices and provide appropriate redress to anyone affected".

Co-operative Bank (August 2015) - Publically censured for breaching the FCA Listing Rules

<http://www.fca.org.uk/news/fca-censures-the-co-operative-bank-for-listing-rules-breaches>

In a joint investigation with the PRA, the FCA found the Bank fell short in its responsibility to be open honest with the regulator in addition to Listing Rules failings.

Between 21 March 2013 and 17 June 2013, the bank breached Listing Rule 1.3.3R (misleading information not to be published). In the Bank's financial statements published on 21 March 2013 for the year ended 31 December 2012 the Bank stated that adequate capital can be maintained at all times even under the most severe stress test scenarios and that the Bank held a capital buffer over the Individual Capital Guidance from the regulator to absorb capital shocks whilst ensuring minimum regulatory capital requirements are maintained.

In fact, since 15 January 2013 when the FSA issued the Bank with revised capital requirements, the Bank did not have sufficient capital to meet its revised Capital Planning Buffer set by the FSA..

The UK listing regime relies on disclosure and transparency to allow investors to make fully informed decisions. Market disclosures by listed companies must be timely and accurate. This ensures that they can be relied on by investors in making investment decisions to hold, buy or sell an investment. By making statements about its capital position that were false and misleading in its annual report, the Bank fell significantly below the standards expected of listed companies in the UK.

Co-operative Bank (August 2015) - Publically censured for breaching the FCA Listing Rules - CONT.

The PRA also found that for the period 22 July 2009 to 31 December 2013 the Bank's three lines of defence risk management model was flawed in design and operation meaning that the Bank was not complying with Principle three of the Principles for Businesses that states a firm must manage its affairs responsibly with adequate risk management.

The Bank also breached Principle 11, which requires firms to be open and co-operative with regulators, and disclose information of which the regulators might reasonably expect to be aware. The Bank failed to notify the FCA or PRA of intended changes to two senior positions and the reasons behind those changes in the period April 2012 to May 2013.

Investigations into senior individuals at Co-op Bank during the relevant period are on-going.

Fine and ban of insurance broker from performing any function in relation to regulated activity – September 2015

<http://www.fca.org.uk/static/documents/final-notice/ralph-paul-whittington.pdf>

The FCA fined Ralph Whittington £42,111 and banned him from the industry for breaching statement of principle 1 and failing to act with integrity in carrying out his controlled functions.

Between March 2012 and December 2013, Mr Whittington deliberately caused Savesure Limited ("Savesure") to misappropriate insurance premiums paid to Savesure by its clients for insurance, by transferring more money from Savesure's client premium bank account to its business account than Savesure was entitled to receive as commission.

FCA said that the misappropriated insurance premiums were primarily used to fund Savesure's business expenses however some of the money was used to repay funds Mr Whittington paid into Savesure from his personal finances or from funds raised through creditors.

Mr Whittington knew that Savesure was not entitled to all of the money being transferred and nevertheless made the transfers as required to pay Savesure's expenses.

This action supports the FCA's statutory objectives of securing protection for consumers and enhancing the integrity of the UK financial system.

Robert Shaw (August 2015) - FCA bans and fines director £166k over poor Sipp advice

<http://www.fca.org.uk/news/fca-bans-and-fines-robert-shaw-of-tailormade-independent-ltd>

A former director of an advisory firm which recommended clients invest £112m in unregulated Sipp investments has been fined £165,900 and banned from senior roles in financial services.

The FCA says former TailorMade Independent director Robert Shaw failed to check the suitability of Sipp investments and also failed to manage conflicts of interests.

TailorMade was a distributor for overseas property firm Harlequin, which is being investigated by the Serious Fraud Office.

Between 2010 and 2013 TailorMade advised 1,661 customers to invest £112.4m in unregulated investments such as green oil, biofuels, farmland via Sipp.

The FCA found that Shaw benefitted financially from being the director and shareholder of TailorMade Alternative Investments, an unregulated introducer which referred clients to Tailor Made Independent.

Shaw received payments for introducing clients to TailorMade Independent but failed to disclose this to investors, despite being warned by compliance consultants to do so.

FCA acting director of enforcement and market oversight Georgina Philpotts says: "Robert Shaw exposed customers to risky investments without considering if these products would meet their needs.

"He personally benefitted from sales of these products without revealing to customers the full extent of the benefits he received. His actions mean many customers faced losing all of their hard earned pension funds. This is not the conduct we expect of senior individuals."

TailorMade is now in liquidation and the Financial Services Compensation Scheme is investigating claims brought by TailorMade Independent clients.

This action was a result the individual breaching approved persons principle 7 which requires senior individuals to ensure the business they are responsible for meet regulatory standards.