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

Since Newgate's previous Code of Market Primer in September, there have only been the following enforcement actions of note in areas pertinent to our clients which we have included below.

1. **Swinton Group Limited (Nov 2014) – Significant Influence Function Failings**

   http://www.fca.org.uk/news/former-swinton-executives-fined-and-banned-misselling

   - This fine is relevant to our clients as it is an example where individuals performing significant functions were banned as a result of failings within the firm that allowed a negative culture to develop within the firm.
   - Swinton Group Limited ("Swinton") allowed the adoption of an aggressive sales strategy that resulted in mis-sales of monthly add on insurance policies. The individuals involved were Peter Halpin (CEO), Anthony Clare (finance director) and Nicolas Bowyer (marketing director) all of who have been banned from performing significant functions at financial service firms.
   - Tracey McDermott, director of enforcement and financial crime at the FCA, said: 'A culture was allowed to develop within Swinton that pushed for high sales and increased profit without regard to the impact on the firm's customers. We expect firms to put customers at the heart of their business. These three directors should have recognised the risk to customers and redressed the balance so that the drive to maximise profits did not jeopardise the fair treatment of customers.

     'Those with significant influence within firms are responsible for setting the tone and the culture; they set the example that others will follow. Today's enforcement action should serve as a timely reminder to those at the very top of firms that the FCA is determined to hold individuals to account where they fall short of the standard we require.'

2. **Former Blackrock Asset Management (Dec 2014) – Managing Director Banned**

   http://www.fca.org.uk/news/former-blackrock-asset-management-managing-director-banned

   - This enforcement action is relevant to our clients as it demonstrates how the FCA can take action against individuals even where their conduct takes place outside of the regulated firm by which they are employed.
   - Approved persons are required under FCA rules to a number of high level principles in order to demonstrate ongoing fitness and propriety to hold controlled functions. Jonathan Burrows, a Managing Director at Blackrock Asset Management Investor Services Limited, was banned by the FCA from performing any function in relation to regulated activities for not being deemed to be a fit and proper person. The issue revolved around Burrows evading his train fare during his daily commute on a number of occasions and doing so in the knowledge that he was breaking the law.
   - Tracey McDermott the FCA's director of enforcement and financial crime, said: 'Burrows held a senior position within the financial services industry. His conduct fell short of the standards we expect. Approved persons must act with honesty and integrity at all times and, where they do not, we will take action.'

3. **Sesame Ltd (October 2014) – Conflict of Interest failings**

   http://www.fca.org.uk/news/fca-fines-sesame-ltd-for-pay-to-play-arrangements

   - In the FCA's Annual Financial Risk Outlook released in April 2014, the FCA stated that Conflicts of Interest would be a particular focus for their supervision teams during the next 12 months.

- Sesame Limited ("Sesame") is the UK's largest network of independent financial advisers. Sesame set up a pay to play scheme which undermined the ban on commission payments brought in by the Retail Distribution Review ("RDR").
- The pay to play scheme meant that the range of products recommended to Sesame clients was influenced by the amount of services Sesame had sold to product providers, ie Sesame promoted its own commercial interests over the interests of its clients.
- Tracey McDermott, director of enforcement and financial crime, said: "Firms must place customers at the heart of their business. Our reforms were designed to ensure advice is based on what is best for the client not the adviser.

  "Firms can have had no doubt about the outcomes we were looking for here. Sesame's approach to inducements, in the face of a clear position from the regulator, undermined the rules in order to look after its own interests.

  "If we are to move on in financial services we must see firms focussing on how they achieve the best outcomes for their customers – not adopting practices that avoid our rules.