



Enforcement Focus



September 2019

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 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>

First destruction of documents prosecution by FCA goes to court

The FCA prosecuted Konstantin Vishnyak in relation to one count of destroying documents. This is the first time the FCA have ever prosecuted this offence under the Financial Services and Markets Act 2000, which carries the potential sanction of up to 2 years imprisonment or a fine.

The FCA were investigating Mr Vishnyak under suspicion of insider dealing offences when the FCA alleges that Mr Vishnyak deleted the WhatsApp application from his phone. Furthermore, this deletion is alleged to have occurred after he was required to provide the app's history as part of the investigation against him.

Mr Vishnyak plead not guilty and will appear in Southwark Crown Court on 4th October 2019.

<https://www.fca.org.uk/news/press-releases/konstantin-vishnyak-appears-court-destruction-documents-offence>

Impact for firms: Firms are reminded of their obligations under the Market Abuse Regime and to co-operate with the FCA in respect of any investigations.

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.

£7.3 million confiscation order awarded to ex-Goldman Sachs investment banker

Mr Elias Nimoh Preko, who laundered millions of dollars on behalf of the former Governor of Delta State in Nigeria, has been ordered to pay back £7,324,268.41.

The NCA began their investigation into Mr Preko following his December 2013 money laundering conviction after he was found guilty of handling funds plundered from Delta State by the former governor, James Ibori. Mr Preko was sentenced to four and a half years.

Mr Preko worked for Goldman Sachs dealing with West African clients but left the company in 2001 when Goldman Sachs refused to act on behalf of Mr Ibori due to suspicions and risk associated with him and other West African clients. Mr Preko took Mr Ibori on as client and set up a number of corporate vehicles which received US\$3.9 million, representing funds stolen from Delta State.

Mr Preko has three months to repay the sum or serve a ten-year default prison sentence.

<https://www.nationalcrimeagency.gov.uk/news/ex-goldman-sachs-investment-banker-ordered-to-pay-back-7-3-million>

Impact for firms: Money laundering and terrorism financing remains a high regulatory priority for the NCA and FCA. Firms are reminded of their obligations under the UK anti-money laundering regime and to ensure that it does not facilitate any financial crime.

The Upper Tribunal published decision on Barclays Wealth's former COO Andrew Tinney

In March 2012, Mr Tinnery, in his role as Chief Operating Officer of Barclays Wealth, received a document containing critical findings about the culture within Barclays Wealth Americas (the US branch of Barclays Wealth). When the Chairman of Barclays Bank plc received an anonymous email accusing Barclays of suppressing "a Wealth cultural audit report" he assisted in drafting the response and, in January 2018, was found guilty by the Upper Tribunal of being reckless in giving the impression the document did not exist. The Upper Tribunal found that Mr Tinney's conduct in this matter failed to meet the required standard of integrity.

However, the Upper Tribunal did not uphold the FCA's further allegation that Mr Tinney made false or misleading statements to his colleagues in a response to the US Federal Reserve Bank of New York in November 2012 about the same document. The Upper Tribunal determined that the appropriate sanction was a public censure, whereby the FCA publishes a statement of Mr Tinney's misconduct, and did not uphold the FCA's submission that a prohibition order should be awarded.

The Final Notice published by the FCA can be found [here](#).

<https://www.fca.org.uk/news/press-releases/upper-tribunal-publishes-decision-andrew-tinney-former-coo-barclays-wealth>

Prudential receive £23,875,000 fine from FCA for failures relating to non-advised annuities sales

From July 2008 to September 2017, The Prudential Assurance Company (“Prudential”) focused on selling annuities to existing Prudential pension holders via their non-advised business.

An annuity is defined as ‘a retirement income product that can be bought with a customer’s pension pot, and which pays them a regular income in return’. There is a requirement for firms to explain the benefits of shopping around for better rates to their customers and Prudential were aware that shopping around on the open market would have provided many of their customers with a higher income in retirement.

Based on this, Prudential’s failure was to ensure that their customers were consistently informed of this option to find higher income on the open market. Prudential also failed to take reasonable care to organise and control its affairs in breach of its obligation to ensure fair treatment of its customers.

Many of Prudential’s customers were contacted about their pension options via phone call and the documentation provided to call handlers was written in such a way that it created a significant risk of customers not being informed of the open market option.

Furthermore, the call sheet created a significant risk that statements would be made during calls which could discourage customers from shopping around on the open market for alternative solutions which could provide a better deal. In addition, Prudential was failing to adequately monitor telephone calls made to customers.

A further area of concern from the FCA was the pre-2013 sales linked incentives for call handlers. The risks created a lack of appropriate systems and controls and call-handlers were incentivised by the potential to earn an additional 37% on top of their base salary and a variety of prizes available such as weekend holidays and spa breaks.

In total, 17,240 customers have received approximately £110 million in redress from Prudential, including ongoing annuity uplifts.

<https://www.fca.org.uk/news/press-releases/fca-fines-prudential-failures-relating-non-advised-annuities-sales>

Impact for firms: Treating customers fairly remains a sector priority in the FCA Business Plan 2019/20. This case is an example of how firms can breach FCA rules and the significant enforcement action that can result accordingly.

Enforcement notice issued to Hudson Bay Finance Ltd

Hudson Bay Finance Limited is a data controller and failed to respond to a subject access request under the General Data Protection Regulation (GDPR). The request was made by the complainant on 18th May 2018 and signed for on 21st May 2018. Having received no response from the Hudson Bay, the complainant contacted the Information Commissioner's Office (ICO) on 21st September 2018 and the ICO reached out to Hudson Bay on 11 December 2018. This letter was returned and resent to Hudson Bay on 17th January 2019. During a phone call from the ICO to Hudson Bay on 21st March 2019, Hudson Bay refused to engage in the conversation and hung up the call. Hudson Bay went on to ignore the preliminary enforcement notice they received on 26th June 2019 and as such are now subject to the enforcement notice issued to them on 9th August 2019.

Hudson Bay have been given 30 days to 'inform the complainant whether the personal data processed by the data controller includes personal data of which the complainant is the data subject and shall supply them with copies of any such personal data'. Should Hudson Bay fail to comply with the orders of the enforcement notice that will be a criminal offence.

<https://ico.org.uk/action-weve-taken/enforcement/hudson-bay-finance-ltd-en/>

Impact for firms: Under GDPR, firms have 30 days to respond to a Subject Access Request (SAR). Firms should take such requests seriously and have policies, procedures and processes in place to respond to any such SARs in a timely manner. Please contact us should you have questions regarding your obligations to respond to such requests, or if you require any assistance with setting up the requisite policies and procedures at your firm.

FSCS to protect the 5,500 members of East London Credit Union Ltd in default declaration

The Financial Services Compensation Scheme (FSCS) has announced that it will take action to protect the members of East London Credit Union Ltd which has stopped trading and is now in default. Within seven days the 'vast majority' of the 5,500 members will automatically receive payments.

FSCS predicts the total pay-out to members to be approximately £2.25 million.

<https://www.fscs.org.uk/about-fscs/media-centre/press-releases/2019/september/east-london-cu-default/>

Multi-million pound drugs and money laundering group receive seventy-year combined prison sentence

An eight-man team that supplied class-A drugs across England used sham companies to launder million of pounds have received a combined prison sentence of 70 years.

At least £1.8 million in illicit profits were transferred offshore via sham company bank accounts. Mr Balinder Kang, the organisation leader, received an 18 year prison term.

<https://www.nationalcrimeagency.gov.uk/news/seventy-years-for-multi-million-pound-drugs-and-money-laundering-group>

Operation Tabernula: Richard Baldwin sentenced to 5 years and 8 months imprisonment

Operation Tabernula is one of the FCA's largest and most complex insider dealing investigations ever to take place and covers offending that took place over several years.

Mr Baldwin's conviction brings the number of convictions secured in Operation Tabernula to six.

In July 2017 Mr Baldwin fled from his trial for money laundering. His sentence also includes punishments for separate contempt of Court by way of breaching a Restraint Order that was made against him in July 2011. The judge described Mr Baldwin's laundering as 'extremely sophisticated' and remarked that that the conviction was based on 'compelling evidence'.

Mr Baldwin was sentenced in his absence on the 3rd September 2019 and an arrest warrant has been issued for Mr Baldwin to be brought before the Court.

<https://www.fca.org.uk/news/press-releases/richard-baldwin-sentencing-3-september-2019>