



Enforcement Focus



November 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>

There are no market abuse enforcement cases this month.

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.

FCA Podcast: The importance of Conduct Rules

The FCA has released the second instalment of their Inside FCA Podcast: The importance of Conduct Rules. The podcast is a conversation with David Blunt, the FCA Head of Conduct Specialist in Supervision, explaining what the Conduct Rules are and how they can be implemented by solo-regulated firms converting to the Senior Managers & Certification Regime ("SMCR").

The SMCR has three main components of which Conduct Rules are one key element.

What are the rules and why are they critical?

- 5 conduct rules.
 1. Acting with integrity.
 2. Acting with due skill care and diligence.
 3. Complying with standards of market conduct.
 4. Paying due regard to the interests of customers and treating them fairly.
 5. Telling the regulator issues it ought to be made aware of.
- For the first time, the rules set a base level of conduct and behaviour which applies to everybody undertaking financial services work.
- The FCA hopes to reinforce healthy cultures in firms by having common standards for everybody.

What do firms need to consider when embedding the conduct rules? Are there specific outcomes the FCA is looking for?

- Firms need to think about the different roles that individuals have.
- There is a training requirement – firms have to ensure that all financial services staff undertake conduct rules training and ensure that training is relevant for the individual and provide examples of the rules as relevant to their role.
- The FCA are looking for an outcome whereby across the financial services sector there is successfully embedded common standards of good behaviour consistently across all staff.

The SMCR guide mentions training requirements for conduct rules – what does this mean for firms?

- For firms coming into the regime in December 2019, senior managers and individuals in the certification part of the regime all need to be trained in the conduct rules by day one, which was 9th December 2019.
- For everybody else undertaking financial services work, firms have 12 months in which to train those people.
- The FCA hopes that this will give firms plenty of time to think about how they can best tailor the training they are going to deliver so it is most effective for the varied set of employees they've got who will be coming into the scope of the conduct rules effectively by December 2020.

What happens if there is misconduct?

- If an individual has breached the conduct rules and the firm has taken disciplinary action for that breach the firm has to report the incident to the FCA.
- If the individual in question is a Senior Manager the firm has to report the misconduct within seven business days of the disciplinary action having been concluded by the firm.
- For all other employees – certification staff and anybody else to whom the conduct rules apply – the firm can report the breach as part of an annual reporting process.
- If the conduct is so significant that the FCA ought to be told about sooner then the firm is expected to notify the regulator immediately.

<https://www.fca.org.uk/media/podcast/inside-fca-podcast-importance-conduct-rules-smcr>

Former CEO given decision notices by PRA and FCA after he reduced his tax liability by paying excessive remuneration to his wife

The FCA and the PRA decided to ban and fine Stuart Forsyth, the former CEO of a small mutual insurer – Scottish Boatowners Mutual Insurance Association (“SBMIA”). The fines were £78,318 and £76,180 respectively. Between February 2010 and July 2016, Mr Forsyth transferred excessive amounts of his own remuneration to his wife to reduce his own tax liability and took steps to conceal that arrangement.

From 2010, Mr Forsyth transferred increasing amounts of his salary amounting to just over £200,000 in total over the six years. By the 2015/16 tax year, Mrs Forsyth’s remuneration was just over £52,000, more than any of the other SBMIA employees bar her husband. Mr Forsyth concealed the level of payment from the SBMIA Board and others, one example of this was the false minutes he created to give the impression that SBMIA’s Remuneration Committee had agreed both their salaries when in fact only Mr Forsyth’s salary had been agreed.

After an internal concern was raised in late 2015, Mr Forsyth inappropriately involved himself with the external auditor’s investigation. In 2016, in response to an information request from the PRA, Mr Forsyth recklessly responded with the false minutes.

Mr Forsyth has referred the Decision Notices to the Upper Tribunal where the parties will present their respective cases. The Upper Tribunal will determine what, if any, is the appropriate action for the FCA and PRA to take.

<https://www.fca.org.uk/news/press-releases/fca-and-pra-publish-decision-notices-given-former-ceo-who-paid-excessive-remuneration-his-wife>

Tullett Prebon face a £15.4 million fine from the FCA for failure to conduct its business with due skill, care and diligence; failing to have adequate risk management systems; and for failing to be open and cooperative with the FCA.

Following an FCA investigation, the FCA found that, between 2008 and 2010, Tullett Prebon’s Rates Division had ineffective controls around broker conduct. Lavish entertainment and a lack of effective controls allowed improper trading to take place, including ‘wash’ trades which generated unwarranted and unusually high amounts of brokerage for the firm.

Wash trade : involves no change in beneficial ownership and has no legitimate underlying commercial purpose.

Senior management mistakenly believed that there were sufficient systems and controls in place, when in fact, they were neither used nor directed effectively. The FCA found that Tullett Prebon had missed obvious red flags of broker misconduct and that opportunities to investigate the situation were ignored. When the firm made inquiries of one of their brokers about the inordinately high brokerage on one trade, the broker replied, “You don’t want to know” and no steps were taken to further clarify this comment or investigate the appropriateness of the reasoning behind it.

Principle 11 of the FCA’s Principles for Businesses was also breached as Tullett Prebon failed to be open and cooperative with the FCA. This breach occurred between August 2011 and October 2014 in relation to the FCA’s request in August 2011 for broker audio tapes. Although Tullett Prebon had most of the audio the FCA had requested, it was not until 2014 that they produced it to the regulator. Furthermore, initially provided an incorrect account was provided as to how the audio had been discovered.

11 Relations with regulators

A *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *FCA* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice.

<https://www.fca.org.uk/news/press-releases/fca-fines-tullett-prebon-154-million>

Henderson receives £1.9 million fine from FCA

Henderson Investment Funds Limited (“HIFL”) has been fined for their failure to treat fairly over 4,500 retail investors in its Henderson Japan Enhanced Equity Fund (“the Japan Fund”) and its Henderson North American Enhanced Equity Fund (“the North America Fund”).

In November 2011, HIFL’s appointed investment manager, Henderson Global Investors Limited (“HGIL”), decided to reduce their active management of HIFL’s Japan and North American Funds. HGIL informed nearly all the institutional investors who were affected by this change. They also offered to manage these two funds for those investors without charge.

On the other hand, HGIL did not communicate the change in investment strategy to any of the retail customers either by amending the funds’ prospectus or otherwise. Therefore, for nearly five years HGIL charged these retail investors the same level of fees as it had previously despite the fact they were no longer providing the same level of active management. As a consequence of this HIFL charged the retail investors £1,784,465.32 more than if they had been investing in a passive fund.

All affected customers have now been informed and compensated by HIFL for the additional costs they incurred.

The situation constituted a breach of **Principle 3** and revealed the serious weaknesses in the systems and controls HIFL had in place in relation to management oversight and governance. These weaknesses meant the issue went undetected and unresolved for such a long period of time.

3 Management and control

A *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management sys-

<https://www.fca.org.uk/news/press-releases/fca-fines-henderson-19m-fund-failings>

HMRC issues a record fine of £7.8 million for money laundering regulation breach

On the 4th September, HMRC announced a record fine of £7.8 million against a London business for breaching strict anti-money laundering regulations. Their failure could have left them susceptible to criminals wanting to 'wash' dirty cash.

Touma Foreign Exchange Ltd, a West London money transmitter, were fined by HMRC for a wide range of serious failures between June 2017 and September 2018. Breaches occurred in relation to the following aspects: risk assessments and associated record-keeping; policies, controls and procedures; fundamental customer due diligence measures; and adequate staff training.

In addition, Mr Hassanien Touma was banned from any management roles at a business governed by anti-money laundering regulations in May 2019 after he acted as an officer for the Money Services Business ("MSB"). Individuals are required to pass a vetting test to ensure that they are fit and proper to carry out the role. Mr Touma failed to pass this test.

<https://www.gov.uk/government/news/money-sender-fined-record-78-million-in-money-laundering-crackdown>

FCA announces ban on promotion of speculative mini-bonds to retail customers

The FCA has announced that it will ban the mass marketing of speculative mini-bonds to retail consumers. The FCA is using its product intervention powers to bring the restriction in without consultation. The restriction will come into force on the **1st January 2020** and will last for 12 months whilst the FCA consults on making permanent rules.

A mini bond is a corporate bond but can be a range of investments. The ban will apply to more complex and opaque arrangements where the funds are 'used to lend to a third party, invest in other companies or purchase or develop properties'.

There are a variety of exemptions: for example the restriction will not apply to listed mini-bonds, companies which (not including those listed in the quote above) raise funds for their own activities or to fund a single UK property investment.

Over the last year the FCA has investigated more than 80 cases of regulated activities potentially being carried out without the proper FCA authorisation as part of their work to tackle the risks for investors in mini-bonds. They have also assessed over 200 cases of financial promotions that appeared not to have been compliant with FCA rules. The regulator has made movements to persuade internet service providers to take a more proactive approach to protecting consumers: for example, a prompt response to take down websites that involve law or regulation breaches. The FCA has also worked alongside the Department of Culture, Media and Sport campaigning for financial harm to be included in the proposed legislation relating to online harms.

Note: there is evidence of a growing occurrence of fraudulent promotions involving mini-bonds. The marketing ban does not apply to such scams because they are illegal in any event, these fraudulent promotions involve no attempt to meet the financial promotion rules.

<https://www.fca.org.uk/news/press-releases/fca-ban-promotion-speculative-mini-bonds-retail-consumers>

£291,070 confiscation order secured against convicted fraudster

Earlier this year following an FCA prosecution, Mr Starling was sentenced to 5 years' imprisonment for fraud. Mr Starling had operated an unauthorised investment scheme from 2008 to 2017 and defrauded investors of just under £3 million.

The money received will be used to compensate the 14 victims of his crimes.

If Mr Starling fails to pay the confiscation order on time, he will be liable to spend an extra two and a half years in prison.

<https://www.fca.org.uk/news/press-releases/fca-secures-confiscation-order-totalling-291070-against-convicted-fraudster>

Newgate Training Centre

Newgate's Training Centre offers an e-learning solution built by experienced compliance consultants, most of whom

are ex-regulators. The Newgate Training Centre offers a suite of online courses designed to help firms meet their mandatory training requirements and individuals with their continuous professional development.

Course catalogue

The course offering covers essential core compliance courses including:

- SMCR – Senior Managers Regime – **NEW**
- SMCR – Conduct Rules – **NEW**
- SMCR – Certification Regime – **NEW**
- Product Governance – **NEW**
- FCA Business Plan for 2019/20 – **NEW**
- Anti-Money Laundering – **UPDATED FOR 5MLD**
- Introduction to Compliance;
- General Data Protection Regulation (“GDPR”) – **UPDATED**
- Market Conduct
- Anti-Bribery and Corruption – **UPDATED FOR DEVELOPMENTS AND LATEST CASES**
- Financial Promotions
- Conduct of Business
- Anti-Tax Evasion – **UPDATED FOR DEVELOPMENTS AND LATEST CASES**
- Cybersecurity
- FCA Systems and Returns
- Approved Persons – **FOR APPOINTED REPRESENTATIVES ONLY**
- Board of Directors: Duties, Responsibilities and Liabilities
- The role of the Compliance Officer

Please [contact us](#) for a free trial and further information on the courses.

Cost

GBP 100 per user (per annum) for unlimited access to our entire range of courses.
Existing subscribers to the Newgate Training Centre will be charged in January 2020 for continued access to the courses.

Features

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| Continually updated content and new courses added each year | Practical examples, case studies and questionnaire tests | Comprehensive audit trail |
| Cost effective | Comprehensive coverage of core regulatory e-learning modules | Quick implementation and delivery |