



Enforcement Focus



June 2020

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>

FCA publicly censures Redcentric PLC for market abuse

26/06/2020

The Financial Conduct Authority (FCA) has issued a public censure to Redcentric PLC (Redcentric) for committing market abuse between 9 November 2015 and 7th November 2016. Redcentric issued unaudited interim results and audited final year results which materially misstated its net debt position and overstated its true asset position in circumstances where it knew that the information was false. As a result, investors were misled and paid more when purchasing shares than they would have done had they known the true position.

Redcentric has agreed to initiate a scheme to provide some compensation to all net purchasers of Redcentric shares during the period from 9 November 2015 to 4 November 2016. This is the first of its kind for an AIM listed company. Redcentric estimates the value of the scheme to potential claimants is £11.4 million and that each claimant will have a basic entitlement to receive an overall value of approximately 17 pence for each net share purchased. The FCA has decided to impose a public censure rather than a financial penalty.

Advice for firms: Although this case is related to a publicly listed entity, firms are reminded to ensure that they are accurately filing data/information as part of the firm's GABRIEL reporting schedule, particularly those relating to the firm's financial resources and capital adequacy. It also goes without saying, that firms should continue to conduct adequate due diligence on the companies they seek to invest in, either via discretionary or advisory mandates.

Full article: <https://www.fca.org.uk/news/press-releases/fca-publicly-censures-redcentric-plc-market-abuse>

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.

Update on FCA test case of the validity of business interruption claims

01/06/2020

Many customers have made claims for losses due to COVID-19 under their Business Interruption insurance policies. There has been widespread concern about the lack of clarity and certainty for some customers making these claims, and the basis on which some firms are making decisions in relation to claims. Since the Financial Conduct Authority (FCA) made its last announcement on the 1st May 2020 (more information can be found here: <https://www.fca.org.uk/firms/business-interruption-insurance>), the FCA have approached 56 insurers and reviewed over 500 relevant policies from 40 insurers.

The FCA are also now publishing a short consultation on draft guidance asking all insurers to check their policy wordings against those intended to test if theirs will be impacted by the outcome of the case (to be published in July). The FCA have also published proposed assumed facts (for example, the types of business and how they responded to the pandemic), a proposed issues matrix and proposed questions for determination by the court.

The FCA have also issued a consultation on draft guidance to set out expectations of all firms handling BI claims and any related complaints during this period, including an expectation that firms identify those policies where their decision to deny claims may be affected by the test case.

Advice for firms: the test case is expected to provide guidance for the interpretation of many other BI policies that are not in the representative sample. If your firm is Business Insurance Policyholder you may wish to sign up to receive email updates on the progression of this test case here: <https://www.fca.org.uk/sign-business-interruption-bi-insurance-email-updates>.

Full article: <https://www.fca.org.uk/news/press-releases/update-fca-test-case-validity-business-interruption-claims>

FCA bars Cypriot firms that used unauthorised celebrity endorsements

01/06/2020

The Financial Conduct Authority (FCA) has taken action to stop four Cypriot investment firms from continuing to offer high risk contracts for difference (CFDs) to UK investors. The orders require them to stop selling CFDs to UK customers, to close existing positions with UK customers, to return UK customers' money and to notify UK customers of the FCA's action. Hoch Capital Ltd (trading as iTrader and tradeATF), Magnum FX (Cyprus) Ltd (trading as ET Finance), Rodeler Ltd (trading as 24option) and F1Markets Ltd (trading as Investous, StrattonMarkets and Europrime) used social media and webpages carrying fake endorsements from celebrities to entice consumers into the scams involving CFDs.

The FCA estimates that UK investors have lost hundreds of thousands of pounds in these investments. Consumers were not provided with sufficient information as to the nature of the investments, some were pressured into making increasingly large investments in CFDs, which referenced bitcoin, foreign exchange, shares and indices, and some were even encouraged to take out credit to make the payments. It also appears that the firms had failed to pay money owed to investors, charged customers undisclosed fees, and failed to tell them about the risks of trading CFDs. A few customers are known to have lost more than £100,000 to the schemes.

The Cypriot-regulated firms – which were permitted to operate in the UK through a method known as passporting – must now cease all regulated activities with UK consumers. It is the first time the FCA has used its power to remove passporting rights from a firm.

Advice to firms: Firms are reminded of the need to provide clear, fair and not misleading financial promotions/marketing communication. The FCA take a dim view on any type of pressure selling practices firms they regulate may try to engage in. It is paramount that firms take into consideration (where applicable) product governance expectations and pre-investment disclosure requirements.

Full article: <https://www.fca.org.uk/news/press-releases/fca-bars-cypriot-firms-used-unauthorised-celebrity-endorsements>

FCA fines Commerzbank London £37,805,400 over anti-money laundering failures

17/06/2020

The Financial Conduct Authority (FCA) has fined Commerzbank AG (London Branch) £37,805,400 for failing to put adequate anti-money laundering (AML) systems and controls in place between October 2012 and September 2017.

Commerzbank London failed to take reasonable and effective steps to fix weaknesses despite the FCA raising specific concerns about them in 2012, 2015 and 2017. These weaknesses also persisted during a period when the FCA was publishing guidance on steps firms could take to reduce financial crime risk as well as taking enforcement action against several firms in relation to AML controls.

The FCA's investigation identified failings in several areas, including failing to conduct timely periodic due diligence on its clients, which resulted in a significant number of existing clients not being subject to timely know-your-client (KYC) checks. By 1st March 2017, the bank had overdue periodic due diligence checks on 1,772 of its clients, it failed to address long-standing weaknesses in its automated tool for monitoring money laundering risk on transactions for clients. The bank also failed to have adequate policies and procedures in place when undertaking due diligence on clients.

Advice to firms: Commerzbank breached Principle 3 of the FCA's Principles for Businesses, which requires firms to have adequate risk management systems in place. Firms operating in the UK, including branches of overseas firms, must take reasonable care to organise and control their affairs responsibly and effectively, and to establish and maintain an effective risk-based AML control framework. Please reach out to your Newgate consultants for assistance with any AML related queries you may have and its impact on your business operations and/or client onboarding. We envisage that there will continue to be iterations made to the Money Laundering Directive/Regulation and JMLSG in an attempt to equip the industry and its participants with guidelines to better combat financial crime.

Full article: <https://www.fca.org.uk/news/press-releases/fca-fines-commerzbank-london>

High court finds against illegal pension introducers, Avacade and others

30/06/2020

The High Court ruled in favour of the Financial Conduct Authority (FCA) in a civil action against 2 firms and their directors who provided services to consumers without FCA authorisation. The FCA's case concerned the activities of Avacade Limited (in liquidation) and Alexandra Associates (UK) Limited trading as Avacade Future Solutions (AA) and their directors, Craig Lummis, Lee Lummis, and Raymond Fox.

The FCA alleged the 2 companies provided a pension report service and made misleading statements which induced consumers to transfer their pensions into self-invested personal pensions (SIPPs) and then into alternative investments such as HotPods (office space available for rent), tree plantations and Brazilian property developments.

More than 2,000 consumers transferred in the region of £91.8m from their pensions into SIPPs. Approximately £68m of that amount was invested in products promoted by Avacade and approximately £905,000 was invested into a product promoted by AA – the Paraiba bond – a fixed rate bond relating to a Brazilian property development. From these investments Avacade and AA earned commissions in the region of £10.8m.

Many of the underlying investments have failed or are in liquidation.

The FCA is seeking orders from the High Court banning AA, the Lummises and Mr Fox from engaging in unauthorised activities in the UK. The FCA will also be asking the Court to determine the sums that AA and the individuals should be required to pay by way of restitution for their roles in the unlawful activity.

Advice for firms: If you are planning to expand or amend your firms existing business activities/services, please ensure that the activity you will be embarking on is within your firm's existing scope of permission and/or unregulated activity. In any case it is worth reaching out to your Newgate consultants to discuss such changes to ensure that the necessary framework and resources from a compliance perspective is in place.

Full article: <https://www.fca.org.uk/news/press-releases/high-court-finds-against-illegal-pension-introducers-avacade-and-others>