



# Enforcement Focus



July 2016

Please click on either option below to learn more about recent enforcement cases handled by the FCA...



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**Market Abuse**  
Enforcement Actions

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**General FCA**  
Enforcement Actions

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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

Since Newgate's previous Code of Market Primer in February, there have been several market abuse enforcement actions. There are also a number of actions outstanding that we will keep you informed of. 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 fines and restricts W H Ireland Limited for market abuse risks – February 2016

<http://www.fca.org.uk/news/fca-fines-and-restricts-wh-ireland>

The FCA fined W H Ireland Limited ("WHI") £1.2 million for failing to have appropriate market abuse systems and controls and restricted its Corporate Broking Division from taking on new clients for 72 days. The penalty related to system failings covering the period from 1 January to 19 June 2013.

WHI provides a wide range of services; corporate finance advice, acting as NOMAD and/or Broker to corporate clients, research services, private client broking, and market making. Because of this, WHI was particularly vulnerable to potential market abuse risks, for example inside information received from its corporate broking and NOMAD services ("the private side") potentially passing to the market making, private client broking and investment research side of the business which did not routinely receive inside information ("the public side").

A Skilled Persons report found deficiencies in WHI's controls to ensure inside information did not leak from the private to the public side, inadequate PA dealing rules, failure to maintain an effective conflicts of interest policy with inadequate recording of where services carried out had or could have resulted in a conflict of interest, deficient compliance oversight, including the absence of a formal risk management framework for market abuse and inadequate post-trade surveillance systems.

In July 2014, WHI commissioned a follow-up report to look at the extent to which it had complied with the Skilled Person's recommendations. This second report showed that there were some recommendations which had not been implemented adequately or approved by the Board within the time set by the Skilled Person. These included a market abuse risk assessment, Compliance Monitoring Plan (which was not complete), Terms of Reference for Compliance and PA Dealing rules.

The penalty reflects WHI's failings to adhere to Principle 3 ("A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems") and section 10 of the SYSC rules concerning conflicts of interest.

### Updates on the FCA's actions in respect of LIBOR rate transgressions.

#### The bans former Deutsche Bank Trader for LIBOR fraud – March 2016

<http://www.fca.org.uk/news/fca-bans-former-deutsche-bank-trader-michael-ross-curtler-following-libor-fraud>

#### Former Royal Bank of Scotland LIBOR submitter banned – April 2016

<http://www.fca.org.uk/news/fca-bans-former-rbs-libor-submitter-paul-white>

#### Former UBS LIBOR trader to appeal against FCA ban decision – April 2016

<http://www.fca.org.uk/news/fca-publishes-decision-notice-for-ubs-libor-trader>

These included a ban for Michael Cutler from Deutsche Bank AG for conspiring to manipulate the US Dollar LIBOR submissions; a ban for Paul White who worked at RBS for taking into account trading positions when making Yen and Swiss Franc LIBOR submissions; and an appeal from Arif Hussein a former derivatives trader at UBS to the Upper Tribunal.

### **Former equities trader pleads guilty to insider dealing – March 2016**

<http://www.fca.org.uk/news/former-equities-trader-pleads-guilty-to-insider-dealing>

Damian Clarke, a former equities trader at Schroders Investment Management Limited, who had pleaded guilty to seven counts of insider dealing in July 2015, pleaded guilty to two further counts on 15<sup>th</sup> March 2016 at Southwark Crown Court.

Mr Clarke acted on inside information about significant corporate events, mainly anticipated public announcements of mergers and acquisitions, over a period of nine years to place trades for himself and close family members, who had provided him with their account numbers and passwords. Total profits from the insider trades amounted to more than £155,000. He was sentenced on 13<sup>th</sup> June 2016 to two years imprisonment.

### **Insider dealers sentenced in FCA's largest and most complex insider dealing investigation – May 2016**

<http://www.fca.org.uk/news/insider-dealers-sentenced-in-operation-tabernula-trial>

Personal friends Martyn Dodgson and Andrew Hind have been sentenced to 4 ½ and 3 ½ years imprisonment respectively for insider dealing offences between November 2006 to March 2010. Mr Dodgson was an investment banker, who worked at Morgan Stanley, Lehman Brothers and Deutsche Bank during the period of the offences. Mr Hind is a businessman and Chartered Accountant.

Mr Dodgson sourced inside information from within the investment banks at which he worked, either on deals he was involved in or by being able to glean what his colleagues were working on. He passed on this inside information to Mr Hind who secretly affected deals for their mutual benefit. The pair put in place elaborate strategies designed to prevent the authorities from uncovering their activities; unregistered mobile phones, encoded and encrypted records, safety deposit boxes and the transfer of benefit using cash and payments in kind. These convictions bring the total number of convictions under the FCA's 'Operation Tabernula' insider dealing investigation to five.

### **FCA fines and bans financial adviser for insider dealing – May 2016**

<http://www.fca.org.uk/news/fca-fines-and-bans-financial-adviser-for-insider-dealing>

Mark Taylor, a former financial adviser at Towry Limited, has been fined £36,285 and banned for two years for a market abuse offence.

Towry Limited were in negotiations to acquire wealth management firm Ashcroft Rowan plc. In March 2015, before a public announcement had been made, Towry Limited mistakenly sent an internal email to staff that it had increased its offer to acquire Ashcroft Rowan to £3.49 per share (up from £2.70). Towry Limited tried to recall the email. A further email was sent advising staff not to act on the information as it was potentially inside information. Mr Taylor ignored this, bought £15,000 worth of shares and sold them for £18,500 after the increased offer was made public.

The day after the sale, Mr Taylor contacted his broker to ask whether the trade could be reversed as he feared he had committed an insider trade. The broker declined and, as is their regulatory duty, reported the trade to FCA.

## 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.

### **Ponzi Scheme perpetrator's sentenced – March 2016**

<http://www.fca.org.uk/news/press-releases/phillip-boakes-sentenced-for-failing-to-pay-confiscation-order>

This article is an update to our April 2015 and January 2016 Enforcement Focus bulletins.

In November 2015, the Court of Appeal upheld the 10-year sentence given to Mr Boakes for running a Ponzi scheme through his company CurrencyTrader Ltd, through which investors lost over £2.5 million. In addition to the conviction, a Confiscation Order for the sum of £165,731 was made against him. The period afforded to Mr Boakes to satisfy the Order expired on 2<sup>nd</sup> February 2016 which he has not done. As a result, a further two years has been added to his sentence.

### **Action against Capital Alternatives Limited and others for misleading investors and unlawfully operating an unregulated collective investment scheme – March 2016**

<http://www.fca.org.uk/news/fca-wins-appeal-case-against-capital-alternatives>

The FCA is continuing to take action through the High Court for monies to be returned to investors who invested in two investment schemes that could not be lawfully operated by the defendants. The two schemes offered investments in rice farm harvests in Sierra Leone and carbon credits generated from reforestation projects in Sierra Leone, Brazil and Australia.

The defendants had structured the schemes to try to avoid the need to be regulated by the FCA. However, the High Court agreed with the FCA that the schemes were unauthorised collective investment schemes and could not be lawfully operated by the defendants.

### **FCA wins Supreme Court case against Asset Land for operating an unauthorised collective investment scheme – April 2016**

<http://www.fca.org.uk/news/fca-wins-supreme-court-case>

<http://www.fca.org.uk/news/asset-land-investors>

The Supreme Court has upheld High Court and Court of Appeal decisions that Asset Land ran an illegal land bank by operating a collective investment scheme without authorisation.

Investors were persuaded by Asset Land to buy individual plots of land for between £7,500 and £24,000 with the promise that the land would increase in value if the land got planning permission or was re-zoned. The Supreme Court found that, although investors were the legal owners of their individual plots of land, in reality the arrangements of the scheme were that investors did not have control over their investment and Asset Land was the central operator of the scheme. The judgement confirms operators must ensure investors have genuine control over their investments to avoid being found to have operated a collective investment scheme.

The judgment opens the way for the FCA to take action to enforce payment of the £21 million by the defendants whose assets remain frozen following the original court proceedings in 2012.

### **FCA bans Keydata's former compliance officer – May 2016**

<http://www.fca.org.uk/news/fca-published-decision-notice-three-former-members-keydatas-senior-management>

Following the Decision Notices issued in May 2015 to three senior members of Keydata's management team, the former compliance officer Peter Johnson has decided to withdraw his reference to the Upper Tribunal. A link to the Final Decision Notice is here.

<http://www.fca.org.uk/your-fca/documents/final-notice/2016/peter-francis-johnson>