



Enforcement Focus



October 2018

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

Since Newgate's previous Market Abuse Enforcement Actions Primer in July, there has been one relevant market abuse enforcement action.

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>

Decision Notice regarding Linear Investments Limited published by FCA, with Linear referring penalty to Upper Tribunal

The Decision Notice was published in response to Linear's failure to 'take reasonable care to organise and control its affairs responsibly and effectively to ensure potential instances of market abuse could be detected and reported'.

The Decision Notice makes it clear that the £409,300 fine is being imposed because of Linear's breach of Principle 3, meaning there were failures regarding the detecting and reporting of potential instances of market abuse between the period of 14th January 2013 and 9th August 2015.

Statement of Principle 3: A *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Up until November 2014, Linear were mistakenly relying on post-trade surveillance by their brokers when transactions were executed. This means that Linear had limited manual oversight of the trading that was being conducted through their Direct Market Access in order to detect and report suspicious orders and transactions. Despite a change in Linear's business model and their trading volumes, their manual oversight was not updated hence leaving inadequate monitoring. In November 2014, Linear became aware of the inadequacy of relying on broker's surveillance and thus the need for its own post-trade surveillance system, and went on to take steps to source and implement a suitable automated system. However, Linear did not actually have effective systems in place until 10 August 2015.

This case is the first to be completed under the FCA's new process for partly contested cases. This allows firms/individuals to accept and agree with certain parts of case whilst contesting others – thus they are still eligible for the discount of up to 30% on any penalties that may be imposed.

In this instance, Linear agreed with the facts and liability whilst contesting the level of penalty as set out in the Decision Notice. The fine would have been £584,700 if the discount had not been applied.

<https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notice-linear-investments-limited>

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.

Mark Starling faces criminal prosecution as FCA commence proceedings in relation to an unauthorised investment scheme

Mark Starling will face prosecution as the FCA commences criminal proceedings for three offences relating to unauthorised investment schemes. The schemes 'purported to carry out financial futures trading for the benefit of investors'. The allegations relate to schemes said to have run between 1st August 2008 and 25 April 2017.

The FCA cite the alleged offences as:

- Operating, or purporting to operate, a collective investment scheme without authorisation or exemption, contrary to sections 19 and 23 of the Financial Services and Markets Act 2000; and
- Two counts of fraud, contrary to sections 1 and 2 of the Fraud Act 2006.

Mr Starling's preliminary hearing took place in Southwark Crown Court on the 18th September 2018.

The Regulator has not provided any further comment or information.

<https://www.fca.org.uk/news/press-releases/fca-commences-criminal-prosecution-against-mark-starling-relation-unauthorised-investment-scheme>

FCA bans Christian Bittar, former Deutsche Bank trader, for his lack of integrity and thus fitness and propriety to perform his role.

Mr Bittar formerly traded interest rate derivative products referenced to benchmarks including EURIBOR, on behalf of Deutsche Bank. Mr Bittar is found to have made at least 81 requests to Deutsche Bank submitters for high or low EURIBOR submissions to influence and benefit trading positions. Furthermore, he was involved in at least 79 communications with traders at other EURIBOR panel banks whereby he either made or received requests for high or low EURIBOR submissions.

Mr Bittar knew that it was improper for him to make such requests, both internally to the Deutsche Bank submitters and to collude with traders at other banks.

On 13th April 2017, Mr Bittar was issued a Decision Notice by the FCA imposing a financial penalty of £6.5 million – which Mr Bittar referred to the Upper Tribunal on 10th May 2017 and was stayed pending the outcome of the criminal proceedings against Mr Bittar for conspiracy to defraud.

Mr Bittar pleaded guilty to conspiracy to defraud and was sentenced to 5 years and 4 months in prison as well as being ordered to pay £2.5 million by way of confiscation order. Considering the criminal proceedings, the Upper Tribunal directed the FCA to impose no financial penalty and otherwise ordered the reference be dismissed, meaning the FCA's initial decision to prohibit Mr Bittar became the final decision.

Note: the FCA has imposed 7 fines, totalling £426 million, on firms for misconduct relating to IBOR.

<https://www.fca.org.uk/news/press-releases/financial-conduct-authority-bans-former-deutsche-bank-trader-christian-bittar>

The Upper Tribunal has upheld the FCA's decision to fine and ban Alistair Burns for his failures in the role of Director and CF1 of TailorMade Independent Limited

On 31st July 2018, the Upper Tribunal upheld the FCA's decision that, for his fundamental lack of competence and capability to perform the role of Director and CF1 of TailorMade Independent, Alistair Burns should be banned from performing any FCA significant influence or senior management functions.

Furthermore, for his breaching of the FCA's Statement of Principle 7, the Tribunal directed the FCA to impose a fine of £60,000 on Mr Burns.

Statement of Principle 7: An approved person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system.

Over a three-year period, starting January 2010, TMI advised 1,661 customers who were considering transferring or switching their pension funds via self-invested personal pensions (SIPPs).

The Tribunal found that TMI's advice, suggesting customers should transfer pension benefits into a SIPP which was to be invested in either a singular, or small number of, inherently risky overseas property investment, was 'wholly unsuitable'.

Moreover, the Tribunal found that Mr Burns was co-owner and co-directed an unregulated introducer, which was referring clients to TMI hence Mr Burns was receiving a financial benefit from the significant amounts of commission the introducer received. Mr Burns did not identify this conflict of interest and TMI failed to manage it.

The Tribunal used the case to confirm the FCA's position on financial advisers giving advice to customers wishing to transfer out of their current pension arrangement to release funds allowing them to invest in an overseas property investment through a SIPP: the financial adviser must consider the suitability of the investments to be held in the SIPP as well as the suitability of the SIPP itself.

TMI was dissolved on 9 July 2016, but to date compensation totalling over £55.6 million had been paid by the Financial Services Compensation Scheme (FSCS) regarding claims upheld against TMI – though FSCS assesses that the true value of all the losses suffered by investors is a figure in excess of £106.5 million.

The FCA's Executive Director of Enforcement and oversight, Mark Steward, said "*Mr Burns failed to ensure that TMI managed its conflicts of interest, benefiting financially from his roles as shareholder and director at an unregulated introducer alongside his regulated role, to the detriment of his customers. Our action sends a strong message that failing to manage conflicts of interest fairly and disclose them clearly is completely unacceptable*".

<https://www.fca.org.uk/news/press-releases/upper-tribunal-upholds-fca-decision-fine-and-ban-chief-executive-tailormade-independent-limited-alistair-burns>

Operation Tidworth: the FCA's second largest ever criminal prosecution, results in the sentencing of six individuals for a total of 28.5 years for their part in a £2.8 million fraudulent investment scheme.

On the 4th September 2018 5 individuals were sentenced to a total of 17.5 years imprisonment for their roles in 'Operation Tidworth'. Then on the 14th September 2018, Michael Nascimento, described as the controlling mind, instigator and the main beneficiary of the fraud, was sentenced to 11 years imprisonment.

This was one of the FCA's most complex fraud investigations, and the first FCA prosecution of an offence of perverting the course of justice.

It involved:

- 4 separate search operations and one unannounced visit;
- Seizure of over 100 computers and other digital devices;
- 4 million documents and (after de-duplication) over 1.4 million documents ingested into the FCA's Evidence Management System requiring evidential assessment and review;
- 142 witnesses;
- 287 witness statements (2,406 pages);
- 3,682 exhibits (23,642 pages);
- 3 defendants remanded in custody for breach of court bail by committing

The scheme took place between July 2010 and April 2014, whereby members of the public received cold calls using high pressure sales tactics to persuade them to purchase shares in a company owning land in Madeira. Investors were promised guaranteed returns of between 125% and 228% - none were ever paid.

Investors were told the following lies:

The schemes were partnered with Barclays Bank;

Planning permission had been obtained to build 20 villas;

There was a guaranteed share buy-back;

The Four Seasons or Hilton Hotel chains had agreed to buy the completed development for £43 million.

Over 170 members of the public invested over £2.8 million in the shares.

Charanjit Sandhu was sentenced to 5.5 years' imprisonment. He was a senior broker. He also received an additional sentence of 3.5 years in relation to matters prosecuted by the CPS, City of London Police and Kent Police, thus his total sentence is 9 years.

Hugh Edwards was sentenced to 3 years and 9 months' imprisonment. He recruited and trained brokers and personally pitched the product as a senior broker using false names.

Stuart Rea was sentenced to 3 years and 9 months' imprisonment. He fronted one of the companies and recruited and managed the sales brokers.

Jeannine Lewis was sentenced to 2 years and 6 months' imprisonment. As PA to Nascimento she assisted him to launder the proceeds of the fraud and hid and destroyed documents to keep them from FCA investigators. The Judge described Mrs Lewis as 'a thoroughly dishonest woman'.

Ryan Parker was sentenced to 2 years' imprisonment to be suspended for 18 months and given 180 hours of unpaid work. He fronted two of the boiler rooms for Nascimento and his personal bank accounts were used as a conduit. His age and personal mitigation and lower level of involvement resulted in a suspended sentence, as the Judge said that Mr Parker had 'been exploited in a significant way' by Michael Nascimento

Michael Nascimento was sentenced to 11 years' imprisonment. He also received an additional sentence of 2 years for further criminality in a prosecution by the CPS and the City of London Police, thus his total sentence is 13 years. He was the 'controlling mind' of the scheme and the Judge said 'despicable was not too strong a word' to describe some of Mr Nascimento's actions.

The FCA's Executive Director of Enforcement and Market Oversight, Mark Steward, commented on the case saying '*This brings to an end the FCA's largest fraud prosecution which has seen the perpetrators imprisoned for a total of 28.5 years, affording justice to victims who were the subject of their calculated deception. We are continuing to fight for compensation for victims out of their assets*'.

<https://www.fca.org.uk/news/press-releases/michael-nascimento-sentenced-11-years-imprisonment-fca-prosecution-investment-fraud-operation-tidworth>

<https://www.fca.org.uk/news/press-releases/five-sentenced-fca-prosecution-28m-investment-fraud>