



Enforcement Focus



August 2017

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 market abuse enforcement actions taken by the FCA since our last enforcement focus in July. 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>

Tesco to pay redress for market abuse – March 2017

On the 29th August 2014 Tesco plc published a trading update in which it stated that it expected trading profit for the six months ending 23rd August 2014 to be in the region of £1.1bn. Tesco plc later published an update announcing that it had “identified an overstatement of its expected profits”. As a result of the false or misleading information within the 29th August announcement, the market price for Tesco shares and bonds was inflated until Tesco issued a corrective statement on 22nd September 2014.

Tesco have agreed to pay compensation to investors who purchased Tesco shares and bonds on or after the 29 August 2014 and who still held those securities when the statement was corrected on the 22nd September 2014. The compensation scheme is due to be launched by 31st August 2017 and will be administered on Tesco’s behalf by KPMG.

This is the first time the FCA has used its powers under section 384 of the Financial Services and Markets Act to require a listed company to pay compensation for market abuse.

<https://www.fca.org.uk/news/press-releases/tesco-pay-redress-market-abuse>

FCA fines and bans two individuals for market abuse – April 2017

Two former Worldspreads Limited (WSL) employees have been banned and fined for market abuse following an FCA investigation.

Former Chief Financial Officer Niall O’Kelly was fined £11,900 and former Financial Controller Lukhir Thind £105,000 for deliberately and repeatedly disseminating false and misleading information relating to a publicly listed company. The holding company of WSL, Worldspreads Group (WSG) floated on AIM in 2007. Documentation submitted to support the floatation, which Mr O’Kelly was closely involved in, contained materially misleading information and omitted key information that investors would rely on to make their investment decision.

FCA also found Mr O’Kelly helped manage an undisclosed ‘internal hedging’ strategy at WSL using fake client trading accounts and the unauthorised use of actual client trading accounts. By doing this, he artificially inflated assets on the holding company WSG’s balance sheet.

In WSL’s Annual Accounts for 2010 and 2011, Mr O’Kelly and Mr Thind knowingly falsified critical financial information concerning its client liabilities and cash position, which was passed to the company’s auditors. This meant that material shortfalls in WSL’s client money position were concealed from investors.

By 31 March 2011, these misstatements amounted to £15.9 million. WSL was unable to meet this client money liability which ultimately led to WSL’s collapse in 2012.

<https://www.fca.org.uk/news/press-releases/fca-bans-and-fines-two-individuals-market-abuse>

FCA secures £350,000 confiscation order against convicted insider dealer – July 2017

In an update to our Enforcement Focus of June 2016 Damian Clarke a former equities trader at Schroders Investment Management Limited, has had a £350,000 confiscation order brought against him which must be paid within 3 months or face a further 3 years in prison.

Mr Clarke was sentenced to 2 years imprisonment in 2016 on 9 counts of insider dealing while employed by Schroders Investment Management between August 2000 and January 2013.

<https://www.fca.org.uk/news/press-releases/confiscation-order-against-convicted-insider-dealer>

<https://www.fca.org.uk/news/press-releases/former-equities-trader-schroders-investment-management-sentenced-insider-dealing>

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.

FCA fines former investment banker for sharing confidential information over WhatsApp. – March 2017

Christopher Niehaus, a former Managing Director within the Investment Banking division at Jeffries International Limited has been fined £37,198 for sharing confidential client information via the instant messaging application WhatsApp.

The FCA found that Mr Niehaus failed to act with due skill care and diligence when sharing, on a number of occasions between January and May 2016, client confidential information with both a friend and a personal acquaintance over WhatsApp.

<https://www.fca.org.uk/news/press-releases/fine-former-investment-banker-sharing-confidential-information-whatsapp>

The FCA secures eight confiscation orders totalling almost £2.2 million - May 2017

The final two defendants who were convicted of operating an unauthorised collective investment scheme by the FCA in 2015 have had confiscation orders brought against them.

A total of £2,195,496 will be confiscated from all eight defendants who operated the scheme between July 2008 and November 2011.

<https://www.fca.org.uk/news/press-releases/fca-secures-eight-confiscation-orders-totalling-almost-22-million>

<https://www.fca.org.uk/news/press-releases/eight-convicted-role-unauthorised-collective-investment-scheme>