Enforcement Focus

NEWGATE COMPLIANCE

November 2015

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 Directive. 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 September, there have been no relevant market abuse enforcement actions. There are a number of actions outstanding tat 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

Please see below for recent FCA enforcement actions.

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 bans hedge fund manager for not allocating trades in a timely manner - Nov 2015

http://www.fca.org.uk/news/fca-fines-and-bans-former-investment-analyst-at-aviva-investors

The FCA has fined Mothahir Miah, a former Investment Analyst at Aviva Investors Global Services Limited ("Aviva Investors"), £139,000 and banned him from performing any function in relation to any regulated activity in the financial services industry for failing to act with honesty and integrity.

Mr Miah traded on behalf of hedge funds and took advantage of weaknesses in the trading system and controls to deliberately delay booking and allocating trades by several hours in order to allocate those that had favourable price movements to funds that paid higher performance fees. This is known as "cherry picking". Aviva Investors was fined £17.6m for its failings.

Directors banned and fined for lack of integrity and not taking due skill, care and diligence – Oct - 2015

http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Timothy-Alan-Roberts-and-Andrew-Wilkins-v-FCA.pdf

Andrew Wilkins and Timothy Roberts, both Approved Persons at Catalyst Investment Group Limited ("Catalyst"), allowed Catalyst to collect funds from potential investors in respect of ARM bonds that had not been issued at a time when ARM Asset Backed Securities was prohibited from doing so. They allowed the funds to be collected and also did not disclose the regulatory position to the bondholders.

In addition, two letters were sent to IFAs/bondholders that the FCA deemed as misleading and subsequent financial promotions issued by Catalyst contained inaccuracies which Messrs Wilkins and Roberts did not take enough care to check. Mr Wilkins also provided false information to the FCA in a conversation.

Timothy Roberts was fined £450,000 and Mr Wilkins was fined £100,000, both were banned from being approved individuals at regulated firms.

FCA Fines IFA firm £20,000 over Keydata sales – September 2015

http://www.fca.org.uk/static/fca/documents/jjfs-final-notice.pdf

John Joseph Financial Services Limited (JJFS) has been fined £20,000 for failings relating to the sale of Keydata products. JJFS recommended Keydata products to a total of 29 customers with a value of £6.1m. The FCA said JJFS did not adequately assess the needs of customers and their appetite for risk, and did not disclose adequately all material risks of the Keydata products to customers. The FCA also alleged that JJFS did not take reasonable care to establish and maintain effective systems and controls for compliance with the regulatory system and did not create and retain adequate records of matters. In addition, the FCA said that JJFS did not take reasonable care to ensure its advice to customers was suitable by failing to properly recognise the risks arising from lack of diversification of investments and failing to disclose these risks to customers.

The FCA fine related to breaches in respect of Principle 9 (Customers: relationships of trust) and certain rules set out in COBS and SYSC.

Ex-Keydata finance director fined and banned from performing a significant influence function – September 2015

http://www.fca.org.uk/static/documents/final-notices/final-notice-craig-mcneil.pdf

Keydata Investment Services' former finance director Craig McNeil has been fined £350,000 and banned from taking senior roles in the industry for failing to comply with Statement of Principles 4 (Open and co-operative relations with FCA) and 6 (Management with due skill, care and diligence).

The punishment follows a £75m fine given to Mr McNeil's former boss Stuart Ford, who allegedly mis-sold £475m of so-called death bonds. The firm designed and sold products for distribution through financial advisors, and Mr McNeil failed to challenge a series of financial irregularities, or to report them to the Financial Conduct Authority.

Keydata collapsed in June 2009, and its administrators uncovered fudged accounts and missing payments in its books. One such problem arose when Keydata invested in bonds issued by Luxembourg-based SLS Capital, the FCA said, which invested in portfolios of life settlement policies.

When SLS failed to make certain payments to investors from early 2008, Keydata instead funded £4.2m in income payments from its own resources, masking the problems with SLS.

The FCA said that Mr McNeil was aware of these payments and failed to tell the regulator (in breach of Statement of Principle 4). He also failed to challenge a decision to enter into a complicated transaction that attempted to obtain security for those missed SLS payments, the FCA said, and permitted the release of £500,000 of Keydata's corporate funds without having a clear understanding of the transaction or its risks (in breach of Statement of Principal 6). In the event, Keydata paid the funds but did not manage to obtain the security.