



Enforcement Focus



March 2016

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>

Mark Lyttleton sentenced to 12 months imprisonment for insider dealing – December 2017

We reported in our previous enforcement focus that Mark Lyttleton, a former Equity Portfolio Manager at BlackRock, had pleaded guilty to two counts of insider dealing for using non-public information to trade in the securities of EnCore Oil and Cairn Energy.

In a prosecution brought by the FCA, Lyttleton has been sentenced to 18 months in prison reduced with credit to 12 months. A confiscation order was also made in the sum of £149,861.27 and costs awarded to the FCA of £83,225.62. The trial judge HHJ Goymer remarked that the offences were “pre-meditated and blatantly dishonest”.

<https://www.fca.org.uk/news/press-releases/mark-lyttleton-sentenced-12-months-imprisonment-insider-dealing>

Two sentenced in insider dealing case - January 2017

In our previous enforcement focus, we reported that Manjeet Mohal, a former business analyst at Logica Plc and his neighbour, Reshim Birk, had pleaded guilty to three counts of insider dealing.

Since then, in a prosecution brought by the FCA, Mohal has been sentenced to 10 months imprisonment suspended for two years and was also ordered to undertake 180 hours of community work. Reshim Birk was sentenced to 16 months imprisonment suspended for two years and was ordered to undertake 200 hours of community work.

<https://www.fca.org.uk/news/press-releases/two-sentenced-insider-dealing-case>

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 Deutsche Bank £163 million for serious anti-money laundering controls failings – January 2017

The FCA have fined Deutsche Bank £163,076,224 for failing to maintain an adequate anti-money laundering (AML) control framework. The fine is the largest financial penalty for AML control failings ever imposed by the FCA.

Deutsche Bank exposed the UK financial system to the risks of financial crime by failing to properly oversee the formation of new customer relationships and the booking of global business in the UK. Because of its inadequate AML control framework, Deutsche Bank was used by unidentified customers to transfer approximately \$10 billion, of unknown origin, from Russia to offshore bank accounts in a manner that is highly suggestive of financial crime.

The FCA specifically found that, during the relevant period, Deutsche Bank's Corporate Banking and Securities division (CB&S) in the UK:

- performed inadequate customer due diligence
- failed to ensure that its front office took responsibility for the CB&S division's 'Know Your Customer' obligations
- used flawed customer and country risk rating methodologies
- had deficient AML policies and procedures
- had an inadequate AML IT infrastructure
- lacked automated AML systems for detecting suspicious trades
- failed to provide adequate oversight of trades booked in the UK by traders in non-UK jurisdictions

Deutsche Bank have now committed significant resources to a large-scale remediation programme to correct the deficiencies in its AML control framework and customer files.

<https://www.fca.org.uk/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure>

FCA takes first criminal action against an individual acting as unlicensed consumer credit lender – January 2017

Mr Dharam Prakash Gopee faces several charges arising from an investigation carried out by the FCA into Mr Gopee and companies he controls including Reddy Corporation Ltd, Speedy Bridging Finance Ltd and Barons Finance Ltd.

It is alleged that Mr Gopee operated as an unlicensed consumer credit lender. He conducted regulated activity without authorisation over a number of years by entering into and administering regulated credit agreements as a lender. It is also alleged that the consumers he engaged with were often in difficult circumstances. Mr Gopee is believed to have lent in excess of £1 million over the last four years, whilst neither in possession of a consumer credit licence from the OFT, or equivalent authorisation by the FCA.

Carrying out unauthorised business is an offence punishable by terms of up to two years imprisonment or a fine or both.

<https://www.fca.org.uk/news/press-releases/fca-takes-first-criminal-action-against-individual-acting-unlicensed-consumer>

HSBC voluntarily agrees to provide approximately £4m redress for historical debt collection practices – January 2017

HSBC has voluntarily agreed to set up a redress scheme for customers who may have paid an unreasonable debt collection charge imposed by HFC Bank Ltd (HFC) and John Lewis Financial Services Limited (JLFS), both of which are now part of HSBC Bank Plc.

Between 2003 and 2009, customers of HFC and JLFS who fell into arrears were referred to the firms' nominated solicitors. On referral, HFC and JLFS levied a charge to the account representing 16.4% of the balance as a "debt collection charge". The flat rate charge was identified as unreasonable by the Office of Fair Trading in 2010, as it did not reflect the actual and necessary costs of collecting the debt.

The FCA has conducted a thorough review of the allegations and has been able to establish that approximately 6,700 customer accounts, the vast majority belonging to HFC customers, paid the debt collection charge prior to 2010 are potentially entitled to redress. HSBC agreed their methodology for calculating the actual and necessary cost with the FCA.

<https://www.fca.org.uk/news/press-releases/hsbc-voluntarily-agrees-provide-approximately-4m-redress-historical-debt>