



Enforcement Focus



April 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 7947 4136

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 other-wise 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 a number of market abuse enforcement actions which we have included below.

BoNY London Branch (April 2015) – Fine for client asset failings

<http://www.fca.org.uk/your-fca/documents/final-notice/2015/bank-of-new-york-mellon-london-international>

The FCA has fined the Bank of New York Mellon London Branch £126m (reduced from £180m because they settled at an early stage of the FCA investigation) for failings to adequately record, reconcile and protect safe custody asset especially in the event of insolvency risk. This related to the credit crisis of 2007 and 2008 with the FCA stating that had the firm had insolvency issues then the risk to safe custody assets would have been significant. The FCA found that among other issues BoNY had commingled safe custody assets with firm assets and used the assets held in an omnibus account for one client to settle the trades of another client.

Paul Robson (March 2015) – Ban for trader following LIBOR fraud conviction

<http://fca.org.uk/your-fca/documents/final-notice/2015/paul-robson>

The FCA has banned Paul Robson, a former trader at Rabobank, from the UK Financial Services Industry for lacking honesty and integrity following a criminal conviction for fraud in the US. In 2014 Mr Robson pleaded guilty in the US for his role in a conspiracy to manipulate Rabobank's Yen LIBOR submission to benefit trading positions.

The ban reinforces the FCA's expectation that individuals and firms take responsibility for ensuring market integrity and reminds them of the consequences if they fall short of our standards.

Tariq Carrimjee (March 2015) – Fine for assisting in Market Abuse

<http://www.fca.org.uk/your-fca/documents/decision-notice/tariq-carrimjee>

The Upper Tribunal (Tribunal) upheld the FCA's decision to impose a penalty of £89,004. Mr Carrimjee, an investment and fund manager, held senior positions at Somerset Asset Management LLP ("Somerset") at the relevant time and was responsible for compliance oversight. The Tribunal found that Mr Carrimjee failed to act with due skill, care and diligence in failing to escalate the risk that his client, Rameshkumar Goenka, might have been intending to engage in market manipulation, and that this risk should have been apparent to Carrimjee. In November 2011 Mr Goenka was fined US\$9.6 (approximately £6 million) for market abuse.

Mr Davis, the senior partner and compliance officer at Paul E Schweder Miller & Co and Vandana Parikh, the broker at the same firm who executed the trades, were fined £70,258 and £45,673 in July 2012 and August 2013, respectively. The FCA concluded that Mr Parikh failed to act with due skill, care and diligence by explaining the process of manipulation to Mr Goenka without recognising the risk that this posed and without proper challenge or enquiry as to his intentions.

Paul Coyle (March 2015) – Prison Sentence for Insider Dealing

<http://www.fca.org.uk/news/former-group-treasurer-and-head-of-tax-at-morrisons-plc-sentenced>

In a case brought by the FCA Paul Coyle, the former Group Treasurer and Head of Tax at Wm Morrison Supermarkets plc, has pleaded guilty to two counts of insider dealing and has been sentenced to 12 months imprisonment. He was ordered to pay £15,000 towards prosecution costs and a confiscation order in the sum of £203,234.

Between 24 January and 17 May 2013 Mr Coyle, through his role at Morrisons, was regularly privy to confidential price sensitive information about Morrisons' ongoing talks regarding a proposed joint venture with Ocado Group plc. Coyle took advantage of this information by trading in Ocado shares using two online accounts which were in the name of his partner.

In the FCA's view, Mr Coyle committed a serious breach of trust by using the confidential price sensitive information he received as part of his role at Morrisons for his own personal gain. The FCA view that abuse of inside information in this way undermines the integrity of the UK financial markets. This action demonstrates how committed the FCA are to prosecuting insider dealing to ensure our markets remain a 'level playing field' for all participants.

Ryan Wilmot (March 2015) – Guilty Plea for insider Dealing

<http://www.fca.org.uk/news/former-logica-plc-manager-pleads-guilty-to-insider-dealing>

In a case brought by the FCA, Ryan Willmott, formerly Group reporting and Financial Planning Manager for Logica PLC, pleaded guilty to three instances of insider dealing. Profits from the related dealing exceeded £30,000. He will be sentenced on 26 March.

Mr Willmott admitted dealing on the basis of inside information he obtained during the course of his employment relating to the takeover of Logica PLC by CGI Group, as publicly announced on 31 May 2012. Willmott set up a trading account in the name of a former girlfriend, without her knowledge, to carry out the trading. He also admitted disclosing inside information to a family friend, who then went on to deal on behalf of Willmott and himself.

This action demonstrates that the FCA will not stand by when people take part in opportunistic 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.

Aviva Investors Global Services Limited – Fine for failing to manage Conflicts of Interest Fairly

<http://www.fca.org.uk/static/documents/final-notice/aviva-investors.pdf>

The FCA have fined Aviva Investors Global Services £17.6m for systems and controls failings that meant it failed to manage its conflicts of interest fairly.

From 20 August 2005 to 30 June 2013, Aviva Investors employed a side-by-side management strategy on certain desks within its fixed income area where funds that paid differing levels of performance fees were managed by the same desk. A proportion of these performance fees were paid to traders in Aviva Investors fixed income area who managed funds on a side-by-side basis.

The FCA says this type of incentive structure created conflicts of interest as these traders had an incentive to favour one fund over another. It found significant weaknesses in Aviva Investors' risk management framework and the systems and controls that operated in the fixed income arena. The FCA says the weakness in systems and processes meant traders could delay recording the allocation of executed trades for several hours. This meant that traders who managed funds on a side-by-side basis could allocate trades that benefitted from favourable intraday price movements to one fund and trades that did not to other funds. This is an abusive 'cherry picking' practice. In May 2013, Aviva Investors found evidence to suggest that two former fixed income traders had been delaying the booking of, and improperly allocating, trades which led to compensation of £132,000,000 being paid to ensure that none of the funds Aviva Investors managed was adversely impacted.

Ensuring that conflicts of interest are properly managed is central to the relationship of trust between asset managers and their customers. This case serves as an important reminder to firms of the importance of managing conflicts of interest effectively by implementing a robust control environment with effective systems to manage the risks. Not doing so risks customers' interests being overlooked in favour of commercial or personal interests.

Phillip Boakes (March 2015) - Imprisonment for defrauding Investors

<http://www.fca.org.uk/news/phillip-boakes-sentenced-following-fca-prosecution>

Phillip Boakes, who defrauded investors of more than £3.5 million, was sentenced to 10 years in jail.

Mr **Boakes**, who ran CurrencyTrader Ltd, a company engaged in Forex spread betting, lured investors by using false instruments and taking deposits without having the proper authorisation. In running a typical Ponzi scheme, Mr Boakes funded the returns of existing investors via the deposits of the new ones. At the same time, he promised guaranteed returns at a rather high rate of 20%.

A big part of the sum misappropriated was used by Mr Boakes to finance his luxurious lifestyle. An investigation found he had spent £1.3 million on cars and holidays abroad.

He used various means to disguise his fraudulent activities, including presenting himself as an FCA approved Independent Financial Adviser and a very successful trader. The FCA found that Mr Boakes' trading was loss-making: of the total £2.1 million traded by him, nearly £1 million was lost.

The defendant pleaded guilty to several counts, including two counts of fraudulent trading and three counts of using a forged instrument. Last year he had already admitted his guilt for accepting deposits without authorisation.

Mr Boakes was sentenced to four years for the first count of fraudulent trading and six years for the second count of fraudulent trading to run consecutively. He was sentenced to four years for each of the three offences of using false instruments and to one year for accepting deposits without FCA authorisation. The total is 10 years, as some of the sentences will run concurrently.

This is the longest total sentence imposed as a result of any FCA probe so far and demonstrates the FCA will not hesitate to take the strongest action to ensure that consumers are protected and individuals are held to account for actions that undermine the integrity of the financial services industry.

Sam Kenny (March 2015) - Fine and Ban for Pressure selling and dishonesty

<http://fca.org.uk/your-fca/documents/final-notice/2015/sam-thomas-kenny>

The former chief executive of Gracechurch Investments Limited, Sam Kenny has been banned from working in the financial services industry and fined £450,000.

Gracechurch, a now dissolved stock broking firm, was guilty of a host of infractions. The FCA found Mr Kenny had used pressure selling techniques and Gracechurch had routinely sold risky stocks through misrepresentation and unsuitable advice.

The FCA said Kenny had withheld from the regulator a non-compliant sales call recording it had requested and led Gracechurch's lawyers to provide the FCA with false dates of meetings of one of the broker's committees.

Between April 2008 and 2009 Gracechurch advised up to 340 clients to buy £4m of shares in small capitalised companies. A review of broker calls showed brokers harassing clients until they bought shares.

As CEO, Mr Kenny has been held to account for Gracechurch's mis-selling and the lack of integrity in his dealings with the FCA. This significant fine and ban sends a strong message to those who run financial services firms, that they will be made to answer for misconduct and that the FCA will take particularly seriously attempts to cover up misconduct by trying to mislead it with false information.

Stephen Bell (March 2015) – Fine and Prohibition from performing Compliance Oversight

<http://www.fca.org.uk/your-fca/documents/final-notice/2015/stephen-edward-bell>

The FCA fined former compliance director Stephen Bell £33,800 for systemic weaknesses in the design and execution of network Financial Group's (the Group's) compliance systems and controls. The FCA has also banned Mr Bell from performing the compliance oversight function.

The main transgression related to the lack of controls over the recruitment training, monitoring and control of its ARs and CF30s and the firm's compliance and file checking processes which did not adequately identify and assess risks. Mr Bell was responsible for compliance oversight generally and had knowledge of and responsibility for the design and implementation of the controls at the firm.

This action shows that a compliance director of a network has an important role in terms of ensuring that systems and controls across the network are focussed on minimising the risk of mis-selling and the provision of unsuitable advice to consumers. The network model is undermined if the senior managers of the principle firm do not carry out their responsibilities.