



Enforcement Focus



December 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>

Two plead guilty to the insider dealing of Logica shares – November 2016

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

A former business analyst at Logica Plc (“Logica”), Manjeet Mohal, and his neighbour, Reshim Birk, have pleaded guilty to three counts of insider dealing.

Whilst employed at Logica, Mr Mohal, who the FCA describe as a “trusted member” of Logica’s management team, received inside information regarding the proposed takeover of Logica by CGI Holdings. He later illegally disclosed that inside information to his neighbour, Reshim Birk, who used the inside information to front run the market by purchasing shares and options in Logica two days before a public announcement was made regarding the takeover. He made in excess of £100,000 profit as a result of that insider trading.

Both are due to be sentenced on the 13th January 2017.

Former Equity Portfolio Manager at BlackRock found guilty of insider dealing – November 2016

<https://www.fca.org.uk/news/press-releases/mark-lyttleton-pleads-guilty-insider-dealing>

Mark Lyttleton, a former Equity Portfolio Manager at BlackRock, has pleaded guilty to two counts of insider dealing.

In his role at Blackrock, Mr Lyttleton was able to discover non-public information either by working on the deals concerning the stocks or being party to conversations conducted by colleagues. He used this information to trade in the securities of EnCore Oil and Cairn Energy before any public announcement was made about the stocks concerned. The trading was conducted by Mr Lyttleton through an overseas asset manager trading on behalf of a Panamanian registered company.

Mr Lyttleton is due to be sentenced this month and now faces up to seven years in prison.

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.

The FCA fine and ban Chief Executive for providing unsuitable advice to customers – December 2016

<https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notice-against-alistair-burns-deciding-ban-him-and-fine>

Alistair Burns, Chief Executive at TailorMade Independent Limited (TMI), has been prohibited from performing any senior management or significant influence function and fined £233,600 for failing to ensure that TMI provided suitable advice to its clients. He also failed to disclose his own personal conflicts of interest and the conflicts of interest relating to other individuals at TMI.

Between January 2010 and January 2013, TMI provided advice to customers who were considering transferring or switching their existing pension funds via self-invested personal pensions (SIPPs) into unregulated investments in green oil, biofuels, farmland and overseas property. In the FCA's view, the personal recommendations process used to advise customers was inadequate. The process failed to take into account a customer's individual circumstances, demands and needs and thus resulted in large losses.

Mr Burns also received "significant financial benefit" from his positions as both a director and shareholder of an unregulated introducer operating under the Tailormade name, which referred clients to the firm. As such, he received advice fees from the clients as well as commission paid to the introducer which created a conflict of interest that was not managed or disclosed to clients.

As of September 2016 the Financial Services Compensation Scheme has upheld 919 claims of unsuitable advice against TMI, with compensation of over £40 million paid to date.

Mr Burns has referred the FCA decision to the Upper Tribunal.

FCA prohibits six individuals for their part in operating an unauthorised collective investment scheme – November 2016

<https://www.fca.org.uk/news/press-releases/fca-prohibits-six-individuals-unauthorised-collective-investment>

Scott Crawley, Daniel Forsyth, Adam Hawkins, Ross Peters, Aaron Petrou and Dale Walker have all been prohibited from performing any function in relation to any regulated activity for their parts in the operation of an unauthorised collective investment scheme. Between them, these individuals were convicted of offences including:

- breaching, or aiding and abetting the breach of, the general prohibition (the carrying on or purported carrying on of a regulated activity without authorisation or exemption);
- possessing criminal property;
- conspiracy to defraud; and
- providing information knowing it to be false or misleading.

The unauthorised scheme, which attempted to purchase land at a vastly inflated price on the false promise of substantial profit, resulted in 110 investors losing £4.3m.

The individuals who operated the scheme received sentences totalling more than 30 years between them.

The FCA charges sixth defendant in alleged investment fraud – November 2016

<https://www.fca.org.uk/news/press-releases/fca-charges-sixth-defendant-alleged-investment-fraud>

Following an investigation by the FCA, Charanjit Sandhu has been charged with conspiracy to defraud, together with other offences for his role in a boiler room fraud.

The FCA had already charged five others in relation to the same scheme following a probe in to four alleged boiler room operations based in London's Docklands. The fraudsters promoted the sale of shares, promising high returns that in reality, were either worthless or non-existent.

It is estimated that a total of 175 investors may have lost £2.75 million.

The FCA bans two individuals from the financial services industry – October 2016

<https://www.fca.org.uk/news/press-releases/fca-bans-two-individuals-financial-services-industry>

In 2014 Richard Clay and Kathryn Clark pleaded guilty to a number of dishonesty offences in a case brought against them by the Serious Fraud Office.

FCA have taken action, banning both from performing any function in relation to any regulated activity in the financial services industry.

The offences related primarily to investments in an unregulated property investment scheme called "Arck" made through HD Administrators LLP, where Ms Clark was an approved person. Arck used independent financial advisers to market unregulated property development investments, offering very high returns with no risk to capital which Arck knew to be misleading. The scheme involved approximately 700 investors and a total of £45m of investors' money, many of whom saw little or no returns.

Mr Clay was sentenced to 10 years and 10 months' imprisonment and Ms Clark was sentenced to 2 years' imprisonment, suspended for 2 years.