



Enforcement Focus



January 2019

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 recent market abuse enforcement actions taken by the FCA. 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>

There have been no recent market abuse enforcement actions taken by the FCA.

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.

Mark Starling sentenced to 5 years' imprisonment in FCA prosecution of £3m investment fraud

Mark Starling, with the trust of his friends and acquaintances, persuaded them to invest a total of £3m in a number of funds and described himself as a proprietary futures trader. Over a period of 9 years between 2008 and 2017, Mr Starling purported to run investment funds, he traded just £8,000 of the £3 million invested with him and made a loss of £2,450. On the upside of the loss, Mr Starling continued to maintain his own lavish lifestyle and managed to spend over £1 million.

Mr Starling was never authorised by the FCA to carry out any regulated activity. He would pay investors monetary amounts to give the impression of actively running a successful investment business when in fact the payments were taken from other investors funds. Mr Starling forged documents and correspondence from brokerages and bank statements and created fictitious brokerage companies by registering web domain names and email addresses.

The judge said that Mr Starling had defrauded investors in an 'appalling way' and that he repeatedly told his victims 'a pack of lies'. Mr Starling's forgeries were so 'sophisticated' and the whole scheme demonstrated the way that he had 'abused a position of trust'.

Mark Steward the Executive Director of Enforcement and Market Oversight at the FCA, said:

'Mr Starling was never authorised to carry on business as an investment manager or as a futures trader. His sophisticated and dishonest masquerade has caused substantial losses to innocent investors. The FCA is committed to ensuring that criminals who operate unauthorised investment schemes are brought to justice and our quick action here has prevented the losses from becoming much worse.'

There was a total of 24 clients that invested in the funds, 17 of which lost around £1.8 million. The FCA commenced confiscation proceedings against Mr Starling which will give the victims limited compensation in hope of paying back their losses.

<https://www.fca.org.uk/news/press-releases/mark-starling-sentenced-5-years-imprisonment-fca-prosecution-3-million-investment-fraud>

Decision Notice against former CEO of Sonali Bank (UK) Ltd for AML failings

The FCA have published a Decision Notice in respect of Mohammad Aatur Rahman Prodhan (“Mr Prodhan”) who was the former Chief Executive Officer of Sonali Bank (UK) Limited (“SBUK”). Mr Prodhan was the senior manager at SBUK and was fined a total of £76,400 for acting without due skill, care and diligence and of its failure to meet the obligations to maintain their anti-money laundering systems.

Mr Prodhan has referred the Decision Notice to the Tribunal where he and the FCA will be able to present their case. The Tribunal will consider all the facts and will determine whether the fine was proportionate and what appropriate action, if any, the FCA should take.

In the FCA’s view, between 7th June 2012 and 4th March 2014, Mr Prodhan failed to oversee the responsibility for the maintenance of SBUK’s AML systems and controls. The FCA believe that Mr Prodham failed to ensure that risks were identified, documented and lacked evidence of being mitigated.

Mr Prodhan must ensure that sufficient focus is given to AML systems and controls within SBUK and that there is a clear allocation of responsibilities to oversee SBUK’s branches, and appropriately oversee, manage and adequately resource SBUK’s Money Laundering Reporting Officer (MLRO) function. The FCA believe that Mr Prodham failed to do so and as a result of the above, the FCA believe that the importance of Anti money laundering was not reflected to SBUK Operational staff which led to failures in SBUK’s Systems and controls throughout the business.

The case is currently with the Tribunal for consideration.

<https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notice-against-former-ceo-sonali-bank>

FCA bans Angela Burns from acting as a non-executive director and fines her for her failure to declare conflicts of interest

The FCA has prohibited Angela Burns from performing the CF2 – Non-Executive Director and fined her £20,000 for failing to act with integrity at two mutual societies.

From 2009 until May 2011, Ms Burns was a NED at two mutual societies and the chair of their investment committees. As an experienced UK professional and the chief executive for her own investment consultancy, both societies were seeking investment manager services and looked to Ms Burns for impartial advice and guidance.

Ms Burns did not disclose a conflict of interest when she had participated in discussions with Vanguard Assessment Management Limited at both mutual societies, whilst simultaneously seeking consultancy work from Vanguard.

Mark Steward, Executive Director of Enforcement and Market Oversight of the FCA, said:

‘Directors have a duty to disclose or avoid conflicts of interest so they can be addressed by the board. In this case, Ms Burns placed herself in a position where her duty as a non-executive director may have conflicted with concurrent opportunities she was pursuing. This was neither disclosed nor, as a consequence, could it be addressed by the board. This was inappropriate and inconsistent with the standards of integrity expected from senior managers’.

Ms Burns breached Statement of Principle 1 which requires approved persons to act with integrity in carrying out their controlled functions.

<https://www.fca.org.uk/news/press-releases/fca-bans-angela-burns-acting-non-executive-director-fines-failure-declare-conflicts-interest>

Manraj Virdee pleads guilty to illegally operating an investment scheme and fraud

Manraj Virdee has pleaded guilty to four charges of the illegal operation of an authorised investment scheme, misleading consumers and two counts of fraud. The FCA believe that, between October 2015 and November 2017, Mr Virdee promoted a deposit taking scheme, through a company called Dynamic UK Trades Ltd and marketed as an investment package without any authorisation from the FCA.

The FCA believe that Mr Virdee received around £600,00 in investment funds by misleading investors. The hearing was adjourned till the 7 January 2019.

<https://www.fca.org.uk/news/press-releases/manraj-virdee-pleads-guilty-illegally-operating-investment-scheme-and-fraud>

Darren Newton banned from working in the financial services sector

The FCA have banned Darren Newton from working in the financial services for using customers' money to purchase issued shares of a debt recovery firm.

Mr Newton funded the purchase of the debt recovery management firm, First Step Finance Limited with client money from the firm rather than his own funds. He allowed £322,500 to be transferred from the First Step accounts knowing that these monies were not to be used by First Step for any purpose other than paying customers' creditors or for the repayment to the customers.

Mr Newton used client money at a time when First Step had a significant shortfall in its accounts of over £6 million and went into administration on the 28 May 2014 with a shortfall of £7,156,036 from over 4,000 customers. Customers are unable to recover compensation from the Financial Services Compensation Scheme.

As a result, the FCA believe that this showed a serious lack of honesty and integrity and has decided that Mr Newton is not a fit and proper person.

Mark Steward, Executive Director of Enforcement at the FCA, said:

'Mr Newton blatantly used customers' money to fund the purchase of First Step from Christine Whitehurst. This was dishonest and showed a complete lack of integrity. First Step was meant to help people manage their debts, but Mr Newton's actions put them one step backwards and in a worse position than before.'

'He is not a fit and proper person and poses a serious risk to consumers. This is the strongest action we can take and will prevent him from operating in financial services again.'

<https://www.fca.org.uk/news/press-releases/darren-newton-banned-working-financial-services-sector>

Santander UK Plc (Santander) fined £32.8m for serious failings in its probate and bereavement process

Santander have been fined £32,817,800 by the Financial Conduct Authority (FCA) for failing to process the accounts and investments of deceased customers. Funds totalling over £183m should have been transferred to beneficiaries directly affecting 40,428 customers. Issues with probate and the bereavement process were not disclosed to the FCA in a timely manner after they were identified which as a result made the issues difficult to fix.

The FCA found that weaknesses in Santander's probate and bereavement process meant that it was made difficult to identify all funds held in a deceased customers estate, they also failed to follow up communications with representatives and managed poor monitoring of the progress of open cases and whether they had been closed. This led to cases being stalled and incomplete, funds not being transferred efficiently, in timely manner, and not being transferred to those who were entitled to them. In some cases, funds were being held by Santander for many years, preventing it from being available to beneficiaries.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said:

'These failings took too long to be identified and then far too long to be fixed. To the firm's credit, once these problems were notified to the board and senior management, they were fixed properly and promptly. But recognition of the problem took too long. Firms must be able to identify and respond to problems more quickly especially when they are causing harm to customers. The FCA will continue to be on the lookout for firms with poor systems and controls and will take action to deter such failings to ensure customers are properly protected.'

Santander breached Principle 3 and Principle 6 between 1 January 2013 and 11 July 2016 by failing to take reasonable care to organise and control its probate and bereavement process responsibly and effectively, with adequate risk management systems, and by failing to treat its customers and those who represented them on their death fairly.

In addition, Santander was selective with the information that they provided to the FCA, failing to provide the nature and extent of the issues and the number of customers and assets that were affected. The period was between 26 November 2013 to 1 May 2015 and as a result, Santander breached Principle 11.

Santander has since carried out remediation exercises and transferred funds from affected accounts to beneficiaries which are almost complete. Santander has also paid beneficiaries interest on the funds to compensate for the delay in receiving the funds.

<https://www.fca.org.uk/news/press-releases/santander-uk-plc-fined-serious-failings-its-probate-and-bereavement-process>

Final Notices issued for executives of Keydata imposing record fines

The FCA has issued the highest fine ever imposed on an individual to Stewart Ford of £76m. Mark Owen was charged £3.2m. Both were senior managers of Keydata which produced and distributed structured products to retail consumers. Mr Ford had personally extracted fees totalling £73m from the structured products, and Mr Owen had received over £2.5m in undisclosed commissions.

The Final Decision Notice for Stewart Owen Ford refers to breaches by an executive director of APER 1, APER 4 and FIT related to mis-selling, failing to be open and co-operative, a lack of fitness/propriety, conflicts of interest, and failing to act on information appropriately in the asset management sector. The FCA has imposed a fine and prohibition.

The Final Notice issued for Mark John Owen refers to breaches by an executive director of APER 1, APER 4 and FIT related to a lack of fitness/propriety and failing to act on information appropriately in the asset management sector. Similarly, the FCA has imposed a fine and prohibition.

<https://www.fca.org.uk/publication/final-notices/stewart-owen-ford-2019.pdf>

<https://www.fca.org.uk/publication/final-notices/mark-john-owen-2019.pdf>