Enforcement Focus

February 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 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 November, there have been no relevant market abuse enforcement actions. There are a number of actions outstanding that 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

There were no findings to report in this period.

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.

Ponzi Scheme - perpetrator's sentence upheld – November 2015

http://www.fca.org.uk/news/fca-bans-phillip-harold-boakes-and-sentence-of-10-years-upheld

This article is an update to our April 2015 Enforcement Focus bulletin.

Phillip Boakes ran a scam through his company CurrencyTrader Ltd, which claimed to carry out foreign exchange spread betting for its customers. The scam encouraged people to invest on the promise of guaranteed annual returns of 20% or more. In reality, Mr Boakes was not authorised by the FCA to accept deposits and the pledge of guaranteed returns was a sham. The 'returns' were funded from the deposit itself or from funds received from new investors.

When the scheme collapsed, investors lost over £2.5 million. £1.3 million was spent by Mr Boakes to fund his luxurious lifestyle. At his trial in March 2015, Mr Boakes admitted that between October 2002 and January 2013 he failed to trade investors' money as promised, lied about the value of funds and the returns they would generate, used client funds for his own benefit and forged documents to support the fraud.

The Court of Appeal upheld the 10-year sentence given to him. In addition to his convictions, the FCA has also taken confiscation proceedings against Mr Boakes and a Confiscation Order for the sum of £165,731 has been made. If Mr Boakes does not pay the confiscation order on time, he is liable to spend a further two years in jail.

Due diligence and AML failings - FCA fine Barclays £72 million for financial crime risk failings – November 2015

http://www.fca.org.uk/news/fca-fines-barclays-72-million-for-poor-handling-of-financial-crime-risks

The failings relate to a single transaction that Barclays arranged and executed in 2011/12 for ultra-high net worth clients who were Politically Exposed Persons ("PEP"). The £1.18 billion transaction involved investments in notes backed by underlying warrants and third party bonds. It was the largest Barclays had ever executed for individuals.

The nature of the transaction and the fact that the clients were PEPs indicated a higher level of financial crime risk. Rather than carrying out a higher level of due diligence, Barclays did the opposite, carrying out less due diligence than it would normally do for lower risk business relationships, so as not to inconvenience the clients who were Ultra HNWI and to speed up the process.

Barclays went to unacceptable lengths to accommodate the clients, agreeing to keep details of the transaction strictly confidential. Few people knew of the existence and location of the firm's due diligence records which were kept in hard copy and not on Barclays' systems.

The fine of £72m imposed on Barclays for not following its anti-financial crime procedures comprised repayment of the £52.3 million Barclays earned in fees on the deal and the remainder being a penalty imposed by FCA. This is the largest fine that has been imposed by the FCA and its predecessor the FSA for financial crime failings.

There was no findings by the FCA that financial crime was involved or facilitated by Barclays in the transaction itself.

Governance failings - CEO of ex-regulated firms Financial Limited and Investments Limited refers decision notice to the Upper Tribunal - December 2015

http://www.fca.org.uk/news/ceo-case-referred-upper-tribunal

Charles Palmer was the CEO and majority shareholder of Standard Financial Group Ltd, a holding company that owned authorised firms Financial Limited and Investments Limited ("the Firms"). Mr Palmer was a director of both Firms making him de facto CEO of these firms too. Both Firms are now in liquidation.

Mr Palmer was the primary controlling influence of the Firms and was responsible for developing and maintaining the Firms' business model and, together with other members of the Firms' senior management, for how that business model was implemented in practice, paid due regard to the fair treatment of customers and for oversight of the general management and conduct of the Firms.

The business model allowed appointed reps and individual advisers of the Firms to be afforded a high level of flexibility and freedom as to how they could operate within the adviser network. This business model thereby increased the risk to underlying customers of being given unsuitable advice or being sold unsuitable investments.

The FCA's view is that Mr Palmer had failed to take adequate steps to ensure that the risks which arose from the business model were being effectively managed, controlled or were understood. Furthermore, Mr Palmer failed to take adequate steps to ensure that the Firms put in place an appropriate control framework or an appropriate risk management framework and that he allowed selling practices that were not fit for purpose.

The FCA considered his failings particularly serious as he had been subject to FSA Enforcement action in 2010 where he was found to have been in breach of Statements of Principle 5 and 7 of the Approved Persons Handbook in performing the CF1 and CF8 roles at Financial Limited. Mr Palmer disputes the FCA's findings and has referred the matter to the Tribunal.

In a separate decision the FCA has fined former risk management director at the group, Ms Paivi Katriina Grigg, £14,807 for failing to ensure the network's risk management framework was adequate to mitigate risks to the group's customers.

Control failings - Threadneedle Asset Management Limited ("Threadneedle") fined £6 million – December 2015

http://www.fca.org.uk/news/fca-fines-threadneedle-asset-management-limited-%C2%A36m

The FCA wrote to Threadneedle in April 2011 following an ARROW visit raising concerns over a number of errors in the firm's fixed income area and fund managers initiating, booking and executing their own trades. Threadneedle responded in June 2011 saying it had appointed individuals to take over all aspects of dealing on their Emerging Markets and High Yield desks. This turned out to be an overstatement as fund managers on these desks continued to initiate, execute and book their own trades.

One month after Threadneedle submitted its response to FCA, a fund manager on the Emerging Markets Debt desk initiated, executed and booked a US$150 million trade at four times its market value. The fund manager did not have the authority to make the trade. Threadneedle's outsourced back office identified the problem and did not settle the trade, which, had it settled, could have caused a US$110 million loss to the relevant client funds.

The FCA has fined Threadneedle for failing to put in place adequate controls in the fixed income area of its front office (breach of Principle 3 – Management and control) and for providing inaccurate information to the regulator and for failing to correct the inaccurate representation for four months (breach of Principle 11 – Relations with regulators).

Senior management failings - HBOS failure – FCA and PRA announce investigations into HBOS Senior Managers—January 2016

http://www.fca.org.uk/news/fca-and-pra-investigations-into-hbos-senior-managers

Following the failure of HBOS in October 2008, the long running review as to why it happened concluded that ultimate responsibility for the failure of HBOS rests with the Board and senior management for failing to set appropriate strategy for the firm's business and failing to challenge a flawed business model which placed inappropriate reliance on continuous growth without due regard to risks involved.

In addition, flaws in the FSA's supervisory approach meant it did not appreciate the full extent of the risks HBOS was running and was not in a position to intervene before it was too late.

As part of the review, Andrew Green QC was asked to provide an independent assessment of whether the decisions taken on enforcement by the FSA, were reasonable. In his report published in November 2015, he recommended that the PRA and FCA should now consider whether any former senior managers of HBOS should be the subject of an enforcement investigation with a view to prohibition proceedings.

The FCA and PRA have decided to start investigations into certain former HBOS senior managers to determine whether or not any prohibition proceedings should be commenced against them.

Openness with the regulator - Former Head of JP Morgan fined for failing to be open and cooperative with the FCA—February 2016

http://www.fca.org.uk/news/former-jp-morgan-cio-international-head-fined

Achilles Macris, former Head of CIO International for JP Morgan Chase Bank, N.A., was responsible for a number of portfolios, including a synthetic credit portfolio ("the portfolio"). The portfolio started to make heavy losses at the start of 2012. On 23 March 2012, the front office was instructed not to execute any further trades on the portfolio. Mr Macris asked to be provided with daily risk reports and instigated a daily progress meeting with CIO Risk and the front office. Despite these measures, the portfolio continued to lose money.

Five days later Mr Macris attended a meeting with the FCA where the portfolio was discussed. Mr Macris did not take the opportunity to inform the FCA the full extent of the problems with the portfolio (for example, that a risk limit had been breached or of the measures he had taken above). The FCA were told that the portfolio had experienced rebalancing problems but this been rectified.

The size of the portfolio's positions was capturing the attention of the press and other market participants. On 10 April 2012 Mr Macris took part in a telephone call with the FCA at the firm's request. Again, this gave Mr Macris an opportunity to divulge that there were causes for concern over the portfolio which he had not mentioned at the previous meeting, that several risk limits had now been breached, that the portfolio had suffered year-to-date losses of US$610mn and was likely to suffer significant losses that very same day pushing the year-to-date losses to over US$1 billion.

By failing to inform the FCA on two occasions that there were causes for concern with the portfolio, Mr Macris had failed to deal with the FCA in an open and cooperative manner, thereby breaching Statement of Principle 4. ("An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice."). Mr Macris was fined £792,900.