



Enforcement Focus



December 2017

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>

Bond trader fined £60,000 for market abuse – November 2017

Paul Walter, a former Bank of America Merrill Lynch International Limited (BAML) bond trader, has received a financial penalty of £60,090 for engaging market abuse.

Following an investigation, the FCA found that Mr Walter, an experienced trader, engaged in market abuse by providing misleading and false impressions as to supply and demand in the market for Dutch State Loans (DSL) on 12 occasions in July and August 2014.

Due to Mr Walters abusive trading he generated a profit of €22,000 to his trading book.

<https://www.fca.org.uk/news/press-releases/fca-fines-bond-trader-60k-market-abuse>

AIM Investment Company fined for failing to disclose inside information as soon as possible – December 2017

The FCA has fined Tejoori Limited £70,000 for failing to inform the market of inside information as required by Article 17(1) of the Market Abuse Regulation (MAR).

Tejoori is a self-managed closed-ended investment company whose shares were traded on AIM. In early 2016, Tejoori had two material investments, one of which was a shareholding in BEKON Holding AG (BEKON) which Tejoori valued in its financial statements at USD 3.35 million. On 12 July 2016, Tejoori was notified by BEKON about a compulsory acquisition of its shares by Eggersmann Gruppe GmbH & Co. KG (Eggersmann). The acquisition required Tejoori to sign a share purchase agreement (SPA) and to sell its BEKON shares to Eggersmann for no initial consideration and with only a possibility of receiving deferred consideration that was materially lower than the value of Tejoori's investment in BEKON.

The information about the sale to Eggersmann was inside information and, under MAR, Tejoori was required to disclose the information as soon as possible, which did not happen.

BEKON and Eggersmann issued press releases re the acquisition which made no reference to Tejoori, so the market was unaware of the terms including the consideration paid to Tejoori. This led to speculation about the amount paid to Tejoori and its share price rose 38% over two days (22nd/23rd August). Once Tejoori finally released its announcement on 24th August that it had sold its BEKON shares for no initial consideration and that it was unable to assess, at that time, whether it would receive any future consideration, its share price closed 13% down.

This is the first fine the FCA has imposed on an AIM company for late disclosure following the introduction of MAR on 3 July 2016.

<https://www.fca.org.uk/news/press-releases/aim-investment-company-fined-failing-disclose-inside-information-soon-possible>

Effective Compliance with the Market Abuse Regulation Speech – December 2017

FCA published a speech delivered by Julia Hoggett, Director of Market Oversight at the FCA, at the 'Recent Developments in the Market Abuse Regime' conference. The speech focused on effective compliance with the Market Abuse Regulation.

The main points highlighted were:

- effective oversight and compliance cannot and should not stay still;
- the manner in which the FCA is set up to surveil the markets today is very different from the structure several years ago, and will continue to evolve;
- market abuse impacts the smooth operation of the markets by adding cost or reducing returns for participants and ultimately eroding trust in the UK markets; and
- trust is essential in any society and necessary to ensure markets function well and efficiently.

<https://www.fca.org.uk/news/speeches/effective-compliance-market-abuse-regulation-a-state-of-mind>

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 urges public to speak out against fraudulent investment schemes – October 2017

The FCA is encouraging people to get in touch if they think they're victims of fraudulent investment schemes. Research shows more than a fifth (22%) of over 55's surveyed who suspect they have been contacted about a fraudulent investment in the last 3 years did not tell anyone about it.

Last year the FCA received over 8,000 reports of potential scams with Londoners reporting the leading number of complaints. Research shows people are more likely to report fly-tipping than investment scams.

<https://www.fca.org.uk/news/press-releases/speak-out-against-fraudulent-investments>

FCA fines Merrill Lynch £34.5 million for failing to report transactions – October 2017

Merrill Lynch International (MLI) has been fined for failing to report 68.5 million exchange traded derivative transactions between 12 February 2014 and 6 February 2016.

This is the first enforcement action taken against a firm for failing to report details of trading in exchange traded derivatives, under the European Markets Infrastructure Regulation (EMIR). This reflects the importance of ensuring people report these transactions to help authorities assess and address the risk inherent in financial systems caused by lack of transparency.

<https://www.fca.org.uk/news/press-releases/fca-fines-merrill-lynch-failing-report-transactions>

Rio Tinto Plc fined £27m for breaching Disclosure and Transparency Rules – October 2017

FCA found that Rio Tinto breached the Disclosure Rules by failing to carry out an impairment test and to recognise an impairment loss on the value of mining assets based in the Republic of Mozambique which it acquired in August 2011 for US\$3.7 billion when publishing its 2012 interim results.

Had Rio Tinto complied with its obligation to carry out the test, a material impairment would have been required to have been disclosed at the time of its 2012 half year financial reporting. Rio Tinto's financial reporting was therefore inaccurate and misleading.

Reflecting the size of the company, this is the largest fine imposed to date by the FCA for a breach of rules relating to a firm's official listing and serves as a reminder how important high standards of disclosure and transparency are to ensuring markets function fairly and effectively.

<https://www.fca.org.uk/news/press-releases/rio-tinto-plc-fined-%C2%A327m-breaching-disclosure-and-transparency-rules>

FCA bans debt management couple for misappropriating client money – October 2017

Adrian and Christine Whitehurst, former directors of First Step Finance Limited (now dissolved) have been banned by the FCA for dishonestly misappropriating client money. Over 400 clients lost a total of more than £6m because of their actions.

First Step's clients were largely vulnerable individuals who went to the firm for help to pay off their debts. First Step received monthly payments from their customers, who were told that the money would be held in a ring-fenced account, when in fact it was used to fund their luxurious lifestyle and over £3.2m of client money was used for the benefit of other firms associated with the Whitehurst's and to fund First Step's expenses.

<https://www.fca.org.uk/news/press-releases/fca-bans-debt-management-couple-misappropriating-client-money>

FCA publicly censures Capita Financial Managers Limited (CFM), who will pay up to £66 million to investors – November 2017

From March 2008 to September 2009, CFM was the Operator of the Guaranteed Low Risk Income Fund, Series 1, an unregulated collective investment scheme providing short term bridging finance to commercial operators in the UK property market.

CFM failed to conduct adequate due diligence on the Fund prior to taking it on and failed fully to rectify this failure when it became aware its processes were inadequate. It also failed to adequately monitor the Fund throughout most of its tenure as Operator, address issues that arose and to ensure the Replacement Operator was fully informed about the issues which had arisen.

These failings would ordinarily have resulted in a FCA fine. However, CFM itself would not have been able to make a payment of up to £66 million for the benefit of the Fund's investors on top of a fine, hence the reason for the public censure.

<https://www.fca.org.uk/news/press-releases/capita-financial-managers-pay-66-million-benefit-investors-connaught-income-fund-series-1>

Four guilty in relation to £1.4 million investment scheme – December 2017

Samrat Bhandari and Dr Muhammad Aleem Mirza have been found guilty for their roles in operating an investment scheme which led to more than 300 investors losing a total of just over £1.4 million. Two other defendants, Michael and Paul Moore, had already admitted their guilt at an earlier hearing.

Between February 2009 and early 2014, brokers cold-called investors and mis-sold them shares in Symbiosis Healthcare Plc ("Symbiosis"), set up by Aleem Mirza, a medical doctor, to provide "healthcare solutions". Samrat Bhandari was a director of William Albert Securities Ltd ("WASL"), a UK company which acted as corporate advisors to Symbiosis and organised the selling of Symbiosis shares. Michael and Paul Moore were brokers directly involved in selling shares in Symbiosis to investors.

All four were instrumental in the systematic and prolonged misleading of investors, helping to create a wholly misleading impression as to the value and prospects of Symbiosis.

<https://www.fca.org.uk/news/press-releases/four-guilty-relation-investment-scheme>

FCA stops unlawful foreign exchange investment scheme – December 2017

Following an application by the FCA to the High Court, orders have been made against a number of individuals involved in an unauthorised foreign exchange investment scheme under the name of Noerus Investments Limited (“Noerus”) which is an unauthorised Cypriot company. The scheme raked in at least £1.2 million from 65 investors but none of the money was used to carry out FX trades or any other investment.

Noerus is purported to have unlawfully promoted, operated and managed a foreign exchange trading facility between December 2014 and November 2015, in contravention of the Financial Services and Markets Act 2000. The High Court has issued a freezing injunction against Noerus and a restitution order under which the defendants must pay back the £1.2 million, though there will most likely be a shortfall.

<https://www.fca.org.uk/news/press-releases/fca-stops-unlawful-foreign-exchange-investment-scheme>