

Code of Market Conduct Primer

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. *Misuse of information* – behaviour which is based upon information which is not generally available but which would affect an investor's decision about the terms on which to deal
4. *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
5. *Manipulating devices* - behaviour which consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;
6. *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
7. *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.
8. *Requiring or encouraging* - another person or persons to engage in behaviour which, if engaged in, would amount to market abuse

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 only been the following enforcement actions of note in areas pertinent to our clients which we have included below.

1. Rogerio Pinto (Feb 2015) – Trader lacking honesty and integrity – Form A CF30 application refused.

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

- Mr Pinto was employed by Firm X (name not disclosed by the FCA) as a trader trading options on the LIFFE.
- Mr Pinto's role was to seek buyers and sellers in the Robusta Coffee Option market and then place client orders and execute the relevant transactions. If there were clients wanting to buy and sell at a certain price, then Mr Pinto could execute a cross trade between the two clients.
- The FCA found that Mr Pinto did not execute crossing trades when he had the option to and he additionally breached other LIFFE trading procedures. He did this to maintain good client relationships and to generate personal commission and this demonstrates that Mr Pinto lacks honesty and integrity.

2. Logica PLC (Feb 2015) – Insider Dealing

<http://www.fca.org.uk/news/former-group-reporting-and-financial-planning-manager-for-logica-plc-appears-in-court>

- In line with its latest Financial Risk Outlook where the FCA have stated its intention to seek out instances of Market Abuse, Ryan Willmott has appeared before Westminster Magistrates court in respect of three offences of insider dealing. The FCA have previously secured 25 convictions of insider dealing.
- We will update with the outcome of the court case when determined.

3. LAFM Limited (Feb 2015) – Standing Data Failings

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

- The firm failed to meet its Principle 11 obligations by not telling the FCA about its new contact details and the FCA have not been able to verify the new contact details. They have cancelled the firm's permission.

4. Nineveh Advisory Limited (Jan 2015) – Investment advisory firm failing to submit returns

<http://www.fca.org.uk/static/documents/final-notice/nineveh-advisory-limited.pdf>

- The firm failed to submit its FSA029 (Balance Sheet), FSA030 (P&L) and FSA033 (Capital Adequacy) returns and when the firm was visited by the FCA to investigate these failings, they found that the firm was not organized in a way to comply with its regulatory obligations.
- The FCA has concluded that the firm did not satisfy the suitability condition to manage its affairs in a sound and prudent manner and cancelled its Permission.

5. Martins Brokers (UK) Limited (January 2015) – Significant Influence Function Failings

<http://www.fca.org.uk/news/two-former-senior-executives-of-martin-brokers-fined-and-banned>

- This case and other recent Significant Influence Function ("SIF") outcomes serves as a warning to everyone that holds a significant influence function that if a firm's misconduct can be attributed to cultural failings, then the FCA expect senior management to answer for this.

- The former chief executive (David Caplin) and former compliance officer (Jeremy Kraft) of interdealer broker Martin Brokers were fined £210,000 and £105,000 respectively and banned from holding senior roles at financial services firms for “compliance and cultural failings”.
- The FCA found that Caplin and Kraft’s failings encouraged a culture to develop at Martins “that permitted LIBOR manipulation to take place and enabled the misconduct to continue undetected over a prolonged period”. It follows a £630,000 fine paid last year by Martins for misconduct relating to the same matter.
- Georgina Philippou, the FCA’s acting director of enforcement and market oversight said, “There was a culture at Martins where revenue came first and compliance was seen as unimportant rather than an integral part of the running of the firm. Both individuals also ignored obvious risks such as the risks that brokers would give or accept inducements. This risk did crystallise when brokers at Martin’s were induced to assist in LIBOR manipulation in exchange for corrupt brokerage payments. Consequently, the integrity of the market was compromised.”
- Caplin as CEO allowed a culture to develop where brokers provided “lavish entertainment to traders in exchange for commission income”. Kraft as compliance officer did not properly oversee brokers and did not challenge Caplin on compliance matters.

6. Arch Financial Products LLP (January 2015) – Conflict of Interest Failings

<http://www.fca.org.uk/news/censure-arch-financial-products>

- This judgment is important for our clients as it is an example of action taken against firms and approved persons in relation to failures to act with integrity and manage of conflicts of interest.
- The case concerned alleged misconduct by investment management firm Arch Financial Products LLP, its CEO Robin Farrel, and Robert Addison, a senior partner and compliance officer.
- Tribunal upheld decisions of the FCA to issue a public censure against Arch Financial Products LLP (“Arch”), to prohibit Farrell and Addison from performing any role in regulated financial services, and to impose penalties of £650,000 and £200,000 on Farrell and Addison respectively. Tribunal also upheld FCA decision that it would have fined Arch £9 million for its misconduct, were it not for the firm’s financial position.
- Main issue revolved around Mr Farrell and Mr Addison being reckless as to whether they had managed the conflicts of interest in four specific transactions fairly, and so lacked integrity, and that they failed to ensure that Arch adequately identified and took appropriate steps to mitigate and record the conflicts of interest in its business.
- The Tribunal found further deficiencies in how Arch segregated and controlled its access to, and use of, non-public information in its business, and further failures by Arch and Mr Addison in relation to Arch’s compliance monitoring procedures.

7. Jonathan Burrows (December 2014) – Approved Person – fit and proper failings

<http://www.fca.org.uk/static/documents/final-notice/jonathan-paul-burrows.pdf>

- This is a prime example of a very senior individual within the financial services sector being fined and banned from being an approved person again for not acting in an honest way and with integrity.
- Mr Burrows was a Managing Director at Blackrock Asset Management Investor Services Limited and was an Approved Person. He travelled to London from his home in East Sussex by train. Rather than buying a £21 train ticket, he would touch his Oyster card on his exit at London Cannon Street but not when he entered his home station which didn’t have barriers. This meant he was automatically charged a fee of £7.20 but this was below the actual fare of £21. He evaded his fare which he admitted to when questioned by a Revenue Protection Officer.

- It has been found that he is not fit and proper to conduct any regulated function because he lacks honesty and integrity. He has been prohibited from performing any function in relation to any regulated activities carried on by any authorised firms.

8. RBS Plc, Nat West and Ulster Bank Ltd (November 2014) – IT failings

<http://www.fca.org.uk/static/documents/final-notices/rbs-natwest-ulster-final-notice.pdf>

- The firms were fined collectively £42,000,000 as a result of an IT failure. The firm breached Principle 3 which states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- The final notice is 26 pages long but in summary the firms installed an upgrade of an IT software system and then after review decided to uninstall the software. This caused IT issues so that customer accounts weren't updated; the execution of some payments were affected; the application of interest and charges was impacted and the reconciliation of accounting entries across the banks was disrupted. Some 6.5 million customers were effected and the bank received 69,500 complaints from customers.