NEWGATE COMPLIANCE

# Newgate News

## June 2021

- FCA stops EverFX offering CFDs to UK customers
- FCA fines Sapien Capital Ltd for control failings in relation to cum/ex trading
- FCA charges individual with fraudulent trading and carrying on regulated activities without authorisation
- FCA bans and fines financial adviser £68,300 for lacking honesty and integrity
- Amex fined for sending four million unlawful emails
- FCA secures bankruptcy of 3 individuals involved in an unauthorised share scheme

## FCA stops EverFX offering CFDs to UK customers

The FCA has stopped ICC Intercertus Capital Ltd, a Cypriot-based firm, from conducting any regulated or marketing activities in the UK. The FCA has also directed the firm to take all reasonable steps to stop other members of its group, including EverFX Group, from doing the same. It has also ordered the firm to close all trading positions and return money to customers.

EverFX Group used the fact that ICC Intercertus was regulated in the UK to convey legitimacy. Many consumers were consequently induced to transact with overseas members of the EverFX Group, which had no authorisation to provide regulated services in the UK meaning that consumers lacked the same level of protection if they were offered those products by a UK authorised firm.

The FCA identified serious concerns with sales and marketing practices, including the use of misleading financial promotions, failing to inform consumers about the nature and risks of CFDs, and instructing clients on which trades to make which led to some consumers losing significant sums of money.

**Newgate's advice:** ***Entering into overseas transactions can mean you lack the same protections as the UK affords. UK consumers have access to the Financial Ombudsman Service or the Financial Services Compensation Scheme. Please contact Newgate if you have any concerns regarding your financial promotions processes or your scope of permissions. Newgate can assist on reviewing marketing/financial promotions to ensure materials contain the appropriate risk warnings as well as ensuring the overarching requirement of being clear, fair and not misleading are met.***

Impact:

Impact assessment key:

Low

Medium

High

## FCA fines Sapien Capital Ltd for serious financial crime control failings in relation to cum/ex trading

The FCA has fined Sapien Capital Ltd £178,000 for failings which led to risks of facilitating fraudulent trading and money laundering. The FCA found that between 10 February 2015 and 10 November 2015 the firm did not have adequate systems and controls in place to identify and mitigate the risk of being used to facilitate fraudulent trading and money laundering.

The fine was in relation to business introduced by Solo Group. Solo trading involved a circular pattern of extremely high value trades undertaken to avoid need for payments and delivery of securities in a settlement process. The trading involved the use of OTC equity trading, securities lending, and forward transactions involving EU equities, on or around the last day securities were cum dividend.

The FCA investigation found that the way these trades conducted by the Solo Group and their clients, were highly suggestive of financial crime, and appeared to have been undertaken to create an audit trail to support withholding tax reclaims in Denmark and Belgium.

The FCA found Sapien did not exercise due skill, care and diligence in applying anti-money laundering policies and procedures, did not undertake appropriate due diligence, and failed to perform effective risk assessments on the Solo clients.

Mark Steward, Director of Enforcement and Market Oversight, stated: 'The FCA expects firms have systems and controls that test the purpose and legitimacy of transactions, reflecting scepticism and alertness to the risk of money laundering and financial crime, and failures here constitute serious misconduct.'

This is the first case in relation to cum/ex trading, dividend arbitrage and withholding tax (WHT) reclaim schemes. The FCA's investigation into the involvement of UK based brokers in cum/ex dividend arbitrage schemes is continuing.

**Newgate's advice:** ***It is vital that your firm has robust systems and controls to combat the risk of fraudulent trading and money laundering. Newgate can design policies and policies for your firm to detail clear procedures in place to mitigate these risks, along with a robust monitoring programme to ensure compliance with these policies and procedures.***

**Impact:**

## FCA charges Ian Hudson with fraudulent trading and carrying on regulated activities without authorisation

Following an investigation, the FCA has started criminal proceeding against Ian James Hudson. The FCA alleges that between 1 January 2008 and 31 July 2019, Mr Hudson attempted to defraud creditors and carry out regulated activities, including advising on investments and accepting deposits, without authorisation.

The FCA allege Mr Hudson carried out regulated activities in relation to a business called Richmond Associates. At no point was Mr Hudson authorised by the FCA to undertake these financial services, as is required by law.

**Newgate's advice:** ***Firms must ensure they only carry out activity which they are appropriately authorised to do. If you have any concerns regarding your scope of permissions, please contact your Newgate Compliance Consultant.***

**Impact:**

## Financial adviser fined £68,300 for lacking honesty and integrity

Following an investigation, the FCA has fined Simon Varley £68,300 and banned him from working in financial services. The FCA found Mr Varley knowingly performing a controlled function without approval and provided investment advice to retail customers whilst not being qualified or approved to do so. The FCA also found that Mr Varley failed to act with integrity as a controlled function holder and is subsequently not a fit and proper person.

Mr Varley worked at Dickinsons Financial Management Limited a small financial advisory firm where he held a customer adviser function (CF30) until January 2013. Although his CF30 approval was removed in January 2013 by the FCA at his request, Mr Varley still continued to advise retail customers between January 2013 and September 2017. Mr Varley also repeatedly misled his fellow directors by providing false information in board meetings about sitting and passing the relevant exams required for him to continue advising, and falsely claiming that he had applied to the FCA for approval as a CF30. Mr Varley's actions led to Dickinsons going into voluntary liquidation and being dissolved.

Mark Steward, Executive Director of Enforcement and Market Oversight said: 'Mr Varley deliberately lied about his position and his misconduct continued for a number of years, potentially creating a risk of loss to customers. He continued to abuse his position of trust as a Director, proving that he lacks both honesty and integrity and poses a serious risk to consumers and to confidence in the financial system.'

**Newgate's advice:** ***It is essential that you are aware of and have obtained any qualifications needed to perform your role. Please contact your Newgate Consultant if you are you unsure if your role requires specific qualifications.***

**Impact:**

## Amex fined for sending four million unlawful emails

The ICO has fined American Express Services Europe Limited (Amex) £90,000 for sending more than four million marketing emails to customers who did not want to receive them, between 1 June 2018 to 31 May 2019.

ICO found that Amex had rejected its customers' complaints saying the emails were servicing emails and not marketing.

Andy Curry, ICO Head of Investigations said: "The emails in question all clearly contained marketing material, as they sought to persuade and encourage customers to use their card to make purchases. Amex's arguments, which included, that customers would be disadvantaged if they weren't aware of campaigns, and that the emails were a requirement of its Credit Agreements with customers, were groundless."

**Newgate's advice:** ***Firms must be aware of the difference between [marketing and service emails] and ensure they do not send any marketing emails to customers who have opted out of receiving them. Firms must also ensure they have adequate complaints procedures in place.***

**Impact:**

## FCA secures bankruptcy of 3 individuals involved in an unauthorised share scheme

On the 6 May 2020, the High Court ordered the payment of nearly £3.62 million in restitution to members of the public who bought shares that were promoted unlawfully. The defendants have failed to satisfy this order and the FCA have consequently made applications to the court to petition for the bankruptcy of 3 of the defendants.

**Newgate's advice:** ***Share schemes need to be appropriately authorised prior to offering to the public. Please speak with your Newgate Compliance Consultants on the authorisation regime and requirements.***

**Impact:**


**Contact us:**
**20 Fenchurch Street**
**London EC3M 3BY**

**+44 (0) 203 696 8750**

**info@newgatecompliance.com**