Enforcement Focus

NEWGATE COMPLIANCE

March 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

Manager Fined £32,200 for conduct relating to IPO and Placement

The FCA has fined a former manager at Newton Investment Management Limited £32,200 for his conduct in relation to an Initial Public Offering (IPO) and placing.

Paul Stephany submitted orders as part of a book build for shares that were quoted on public exchanges on two separate occasions. He attempted to influence other fund managers at competitor firms to cap their orders at the same price limit as his own orders prior to the order books for the new shares closing. The FCA found that Mr Stephany had risked undermining the integrity of the market and the book build, by trying to use their collective power. As a result of this, the FCA confirmed Mr Stephany failed to observe the proper standards of market conduct and acted without due skill, care and diligence by failing to give proper consideration to the risks of engaging in these communications.

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

'This matter underscores the importance of fund managers taking care to avoid undermining the proper price formation process in both IPOs and placings. These markets play a vital role in helping companies raise capital in the UK's financial markets and when they are put at risk the FCA will take action.'

https://www.fca.org.uk/news/press-releases/fca-fines-former-fund-manager-paul-stephany

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 issued first formal competition decision: 3 asset management firms breached competition law

Under its competition and enforcement powers, the FCA has issued its first formal decision which finds that 3 asset management firms have breached competition law. The firms and the fines were imposed are:

- Hargreaves Hale Ltd – Fined £306,300.
- Newton Investment Management Limited – no fine; as was given immunity under the competition leniency programme.
- River and Mercantile Asset Management LLP (RAMAM) – Fined £108,600.

The FCA stated the breaches consisted of the sharing of strategic information shortly before the share prices were set on a bilateral basis and between asset management competitors during one initial public offering (IPO) and one placing. The firms disclosed and/or accepted otherwise confidential bidding intentions, in the form of the price they were willing to pay and sometimes the volume they wished to acquire which allowed one firm to know another's plans during the IPO or placing process when they should have been competing for shares.

The FCA also decided that there are no grounds for action in respect of conduct between Artemis Investment Management LLP and Newton that took place between April and May 2014 in relation to an IPO.

Christopher Woolard, Executive Director of Strategy and Competition at the FCA, said:

'This is our first case using our competition law powers and demonstrates our commitment to taking enforcement action to protect competition. Asset management firms must take care to avoid undermining how prices are properly set for shares in both IPOs and placings. Failure to do so risks them acting illegally. The FCA will act when markets that play a vital role in helping companies raise capital in the UK's financial markets are put at risk. We can also take regulatory action against an individual and did so here with respect to some of the same facts.'

Asset managers set out to bid for the shares they want in IPOs and placings against asset managers competitors in prevailing market practice. If asset managers share detailed and confidential information about their bids with each other, they undermine the process by which prices are set. This can reduce pressure to make bids that reflect what they really think the company is worth and reduce the share price achieved by the IPO or placing and so raise the cost of equity capital for the issuing company. Firms rely on such capital as a way of financing investments, so unlawful information sharing could increase the cost of related investments or even make them unviable.

It is highly important to protect competition in the primary capital markets during a book building process as over £31 billion was raised on just the London Stock Exchange (LSE) markets in new investment between 2015 and 2018.

https://www.fca.org.uk/news/press-releases/fca-issues-its-first-decision-under-competition law

Robert John McKendrick sentenced to 6 month imprisonment for Contempt of Court

Robert John McKendrick has been sentenced to 6 months imprisonment for contempt of court as he diverted funds and failed to disclose information about his assets in breach of a freezing injunction obtained by the FCA. The FCA launched legal action in July 2013 in respect of four unauthorised collective investment schemes promoted mainly by Capital Alternatives:

- African Land (also known as Agri Capital) offered investments in rice farm harvests in Sierra Leone; and
- Reforestation Projects (also known as Capital Carbon Credits) offered three investments in carbon credits intended to be generated from land in Sierra Leone, Brazil and Australia.

Mr Kendrick was the main director and sole shareholder of African Land which he unlawfully promoted and operated with authorisation from the FCA. The High Court of Justice found that Mr Kendrick made misleading statements to investors, was knowingly concerned in misleading statements made by others and knowingly concerned in the Capital Carbon Credits scheme in Sierra Leone, which was also operated and promoted unlawfully.

Having taken action in 2013, the FCA obtained a freezing order requiring Mr Kendrick to disclose all his assets and preventing him from disposing them. However, in breach of these orders Mr Kendrick appointed his wife to manage his portfolio of buy-to-let properties at a commission rate significantly higher than he had paid to his previous letting agents and then diverted the rental income from these properties to his wife. He did not disclose these arrangements.

The FCA's primary aim was to recover the investors' money and set out to discover what had happened by making an application to the Court to which Mr Kendrick responded by admitting his breaches of the freezing orders and finally provided an account of where the money went.

The losses across the schemes exceeded £15m and the Court gave Judgment in the FCA's claim and ordered Mr McKendrick to pay the losses to the FCA so they can be paid back to investors. As a result, Mr McKendrick has since been declared bankrupt. The Court indicated that Mr McKendrick would have received a 12-month sentence but for his admissions and his genuine attempt to remedy his failure the Court was lenient to a 6-month sentence.

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

'In this case, Mr McKendrick misled investors and then, in contempt of court, failed to comply with court orders requiring him to properly account for the losses. The FCA will ensure that defendants who mislead investors are held to account to the fullest extent possible.'

Anyone who invested in African Land or Capital Carbon Credits is urged to complete a questionnaire and send documents to the by 31 March 2019 – more information can be found at: https://www.fca.org.uk/news/news-stories/capital-alternatives-information-investors.

https://www.fca.org.uk/news/press-releases/fca-takes-action-contempt-court

Manraj Virdee sentenced to 2 years suspended sentence

In Newgate's last Enforcement Focus published in January 2019, we reported that Manraj Virdee had pleaded guilty to four charges of illegal operation of an authorised investment scheme, misleading consumers and two counts of fraud. The FCA have since confirmed Manraj Virdee has been sentenced to a 2 year prison sentence suspended for 2 years and further ordered to carry out 300 hours of unpaid work in the community.

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 and received around £600,00 in investment funds by misleading investors.

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

'The FCA's prompt action nipped Mr Virdee's fraud in the bud and stopped it becoming inevitably bigger, causing greater loss to a wider group of victims. The FCA reminds investors to beware of anyone who is not authorised to carry out the activities they are offering.'

https://www.fca.org.uk/news/press-releases/manraj-virdee-sentenced-2-years-illegally-operating-investment-scheme-and-fraud