



Newgate News

FCA secures £1.6m confiscation order against Richard Baldwin

On the 5th October 2020, at Southwark Crown Court, Judge Hehir made a confiscation order against Mr Richard Baldwin in the sum of £1,633,766. He was ordered to pay the order within 3 months, or he will face a further 8 years in prison.

The confiscation order was made in Mr Baldwin's absence after he absconded from justice during his trial and conviction for money laundering in 2017. He was previously sentenced to a total of 5 years and 8 months' imprisonment for the offence as well as separate contempt of court which he admitted in 2015.

The confiscation order reflects his benefit from laundering the proceeds of a conspiracy to insider deal between October 2007 and November 2008 which also involved his co-defendants Martyn Dodgson and Andrew Hind. Mr Baldwin used off-shore companies, bank accounts and false invoices and during the earlier sentencing hearing HHJ Hehir remarked that Mr Baldwin had been convicted on 'compelling evidence' of 'extremely sophisticated' money laundering.

An arrest warrant has been issued for Mr Baldwin to be brought before the Court.

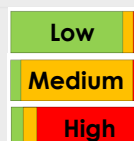
Impact:



October 2020

- FCA secures £1.6m confiscation order against Richard Baldwin
- FCA bans IFA directors who provided false and misleading SIPP declarations
- FCA fines Asia Research and Capital Management Ltd (ARCM) £873,118 for breaches of short selling disclosure rules
- FCA and PRA fine Goldman Sachs International £96.6m for risk management failures in connection with 1MDB
- FCA bans three individuals for non-financial misconduct
- FCA censures Aviva plc for listing and transparency rules breach

Impact assessment key:



Newgate's advice: *We encourage firms to ensure staff receive periodic refresher training on anti-money laundering, in addition to ensuring that the firm's Compliance Officer/MLRO has up to date records of staff's periodic affirmation pertaining to their understanding of the firm's AML policies and procedures.*

Firms should also be ensuring that it revisits its Money Laundering Risk Assessments and accompanying reports at least annually . This is to ensure it reflects the firms current risks concerning its client base, business activities and whether any Suspicious Activity Reports (SARs) have been reported to the National Crime Agency (NCA).

<https://www.fca.org.uk/news/press-releases/fca-secures-1-6m-confiscation-order-against-richard-baldwin>

FCA bans IFA directors who provided false and misleading SIPP declarations

The FCA has banned Peter Howson and John Butterfield from performing any regulated activity because of their roles in the submission of false and misleading information about customers' high net worth status.

Mr Howson and Mr Butterfield, who were both directors of the now-liquidated Vanguard Wealth Management Limited (Vanguard), submitted the information to self-invested personal pension (SIPP) provider, James Hay, which had no knowledge of their actions. Wealth Management Limited has no connection to the Vanguard Group.

FCA Executive Director of Enforcement and Market Oversight, Mark Steward, said: 'Both advisers knew, or should have known, that what they were doing lacked integrity and betrayed the high standards expected by the FCA. They have no place in the financial services industry.'

The FCA found that Mr Howson dishonestly deceived James Hay about the high net worth status of six customers by submitting fabricated information, including fabricating figures for fictitious properties. Between 26 February 2014 and 21 November 2014, Mr Howson also dishonestly submitted 27 high net worth declarations in which he falsely claimed to have seen evidence of the customers' net worth. In addition, in July 2013 and April 2014, Mr Howson dishonestly submitted false information relating to his own financial circumstances to the SIPP provider when submitting his own applications.

The FCA also found that between 6 March 2013 and 1 September 2014, Mr Butterfield submitted 48 high net worth declarations in which he falsely claimed he had seen evidence of the customers' net worth.

Newgate's advice: *Mr Howson and Mr Butterfield knowingly and repeatedly made these false declarations, and thereby increased the number of Vanguard customers who purchased Elysi-an Fuels PLC shares through their James Hay SIPPs. This generated substantial fees and commissions from which Mr Howson and Mr Butterfield benefitted. As a result of Mr Howson's and Mr Butterfield's actions, customers lost money. Mr Howson and Mr Butterfield lacked integrity and have been banned from carrying out any regulated activities.*

This enforcement case is an important example of how knowingly distributing false and misleading information is frowned heavily upon by the Regulator. Additionally, firms should continue to have appropriate procedures and documentation when onboarding clients to ensure they are correctly categorisation in order to receive services/products because they fall within the appropriate target market.

<https://www.fca.org.uk/news/press-releases/fca-bans-ifa-directors-false-misleading-sipp-declarations>

Impact:



FCA censures Aviva plc for listing and transparency rules breach

The FCA has publicly censured Aviva plc for making an announcement that had the potential to mislead the market.

The announcement on 8 March 2018 (the Announcement) concerned Aviva's preliminary year-end results. The FCA's investigation into breaches of the Listing Rules and Transparency Rules found that the Announcement was reasonably capable of giving the impression that Aviva intended to take action to cancel at par value certain preference shares (which had been described at the time of issue in the early 1990s as "irredeemable").

At the time, the preference shares were trading above their par value and so the statement caused concern that holders would incur losses on cancellation. At the close of market on that day the market price for Aviva's preference shares fell between 20% and 26% as holders took action to sell at the above par market price. Retail investors made up a significant proportion of the preference shareholders affected.

Aviva made the Announcement when it had, in fact, formed no intention to cancel the preference shares in question. The impression given by the Announcement was not accurate. Aviva clarified its intentions in a further regulatory announcement on 23 March 2018 which expressly stated Aviva had decided to take no action to cancel the preference shares. A week later, Aviva also established a payment scheme for preference shareholders who sold their shares in the period between the Announcement and 22 March 2018 (inclusive) at a share price that was lower than the price to which the preference shares returned following 23 March 2018. This scheme was intended to put those shareholders in the same financial position they would have been in, had they sold their preference shares during this period.

Aviva's breach was 'serious and not intentional' and the FCA have chosen not to enforce more stringent

measures (such as a financial penalty) other than a public censure because Aviva acted to redeem their breach by clarifying the announcement and proving a payment scheme for affected shareholders.

Newgate's advice: *Aviva failed to consider adequately how the announcement might be interpreted by the market, especially the holders of the preference shares.*

Firms are reminder to ensure that all forms of communication are fair, clear and not misleading. Please contact your Newgate consultant for general guidance on the content of any communications and/or financial promotions you intend to publish as well as guidance particularly related to the Listing and Transparency Rules.

<https://www.fca.org.uk/news/press-releases/fca-censures-aviva-plc-listing-and-transparency-rules-breach>

Impact:



FCA bans three individuals from working in the financial services industry for non-financial misconduct

The FCA has prohibited Russell David Jameson, Mark Horsey, and Frank Cochran from working in the financial services industry following findings that they are not fit and proper. Each of them had been convicted of serious non-financial indictable offences while working in the financial services industry.

The FCA's Executive Director of Enforcement and Market Oversight commented on this case: "The FCA expects high standards of character, probity and fitness and properness from those who operate in the financial services industry and will take action to ensure these standards are maintained."

Russell David Jameson

Jameson was a financial adviser at an authorised firm and was approved by the FCA to hold various significant influence and customer facing functions at the firm.

In July 2018, Jameson was convicted of serious criminal offences involving the making, possession, and distribution of indecent images of children. Between January 2013 and August 2017, Jameson made thousands of indecent photographs of children and had thousands of such images in his possession, including films and images of the utmost severity. These offences were committed whilst Jameson was an approved person. Jameson was sentenced to five years' imprisonment, ordered to sign the sex offenders register indefinitely, and included in the list of individuals barred from working with children or vulnerable adults.

Mark Horsey

Horsey was the sole director and shareholder of an authorised financial advice firm with permission to conduct designated investment business (including advising on and arranging deals in investments) and insurance distribution. In September 2018, Horsey was convicted of voyeurism, contrary to the Sexual Offences

Act 2003. Horsey had observed and video recorded his tenant having a shower without their consent. He committed the offence whilst he was an approved person. Horsey was sentenced to nine months' imprisonment, suspended for 18 months, required to complete 100 hours of unpaid work and 25 days of rehabilitation activity, and required to sign the sex offenders' register.

Frank Cochran

Cochran was a director and shareholder of an authorised financial advice firm with permission to advise on pensions, mortgages, and investments. In April 2018, Cochran was convicted of sexual assault, engaging in controlling and coercive behaviour and an offence contrary to the Protection from Harassment Act 1997. These offences were committed whilst he was an approved person. Cochran was sentenced to seven years' imprisonment and required to sign the sex offenders' register.

Newgate's advice: Mr Jameson, Mr Horsey and Mr Cochran proved themselves to be unfit to hold positions of seniority within the financial services sector. Firms are responsible for ensuring that their employees are fit and proper for the positions they hold and that they adhere to the Handbook (COCON) and also the SM&CR Conduct Rules, with those holding SMF-roles subject to additional Conduct Rules as well as other due diligence such as Standard DBS checks. Please contact Newgate for more information on how you can ensure employees are fit and proper, received assistance in carrying out background checks and ensure certain SM&CR requirements are met by the revised deadline of March 31st 2021.

<https://www.fca.org.uk/news/press-releases/fca-bans-three-individuals-working-financial-services-industry-non-financial-misconduct>

Impact:



FCA and PRA fine Goldman Sachs International £96.6m for risk management failures in connection with 1MDB

The FCA and the Prudential Regulation Authority (PRA) have fined Goldman Sachs International (GSI) a total of £96.6 million (US\$126 million) for risk management failures connected to 1Malaysia Development Berhad (1MDB) and its role in three fund raising transactions for 1MDB. The FCA and PRA fines are part of a US\$2.9 billion globally coordinated resolution reached with the Goldman Sachs Group Inc. (GSG) and its subsidiaries.

1MDB is a Malaysian state-owned development company that has been at the centre of billion-dollar embezzlement allegations. GSI underwrote, purchased and arranged three bond transactions for 1MDB in 2012 and 2013 that raised a total of US\$6.5 billion for 1MDB. The 1MDB transactions were approved by global GSG committees that GSI participated in and were booked to GSI.

The 1MDB transactions involved clients and counterparties in jurisdictions with higher financial crime risk. GSI was also aware of the risk of involvement of a third party that GSI had serious concerns about. GSI failed to assess and manage risk to the standard that was required given the high-risk profile of the 1MDB transactions and failed to assess risk factors on a sufficiently holistic basis. GSI also failed to address allegations of bribery in 2013 and failed to manage allegations of misconduct in connection with 1MDB in 2015.

Mark Steward, FCA Executive Director of Enforcement and Market Oversight, said: 'Firms have a crucial role to play in tackling financial crime, and in helping to maintain the integrity of the financial system. GSI's failure to take appropriate action in this case shows that it did not take this responsibility seriously. When confronted with allegations of bribery and staff misconduct, the firm's mishandling allowed severe misconduct to go unaddressed.'

There is no amnesty for firms that tackle financial crime poorly, and the size of GSI's fine reflects that.'

GSI agreed to resolve this case with the FCA and PRA, qualifying it for a 30% discount in the overall penalty imposed by both regulators. Without this discount, the FCA and PRA would have imposed a financial penalty of £69,012,000 (US\$90,000,000) each on GSI.

Newgate's advice: *Firms are reminded to ensure that they continue to adhere to the regulator's principles and rules. Where this case is concerned, particular attention is drawn to the fact that GSI failed to:*

- **Assess with due skill, care and diligence the risk factors that arose in each of the transactions on a sufficiently holistic basis;**
- **Assess and manage the risk of the involvement in the 1MDB bond transactions of a third party that GSI had serious concerns about; and**
- **Exercise due skill, care and diligence when managing allegations of bribery and misconduct in connection with the transactions.**

<https://www.fca.org.uk/news/press-releases/fca-pra-fine-goldman-sachs-international-risk-management-failures-1mdb>



Impact:



FCA fines Asia Research and Capital Management Ltd (ARCM) £873,118 for breaches of short selling disclosure rules

The Financial Conduct Authority (FCA) has fined Asia Research and Capital Management Ltd (ARCM) £873,118 over transparency failures. The firm failed to notify the FCA and disclose to the public its net short position in Premier Oil Plc built between February 2017 and July 2019.

The Short Selling Regulation 2012 (SSR) sets out thresholds for when a firm is required to notify the FCA and disclose to the public details of net short positions held.

From 24 February 2017 to 5 July 2019, ARCM failed to make 155 notifications to the FCA and 153 disclosures to the public of its net short position in Premier Oil. By 5 July 2019, ARCM had built a net short position equivalent to 16.85% of the issued share capital in Premier Oil, which was then held by ARCM for a further 106 trading days before being notified to the FCA and disclosed to the public.

ARCM agreed to resolve this matter and qualified for a 30% discount under the FCA's executive settlement procedures. Were it not for this discount, the FCA would have imposed a financial penalty of £1,247,312 on ARCM.

This is the first time the FCA has taken enforcement action for a breach of the SSR.



Impact:



Newgate's advice: *Firms should continue to ensure that sufficient compliance monitoring programmes, policies and procedures are in place to ensure that awareness of FCA reporting obligations are maintained and followed. Please reach out to Newgate if you wish to seek clarity on your entity's reporting obligations, or if a notification needs to be made to the FCA for failing to report the required information within any stated timescales.*

<https://www.fca.org.uk/news/press-releases/fca-fines-arcm-breaches-short-selling-disclosure-rules>

Contact us:
20 Fenchurch Street
London EC3M 3BY

+44 (0) 203 696 8750

info@newgatecompliance.com

info@newgatecompliance.com