NEWGATE COMPLIANCE

Newgate News

April 2021

Restrictions placed on Dolfin Financial (UK) Ltd

On the 12th of March 2021, the Financial Conduct Authority (FCA) imposed several restrictions on Dolfin Financial (UK) Ltd (Dolfin) stopping it from carrying on any regulated activities due to concerns about the way it conducts its business. Dolfin is a wealth management firm providing services to retail and professional clients on a range of investment securities, such as shares, government and corporate bonds, and investment funds.

The FCA's decision to stop Dolfin from carrying on any regulated activity, from reducing the value of their assets and any of the client money/custody assets without FCA consent was driven by concerns on the way Dolfin operates its business. In particular, the FCA identified several serious concerns around the way that Dolfin operates its business, including the firm's Tier 1 investor business activities and financial crime controls.

Newgate's advice: ***Firms are reminded of their Conduct of Business ('COBS') obligations. Newgate offer a dedicated training module on COBS, so do feel free to request access if not currently on your training schedule. Additionally, for firms that have the ability to hold and/or control Client Assets/Money ('CASS') on their scope of permission, please ensure that you adhere to the necessary requirements and conduct appropriate periodic training/compliance monitoring.***

Impact: Medium

Impact assessment key:

Low

Medium

High

High Court finds that 24HR Trading Academy unlawfully advised on investments and unlawfully promoted CFD trading

The High Court has delivered a summary judgement in proceedings commenced by the FCA ruling that 24HR Trading Academy Limited (24HR Trading), run by Mohammed Fuaath Haja Maideen Maricar, contravened the Financial Services and Markets Act 2000 (FSMA) by providing unauthorised investment advice to consumers via WhatsApp messages. The Court also found that Mr Maricar was knowingly concerned in his company's contraventions of FSMA. Judge Jonathan Richards sitting as a Deputy High Court Judge also ordered Mr Maricar to pay restitution of more than £530,000. The recovered funds will be distributed to 24HR Trading customers. The Court has also made orders preventing 24HR Trading from further breaching FSMA.

The Court found that 24HR Trading unlawfully provided trading signals to consumers for a fee. The trading signals were sent via WhatsApp and contained recommendations about contracts for difference (CFDs) relating to currencies and commodities. The Court found that these signals amounted to unlawful investment advice. 24HR Trading also encouraged consumers to open trading accounts with 'partnered brokers' to place their CFD trades. Mr Maricar received significant sign-up and other commissions from these brokers. This conduct was found to constitute both financial promotion and making arrangements with a view to consumers acquiring investments. 24HR Trading and Mr Maricar were not authorised by the FCA or exempt from authorisation, and the promotional communications were not approved by an authorised person.

The FCA commenced proceedings in the High Court against 24HR Trading and Mr Maricar in April 2020. The 25 March 2021 summary judgment includes a restitution order against Mr Maricar and an injunction restraining 24HR Trading from continuing its unlawful signals business.

Newgate's advice: ***Unauthorised investment advice exposes consumers to the risk of substantial losses because the adviser has not met the FCA's tests of competence and fitness; nor do consumers have access to the Financial Ombudsman Service or the Financial Services Compensation Scheme if things go wrong. Please contact Newgate if you have any concerns regarding your scope of permission, particularly if business activities have widened beyond the firm's current permissions. We are also able to 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:

FCA starts criminal proceedings against NatWest Plc

The Financial Conduct Authority (FCA) has today announced that it has commenced criminal proceedings against National Westminster Bank Plc (NatWest) in respect of offences under the Money Laundering Regulations 2007 (MLR 2007). The FCA alleges that NatWest failed to adhere to the requirements of regulations 8 (1), 8(3) and 14(1) of MLR 2007 between 11 November 2011 and 19 October 2016.

These regulations require the firm to determine, conduct and demonstrate risk sensitive due diligence and ongoing monitoring of its relationships with its customers for the purposes of preventing money laundering. The case arises from the handling of funds deposited into accounts operated by a UK incorporated customer of NatWest. The FCA alleges that increasingly large cash deposits were made into the customer's accounts. It is alleged that around £365 million was paid into the customer's accounts, of which around £264 million was in cash.

It is alleged that NatWest's systems and controls failed to adequately monitor and scrutinise this activity. NatWest is scheduled to appear at Westminster Magistrates' Court on 14 April 2021.

This is the first criminal prosecution under the MLR 2007 by the FCA and the first prosecution under the MLR.

Newgate's advice: ***The GATEway has been designed to ensure that our firms can maintain oversight on FCA expectations regarding their systems and controls. The GATEway enables Client On Boarding to be documented as well as your firm's ongoing Systems and Controls monitoring. Newgate can also assist with any client files that you would like to carry out spot checks on from an ongoing due diligence perspective. Lastly, your AML Policy should provide guidance on adjusting the periodicity of review of clients that have been onboarded to better align to the risk rating determined upon initial onboarding.***

Impact:

FCA commences criminal proceedings against brothers for insider dealing and fraud

Following an investigation by the Financial Conduct Authority, the FCA has commenced criminal proceedings against Mohammed Zina and Suhail Zina.

The proceedings relate to 6 offences of insider dealing, contrary to section 52(1) of the Criminal Justice Act 1993, and 3 offences of fraud by false representation, contrary to section 1 of the Fraud Act 2006. Mohammed Zina was employed by Goldman Sachs International as an analyst in the Conflicts Resolution Group in their London office. Suhail Zina was a solicitor at Clifford Chance, also in London.

The alleged offences took place between 15 July 2016 and 4 December 2017 and involved trading in the following stocks:

- ARM Holdings plc
- Alternative Networks plc
- Punch Taverns plc
- Shawbrook plc
- HSN Inc
- Snyder's Lance Inc

The total profit from the alleged insider dealing was approximately £142,000.

The fraud charges relate to 3 personal loans obtained from Tesco Bank, totalling £95,000. The loans were stated to be for funding home improvements. Instead, the loans funded the alleged insider dealing.

Mohammed Zina and Suhail Zina appeared at Westminster Magistrates' Court on 16 February 2021. The case was sent to Southwark Crown Court for a Plea and Trial Preparation Hearing on 16 March 2021.

Newgate's advice: ***Please be reminded that Fraud is punishable by a fine and/or up to 10 years' imprisonment. Insider dealing is punishable by a fine and/or up to 7 years' imprisonment. Newgate has updated its Market Abuse framework documents to ensure that compliance post-pandemic is in place (particularly when working remotely). Newgate have also worked on ensuring our Market Abuse Risk Assessment/ Market Abuse policy has been updated to reflect the recent changes.***

FCA fines and prohibits trader for market abuse

The FCA has fined Mr Adrian Geoffrey Horn, formerly a market making trader at Stifel Nicolaus Europe Limited ('Stifel'), £52,500 for market abuse and prohibited him from performing any functions in relation to regulated activity. Following an investigation, the FCA found that Mr Horn, an experienced trader, engaged in market abuse by executing trades with himself in the share McKay Securities Plc ('McKay').

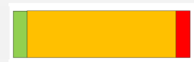
This practice known as 'wash trading' involved Mr Horn intentionally placing buy orders in McKay shares that traded with his existing sell orders (and vice versa). In total, Mr Horn executed 129 wash trades during the period 18 July 2018 to 22 May 2019. Mr Horn entered orders into the market in such a way as to try and avoid anyone detecting that he was wash trading.

McKay was a corporate client of Stifel. Mr Horn's motive for executing the wash trades was to ensure that a minimum number of shares were traded in McKay each day, which he believed was a requirement to ensure that McKay remained in the FTSE All Share Index. Mr Horn thought that by assisting McKay to remain in the FTSE All Share Index he would benefit the relationship between Stifel and its client.

The FCA considers that the fine and the prohibition imposed reflect the serious nature of the breach set out in the Final Notice and should act as a deterrent to other market participants.

Newgate's advice: ***Through his wash trading Mr Horn gave false and misleading signals to the market as to demand for and supply of McKay shares. His actions resulted in other market participants seeing what they believed to be legitimate trades in McKay occurring. In addition, the wash trades artificially inflated end of day trading volumes reported to the market. Please continue to ensure that staff keep up to date with any periodic affirmations on the GATEway.***

Impact:



FCA provide update on trial dates in criminal cases

Northamptonshire insider dealing prosecution

At a plea and trial preparation hearing at Southwark Crown Court on 11 March 2021, a date was set for the trial of Stuart Bayes and Jonathan Swann.

Mr Bayes and Mr Swann are being prosecuted by the FCA for insider dealing. Mr Bayes has also been charged with improperly disclosing inside information, or encouraging another, whilst being an insider, to engage in dealing. The case was listed for trial on 4 April 2022 and neither defendant was arraigned. The next hearing in the case will be for case management on 10 September 2021.

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