

FCA fines and imposes prohibition order on trader for market manipulation

The FCA has fined a trader GBP52,500 for conduct amounting to market manipulation under the Market Abuse Regulation (596/2014) (MAR).

It also issued a prohibition order banning him from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

This is the second case where the FCA has taken enforcement action against an individual for committing one of the three substantive offences under MAR, namely insider dealing, market manipulation and unlawful disclosure.

Background

Article 15 of the Market Abuse Regulation (596/2014) (MAR), as a result of Article 12(1)(a) MAR, prohibits the placing of an order to trade which gives, or is likely to give, a false or misleading signal as to the supply of or demand for a UK listed share. In particular, Article 12(1)(a) MAR states that market manipulation shall comprise the following activities (among others):

"entering into a transaction, placing an order to trade or any other behaviour which [...] gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument [...] unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13."

Annex I of MAR describes the following practice as an indicator of manipulative behaviour for the purposes of Article 12(1)(a) MAR:

"whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or an auctioned product based on emission allowances."

Facts

Mr Horn

Mr Horn was a senior market-making trader at a bank (the **Firm**) and under the approved persons regime was approved to perform the CF30 (Customer) controlled function. His role involved placing and executing orders in shares for clients, but he was also able to execute trades on his own behalf to make money for the Firm.

In addition to detailing the authority of his trading desk and how it should operate, the mandate for Mr Horn's trading desk included information about market abuse. In particular, it referred to "wash trades" as an indicator of potential market abuse, which it described as "*[e]ntering into arrangements for the sale or purchase of a financial instrument where there is no change in beneficial interests or market risk, or where beneficial interest or market risk is transferred between colluding parties*". The Firm required Mr Horn to sign an annual attestation to confirm that he had received and would adhere to the desk mandate. Mr Horn was also required to attest on an annual basis that he understood and would comply with various rules and regulations, including the requirements set out in the Firm's compliance handbook, which contained a section on market abuse.

The FTSE All Share Index

The FTSE All Share Index represents the performance of all eligible companies listed on the London Stock Exchange's main market and captures 98% of the UK's market capitalisation.

For an issuer's shares to be included in the FTSE All Share Index, there must be a minimum amount of liquidity or tradeability of its shares. If a constituent of the FTSE All Shares Index fails to meet the liquidity criteria as per the index provider's annual calculations performed in June of each year, the issuer is removed and it will fall into the FTSE Fledgling Index.

For an issuer to remain in the FTSE All Share Index when Mr Horn's conduct (described in **Mr Horn's trading**) occurred, an issuer was required to have a monthly median turnover ratio of at least 0.015% of its free float of shares (using its published free float figure at the end of each month) during at least eight of the 12 months prior to the annual index review.

Mr Horn's trading

During the period 18 July 2018 to 22 May 2019, Mr Horn executed 129 trades across 68 days in the shares of an issuer that was a client of the Firm and a constituent of the FTSE All Share Index (the **Issuer**). The FCA determined that these trades were wash trades and that Mr Horn placed them to ensure a minimum number of the Issuer's shares were traded each day.

In particular, the FCA found that Mr Horn would monitor the volume of trading in the Issuer's shares each day and, if there had been little or no volume trading that day, he would enter bids and/or offers to create liquidity in the order book to try and encourage other market participants to deal with him. Approximately an hour before market close, Mr Horn would check to see if the Issuer's shares had been traded and, if the volume traded that day was below 13,000, Mr Horn would execute the wash trades so that this volume was reached. For example, Mr Horn might initially place an order to sell the Issuer's shares at the best offer price and if, towards the end of the trading day, this sell order had not been executed and the volume of the Issuer's shares traded had not reached 13,000, Mr Horn would enter a buy order to execute against it.

The FCA found that Mr Horn executed the wash trades because he erroneously believed (based on discussions with colleagues) that at least 13,000 of the Issuer's shares had to be traded each day for the Issuer to remain in the FTSE All Share Index. He assumed the Issuer wanted to remain in the FTSE All Share Index and that, by helping to ensure that this was the case, he would benefit the Firm's broader relationship with the Issuer. He also thought it would reflect badly on him within the Firm if the Issuer did not achieve sufficiently high trading volumes.

Details of Mr Horn's wash trades were reported to other market participants. As a result, other market participants would have seen what they believed to be legitimate trades in the Issuer's shares occurring in the market. In addition, the wash trades increased the end of day trading volume reported to the market. As a result, the FCA concluded that Mr Horn's wash trades would have created false and misleading signals regarding the true supply of and demand for the Issuer's shares.

FCA enforcement action

The FCA found that Mr Horn engaged in market manipulation as defined by Article 12(1)(a) of MAR and in contravention of Article 15 of MAR because, by executing the wash trades, he gave false and misleading signals as to the supply of and demand for the Issuer's shares. In executing the wash trades, Mr Horn signalled to the market that there was genuine volume being traded in the Issuer's shares, when in fact this was not the case as there had been no change in beneficial interest as a result of the wash trades. This was also consistent with one of the indicators of manipulative behaviour for the purposes of Article 12(1)(a) of MAR that is set out in Annex I of MAR (see [Background](#)).

The FCA found that Mr Horn's conduct was reckless as he undertook, "*a course of action with the clear intention of creating a false volume in [the] shares and to ensure that [the issuer] remained in the FTSE All Share Index. Mr Horn was aware that his conduct would mislead other market participants as to the demand for and supply of [the] shares*".

Financial penalty

The FCA imposed a financial penalty of GBP52,500 on Mr Horn.

In accordance with its usual practice, the FCA's starting point for calculating Mr Horn's financial penalty was the greater of a figure based on the percentage of his relevant income, a multiple of the profit made or loss avoided by the individual for their own or others' benefit as a direct result of the market abuse or GBP100,000. After assessing the quantum of each option, the FCA opted to use GBP100,000 as its starting point for calculating Mr Horn's financial penalty.

In addition to an early settlement discount of 30%, the FCA also applied an additional discount of 25% to Mr Horn's financial penalty on account of his "*very high level of co-operation during the investigation*" that was considered to be a mitigating factor.

Prohibition order

The FCA has the power to impose prohibition orders on individuals under section 56 of the Financial Services and Markets Act if it considers that an individual is not fit and proper, with reference to the FCA's Fit and Proper Test for Approved Persons. The FCA's Enforcement Guide (EG) states that the FCA may decide to impose a prohibition order "*where it considers that, to achieve any of its statutory objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities or to restrict the functions which he may perform*" (EG 9.1). EG also includes an individual engaging in market abuse as one of a non-exhaustive list of factors that they will consider when assessing an individual's fitness and propriety (EG 9.3.2(4)).

The FCA found that Mr Horn's conduct in intentionally executing the wash trades lacked integrity. This is because it amounted to market manipulation, was likely to adversely impact other market participants and was repeated multiple times over a period of ten months. As a result, the FCA found that Mr Horn was not a fit and proper person to perform any function in relation to any regulated activity and imposed a prohibition order on him.

Decision insight

This is the second case where the FCA has taken enforcement action against an individual for committing one of the three substantive offences under MAR, namely insider dealing, market manipulation and unlawful disclosure. The first case was concluded by the FCA in December 2020 against Corrado Abbattista following the withdrawal of his reference to the Upper Tribunal (Tax and Chancery Chamber).

The period during which Mr Horn engaged in the market manipulation (18 July 2018 to 22 May 2019) pre-dated the end of the Brexit transition period, which ended at 11:00pm on 31 December 2020. As a result, the FCA took enforcement action against him under MAR. However, the provisions of MAR on which the FCA relied to take enforcement action against Mr Horn are replicated in the retained EU law version of MAR (UK MAR) (that is, Article 12(1)(a) and Part A of Annex I of UK MAR).

The additional discount of 25% that the FCA applied to Mr Horn's financial penalty is not the highest discount that the FCA has applied to a financial penalty in recent years due to mitigating factors. However, it is one of the highest discounts applied by the FCA solely due to an individual's co-operation with an investigation. The final notice only contains brief details about the nature of Mr Horn's co-operation that led to this additional discount, but the FCA noted that Mr Horn "*admitted that he intentionally placed orders to execute with his existing orders*" and that Mr Horn "*made these significant admissions to both to his employer ... when the issue was first raised with him and at a very early stage in the [FCA's] investigation during a voluntary interview*", which "*significantly expedited the investigation*" into his conduct.

Source

FCA final notice issued to Adrian Geoffrey Horn

(dated 3 March 2021, published 4 March 2021)
and [FCA press release](#) (published 4 March 2021).

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