FCA REMINDER ABOUT THE MARKET MANIPULATION PRACTICES OF “PRINTING” AND “FLYING”

In its January 2024 edition of the Market Watch newsletter[1] the FCA reminded firms of the risks of the market abuse practices of “printing” and “flying”. Their most recent May 2024 newsletter[2] carried on the theme of market abuse, focusing on the importance of firms having suitable surveillance arrangements to detect suspicious activity.

1 https://www.fca.org.uk/publications/newsletters/market-watch-76

2 https://www.fca.org.uk/publications/newsletters/market-watch-79

What is printing & flying?

Flying involves a firm communicating to its clients, or other market participants, via screen, instant message, voice or other method, that it has bids or offers when they are not supported by, or sometimes not even derived from, an order or a trader's actual instruction.

Printing involves communicating, by one of the above methods, that a trade has been executed at a specified price and/or size, when no such trade has taken place.

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Market abuse

These practices and others which give a false or misleading impression of the market are considered by the FCA and EU regulators to be market abuse and specifically "market manipulation". Such conduct is prohibited by the EU Market Abuse Regulation (**MAR**) which has been in force in the UK since 2016.

Penalties for such conduct can range from regulatory fines to a criminal conviction in more serious cases for offences under part 7 of the Financial Services Act 2012 which could result in imprisonment for up to 7 years.

Where the FCA suspects an actual or likely contravention of MAR it can also apply to the High Court for an injunction against an individual, ordering them to remedy the contravention and/or restraining any assets which the individual is likely to dispose of, or otherwise deal with.

Focus on commodities

The FCA stated that they had issued the January reminder due to instances of such practices continuing in certain markets despite their 2018 Market Watch 57[3] Newsletter on the subject. The commodities market was one of those specifically called out for these practices, with the FCA noting that the instances they had identified included entering prices in lit markets to generate orders in dark markets.

Management failings

The FCA also highlighted their concerns about management within firms failing to deal with such behaviours in a robust and timely way. Failings they highlighted included:

- failing to recognise the risks of flying & printing;
- failing to implement appropriate surveillance;
- failing to submit suspicious transaction and order reports, or market observations; relating to flying or printing; and
- taking a long time to investigate potential misconduct.

Enforcement action

In the UK the FCA has a limited record of enforcement action on market abuse cases generally and the practices of printing and flying in particular.

The most recent, and only published example of FCA enforcement action specifically relating to the practice of "printing", was in the case of the interdealer broker, TFS-ICAP, which was fined £3.44m by the FCA in November 2020[4] in relation to misleading broker communications between 2008 and 2015, which falsely stated that trades relating to FX options had taken place. The final notice in respect of that case noted that at the time of the conduct the practice had been seen as part of the role that "everyone was doing" and took place openly on desks.

Showing it will also take action where internal controls are inadequate, the FCA, somewhat more recently in December 2022, fined three inter-dealer brokerage firms, specialising in broking exchange listed and over-the-counter financial products and related derivative products, £4,775,200 for failing to ensure they had appropriate systems and controls in place to effectively detect market abuse.

Meanwhile in the US, the Commodity Futures and Trading Commission (CFTC) fined TFS-ICAP's US entity US$7m for printing and flying practices. It also fined the Chairman of the US entity US$250,000 and brought separate actions against the CEO and the Head of Emerging Markets for supervisory failures[5] which resulted in monetary penalties of US$500,000 each and a five-year ban from any activities supervised by the CFTC.

The CFTC has also targeted commodity firms for market abuse, most notably fining certain Glencore entities a total of $1.186 billion for manipulative and deceptive conduct[6]

3 https://www.fca.org.uk/publication/newsletters/market-watch-57.pdf

4 https://www.fca.org.uk/publication/final-notices/tfs-icap-2020.pdf

5 https://www.cftc.gov/PressRoom/PressReleases/7816-18

6 https://www.cftc.gov/PressRoom/PressReleases/8534-22

spanning from 2007 to 2018, involving manipulation and foreign corruption in the U.S. and global oil markets, including manipulation or attempted manipulation of four U.S. based S&P Global Platts physical oil benchmarks and related futures and swaps.

And in June of this year the CFTC issued a $55 million civil monetary penalty against Trafigura entities for multiple violations of the Commodity Exchange Act (CEA) and associated CFTC regulations. The conduct which was the subject of the action included trading gasoline between 2014-2017 "while in knowing possession of material nonpublic information it knew or should have known had been misappropriated from a Mexican trading entity" and in February 2017 manipulating "a fuel oil benchmark to benefit its futures and swaps positions, including derivatives traded on United States registered entities".

In addition to the fine Trafigura[7] was required to implement remedial measures to ensure future compliance with the CEA.

Going forward the fact that the FCA have issued a reminder about such practices and its statement that it "will not hesitate to intervene when we suspect behaviour detrimental to confidence in, and the fairness of, UK markets" indicates a robust approach to any future instances of such conduct to send a stronger message of deterrence.

What firms can do

To mitigate the risks of the harms caused by flying and printing firms may want to:

- Ensure compliance manuals prohibit flying and printing and are effectively communicated,
- Obtain annual attestations of compliance,
- Ensure that training explains the nature of and the prohibition of flying and printing and the consequences of such behaviours,
- Ensure there are robust surveillance procedures to identify and report flying and printing in place, and
- Ensure that disciplinary procedures offer clear and consistent processes for dealing with misconduct, and that commercial interests are not drivers of outcomes.

7 https://www.cftc.gov/PressRoom/PressReleases/8921-24

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