

Market conduct

Chapter 1

Market Abuse

1.2 Market Abuse: general

- 1.2.1 **G** Provisions in this section are relevant to more than one of the types of behaviour which may amount to *market abuse*.
- 1.2.2 **UK** [deleted]
- 1.2.2-A **UK** [article 2, article 14 and article 15 of the *Market Abuse Regulation*]
- 1.2.2A **UK** [deleted]
- 1.2.3 **G** The *Market Abuse Regulation* does not require the *person* engaging in the behaviour in question to have intended to commit *market abuse*.
- 1.2.4 **G** [deleted]

Factors that may be taken into account in relation to behaviour prior to either a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a recognised auction platform

- 1.2.5 **G** The following factors may be taken into account in determining whether or not behaviour prior to a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a *recognised auction platform* contravenes prohibitions and obligations in the *Market Abuse Regulation* and are indications that it does:

if it is in relation to *financial instruments*:

in respect of which a request for admission to trading on a *regulated market* or *MTF* is subsequently made; and

if it continues to have an effect once an application has been made for the *financial instrument* to be admitted for trading, or it has been admitted to trading on a *regulated market* or *MTF*, respectively ; or

if it is in relation to *financial instruments* :

which are subsequently offered for sale on a *recognised auction platform*; and

if it continues to have an effect once the *financial instruments* are offered for sale on a *recognised auction platform*.

1.2.6 **G** The following factors may be taken into account in determining whether or not refraining from action indicates behaviour which falls under the scope of the *Market Abuse Regulation*, and are indications that it does:

if the *person* concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or

if the *person* concerned has created a reasonable expectation of him acting in a particular manner, as a result of his representations (by word or conduct), in circumstances which give rise to a duty or obligation to inform those to whom he made the representations that they have ceased to be correct, and he has not done so.

Insiders: factors to be taken into account

1.2.7 **UK** [deleted]

1.2.7-A **UK** [article 8(4) of the *Market Abuse Regulation*]

1.2.7A **UK** [deleted]

1.2.8 **G** The following factors may be taken into account in determining whether or not a *person* who possesses *inside information* ought to know that it is *inside information* for the purposes of the final indent of article 8(4) of the *Market Abuse Regulation*:

- (1) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that the *person* from whom he received it is an *insider*; and
- (2) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that it is *inside information*.

1.2.9 **G** For the purposes of being categorised as an *insider* in article 8(4) of the *Market Abuse Regulation*, the *person* concerned does not need to know that the information concerned is *inside information*.

Inside information: factors to be taken into account

1.2.10 **UK** [deleted]

1.2.10A **UK** [article 7 of the *Market Abuse Regulation*]

1.2.11 **G** [deleted]

- 1.2.12 **G** The following factors may be taken into account in determining whether or not information has been made public, and are indications that it has (and therefore is not *inside information*):
- (1) whether the information has been disclosed to a *prescribed market* or a *prescribed auction platform* through a *regulatory information service* or *RIS* or otherwise in accordance with the rules of that market;
 - (2) whether the information is contained in records which are open to inspection by the public;
 - (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public; and
 - (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality.
 - (5) [deleted]
- 1.2.13 **G**
- (1) In relation to the factors in **MAR 1.2.12G** it is not relevant that the information is only generally available outside the *UK*.
 - (2) In relation to the factors in **MAR 1.2.12G** it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.
- 1.2.14 **G** For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be using information which has been made public, since it is information which has been obtained by legitimate means through observation of a public event.
- 1.2.15 **UK** [deleted]
- 1.2.15A **UK** [deleted]
- 1.2.15B **UK** [article 7(1)(d) of the *Market Abuse Regulation*]
- 1.2.16 **G** In determining whether there is a pending order for a client in relation to article 7(1)(d) of the *Market Abuse Regulation*, a factor that may be taken into account is if a *person* is approached by another in relation to a transaction, and:
- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
 - (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

Inside information: commodity derivatives

- 1.2.17 **G** [deleted]
[Note: article 7(1)(b) of the *Market Abuse Regulation*]
- 1.2.18 **UK** [deleted]
- 1.2.18A **UK** [article 7(1)(b) of the *Market Abuse Regulation*]
- 1.2.19 **UK** [deleted]
- 1.2.19A **G** *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.
[Note: *ESMA* guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN)]
- 1.2.20 **G** [deleted]
- 1.2.21 **G** [deleted]
- Recommending or inducing**
- 1.2.22 **UK** [deleted]
- 1.2.23 **G** The following are examples of behaviour that might fall within the scope of article 14(b) of the *Market Abuse Regulation*:
- (1) a director of a company, while in possession of *inside information*, instructs an employee of that company to *sell a financial instrument* in respect of which the information is *inside information*;
 - (2) a *person* recommends or advises a friend to engage in behaviour which, if he himself engaged in it, would amount to *market abuse*.