

MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 3) INSTRUMENT 2001

Powers exercised

A. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument (MAR 4 (Endorsement of the Takeover Code)) in the exercise of the following powers and related provisions in the Act:

- (1) section 138 (General rule-making power)
- (2) section 143 (Endorsement of codes etc.)
- (3) section 157(1) (Guidance).

Commencement

B. This instrument comes into force immediately.

Amendment of schedules

C. In schedule 4 (Powers exercised), insert the following after “Section 138 (General rule-making power)”

“Section 143 (Endorsement of codes etc.)”.

D. In schedule 5 (Rights of action for damages), insert the following at the end of the table:

Chapter/ Appendix	Section/ Annex	Paragraph	For Private Person?	Removed	For other person?
<i>MAR 4</i> <i>(all rules)</i>			Yes	No	No

Amendment of Derivations

E. The table of derivations is amended by the insertion of the following at the end of the table:

Ch/App	S/Ann	P		Subject	Source	Reference
MAR 4	3	1	R	Further support of the Takeover Panel's functions	FSA rules and SFA rules	Financial Services (Conduct of Business) Rules 1990, rule 2.12(1) SFA rule 5-48(1)
MAR 4	3	5	R	Further support of the Takeover Panel's functions	SFA rules	SFA rule 5-48(2)

Amendment of destinations

F. The table of destinations is amended by the insertion of the following at the end of the table:

Source reference	Subject	Module	Ch/App	S/Ann	P		
Financial Services (Conduct of Business) Rules 1990, rule 2.12(1) and SFA rule 5.48(1)	Further support of the Takeover Panel's functions	MAR	4	3	1	R	
Financial Services (Conduct of Business) Rules 1990, rule 2.12(2) and SFA rule 5.48(2)	Further support of the Takeover Panel's functions	MAR	4	3	5	R	

Citation

G. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 3) Instrument 2001.

By order of the Board
20 September 2001

ANNEX

Chapter 4

Endorsement of the Takeover Code



4.1 APPLICATION AND PURPOSE

Application

4.1.1 **R** This chapter applies to every *firm* whose *permission* includes, or ought to include, any *designated investment business*, except as set out in MAR 4.4.1R.
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4.1.2 **G** MAR 4.1.1R applies regardless of whether the *firm's* activity:
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- (1) is a *regulated activity*;
- (2) is carried on from an office of the *firm* in the *United Kingdom*; or
- (3) is in respect of a *client* in the *United Kingdom*.

Purpose

4.1.3 **G** The *Takeover Code* and the *SARs* provide valuable regulation in the areas of takeovers, mergers and substantial acquisition of *shares* of companies. The purpose of endorsing the *Takeover Code* and the *SARs* is to provide them with statutory support. The other requirements in this chapter provide further support for the functions of the *Takeover Panel*.
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4.1.4 **G** Endorsing the *Takeover Code* and the *SARs* and imposing the other requirements in this chapter furthers the FSA's *regulatory objectives*, and in particular the objectives of market confidence and protection of consumers.
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4.2 ENDORSEMENT

4.2.1

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The *FSA* endorses:

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- (1) the *Takeover Code*; and
- (2) the *SARs*;

as respects the *firms* described in *MAR 4.1.1R*.

4.2.2

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The *FSA*'s endorsement in *MAR 4.2.1R* has effect in relation to the *Takeover Code* and the *SARs* as amended from time to time. This is because the *FSA* has notified the *Takeover Panel* that it is satisfied with the *Takeover Panel's* consultation procedures, and not withdrawn that notification, in accordance with section 143(6) of the *Act* (Endorsement of codes etc.).

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4.2.3

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The effect of the *FSA*'s endorsement in *MAR 4.2.1R* is that, under section 143 of the *Act* (Endorsement of codes etc.):

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- (1) at the request of the *Takeover Panel*, the *FSA* may take enforcement action against a *firm* which contravenes the *Takeover Code* or the *SARs*, under Part IV (Permission to Carry on Regulated Activities), Part XIII (Incoming firms: Intervention by Authority), Part XIV (Disciplinary Measures) and Part XXV (Injunctions and Restitution) of the *Act* (see *ENF 14.10*); and
- (2) at the request of the *Takeover Panel*, the *FSA* may take enforcement action against an *approved person* under section 66(2)(b) of the *Act* (Disciplinary powers).

4.2.4

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A failure to comply with a requirement imposed, or ruling given, by the *Takeover Panel* under the *Takeover Code* or the *SARs* has the same effect as a contravention of the *Takeover Code* or the *SARs*, under section 143(5) of the *Act* (Endorsement of codes etc.).

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4.2.5

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ENF 14.10 contains *guidance* on the *FSA*'s exercise of its enforcement powers in this area.

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4.3 FURTHER SUPPORT OF THE TAKEOVER PANEL'S FUNCTIONS

- 4.3.1** **R** ^{/1} A *firm* must not act, or continue to act, for any *person* in connection with a transaction to which the *Takeover Code* or the *SARs* apply (including a *rule 8 transaction*) if the *firm* has reasonable grounds for believing that the *person* in question, or his principal, is not complying or is not likely to comply with the *Takeover Code* or the *SARs*.
- 4.3.2** **G** ^{/1}
- (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code* and *SARs*. It may also, from time to time, name in those notices *persons* as *persons* that, in the *Takeover Panel's* opinion, are not likely to comply with the *Takeover Code* or the *SARs*. Any notices of this type will be available on the *Takeover Panel's* website (www.thetakeoverpanel.org.uk).
 - (2) A *firm* should keep itself informed of *Takeover Panel* notices and take them into account in seeking to comply with *MAR 4.3.1R*. If the *Takeover Panel* were to name such a *person* in such a notice, the *FSA* would expect a *firm* to comply with *MAR 4.3.1R* by not acting or continuing to act for that *person*.
 - (3) The *FSA* would not regard a *firm* as in breach of *MAR 4.3.1R* where the *Takeover Panel* has indicated that it is content for the *firm* to act in relation to that transaction.
- 4.3.3** **G** ^{/1}
- (1) Where a restriction under *MAR 4.3.1R* applies, among other things the *firm* is prevented from carrying on any *designated investment business* activity, or *communicating* or *approving* any *financial promotion*, in connection with a transaction to which the *Takeover Code* or the *SARs* apply.
 - (2) Where a restriction under *MAR 4.3.1R* applies, the *firm* is not prevented from carrying on other activities (including *regulated activities*) in relation to that *person*. This includes *designated investment business* activity which is not in connection with a transaction to which the *Takeover Code* or the *SARs* apply.
- 4.3.4** **G** ^{/1}
- (1) Where a restriction under *MAR 4.3.1R* applies, an *authorised professional firm* is not prevented from providing professional advice or representation in any proceedings to the *person* where that falls within section 327(8) of the *Act*. This means that the *person* can obtain legal advice or representation in any proceedings from a law firm and accounting advice from an accounting firm: see *MAR 4.4.1R(2)*.
 - (2) While the *FSA* recognises the duty of *authorised professional firms* to act in the best interests of their clients, the duty cannot override the provisions of the *Takeover Code* or *SARs* so as to require the *authorised professional firm* to provide services in breach of, or enable breach of, the *Takeover Code* or *SARs*.

- 4.3.5 **R**^{/1} A *firm* must provide to the *Takeover Panel*:
- (1) any information and documents in its possession or under its control which the *Takeover Panel* requests to enable the *Takeover Panel* to perform its functions; and
 - (2) such assistance as the *Takeover Panel* requests and as the *firm* is reasonably able to provide to enable the *Takeover Panel* to perform its functions.

4.3.6 **G**^{/1} In MAR 4.3.5R, “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to providing documents include references to producing a copy of the information in legible form.

4.3.7 **G**^{/1} As a result of section 413 of the *Act* (Limitation on powers to require documents), MAR 4.3.5R does not require a *firm* or an *authorised professional firm* to produce, disclose or permit the inspection of *protected items*.

4.4.1

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This chapter is subject to the following exceptions:

- (1) this chapter does not require an *authorised professional firm* to contravene any rule or principle of, or requirement of a published guidance note relating to, professional conduct applying generally to members of the profession regulated by its *designated professional body*;
- (2) this chapter does not prevent an *authorised professional firm* from providing professional advice, that is, in accordance with section 327(8) of the *Act*, advice:
 - (a) which does not constitute carrying on a *regulated activity*; and
 - (b) the provision of which is supervised and regulated by a *designated professional body*;
- (3) this chapter does not have effect in relation to an *authorised professional firm* in respect of *non-mainstream regulated activity*; and
- (4) this chapter does not apply to:
 - (a) a *UCITS qualifier*; or
 - (b) an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*.