

MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 7) INSTRUMENT 2006

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 119 (The code);
 - (2) section 138 (General rule-making power);
 - (3) section 149 (Evidential provisions); and
 - (4) section 157(1) (Guidance).

Commencement

- B. This instrument comes into force on 6 April 2006.

Amendment to the Glossary of definitions

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.

Amendment to the Market Conduct sourcebook

- D. The Market Conduct sourcebook is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 7) Instrument 2006.

By order of the Board
23 March 2006

Annex A

Amendment to the Glossary of definitions

In this Annex, underlining indicates new text.

Insert the following new definition in the appropriate alphabetical position:

metal market
aberrations regime

The practices set out in the London Metal Exchange's document "Market Aberrations: The Way Forward" published in October 1998 which govern the behaviour expected of long position holders, as clarified and explained by Schedule 1 to the Memorandum from the Executive Director, Regulation and Compliance, London Metal Exchange, to All Members of the London Metal Exchange dated 15 December 2005.

Annex B

Amendments to the Market Conduct sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.6.14 E The following are accepted by the FSA as *accepted market practices* for the purposes of *market abuse (manipulating transactions)*:

- (1) ~~The practices set out in the London Metal Exchange's document "Market Aberrations: The Way Forward" published in October 1998~~ *metal market aberrations regime* ~~which govern the behaviour expected of long position holders (see MAR 1 Annex 2G).~~

...

1.9.3 C *Behaviour* that complies with the requirements imposed on long position holders in the ~~London Metal Exchange's document "Market Aberrations: The Way Forward" published in October 1998~~ *metal market aberrations regime* will not amount to *market abuse (distortion)*.

...

MAR 1 Annex 2 G

Accepted Market Practices

...

Table: Part 2 – Accepted Market Practice: Market aberrations on the London Metal Exchange

Description of the AMP:	
Behaviour conforming with the London Metal Exchange Document "Market Aberrations: the Way Forward" published in October 1998 <u><i>metal market aberrations regime</i></u> which governs the behaviour expected of long position holders in this market.	
Rationale for why the practice would constitute manipulation	
Behaviour which gives rise to the application of the London Metal Exchange Document "Market Aberrations: the Way Forward" published in October 1998 <u><i>metal market aberrations regime</i></u> may involve transactions or orders to trade which:	
(i)	give or are likely to give, false or misleading signals as to the supply of or demand for or price of <i>financial instruments</i> ;
(ii)	secure, by a person or persons acting in collaboration, the price of one or several <i>financial instruments</i> at an abnormal or artificial level.

List of Factors
The following factors were taken into account by the FSA when assessing behaviour conforming with the London Metal Exchange Document "Market Aberrations: the Way Forward" <u>metal market aberrations regime</u> as an accepted market practice:
<i>The level of transparency (to the rest of the market) of the practice in question</i>
The Metal Market Aberrations Regime <u>metal market aberrations regime</u> has been published to the market by the Exchange on which it applies. The transparency criterion is therefore met. Those who have long positions at or above the thresholds specified in the Market Aberrations Regime <u>metal market aberrations regime</u> are required to advertise to the market that they will be prepared to lend stock.
<i>The need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand</i>
The Metal Market Aberrations Regime <u>metal market aberrations regime</u> is designed to facilitate the operation of supply and demand on the market by avoiding abusive squeezes or other circumstances which could result in or involve distortion of the market for the investment in question.
...
<i>The degree to which the practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by the practice</i>
The practice in the London Metal Exchange Document "Market Aberrations: the Way Forward" <u>metal market aberrations regime</u> was developed taking into account the trading mechanism of the LME. The behaviour required of long position holders under the London Metal Exchange Document "Market Aberrations: the Way Forward" , <u>metal market aberrations regime</u> is monitored by the LME compliance department on a daily basis using public and confidential regulatory information available to it. ...
<i>The risk inherent in the practice for the integrity of directly or indirectly related markets in the financial instrument, including any market in the financial instrument which exists on an exchange (or other trading venue) and related markets in directly related financial instruments:</i>
The practices in the London Metal Exchange Document "Market Aberrations: the Way Forward" <u>metal market aberrations regime</u> was <u>was</u> developed to maintain the integrity of the markets in <i>financial instruments</i> traded in the LME. The practices have <u>regime has</u> been shown to be an aid in maintaining the integrity of those markets.
<i>The outcome of any investigation of the practice by any regulatory body, including the extent to which a practice breaches existing rules or regulations designed to prevent market manipulation on the market in question or on directly or indirectly related markets in the EU:</i>
The FSA <u>FSA</u> supports the regime outlined in the London Metal Exchange Document "Market Aberrations: the Way Forward" <u>metal market aberrations regime</u> and, under the

previous Code of Market Conduct applying to trading on the LME, provided a safe harbour for behaviour in conformity with the ~~practices outlined in the document~~ metal market aberrations regime.

...

Overriding Principles

The ~~FSA~~FSA had regard to the following overriding principles to ensure that the ~~practices outlined in the London Metal Exchange Document "Market Aberrations: the Way Forward"~~ metal market aberrations regime ~~do~~ does not undermine market integrity, while fostering innovation and the continued dynamic development of financial markets:

...

Conditions relating to legitimate reasons and proper execution:-

The ~~regime in the London Metal Exchange Document "Market Aberrations: the Way Forward"~~ metal market aberrations regime specifies the behaviour required in the circumstances where it is triggered and conduct in conformity with the ~~regime~~ metal market aberrations regime is for legitimate reasons.