

MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2007

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).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 December 2007.

Amendments to the Handbook

- D. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 8) Instrument 2007.

By order of the Board
6 December 2007

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

Factors to be taken into account in determining whether or not behaviour amounts to market abuse (improper disclosure)

- 1.4.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:
- (1) whether the disclosure is permitted by the rules of a *prescribed market*, of the *FSA* or the *Takeover Code*; or
 - (2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:
 - (a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
 - (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or
 - (c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or placees of *securities*); or
 - (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or
 - (e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf; or
 - (3) whether:
 - (a) the information disclosed is *trading information*;
 - (b) the disclosure is made by a person ("A") only to the extent necessary, and solely in order, to offer to dispose of the *investment* to, or acquire the *investment* from, the *person* receiving the information; and
 - (c) it is reasonable for A to make the disclosure to enable him to perform the proper functions of his employment, profession or

duties.

1.4.5A G MAR 1.4.5E(3) is intended only to apply to an actual offer of the *investment*. It is not intended to apply to a disclosure of *trading information* to gauge potential interest in the *investments* to be offered or to help establish the likely price that will be obtained.