

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

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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

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[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

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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 <i>financial instruments</i> are offered for sale on a <i>recognised auction platform</i> .
1.2.6	G	<p>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 <i>Market Abuse Regulation</i>, and are indications that it does:</p> <p>if the <i>person</i> concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or</p> <p>if the <i>person</i> 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.</p>
		Insiders: factors to be taken into account
1.2.7	UK	[deleted]
1.2.7-A	UK	[article 8(4) of the <i>Market Abuse Regulation</i>]
1.2.7A	UK	[deleted]
1.2.8	G	<p>The following factors may be taken into account in determining whether or not a <i>person</i> who possesses <i>inside information</i> ought to know that it is <i>inside information</i> for the purposes of the final indent of article 8(4) of the <i>Market Abuse Regulation</i>:</p> <p>(1) if a normal and reasonable <i>person</i> in the position of the <i>person</i> who has <i>inside information</i> would know or should have known that the <i>person</i> from whom he received it is an <i>insider</i>; and</p> <p>(2) if a normal and reasonable <i>person</i> in the position of the <i>person</i> who has <i>inside information</i> would know or should have known that it is <i>inside information</i>.</p>
1.2.9	G	<p>For the purposes of being categorised as an <i>insider</i> in article 8(4) of the <i>Market Abuse Regulation</i>, the <i>person</i> concerned does not need to know that the information concerned is <i>inside information</i>.</p>
		Inside information: factors to be taken into account
1.2.10	UK	[deleted]
1.2.10A	UK	[article 7 of the <i>Market Abuse Regulation</i>]
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 <i>Market Abuse Regulation</i>]
1.2.18	UK	[deleted]
1.2.18A	UK	[article 7(1)(b) of the <i>Market Abuse Regulation</i>]
1.2.19	UK	[deleted]
1.2.19A	G	ESMA has issued guidelines under article 7(5) of the <i>Market Abuse Regulation</i> which relate to the definition of <i>inside information</i> 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 <i>Market Abuse Regulation</i> : (1) a director of a company, while in possession of <i>inside information</i> , instructs an employee of that company to <i>sell a financial instrument</i> in respect of which the information is <i>inside information</i> ; (2) a <i>person</i> recommends or advises a friend to engage in behaviour which, if he himself engaged in it, would amount to <i>market abuse</i> .