

Chapter 1

Market Abuse

1.3 Insider dealing

1.3.1 UK [deleted]

1.3.1A UK [article 8 of the *Market Abuse Regulation*]

Descriptions of behaviour that amount to insider dealing

1.3.2 G The following are examples of behaviour that may amount to *insider dealing* under the *Market Abuse Regulation*, but are not intended to form an exhaustive list:

- (1) [deleted]
- (2) front running/pre-positioning - that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market or auction clearing price;
- (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *financial instrument* , using *inside information* concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a *spread bet* on the target *company's share price*); and
- (4) in the context of a takeover, a *person* who acts for the *offeror* or potential *offeror dealing* for his own benefit in a *financial instrument* using information concerning the proposed bid.

Factors to be taken into account: "on the basis of"

1.3.3 E [deleted]
[Note: article 9 of the *Market Abuse Regulation*]

1.3.4 E [deleted]

1.3.5 E [deleted]
[Note: article 9(1)(a) of the *Market Abuse Regulation*]

Relevant factors: legitimate business of market makers

- 1.3.6 **C** [deleted]
[Note: article 9(5) of the *Market Abuse Regulation*]
- 1.3.7 **G** For market makers and *persons* that may lawfully *deal* in *financial instruments* on their own account, pursuing their legitimate business of such *dealing* (including entering into an agreement for the underwriting of an issue of *financial instruments*) may not in itself amount to *market abuse*.
- 1.3.8 **G** [deleted]
- 1.3.9 **E** [deleted]
- 1.3.10 **G** The following factors maybe taken into account in determining whether or not a *person's* behaviour is in pursuit of legitimate business, and are indications that it is:
- (1) the extent to which the relevant trading by the *person* is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the *person's* legitimate business; or
 - (2) whether, in the case of a transaction on the basis of *inside information* about a client's transaction which has been executed, the reason for it being *inside information* is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or *trading venue* obligations; or
 - (3) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or
 - (4) the extent to which the *person's* behaviour was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.

- 1.3.11 **E** [deleted]
[Note: article 9 of the *Market Abuse Regulation*]

Relevant factors: execution of client orders

- 1.3.12 **C** [deleted]
[Note: article 9 of the *Market Abuse Regulation*]
- 1.3.13 **G** [deleted]
[Note: article 9 of the *Market Abuse Regulation*]

1.3.14	E	[deleted]
1.3.15	G	<p>The following factors may be taken into account in determining whether or not a <i>person's</i> behaviour in executing an order (including an order relating to a bid) on behalf of another is carried out legitimately in the normal course of exercise of that person's employment, profession or duties, and are indications that it is:</p> <ul style="list-style-type: none">(1) whether the <i>person</i> has complied with the applicable provisions of COBS , or their equivalents in the relevant jurisdiction; or(2) whether the <i>person</i> has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order; or(3) whether the <i>person's</i> behaviour was with a view to facilitating or ensuring the effective carrying out of the order; or(4) the extent to which the <i>person's</i> behaviour was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him; or(5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that <i>person</i> is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.
1.3.16	G	[deleted]
Descriptions of behaviour that do not indicate insider dealing and relevant factors: takeover and merger activity		
1.3.17	G	<p>With reference to article 9(4) of the <i>Market Abuse Regulation</i>, examples of using <i>inside information</i> solely for the purpose of proceeding with a merger or public takeover may include:</p> <ul style="list-style-type: none">(1) seeking from holders of <i>securities</i>, issued by the target, irrevocable undertakings or expressions of support to accept an <i>offer</i> to acquire those <i>securities</i> (or not to accept such an <i>offer</i>);(2) making arrangements in connection with an issue of <i>securities</i> that are to be offered as consideration for the takeover or merger <i>offer</i> or to be issued in order to fund the takeover or merger <i>offer</i>, including making arrangements for the underwriting or placing of those <i>securities</i> and any associated hedging arrangements by underwriters or places which are proportionate to the risks assumed; and(3) making arrangements to offer cash as consideration for the takeover or merger <i>offer</i> as an alternative to <i>securities</i> consideration.

- 1.3.18** **G** Categories of *inside information* relevant to ■ MAR 1.3.17 G:
- (1) information that an *offeror* or potential *offeror* is going to make, or is considering making, an offer for the target; and
 - (2) information that an *offeror* or potential *offeror* may obtain through due diligence.
- 1.3.19** **G** The following factor may be taken into account in determining whether or not a *person's* behaviour is for the purpose of him proceeding with a merger with the target *company* or a public takeover of the target *company*, and is an indication that it is:
- (1) whether the transactions concerned are in the target *company's* shares.
 - (2) [deleted]
- 1.3.20** **G** **Examples of insider dealing**
- The following descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the definition of *inside information* relating to *financial instruments* other than *commodity derivatives* or *emissions allowances* or auctioned products based thereon:
- (1) X, a director at B PLC has lunch with a friend, Y. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread bet priced or valued by reference to the share price of B PLC based on his expectation that the price in B PLC will increase once the takeover offer is announced.
 - (2) An employee at B PLC obtains the information that B PLC has just lost a significant contract with its main customer. Before the information is announced over the *regulatory information service* the employee, whilst being under no obligation to do so, sells his shares in B PLC based on the information about the loss of the contract.
- 1.3.21** **G** The following description is intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concerns the definition of *inside information* relating to commodity derivatives.
- Before the official publication of LME stock levels, a metals trader learns (from an *insider*) that there has been a significant decrease in the level of LME aluminium stocks. This information is reasonably expected to be disclosed in accordance with market practice or custom on the LME. The trader buys a substantial number of *futures* in that metal on the LME, based upon his knowledge of the significant decrease in aluminium stock levels.
- 1.3.22** **G** The following description is intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concerns the definition of *inside information* relating to pending client orders.

A dealer on the trading desk of a *firm dealing* in oil derivatives accepts a very large order from a *client* to acquire a long position in oil futures deliverable in a particular *month*. Before executing the order, the dealer trades for the *firm* and on his personal account by taking a long position in those oil futures, based on the expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his *client's* order. Both trades could constitute *insider dealing*.

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The following connected descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A *person* deals, on a *trading venue* , in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A *person* deals, in a commodity futures contract traded on a *trading venue* , based on the same information, provided that the information is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the national, *EU* or Member State level, market rules, contract, practice or custom, on the relevant commodity futures market.

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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).]