

**MARKET CONDUCT SOURCEBOOK INSTRUMENT 2001**

- A The Financial Services Authority makes the provisions in the Annex to this instrument (“MAR”) in the exercise of the powers listed in Schedule 4 to MAR (Powers exercised).
- B This instrument shall come into force as follows:
- (1) MAR 1 (Code of Market Conduct): at the beginning of the day on which section 123 (Power to impose penalty in cases of market abuse) of the Financial Services and Markets Act 2000 (the “Act”) comes into force;
  - (2) MAR 2 (Price stabilising rules) and MAR 3 (Inter-professional conduct): at the beginning of the day on which section 19 of the Act (The general prohibition) comes into force;
  - (3) paragraphs A to E on this page: immediately.
- C The provisions of the Act relevant to making rules and listed in Schedule 4 to MAR (Powers exercised) are specified for the purpose of section 153(2) of the Act (Rule-making instruments).
- D This instrument may be cited as the Market Conduct Sourcebook Instrument 2001.
- E The Annex to this instrument (including its Schedules) may be cited as the Market conduct sourcebook (or MAR).

By Order of the Board  
June 2001

# ANNEX



# Market conduct



## Contents

Transitional provisions

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Schedule 4: Powers exercised

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Derivations

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## Handbook Modules

### Transitional Provisions

#### 1 Table

*G GEN* contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*. These include transitional provisions relevant to record keeping and *notification rules*.

#### 1) Transitional Provisions for The Code of Market Conduct – (MAR 1)

There are no transitional provisions for *MAR 1* (The Code of Market Conduct).

#### 2) Transitional Provisions for Price stabilising rules (MAR 2)

*SUP* contains transitional provisions which carry forward into *MAR 2* (Price stabilising rules) written concessions relating to pre-commencement provisions.

#### 2 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material provision to which transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force

1	MAR 2	R	<p><b>Part 10 of the Financial Services (Conduct of Business) Rules 1990 applies in relation to an <i>offer for cash</i>, instead of MAR 2, if:</b></p> <p><b>(1) a <i>public announcement of the offer</i> which stated the <i>offer price</i> has been made before <i>commencement</i>; or</b></p> <p><b>(2) the <i>introductory period</i> for the <i>offer</i> started not more than 60 days before <i>commencement</i> and the <i>firm</i> or other <i>person</i> so chooses and makes a written record of that choice before <i>commencement</i>.</b></p> <p><b>A record in (2) must be retained for 3 years from the end of the <i>stabilising period</i> for the <i>offer</i>.</b></p> <p><b>This transitional provision applies to an offer as defined in the 1990 Rules, and has effect as a <i>price stabilising rule</i>.</b></p>	<p><i>Commence-</i> <i>ment</i> until the end of the <i>stabilis-</i> <i>ing period</i> for the offer</p>	<p><i>Commence-</i> <i>ment</i></p>
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# Chapter 1.

## The Code of Market Conduct

## 1.1 Application

### APPLICATION: WHO?

- 1.1.1** **G**<sub>/1</sub> The *Code of Market Conduct* ("the Code") is made under section 119 of the *Act* which requires the *FSA* to produce a code giving guidance on what does and does not amount to *market abuse*. This Code is relevant to all *persons* seeking guidance as to whether or not *behaviour* amounts to *market abuse*.

### APPLICATION: WHAT?

- 1.1.2** **G**<sub>/1</sub> Part VIII of the *Act* (Penalties for market abuse) contains provisions relating to *market abuse* which are described in this Code as the *market abuse regime*.
- 1.1.3** **G**<sub>/1</sub> The three tests in the *Act* which must be satisfied in order to establish that *behaviour* (see *MAR* 1.3), whether by one *person* alone or by two or more *persons* jointly or in concert, amounts to *market abuse* are as follows:
- (1) the *behaviour* must occur in relation to a *qualifying investment* traded on a *prescribed market* (see *MAR* 1.11);
  - (2) the *behaviour* must satisfy one or more of the three conditions identified in section 118(2) of the *Act* (Market abuse), the text of which is set out below:
    - (a) "the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in *investments* of the kind in question should be effected" (section 118(2)(a) of the *Act*) (see *MAR* 1.4);
    - (b) "the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question" (section 118(2)(b) of the *Act*) (see *MAR* 1.5);
    - (c) "a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question" (section 118(2)(c) of the *Act*) (see *MAR* 1.6); and
  - (3) the *behaviour* must be likely to be regarded by a *regular user* of the market as a failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a *person* in the position of the *person* in question (see *MAR* 1.2).



**1.1.4** G<sub>/1</sub> Under section 123(1) of the *Act*, the FSA has the power either to impose a penalty, or to make a statement to the effect that a *person* has engaged in *market abuse*, if the FSA is satisfied that a *person* ("A"):

- (1) has engaged in *market abuse*; or
- (2) by taking or refraining from taking any action has *required or encouraged* another *person* to engage in *behaviour* which, if engaged in by A, would amount to *market abuse*.

**1.1.5** G<sub>/1</sub> In accordance with section 123(2) of the *Act*, the FSA cannot impose a penalty if there are reasonable grounds for it to be satisfied that a *person*:

- (1) believed on reasonable grounds that his *behaviour* did not amount to *market abuse*; or
- (2) had taken all reasonable precautions and exercised all due diligence to avoid engaging in *market abuse*.

**1.1.6** G<sub>/1</sub> In accordance with section 123(2) of the *Act*, the FSA cannot impose a penalty if there are reasonable grounds for it to be satisfied that a *person*:

- (1) believed on reasonable grounds that his *behaviour* had not *required or encouraged* another *person* to engage in *behaviour* which, if engaged in by the first *person*, would have amounted to *market abuse*; or
- (2) had taken all reasonable precautions and exercised all due diligence to avoid *requiring or encouraging* another *person* to engage in *behaviour*, which, if engaged in by the first *person*, would have amounted to *market abuse* (see ENF 14.5).

**APPLICATION: WHERE?**

**1.1.7** G<sub>/1</sub> Under section 118(5) of the *Act*, *behaviour* will fall within the scope of the *market abuse regime* if it occurs in relation to *qualifying investments* which are traded on a *prescribed market* which is located in the *United Kingdom* or which is accessible electronically in the *United Kingdom*. (See MAR 1.11 for more detail on *qualifying investments* traded on a *prescribed market*.)

**PURPOSE AND EFFECT**

**1.1.8** G<sub>/1</sub> The Code gives *guidance* for the purpose of determining whether or not *behaviour* amounts to *market abuse*, in accordance with section 119 of the *Act*.

**1.1.9** G<sub>/1</sub> The Code does not have the effect of modifying or extending any disclosure obligations, including under the *Listing Rules*, the *Takeover Code* and SARs or which apply in relation to any *prescribed market*.




**1.1.10** G<sub>/1</sub> The Code also describes *behaviour* that, in the opinion of the FSA, does not amount to *market abuse*. Section 122(1) of the *Act* (Effect of the code) provides that such *behaviour* is to be taken conclusively, for the purposes of the *Act*, as not amounting to *market abuse*. The relevant sections of the Code are identified by the letter "C" and they are referred to in the Code as "safe harbours". (See MAR

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1.4.20C, MAR 1.4.21C, MAR 1.4.24C, MAR 1.4.26C, MAR 1.4.28C, MAR 1.5.24C, MAR 1.5.25C, MAR 1.5.27C, MAR 1.5.28C and MAR 1.6.19C.)







- 1.1.11** G<sub>/1</sub> In accordance with section 122(2) of the *Act*, some of the provisions of the Code identified by the letter “E” may be relied upon so far as they describe *behaviour* which, in the opinion of the *FSA*, amounts to *market abuse*. In addition, in accordance with section 119(2)(c) of the *Act*, other provisions in the Code identified by the letter “E” describe factors that, in the opinion of the *FSA*, are to be taken into account in determining whether or not *behaviour* amounts to *market abuse*.
- 1.1.12** G<sub>/1</sub> Explanatory *guidance* is provided in relation to some provisions of the *Act* and this Code. This *guidance* is indicated by the letter “G”. It does not form part of the Code, but it is *guidance* made under the *FSA*’s general power to give *guidance* as set out in section 157 of the *Act* (Guidance).
- 1.1.13** G<sub>/1</sub> The Code is not an exhaustive list of all types of *behaviour* which may, or may not, amount to *market abuse*, nor of all the factors to be taken into account in determining whether *behaviour* amounts to *market abuse*. The *FSA* may, subject to appropriate consultation, alter or replace the Code at any time.
- 1.1.14** G<sub>/1</sub> The *Act* provides certain statutory exceptions in relation to the *market abuse regime* (see MAR 1.7).

## 1.2 The regular user test

- 1.2.1**  <sup>/1</sup> A *regular user* is defined in Section 118(10) of the *Act* as 'in relation to a particular market, a reasonable person who regularly deals on that market in investments of the kind in question.' *Behaviour* will amount to *market abuse* only where it would be likely to be regarded by a *regular user* as a failure on the part of the *person* or *persons* concerned to observe the standard of *behaviour* reasonably expected of a *person* in his or their position in relation to the market.
- 1.2.2**  <sup>/1</sup> In determining whether *behaviour* amounts to *market abuse*, it is necessary to consider objectively whether a hypothetical reasonable *person*, familiar with the market in question, would regard the *behaviour* as acceptable in the light of all the relevant circumstances.
- 1.2.3**  <sup>/1</sup> In determining whether *behaviour* falls below the standards expected, the *regular user* is likely to consider all the circumstances of the *behaviour*, including:
- (1) the characteristics of the market in question, the *investments* traded on that market, and the users of the market;
  - (2) the rules and regulations of the market in question and any applicable laws. For example, it is likely that it will be relevant to consider the extent to which the *behaviour* is in compliance with the rules of the particular market and if the *person* is based overseas it may be relevant to consider the extent to which the *behaviour* is in compliance with the standards prevailing in that overseas jurisdiction;
  - (3) prevailing market mechanisms, practices and codes of conduct applicable to the market in question;
  - (4) the position of the *person* in question and the standards reasonably to be expected of that *person* at the time of the *behaviour* in the light of that *person's* experience, level of skill and standard of knowledge. For example, the standards which it would be reasonable to expect of a retail investor are likely to differ from those to be expected of an industry professional; and

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(5) the need for market users to conduct their affairs in a manner that does not compromise the fair and efficient operation of the market as a whole or unfairly damage the interests of investors.

- 1.2.4**  <sub>/1</sub> The *regular user* is likely to consider it relevant, although not determinative, that the *behaviour* conforms with standards that are generally accepted by users of the market. Detailed guidance is given at MAR 1.4 – MAR 1.6 as to the different types of *behaviour* that would not be regarded as acceptable.
- 1.2.5**  <sub>/1</sub> The statutory definition of market abuse does not require the *person* engaging in the *behaviour* to have intended to abuse the market. Accordingly it is not essential for such an intention or purpose to be present in order for *behaviour* to fall below the objective standards expected. However, in some circumstances the determination of whether *behaviour* falls short of those standards will depend on the purpose of the *person* in question (for example, MAR 1.6.4E). In those circumstances, the *regular user* is likely to consider the purpose of the *person* in question in addition to the other relevant considerations listed at MAR 1.2.3E. This need not be the sole purpose but should be an *actuating purpose*.
- 1.2.6**  <sub>/1</sub> A mistake is unlikely to fall below the objective standards expected where the *person* in question has taken reasonable care to prevent and detect the occurrence of such mistakes.
- 1.2.7**  <sub>/1</sub> The objective standard of *behaviour* expected by the *regular user* is likely to vary to some degree across markets according to the characteristics of the market in question and the *investments* concerned. For example, the disclosure standards currently expected in equities markets differ from those expected in *commodities* markets. Consequently, different standards currently apply to the use of non-public information in different markets. Further, the standard expected of a *person* will vary with the experience, level of skill and standard of knowledge that the *regular user* is likely to expect from a *person* in that position. For example, when assessing the standards to be expected of public sector bodies, it is likely that it will be relevant to take into account their statutory and other official functions.
- 1.2.8**  <sub>/1</sub> It may often be appropriate to take into account the extent to which the *behaviour* is in compliance with other applicable rules including the rules of a *prescribed market*, the *Takeover Code* or *FSA rules*. Compliance with such rules may not be sufficient for the *behaviour* not to amount to *market abuse*, since those rules may not be specifically directed at the types of *behaviour* prohibited by the *Act* or because compliance with those rules is only one consideration among others. Greater weight is likely to be given to compliance with a rule that expressly requires or permits particular *behaviour*. However, this will not in itself be determinative. Similarly, failure to comply with a rule will not of itself create a presumption that there has been *market abuse*. If the *prescribed market* or the *Takeover Panel* has granted a dispensation from, or given guidance in advance on, its rules, this is likely also to be a relevant factor in considering whether the *behaviour* amounts to *market abuse*. As mentioned at ENF 14.9.3G the *FSA* will attach considerable weight to the views of the *Takeover Panel* in interpreting and applying the *Takeover Code* and the *SARs*.
- 1.2.9**  <sub>/1</sub> Where a *person's behaviour* occurs on an overseas market, but has an impact on a *prescribed market*, the *regular user* is likely to consider that it will be relevant to

have regard to the local rules, practices and conventions prevailing in the relevant market, and whether or not the *person* is in the *United Kingdom*. However, compliance with such rules will not of itself be determinative.

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As stated in *MAR 1.2.4E*, it is likely to be relevant to consider whether to take into account the extent to which the *behaviour* conforms with standards that are generally accepted by users of the market, but again this will not in itself be determinative. Such standards will be acceptable where they promote the fair and efficient operation of the market as a whole and do not unfairly damage the interests of investors. In circumstances where there is a range of practices which are generally accepted by users of the market, each practice is to be judged objectively on its own merits.

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The *FSA* does not anticipate that divergences between standards that are generally accepted by users of the market and the standards expected by the *regular user* will be frequent. In future, the *FSA* may identify a practice which is accepted in the market, but which, in the *FSA*'s opinion, is likely to fall short of the standards expected by the *regular user*. In such cases the *FSA* will consider whether to signal its views on the practice in the form of *guidance* (making use of its power to do so under section 157 of the *Act*), or through some other statement, or by revising the Code, or to take enforcement action. The *FSA* recognises that the former approach will often be more appropriate, and where this is the case the *FSA* will work with relevant market participants and regulatory bodies (including the *RIEs*) to address the causes of concern. However, for those occasions where the appropriate response will be to take enforcement action, the *FSA*'s enforcement policies in relation to *market abuse* as set out at *ENF 14* will be relevant.

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The *FSA* is satisfied that the *RIE* rulebooks do not permit or require *behaviour* which amounts to *market abuse*.

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The Code is not exhaustive in its descriptions of *behaviour* that does or does not amount to *market abuse*. In circumstances where a *person* is proposing to undertake an innovative transaction, he should consider it in the light of the guidance provided in sections *MAR 1.4 - MAR 1.6*. It is also open to a *person* to consider seeking *guidance* from the *FSA* in respect of the proposed *behaviour*. Similarly, members of an *RIE* may wish to seek guidance from the relevant exchange on the consistency of the *behaviour* with exchange rules.

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## 1.3 Behaviour

### 1.3.1



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The types of *behaviour* which come within the scope of the *market abuse regime* include, but are not limited to, the following:

- (1) *dealing in qualifying investments*;
- (2) *dealing in commodities or investments* which are the subject matter of, or whose price or value is determined by reference to, a *qualifying investment* (in this case, the *commodity* will be a “*relevant product*” in relation to the *qualifying investment* );
- (3) *arranging deals* in respect of *qualifying investments*;
- (4) causing or procuring or *advising* others to *deal in qualifying investments*;
- (5) making statements or representations or otherwise disseminating information which is likely to be regarded by the *regular user* as relevant to determining the terms on which transactions in *qualifying investments* should be effected;
- (6) providing corporate finance advice and conducting corporate finance activities in *qualifying investments*; and
- (7) managing investments which are *qualifying investments* belonging to another.




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*Behaviour* includes both action and inaction. For example, inaction may amount to *market abuse* in circumstances where a *person* is under a legal or regulatory obligation to make a particular disclosure and fails to do so.

## 1.4 Misuse of information

- 1.4.1**  Statements in this section to the effect that *behaviour* “amounts to *market abuse*” assume that the test in MAR 1.1.3G(1) has also been met. /1
- 1.4.2**  Section 118(2)(a) of the *Act* defines *behaviour* based on misuse of information as: /1  
 ”behaviour which is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected”.
- 1.4.3**  In all *prescribed markets*, market users rely on the timely dissemination of such *relevant information* as they may reasonably expect to receive. Those who possess *relevant information* ahead of general dissemination should, therefore, refrain from basing their *behaviour* on that information and from *requiring or encouraging* others to engage in *behaviour* until it is disseminated, save in the circumstances set out in MAR 1.4.20C - MAR 1.4.28C. Otherwise, the confidence of market users in the ability of the market to ensure access to such information will be undermined. The extent to which market users may reasonably expect to have access to information differs between different markets. This is explained further below at MAR 1.4.12E to MAR 1.4.16G. /1

### BEHAVIOUR WHICH AMOUNTS TO MARKET ABUSE

- 1.4.4**  *Behaviour* will amount to *market abuse* (unless MAR 1.4.20C - MAR 1.4.28C apply) in that it will be a misuse of information where a *person deals or arranges deals* in any *qualifying investment* or *relevant product* where all four of the following circumstances are present: /1
- (1) the *dealing* or *arranging* is based on information. The *person* must be in possession of information and the information must have a material influence on the decision to engage in the *dealing* or *arranging*. The information must be one of the reasons for the *dealing* or *arranging*, but need not be the only reason;

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- (2) the information must be information which is not generally available. Criteria for determining whether information is generally available are set out in MAR 1.4.5E;
- (3) the information must be likely to be regarded by a *regular user* as relevant when deciding the terms on which transactions in the *investments* of the kind in question should be effected. Such information is referred to in this Code as “*relevant information*”. Factors which are to be taken into account when determining whether information is *relevant information* are set out in MAR 1.4.9E to MAR 1.4.11E;
- (4) the information must relate to matters which the *regular user* would reasonably expect to be disclosed to users of the particular *prescribed market*. As explained further below at MAR 1.4.12E and MAR 1.4.13E, this includes both matters which give rise to such an expectation of disclosure or are likely to do so either at the time in question, or in the future.

**(A) INFORMATION WHICH IS GENERALLY AVAILABLE (MAR 1.4.4E(2))**

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Information is treated as generally available if it can be obtained by research or analysis conducted by or on behalf of users of a market (section 118(7) of the *Act*). In addition, information is to be regarded as generally available where one (or more) of the following is satisfied:

- (1) the information has been disclosed to a *prescribed market* through an *accepted channel for dissemination of information* or otherwise under the rules of that market;
- (2) the information is contained in records which are open to inspection by the public;
- (3) the information has otherwise been made public, including through the Internet, or some other publication, or is derived from information which has been made public;
- (4) the information can be obtained by observation.






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People are free to use information that they have obtained through research, analysis or other legitimate means. Legitimate means include the observation of a public event. Observation of a public event includes any information which is discussed in a public area or can be observed by the public without infringing rights of privacy, property or confidentiality. Such information will be considered generally available. The fact that in practice other users of the market cannot obtain the information because of limitations in their resources, expertise or competence does not mean that the information cannot legitimately be obtained.



- 1.4.7**  /1 Examples of information which might be obtainable through legitimate research include:
- (1) information which is available only overseas and has not been published, or otherwise been made available to the public, in the *United Kingdom*; and
  - (2) information which is only available on payment of a fee.
- 1.4.8**  /1 For example, if a train passes a burning factory and a passenger calls his broker using his mobile telephone to *sell shares* in the factory's owner, that passenger will be acting on information which is generally available, since it is information which has been obtained by legitimate means through observation of a public event.
- (B) RELEVANT INFORMATION (MAR 1.4.4E(3))**
- 1.4.9**  /1 Whether, in a particular case, a particular piece of information would, or would be likely to, be regarded as *relevant information* by the *regular user* will depend on the circumstances of the case. In making such a determination, the *regular user* is likely to consider the extent to which:
- (1) the information is specific and precise;
  - (2) the information is material;
  - (3) the information is current;
  - (4) the information is reliable, including how near the *person* providing the information is, or appears to be, to the original source of that information and the reliability of that source;
  - (5) there is other material information which is already generally available to inform users of the market; and
  - (6) the information differs from information which is generally available and can therefore be said to be new or fresh information.
- 1.4.10**  /1 In the case of information relating to possible future developments (which do not currently give rise to an expectation of disclosure (MAR 1.4.4E(4)), the following additional factors are to be taken into account when determining the relevance of that information (see example in MAR 1.4.18E):
- (1) whether the information provides, with reasonable certainty, grounds to conclude that the possible future developments will, in fact, occur; and
  - (2) the significance those developments would assume for market users given their occurrence.
- 1.4.11**  /1 Examples of *relevant information* include the following:

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- (1) where the *qualifying investment* in question is issued by a *company*, or is a *derivative* relating to a *qualifying investment* issued by a *company*, information concerning the business affairs or prospects of the *company* or a related *company*;
- (2) where the *qualifying investment* is a *derivative* relating to a *commodity*, information or events affecting the deliverable supply of the *commodity*, such as, for example, information as to the business operations of major suppliers; and
- (3) information as to official statistics, and fiscal and monetary policy announcements before they are announced.

**(C) INFORMATION WHICH A REGULAR USER WOULD REASONABLY EXPECT TO BE DISCLOSED TO OTHER USERS OF THE MARKET (MAR 1.4.4E(4))**

1.4.12



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Information will only fall within MAR 1.4.4E(4) if it is either:

- (1) information which has to be disclosed in accordance with any legal or regulatory requirement (referred to as “*disclosable information*”); or
- (2) information which is routinely the subject of a public announcement although not subject to any formal disclosure requirement (referred to as “*announceable information*”).

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In the case of information relating to possible future developments (MAR 1.4.4E(4) and MAR 1.4.10E), which may lead to a disclosure or an announcement being made, the following additional factor is to be taken into account when determining whether the information is to be treated as *disclosable information* or as *announceable information*, namely whether the information provides, with reasonable certainty, grounds to conclude that the possible future developments will, in fact, occur and accordingly that a disclosure or announcement will, in fact, be made (see example in MAR 1.4.18E).

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Examples of *disclosable information* include:

- (1) information which is required to be disseminated under the *Takeover Code* or *SARs* on, or in relation to, *qualifying investments* traded on a *prescribed market*;
- (2) information relating to *officially listed securities* which is required to be disclosed under the *Listing Rules*;
- (3) information which is required to be disclosed to a *prescribed market* under the rules of an *RIE*.

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Examples of *announceable information* include:

- (1) information which is to be the subject of official announcement by governments, central monetary or fiscal authorities or *regulatory body* (financial or otherwise, including exchanges);
- (2) changes to published credit ratings of *companies* whose *securities* are *qualifying investments* or *relevant products*; and
- (3) changes to the constituents of a *securities* index, where the *securities* are *qualifying investments* or *relevant products*.

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Examples of information that would not be *announceable information* include surveys or research based on information generally available, for example, CBI surveys and MORI opinion polls.

**(D) EXAMPLES**

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An example of *behaviour* which falls within MAR 1.4.4E occurs where a *person deals*, on a *prescribed market*, in the equities of XYZ plc, a *commodity* producer, based on information concerning that *company* which is not generally available, which is *relevant information* and which is *disclosable* or *announceable information* in relation to the equity market. If the information is also *relevant information* in relation to a *commodity futures* contract traded on a *prescribed market*, *dealing* in that *futures* contract based on the information will amount to *market abuse* only if the information is also *disclosable* or *announceable* in relation to the *commodity futures* market. More generally, where information is required to be disclosed to market A, *dealing or arranging deals* in *qualifying investments* traded on A, or in other related products, based on the information will amount to *market abuse* where this occurs prior to the disclosure being made. Where market A is an equity market, related products will include *derivatives* and other *investments* related to the equity in relation to which the disclosure is to be made. Where the information is also relevant to market B, *dealing or arranging deals* in relation to *qualifying investments* traded on market B, or in other related products, based on the information will only amount to *market abuse* where disclosure obligations exist in relation to market B.

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An example of information which falls within MAR 1.4.4E(4) arises in connection with the obligation of an *officially listed company* to announce any major new developments in its sphere of activity which may lead to substantial movement in the price of its *listed securities*. This could include, for example, entering into a significant contract with a major supplier. In that case, the obligation arises at the time of entering into the contract and disclosure is required to be made without delay. This falls within the category of information set out in MAR 1.4.4E(3) and MAR 1.4.4E(4). However, subject to meeting the tests in MAR 1.4.12E, the information will fall within MAR 1.4.4E(3) and MAR 1.4.4E(4) at an earlier stage: namely at the time


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at which there are grounds to conclude, with reasonable certainty, that the contract will be entered into and that disclosure of the contract will have to be made. Any *dealing* based on that information in the *securities* (or *investments* related to the *securities*) at that earlier stage would amount to *market abuse*.




#### SAFE HARBOURS

- 1.4.19  /1 MAR 1.4.20C, MAR 1.4.21C, MAR 1.4.24C, MAR 1.4.26C and MAR 1.4.28C each set out descriptions of *behaviour* that does not amount to *market abuse* in that the *behaviour* does not constitute a misuse of information (see MAR 1.4.4E).

#### (A) DEALING OR ARRANGING REQUIRED FOR OTHER REASONS

- 1.4.20  /1 *Dealing or arranging deals* will not amount to a misuse of information if the *dealing or arranging* was required in order to comply with a legal (including contractual) or regulatory obligation in circumstances where the obligation existed before the *relevant information* was in the *person's* possession.

#### (B) DEALING OR ARRANGING NOT BASED ON INFORMATION

- 1.4.21  /1 *Dealing or arranging deals* will not amount to a misuse of information if the *person's* possession of *relevant information* that is not generally available did not influence the decision to engage in the *dealing or arranging* in question.
- 1.4.22  /1 It will be presumed for the purposes of MAR 1.4.21C that the *person's* possession of the information in question did not influence his decision to *deal or arrange deals* if:
- (1) the *person* had taken a firm decision to *deal or arrange deals* before the *relevant information* was in the *person's* possession; and
  - (2) the terms on which the *person* had proposed to enter into the transaction(s) did not alter after the receipt of the information.
- 1.4.23  /1 Where a *person* is an *organisation* and where one or more individuals within the *organisation* are in possession of *relevant information*, it will be presumed for the purposes of MAR 1.4.21C that such possession had no influence on the *person's* decision to *deal or arrange deals* if none of the individuals in possession of the information:

- (1) had any involvement in the decision to engage in the *dealing* or *arranging*; or
- (2) behaved in such a way as to influence, directly or indirectly, the decision to engage in the *dealing* or *arranging*; or
- (3) had any contact with those who were involved in the decision to engage in the *dealing* or *arranging* whereby the information could have been transmitted.

**1.4.24** P <sup>/1</sup> *Relevant information* does not influence the decision to *deal* or *arrange deals* if:

- (1) the information in question was held behind an effective *Chinese wall* and the individual or individuals who *dealt* or *arranged deals* or were on the other side of the *Chinese wall* (see further *COB 2.4*); or
- (2) arrangements equivalent to effective *Chinese walls* had been established and maintained in respect of the information, and the individuals who *dealt* or *arranged deals* did not, therefore, have access to the *relevant information*.

**1.4.25** G <sup>/1</sup> See also *MAR 1.7.3E(2)* which discusses a further safe harbour in relation to *Chinese walls*.

**(C) TRADING INFORMATION**

**1.4.26** P <sup>/1</sup> *Dealing* or *arranging deals* will not amount to a misuse of information solely because it is based on information as to that *person's* intention, or any other *person's* intention, to *deal* or *arrange deals* in relation to any *qualifying investment*, or information concerning transactions that have taken place. However, this safe harbour does not include *dealing* or *arranging deals*:

- (1) based on information as to a possible *takeover bid*;
- (2) based on information relating to new *offers, issues, placements* or other primary market activity.

**1.4.27** G <sup>/1</sup> While *dealing* or *arranging deals* which is based on trading information will not constitute *market abuse*, it may constitute a breach of *COB 7.4.3R* (*Dealing fairly and in due turn*) or *rules* in *COB 7.13* (*Personal account dealing*) applicable to *firms*. Specifically, *MAR 1.4.26C* does not legitimise the front running of customer orders.

**(D) FACILITATION OF TAKEOVER BIDS AND OTHER MARKET OPERATIONS**

**1.4.28** P <sup>/1</sup> *Dealing* or *arranging deals* will not amount to a misuse of information if it is engaged in by a *person* (or someone acting for him) or by another person acting in concert with him in circumstances where:

1.

- (1) the *dealing or arranging deals* was:
  - (a) in connection with the acquisition or disposal of an *equity* or *non-equity stake* in a *company*;
  - (b) engaged in for the sole purpose (see *MAR 1.4.30E*) of making the acquisition or disposal; or
  - (c) where engaged in by a concert party of a person making or potentially making an acquisition or disposal for the sole benefit of that person; and
- (2) the information in question consists of one or more of the following matters:
  - (a) that *investments* of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;
  - (b) that *investments* of a particular kind have not been or are not to be acquired or disposed of;
  - (c) the number of *investments* acquired or disposed of, or to be acquired or disposed of, or whose acquisition or disposal is under consideration or the subject of negotiation;
  - (d) the price (or range of prices) at which *investments* have been, or are to be, acquired or disposed of, or the price (or range of prices) at which the *investments* whose acquisition or disposal is under consideration, or the subject of negotiation, may be acquired or disposed of;
  - (e) the identity of the *persons* involved, or likely to be involved, in any capacity in an acquisition or disposal;
  - (f) in the case of a takeover bid any information legitimately obtained by the bidder in relation to the target company.

1.4.29



<sup>1</sup>

For example, in the context of a takeover bid the following instances of *dealing or arranging deals* will fall within *MAR 1.4.28C*.

- (1) seeking from holders of *securities* irrevocable undertakings or expressions of support to accept an *offer* to acquire those *securities* (or not to accept such an *offer*);
- (2) making arrangements in connection with an issue of *securities* where those *securities* are to be offered as consideration for the takeover *offer* or to be issued in order to fund the takeover *offer*, including making arrangements for the underwriting or placing of those *securities* and any associated hedging arrangements by underwriters or placees;

PAGE  
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- (3) making arrangements to offer cash as consideration for the takeover *offer* as an alternative to *securities* consideration.

1.4.30





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A *person* should not be prevented from acquiring an *equity* or non-*equity stake* in a *company* with a view to pursuing a *takeover bid* or engaging in other forms of market operations simply because he knew that he would be making a bid, and the knowledge amounted to *relevant information*. For example, a bidder (including a potential bidder), and those who act for him and his associates, may *deal* in the target *company's shares* for the purpose of building a stake in the target *company* or take other steps in connection with a proposed takeover, such as seeking irrevocable undertakings from shareholders or making arrangements for an issue of consideration *shares*. However, this does not mean that a bidder may undertake any other type of transaction in the target *company's shares*, or in other *investments* (for example, *contracts for differences* or *securities* of other *companies*) in relation to which the information is *relevant information*. For example, a bidder will be engaging in *market abuse* if he enters into transactions in *qualifying investments* that provide merely an economic exposure to movements in the price of the target *company's shares*. Similarly, those who act for the bidder will engage in *market abuse* if they *deal* for their own benefit in *qualifying investments* or *relevant products* in respect of which information concerning the proposed bid is *relevant information*. (See MAR 1.8.3G, MAR 1.8.7G(2) and MAR 1.8.8G.)


## 1.5 False or misleading impressions

### INTRODUCTION


**1.5.1**  Statements in this section to the effect that *behaviour* “amounts to *market abuse*” assume that the test in MAR 1.1.3G(1) has also been met.

**1.5.2**  Section 118(2)(b) of the *Act* defines *behaviour* giving rise to a false or misleading impression as follows:

“behaviour [which] is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question”.

**1.5.3**  *Prescribed markets* provide a mechanism by which the price or value of *investments* may be determined according to the market forces of supply and demand. When market users trade on *prescribed markets* they expect the price or value of *investments* and volumes of trading to reflect the proper operation of market forces rather than the outcome of improper conduct by other market users. Improper conduct which gives market users a false or misleading impression results in market users no longer being able to rely on the prices formed in markets or volumes of trading as a basis for their *investment* decisions. This will undermine confidence in the integrity of the *prescribed market* and overall market activity may decrease and transaction costs may rise, or both, to the detriment of market users, including investors.

### ELEMENTS OF THE TEST

**1.5.4**  In order to fall within the false or misleading impressions test:

- (1) the *behaviour* must be likely to give the *regular user* a false or misleading impression. *Behaviour* will amount to *market abuse* if the *behaviour* engaged in is likely to give rise to, or to give an impression of, a price or value or volume of trading which is materially false or misleading; and



- (2) in order to be likely, there must be a real and not fanciful likelihood that the *behaviour* will have such an effect, although the effect need not be more likely than not. The *behaviour* may, or may be likely to, give rise to more than one effect, including the effect in question.

**GENERAL FACTORS**

1.5.5



Factors that are to be taken into account in determining whether or not *behaviour* is likely to give the *regular user* a false or misleading impression as to the supply of, or the demand for, or the price or value of a *qualifying investment* or *relevant product* include:

- (1) the experience and knowledge of the users of the market in question;
- (2) the structure of the market, including its reporting, notification and transparency requirements;
- (3) the legal and regulatory requirements of the market concerned and accepted market practices;
- (4) the identity and position of the *person* responsible for the *behaviour* which has been observed (if known); and
- (5) the extent and nature of the visibility or disclosure of the *person's* activity.

**RELATIONSHIP WITH DISTORTION**

1.5.6



In some circumstances, *behaviour* which falls within these descriptions (see MAR 1.5.7E) may also fall within the descriptions of *behaviour* giving rise to a market distortion (see MAR 1.6).

**BEHAVIOUR WHICH AMOUNTS TO MARKET ABUSE**

1.5.7



MAR 1.5.8E, MAR 1.5.15E, MAR 1.5.18E and MAR 1.5. 21E each set out descriptions of *behaviour* that amount to *market abuse* in that the *behaviour* gives rise, or is likely to give rise, to a false or misleading impression.

**(A) ARTIFICIAL TRANSACTIONS**

1.5.8



*Behaviour* will constitute *market abuse* where:

1.

- (1) a *person* enters into a transaction or series of transactions in a *qualifying investment* or *relevant product*; and
- (2) the principal effect of the transaction or transactions will be, or will be likely to be, to inflate, maintain or depress the apparent supply of, or the apparent demand for, or the apparent price or value of a *qualifying investment* or *relevant product* so that a false or misleading impression is likely to be given to the *regular user*; and
- (3) the *person* knows, or could reasonably be expected to know, that the *principal* effect of the transaction or transactions on the market will be, or will be likely to be, as set out at MAR 1.5.8E(2);

unless the *regular user* would regard:

- (4) the principal rationale for the transaction in question as a legitimate commercial rationale; and
- (5) the way in which the transaction is to be *executed* as proper.

1.5.9



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A transaction which creates a false or misleading impression will not normally be considered to have a legitimate commercial rationale where the purpose behind the transaction was to induce others to trade in, or to position or move the price of, a *qualifying investment* or *relevant product*. This need not be the sole purpose for entering into the transaction or transactions, but must be an *actuating purpose*. Equally, transactions will not automatically be considered to have a legitimate commercial rationale simply because the purpose behind the transaction was to make a profit or avoid a loss (whether directly or indirectly).

1.5.10



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A transaction will be executed in a proper way where it is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently. The way in which a transaction was executed would be unlikely to be regarded as proper by the *regular user* where a transaction was executed in a particular way with the purpose of creating a false or misleading impression. In most cases the rules of *prescribed markets* include a requirement that transactions be executed in a proper way (for example, rules on reporting and executing *cross-transactions*). Transactions would not necessarily be considered to have been executed in an improper way simply because the way in which they were executed did not disclose the firm's intentions or positions to the market.

1.5.11



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The following factors are to be taken into account when determining whether a *person's behaviour* amounts to *market abuse* as described in MAR 1.5.8E, although the presence of one or more of these factors does not automatically mean the *behaviour* in question amounts to *market abuse*:

- (1) whether the transaction causes or contributes to an increase (or decrease) in the supply of, or the demand for, or the price or value of a *qualifying investment* or *relevant product* and the *person* has an interest in the level of the supply of, or the demand for, or the price or value of the *qualifying investment* or *relevant product*;
- (2) whether the transaction involves the placing of *buy* and *sell* orders at prices higher or lower than the market price, or the placing of *buy* and *sell* orders which increase the volume of trading;
- (3) whether the transaction coincides with a time at or around which the supply of, or the demand for, or the price or value of a *qualifying investment* or *relevant product* is relevant (whether for the market as a whole or the *person* in question) to the calculation of reference prices, settlement prices, and valuations (for example, close of trading, end of quarter);
- (4) whether those involved in the transaction are connected parties;
- (5) whether the transaction causes the market price of the *investment* in question to increase or decrease, following which the market price immediately returns to its previous level;
- (6) whether a *person* places a bid (or offer) which is higher (or lower) than the previous bid (or offer) only to remove the bid (or offer) from the market before it is executed.

## 1.5.12



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A further factor to be taken into account in determining whether the *behaviour* amounts to *market abuse* as described in MAR 1.5.8E is the extent to which the transaction generally either opens a new position, so creating an exposure to market risk, or closes out a position and so removes market risk. This factor, if present, will tend to suggest that the transaction is likely to have a legitimate commercial rationale and the *behaviour* does not amount to *market abuse* as described in MAR 1.5.8E, subject to the way in which the transaction is executed. Examples of transactions which typically have a legitimate commercial rationale are given at MAR 1.5.24C.

## 1.5.13



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A *person* has an interest in a *qualifying investment* or *relevant product* where that *person*:

- (1) may directly (including by holding a short position) or indirectly benefit from alterations in its market price; or
- (2) may be rewarded by, or is otherwise in collusion with or connected with, *persons* who may benefit from alterations in the market price of the *qualifying investment*.

## 1.5.14



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Examples of *behaviour* which might give rise to a false or misleading impression and in respect of which the principal rationale may not be a legitimate commercial rationale include:

1.

- (1) arrangements for the sale or purchase of a *qualifying investment* or *relevant product* (other than on *repo* or on *stock lending* or borrowing terms) whereby there is no change in beneficial interests or market risk, or the transfer of beneficial interest or market risk is only between *persons* who are acting in concert or collusion;
- (2) a transaction or series of transactions that are designed to conceal the ownership of a *qualifying investment* or *relevant product*, so that disclosure requirements are circumvented by the holding of the *qualifying investment* in the name of a colluding party, such that disclosures are misleading in respect of the true underlying holding of the *security*. These transactions are often structured so that market risk remains with the seller. This does not include nominee holdings;
- (3) a fictitious transaction.

#### (B) DISSEMINATING INFORMATION

1.5.15



*Behaviour* will constitute *market abuse* where:

- (1) a *person* disseminates information which is, or if true would be, *relevant information*;
- (2) the *person* knows, or could reasonably be expected to know, that the information disseminated is false or misleading; and
- (3) the *person* disseminates the information in order to create a false or misleading impression (this need not be the sole purpose for disseminating the information, but must be an *actuating purpose*).

1.5.16



A factor to be taken into account in determining the purpose of the *person* in question is whether that *person* has an interest in a *qualifying investment* or *relevant product* (see MAR 1.5.13E) to which the information is relevant. This factor, if present, will tend to suggest that the *person* had disseminated the information in order to create a false or misleading impression. That said, the absence of any such interest does not conclusively demonstrate that the *behaviour* does not amount to *market abuse*.

#### EXAMPLES

1.5.17



The following is an example of disseminating false or misleading information. A *person* posts information on an Internet bulletin board or chat room which contains false or misleading statements about the takeover of a *company* whose *shares* are *qualifying investments*. The *person* knows that the information is false or

PAGE  
22

misleading and he has posted the information in order to create a false or misleading impression.

### (C) DISSEMINATION OF INFORMATION THROUGH AN ACCEPTED CHANNEL

1.5.18



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*Behaviour* will constitute *market abuse* where:

- (1) a *person* responsible for the submission of the information to an *accepted channel for the dissemination of information* submits information which is, or if true would be, *relevant information* which is likely to give the *regular user* a false or misleading impression as to the supply of, or the demand for, or the price or value of a *qualifying investment* or *relevant product*; and
- (2) the *person* who submits the information has not taken reasonable care to ensure it is not false or misleading.

1.5.19



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There are a number of channels through which information relating to *qualifying investments* which are traded on *prescribed markets* is formally disseminated to other market users. Some information is required to be disseminated through one of these channels, for example, under the rules of the *prescribed market* or the *Listing Rules*. *RIEs* also use these channels to disseminate information about trades which have been *executed* on their markets.

1.5.20



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The *FSA* recognises the importance of information disseminated through *accepted channels for the dissemination of information*. Users of such information should be able to rely on the accuracy and integrity of information carried through these channels. It is, therefore, appropriate that those who disseminate information through them, for example, the *company* itself, its *financial advisers* or its public relations advisers, take reasonable care to ensure the information is not inaccurate or misleading. Where they do not, and the information is likely to give rise to a false or misleading impression, they will be regarded as engaging in *behaviour* which amounts to *market abuse*.

### (D) COURSE OF CONDUCT

1.5.21



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*Behaviour* will constitute *market abuse* where:

- (1) a *person* engages in a course of conduct, the principal effect of which will be, or is likely to be, to give a false or misleading impression to the *regular user* as to the supply of, or the demand for, or the price or value of a *qualifying investment* or *relevant product*; and
- (2) the *person* knows, or could reasonably be expected to know, that the principal effect of the conduct on the market will be, or is likely to be as set out in MAR 1.5.21E(1);

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unless the *regular user* would regard:

- (3) the principal rationale for the conduct in question as a legitimate commercial rationale (see MAR 1.5.9E) and
- (4) the way in which the conduct is engaged in as proper (see MAR 1.5.10E)

#### EXAMPLES

1.5.22



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The exact nature of conduct that might give a false or misleading impression will vary according to the characteristics of the market. The following are examples of *behaviour* which might give a false or misleading impression to the *regular user*:

- (1) the movement of physical *commodity* stocks, which might create a misleading impression as to the supply of, or demand for, or price or value of, a *commodity* or the deliverable into a *commodity futures* contract; and
- (2) the movement of an empty cargo ship, which might create a false or misleading impression as to the supply of, or the demand for, or the price or value of a *commodity* or the deliverable into a *commodity futures* contract.

#### SAFE HARBOURS

1.5.23



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MAR 1.5.24C, MAR 1.5.25C, MAR 1.5.27C and MAR 1.5.28C each set out descriptions of *behaviour* that does not amount to *market abuse* in that the *behaviour* does not give rise to a false or misleading impression (see MAR 1.5.4E).

#### (A) PERMITTED TRANSACTIONS

1.5.24



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The following examples of *behaviour* will not give rise to a false or misleading impression even though the conditions described in MAR 1.5.8E(1), MAR 1.5.8E(2) and MAR 1.5.8E(3) are satisfied, provided that the conditions in MAR 1.5.8E(4) and MAR 1.5.8E(5) are also satisfied:

- (1) transactions which effect the taking of a position, or the unwinding of a position taken, so as to take legitimate advantage of:
  - (a) differences in the taxation of income or capital returns generated by *investments* or *commodities* (whether such differences arise solely because of the identity of the *person* entitled to receive such income or capital or otherwise); or

- (b) differences in the prices of *investments* or *commodities* as traded in different locations; or
- (2) transactions which effect the lending or borrowing of *qualifying investments* or *commodities* so as to meet an underlying commercial demand for the *investment* or *commodity*.

### (B) REQUIRED REPORTING OR DISCLOSURE OF TRANSACTIONS

1.5.25

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Making a report or disclosure will not, of itself, give rise to a false or misleading impression if:

- (1) the report or disclosure was made in accordance with the way specified by any applicable legal or regulatory requirement; and
- (2) the report or disclosure was expressly required or expressly permitted by the *rules* or the rules of a *prescribed market* or the rules of the *Takeover Code* or *SARs* or by any other applicable statute or regulation or the rules of any competent statutory, governmental or regulatory authority.

1.5.26

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Examples of disclosure that is expressly required or expressly permitted include *rule 9.10(j)* of the *Listing Rules*, which permits a *company* to delay certain announcements at its discretion, and section 198 of the Companies Act 1985 which requires disclosure of certain interests in *shares*. See also *MAR 1.7.7C* concerning rules of the *Takeover Code* which relate, among other things, to the timing of announcements and *MAR 1.7.3E(3) - 1.7.3E(4)* concerning the *Listing Rules*.

### (C) CHINESE WALLS

1.5.27

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Where a *person* is an *organisation*, that *person* may be aware of information that is not known to all of the individuals within the *organisation*. If an individual within the *organisation* disseminates information which he would know, or could reasonably be expected to know, is false or misleading if he was aware of information held by other individuals within the *organisation*, then that *person* will be taken not to know, or to be reasonably expected to know, that the information disseminated was false or misleading if:

- (1) the other information in question is held behind an effective *Chinese wall* or is restricted using other similarly effective arrangements; and
- (2) there was nothing which was known, or ought reasonably to have been known, to the individual who disseminated the information which should have led him to conclude it was false or misleading.

1.5.28

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For the purposes of *MAR 1.5.27C*, the fact that the *person* did not know, or could not be reasonably expected to know, that the information was false or misleading can be demonstrated by showing that the

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requirements identified in *MAR 1.4.22E* have been satisfied. Where it can be demonstrated that the individual disseminating the information did not know, or could not be reasonably expected to know, that the information was false or misleading, *behaviour* will not fall within the description of *market abuse* set out in *MAR 1.5.15E*.

1.5.29






The circumstances described in *MAR 1.4.23E(1)* to *MAR 1.4.23E(3)* are capable of giving rise to a presumption that the other information in question is held behind an effective *Chinese wall* or is restricted using other similarly effective arrangements.





## 1.6 Distortion


### INTRODUCTION

- 1.6.1**  Statements in this section to the effect that *behaviour* “amounts to *market abuse*” assume that the test in MAR 1.1.3G(1) has also been met.  
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- 1.6.2**  Section 118(2)(c) of the *Act* defines *behaviour* amounting to distortion as follows:  
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“a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.”
- 1.6.3**  The matters in MAR 1.5.3E apply with equal force in connection with *behaviour* which gives rise to market distortion. A *person* may not engage in *behaviour* that interferes with the proper operation of market forces and so with the interplay of proper supply and demand and so has a distorting effect. Distortion undermines confidence in the *prescribed markets* and damages efficiency to the detriment of market users, including investors.  
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### ELEMENTS OF THE TEST

- 1.6.4**  In order to fall within the distortion test:  
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- (1) the *behaviour* must be such that a *regular user* would, or would be likely to, regard it as *behaviour* which would, or would be likely to, distort the market in the *investment* in question. *Behaviour* will amount to *market abuse* if the *behaviour* engaged in interferes with the proper operation of market forces with the purpose of positioning prices at a distorted level. This need not be the sole purpose of entering into the transaction or transactions, but must be an *actuating purpose*; and
  - (2) in order to be likely, there must be a real and not fanciful likelihood that the *behaviour* will have such an effect, although the effect need not be more likely than not. The *behaviour* may, or may be likely to, give rise to more than one effect, including the effect in question.


**1.6.5**  /1 It is unlikely that the *behaviour* of market users when trading at times and in sizes most beneficial to them (whether for the purpose of long term *investment* objectives, risk management or short term speculation) and seeking the maximum profit from their *dealings* will of itself amount to distortion. Such *behaviour*, generally speaking, improves the liquidity and efficiency of markets.

**1.6.6**  /1 It is unlikely that prices in the market which are trading outside their normal range will necessarily be indicative that someone has engaged in *behaviour* with the purpose of positioning prices at a distorted level. High or low prices relative to a trading range can be the result of the proper interplay of supply and demand.


#### RELATIONSHIP WITH FALSE OR MISLEADING IMPRESSIONS


**1.6.7**  /1 In some circumstances, *behaviour* which falls within these descriptions (see MAR 1.6.8E) may also fall within the scope of the prohibition against *behaviour* giving rise to a false or misleading impression (see MAR 1.5).

#### BEHAVIOUR WHICH AMOUNTS TO MARKET ABUSE

**1.6.8**  /1 MAR 1.6.9E and MAR 1.6.13E each set out descriptions of *behaviour* that amount to *market abuse* in that the *behaviour* gives rise to market distortion.

#### (A) PRICE POSITIONING

**1.6.9**  /1 *Behaviour* will constitute *market abuse* where a *person* enters into a transaction, or a series of transactions, with the purpose of positioning the price of a *qualifying investment* or *relevant product* at a distorted level (the purpose need not be the sole purpose for entering into the transaction or transactions, but must be an *actuating purpose*).

**1.6.10**  /1 It follows that *behaviour* which incorporates a purpose of positioning the price at a distorted level cannot have a legitimate commercial rationale. The Code does not restrict market users trading significant volumes where there is a legitimate purpose for the transaction (for example, index tracking which can involve trading significant volumes on the close) and where the transaction is *executed* in a proper way, that is, a way which takes into account the need for the market as a whole to operate fairly and efficiently. In most cases the rules of *prescribed markets* include a requirement that transactions be *executed* in a proper way (for example, rules on reporting and *executing cross-trades*). Such *behaviour* is unlikely to distort the

market in the *investments* in question, even if it causes the market to move. But trading significant volumes with the purpose of controlling the price of a *qualifying investment* or a *relevant product* and positioning it at a distorted level will amount to *market abuse*.

## 1.6.11



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The following factors will be taken into account when determining whether a *person* has positioned the price of a *qualifying investment* or *relevant product* at a distorted level, although the presence of one or more of these factors does not automatically mean the market has been distorted:

- (1) the extent to which the timing of the *person's* transaction or transactions coincided with a time at or around which the price of the *qualifying investment* or *relevant product* was relevant (whether for the market as a whole and or the *person* in question) to the calculation of reference prices, settlement prices, and valuations (for example, close of trading, end of quarter);
- (2) the extent to which the *person* had a direct or indirect interest in the price or value of the *qualifying investment* or *relevant product*;
- (3) the volume or size of the *person's* transaction or transactions in relation to reasonable expectations of the depth and liquidity of the market at the time in question;
- (4) the extent to which price, rate or *option* volatility movements, and the volatility of these factors for the *investment* in question occur which are outside their normal intra-day, daily, weekly or monthly range;
- (5) the extent to which the *person's* transaction or transactions caused the market price of the *investment* to increase or decrease, following which the market price returned immediately to its previous level; and
- (6) whether a *person* has successively and consistently increased or decreased his bid, offer or the price he has paid for a *qualifying investment* or *relevant product*.

#### EXAMPLES

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## 1.6.12



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The following are examples of price positioning at a distorted level:

- (1) a trader simultaneously *buys* and *sells* the same *investment* (that is, trades with himself) to give the appearance of a legitimate transfer of title or risk (or both) at a price outside the normal trading range for the *investment*. The price of the *investment* is relevant to the calculation of the settlement value of an *option*. He does this while holding a position in the *option*. His purpose

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is to position the price of the *investment* at a distorted level, making him a profit or avoiding a loss;

- (2) a trader *buys* a large volume of *commodity futures* (whose price will be relevant to the calculation of the settlement value of a *derivatives* position he holds) just before the close of trading. His purpose is to position the price of the *commodity futures* at a distorted level so as to make a profit from his *derivatives* position;
- (3) a trader holds a short position that will show a profit if a particular *investment*, which is currently a component of an index, falls out of that index. The question of whether the *investment* will fall out of the index depends on the closing price of the *investment*. He places a large *sell* order in this *investment* just before the close of trading. His purpose is to position the price of the *investment* at a distorted level so that the *investment* will drop out of the index so as to make a profit; and
- (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to *buy* relatively illiquid *shares*, which are also components of his portfolio, to be executed at or just before the close. His purpose is to position the price of the *shares* at a distorted level.

#### (B) ABUSIVE SQUEEZES

1.6.13



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*Behaviour* will constitute *market abuse* where a *person* engages in an abusive squeeze. That is, where a *person* with:

- (1) a significant influence over the supply of, or demand for, or delivery mechanisms for a *qualifying investment* or *relevant product*; and
- (2) a position (directly or indirectly) in an *investment* under which quantities of the *qualifying investment* or *relevant product* in question are deliverable;

engages in *behaviour* with the purpose of positioning at a distorted level the price at which others have to deliver, take delivery or defer delivery to satisfy their obligations (the purpose need not be the sole purpose of entering into the transaction or transactions, but must be an *actuating purpose*).




1.6.14



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Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not of itself abusive. In addition, having a significant influence over the supply of, or demand for, or delivery mechanisms for an *investment*, for example, through ownership, borrowing or reserving the *investment* in question, is not of itself abusive.

PAGE  
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- 1.6.15**  /1 An abusive squeeze occurs where a *person* has satisfied the conditions in MAR 1.6.13E, which include positioning the price at a level materially different than the price that would have been determined by the interaction of proper supply and demand at which others have to deliver, take delivery or defer delivery to satisfy their obligations. Abusive squeezes damage liquidity and confidence in *prescribed markets* on a multilateral, not just a bilateral, basis and damage confidence in the delivery mechanisms of *prescribed markets*.
- 1.6.16**  /1 The following factors will be taken into account when determining whether a *person* has engaged in an abusive squeeze. These factors do not impose new obligations on market users. For example, they do not impose an obligation to lend to others where one does not already exist, although *behaviour* is less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question. The factors are as follows:
- (1) the extent to which a *person* is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so;
  - (2) the extent to which the *person's* activity causes, or risks causing, settlement default by other market users on a multilateral basis and not just a bilateral basis. The more widespread the risk of multilateral settlement default, the more likely that the market has been distorted;
  - (3) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the *investment* or its equivalent outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that the market has been distorted; and
  - (4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive.
- 1.6.17**  /1 The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of *behaviour* to be expected of them in that market. The *regular user* is likely to expect other market users to settle their obligations and not to put themselves in a position where, to do so, they have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so. For example, where a long position holder has accumulated his position in an open and transparent manner, the *regular user* is likely to expect the short position holders to be aware of the situation and to protect themselves accordingly.

EXAMPLES

1.6.18



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The following is an example of an abusive squeeze. A trader with a long position in bond *futures buys* or borrows a large amount of the cheapest to deliver bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making him a profit.

(C) SAFE HARBOURS


1.6.19




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*Behaviour* which complies with the London Metal Exchange's document "Market Aberrations: The Way Forward" published in October 1998, which governs the *behaviour* expected of long position holders, will not amount to *market abuse* in that the *behaviour* will not amount to distortion (see MAR 1.6.4E).

## 1.7 Statutory Exceptions

**1.7.1**  /1 The *Act* provides statutory exceptions for two types of *behaviour* in relation to the *market abuse regime*. The first relates to *behaviour* which is described in this Code as not amounting to *market abuse* (see MAR 1.1.10G). The second relates to *behaviour* which conforms with an *FSA rule* where that *rule* includes a provision to the effect that *behaviour* conforming with that *rule* does not amount to *market abuse* (section 118(8) of the *Act*). In the Code, specific instances of both these exceptions are referred to as ‘safe harbours’. In addition, the *Act* states that information which can be obtained by research or analysis is to be regarded as generally available (section 118(7) of the *Act*) (see MAR 1.4.5E).







**1.7.2**  /1 *Behaviour* will be regarded as conforming with an *FSA rule* only if it is required or expressly permitted by that *rule*. In order to fall within this safe harbour, there must be a specific *rule* that either requires or expressly permits a *person* to engage in the *behaviour* in question.

### FSA RULES





**1.7.3**  /1 The *FSA rules* which contain a provision to the effect that *behaviour* conforming with that *rule* does not amount to *market abuse* (section 118(8) of the *Act*) are:

- (1) the *price stabilising rules*; (MAR 2; see MAR 2.1.1R(2));
- (2) a *rule* relating to *Chinese walls* (COB 2.4.4R(1)); see COB 2.4.4R(4) and see also MAR 1.4.21C and MAR 1.5.27C;
- (3) those parts of the *Listing Rules* which relate to the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information. These are specified in MAR 1 Annex 1G;
- (4) *rule* 15.1(b) of the *Listing Rules* (in relation to *share* buy-backs).

## TAKEOVER CODE AND SARs

- 1.7.4  /1 The FSA exercises in MAR 1.7.7C - MAR 1.7.8C, with the approval of the Treasury, the powers conferred by section 120 of the *Act* (Provisions included in the Authority's code by reference to the City Code), save that any reference made to the SARs is made under section 119 of the *Act* and therefore does not require the approval of the Treasury.
- 1.7.5  /1 These safe harbours apply in relation to *behaviour* likely to give rise to a false or misleading impression as described in MAR 1.5, and *behaviour* which would, or would be likely to, give rise to distortion as described in MAR 1.6, but not in relation to *behaviour* based on the misuse of information as described in MAR 1.4.
- 1.7.6  /1 The FSA is satisfied that the remainder of the *Takeover Code* and SARs do not permit or require *behaviour* which amounts to *market abuse*. Much of the *Takeover Code* and the SARs is not directed specifically at the types of *behaviour* prohibited by the *Act*; for example, many provisions are directed at ensuring that an *offer* or stakebuilding is conducted within an orderly framework or that shareholders in a *company* are treated similarly. Other provisions, such as the rules dealing with the specific content of *offeree* and *offeror* documents, are encompassed within the general content standard in Rule 23 of the *Takeover Code* and have not, therefore, been given a specific safe harbour.
- 1.7.7  /1 *Behaviour* conforming with any of the rules of the *Takeover Code* or SARs in relation to the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, and which rules are specified in MAR 1 Annex 2G, does not of itself amount to *market abuse* in that the *behaviour* does not give rise to a false or misleading impression (MAR 1.5.4E) or distortion (MAR 1.6.4E) in so far as the *behaviour* is expressly required or expressly permitted by the rule in question, but this is subject to MAR 1.7.10E.
- 1.7.8  /1 *Behaviour* conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offeror* and concert parties) does not of itself amount to *market abuse* in that the *behaviour* does not give rise to a false or misleading impression (MAR 1.5.4E) or distortion (MAR 1.6.4E) in so far as the *behaviour* is expressly required or expressly permitted by that rule, but this is subject to MAR 1.7.10E.
- 1.7.9  /1 An example of how MAR 1.7.7C is intended to work may assist. If the rule in question in the *Takeover Code* is about timing of an announcement, then the protection of MAR 1.7.7C is conferred on the *behaviour* in so far as timing is relevant. However, the method of dissemination, the content and the standard of care will not be protected unless they are respectively in compliance with relevant provisions of the *Takeover Code* or SARs relating to dissemination, content and standard of care.



- 1.7.10**  /1 MAR 1.7.7C and MAR 1.7.8C do not apply in any case where the *behaviour* which conforms with the particular rule of the *Takeover Code* is nonetheless in breach of any General Principle set out at Section B of the *Takeover Code* which is relevant to that rule.
- 1.7.11**  /1 In applying MAR 1.7.7C, the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the relevant rule.
- 1.7.12**  /1 Certain provisions of the *Takeover Code* and of the SARs restrict the commercial freedom of a *person* by, for example, restricting the speed at which *shares* can be acquired. However, *behaviour* in compliance with such provisions will not be regarded as giving a false or misleading impression, as such restrictions will be taken into account in assessing whether *behaviour* falls below the standard reasonably to be expected.
- 1.7.13**  /1 In cases where none of the safe harbours in MAR 1.7.7C to MAR 1.7.8C apply, the *regular user* may not necessarily consider that complying with applicable requirements of the *Takeover Code* or the SARs will be sufficient in and of itself to demonstrate that *behaviour* does not amount to *market abuse*. An example may help to explain this. If, for example, a *person* were to comply with Rule 1 of the SARs in building a stake, but his decision to build the stake was based on *relevant information* and none of the safe harbours in MAR 1.4 applied, that *person's behaviour* would be likely to amount to *market abuse*. Nevertheless, the question whether a *person* has complied with relevant provisions of the *Takeover Code* and SARs which do not give a safe harbour may be relevant to a *regular user's* assessment of whether or not that *person's behaviour* has fallen below reasonably expected standards.

## 1.8 Requiring or encouraging

**1.8.1** **G**<sub>/1</sub> Section 123(1)(b) of the *Act* (Power to impose penalties) gives the *FSA* the power to impose a penalty on a *person*, “A”, if it is satisfied that A, “by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse”.

**1.8.2** **G**<sub>/1</sub> For the purposes of section 123(1)(b), it must be shown:

- (1) that the *behaviour* would have amounted to *market abuse* if carried out by the *person* who *requires or encourages* (to which hypothetical situation the principles set out in this Code will be applied); and
- (2) that the *person*, by action or inaction, *required or encouraged* another to engage in the *behaviour* in question.

It is not necessary to show that the *person* who *requires or encourages* has benefited from the action of the *person* who is *required or encouraged*.

**1.8.3** **G**<sub>/1</sub> There are many ways in which a *person*, A, may, by taking or refraining from taking any action, *require or encourage* another *person*, B, to engage in *behaviour* which, if engaged in by A, would amount to *market abuse*. Some examples of *behaviour* that might fall within the scope of 123(1)(b) are as follows:

- (1) where a *director* of a *company*, while in possession of information which is both *relevant information* and disclosable *information* (other than trading information) and which is not generally available to market users, instructs an *employee* of that *company* to *deal in qualifying investments* or *relevant products* in respect of which the information is *relevant* and *disclosable information*;
- (2) where A recommends or advises B to engage in *behaviour* which, if engaged in by A, would amount to *market abuse*.

**1.8.4** **G**<sub>/1</sub> Whether a *person’s* taking or refraining from taking action might be regarded as *requiring or encouraging* others will depend on circumstances such as acceptable market practices, the experience, level of skill and standard of knowledge of the *person* concerned, and the control or influence the *person* has in relation to the *person* who engages in the *behaviour* in question.

**1.8.5** **G**<sub>/1</sub> However, early or selective disclosure of information which a *regular user* would expect market users to have will generally be presumed to constitute *requiring or encouraging* unless there is a legitimate purpose for making the disclosure, for example, as permitted or required by the rules of a *prescribed market*, the *rules* of the *FSA*, or the *rules* of the *Takeover Code*. Any such disclosure should be accompanied by a statement at or before the time the information is passed that the information is given in confidence and that the recipient should not base any

*behaviour* in relation to the *qualifying investment* or *relevant product* which would amount to *market abuse* on the information until after the information is made generally available. Such a statement may be incorporated in the express or implied terms of any contract governing the relationship between the *persons* making and receiving the disclosure. Some examples of disclosure for a legitimate purpose are set out in MAR 1.8.6G.

## 1.8.6

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The FSA will not regard a *person* as *requiring or encouraging* others to *deal* if he passes information which is *relevant information* and not generally available to:

- (1) his *employees* (or, where appropriate, his fellow *employees* or *employees* of a group or associated *company*) for the purpose of enabling them to perform their functions in circumstances where the possession of the information in question is necessary for the proper performance of those functions; or
- (2) his professional advisers, and or the professional advisers of any *persons* involved or who may be involved in any transaction or *takeover bid* with or involving him, for the purpose of obtaining advice; or
- (3) any *person* with whom he is negotiating, or intends to negotiate, any commercial, financial or *investment* transaction (including prospective underwriters or placees of *securities*) for the purpose of facilitating the proposed transaction; or
- (4) any *person* from whom he is seeking or intends to seek an irrevocable commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*, for the purpose of obtaining that commitment or expression of support; or
- (5) representatives of his *employees* or trade unions acting on their behalf in fulfilment of a legal obligation; or
- (6) any government department, the Bank of England, the Competition Commission, the *Takeover Panel* or any other statutory or *regulatory body* or authority for the purposes of fulfilling a legal or regulatory obligation or otherwise in connection with the performance of the functions of the body to which the information has been passed.

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In the context of a *takeover bid* (see MAR 1.4.28C - MAR 1.4.30E), a *person*, A, will not be regarded as having *required or encouraged* another *person*, B, to engage in *behaviour* amounting to *market abuse* in circumstances where:

- (1) A is an adviser to B, and B is considering the acquisition or disposal of an *equity* or *non-equity stake*; and
- (2) A advises B to acquire or dispose of an *equity* or *non-equity stake* in the target *company* for the purposes and in the manner specified in MAR 1.4.28C.

## 1.8.8

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Where the originator of the transaction appears to have engaged in *market abuse* and, in the course of doing so, has acted through an intermediary, the intermediary's *behaviour* will not amount to either *requiring or encouraging* or *market abuse* unless the intermediary knew or ought reasonably to have known that the originator was engaging in *market abuse*.

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There are circumstances where the FSA will regard a *person* as *requiring or encouraging*: for example, where a *person* who has relevant and *disclosable information* about a *company* which is not yet generally available to other market

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users, advises or encourages another to acquire *shares* in that *company*, unless *guidance* suggests that this is acceptable (see for example, MAR 1.8.7G).

A *director* of a *company* or relevant employee (as defined in the *Model Code*) will not be regarded as having *required or encouraged* another *person* to engage in *behaviour* amounting to *market abuse* where the *director* or relevant employee acts in compliance with the requirements in paragraphs 11 and 12 (Dealings by connected parties and investment managers) of the *Model Code*.

## 1.9 Relationship with criminal law and other regulatory requirements

- 1.9.1** **G**<sub>/1</sub> Nothing in the Code makes lawful or permits any activity that contravenes the criminal law or applicable legal or regulatory requirements. In particular, nothing in this Code modifies or affects any other obligations of *persons* who are bound by the *rules*, the rules of a *prescribed market* or other relevant rules, regulations or codes of conduct or good practice. The FSA's policy on individual *guidance* in Chapter 9 of the Supervision manual (*SUP 9*) is relevant to a person seeking *guidance* on the Code.
- 1.9.2** **G**<sub>/1</sub> *Persons* will, therefore, need to ensure that, even if their *behaviour* does not amount to *market abuse*, it does not breach:
- (1) any applicable criminal law, for example the *insider dealing* provisions of the Criminal Justice Act 1993 or the provisions relating to misleading statements and practices in section 397 of the *Act*; or
  - (2) any applicable *rules*, for example *Principle 5* of the *Principles for Businesses (PRIN)*, the *Conduct of Business sourcebook (COB)*, and the *Statements of Principle and Code of Practice for Approved Persons (APER)*; or
  - (3) any other legal or regulatory requirements to which they are subject, including the rules and regulations of *RIEs*, the provisions of the *Takeover Code* and the *SARs*, the *Companies Acts*, overseas rules and regulatory requirements.
- 1.9.3** **G**<sub>/1</sub> *Principle 5* requires a *firm* to observe proper standards of market conduct. *APER 4.3.1P* requires *approved persons* to observe proper standards of market conduct in carrying out their *controlled function*. There is, therefore, some degree of overlap between *Principle 5* and the *market abuse regime*, and between *APER 4.3.1P* and the *market abuse regime*. However, there are some important differences:
- (1) *Principle 5* and *APER 4.3.1P* apply only to *authorised persons* and to *approved persons*, respectively, whereas the *market abuse regime* applies to all *persons*.
  - (2) the *market abuse regime* applies only to *behaviour* which occurs in relation to *qualifying investments* traded on a *prescribed market*. *Principle 5* applies, in respect of *authorised persons*, in relation to activities wherever conducted, if the activities have or might have a negative effect on confidence in the financial system, and otherwise broadly in relation to activities carried on in the *United Kingdom*. *APER 4.3.1P* applies to the activities of *approved persons* in carrying out their *controlled function* wherever they occur.
  - (3) *Principle 5* and *APER 4.3.1P* are broader in scope than the *market abuse regime*. *Principle 5* and *APER 4.3.1P* are directed generally at all *behaviour* which may fall short of proper standards of market conduct. Accordingly, *behaviour* may fall short of proper standards of market conduct, and therefore

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breach *Principle 5* and *APER 4.3.1P*, even though such *behaviour* does not constitute *market abuse*.

## 1.10 Statement of policy on penalties

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Section 124 of the *Act* requires the *FSA* to publish a statement of its policy with respect to the imposition and amount of penalties in cases of *market abuse* under section 123 of the *Act*. This statement must include an indication of the circumstances in which the *FSA* is to be expected to regard a *person* as having a reasonable belief that his *behaviour* did not amount to *market abuse* or having taken reasonable precautions and exercised due diligence to avoid engaging in *market abuse*. This statement is contained in *ENF* 14.

## 1.11 The scope of the market abuse regime

### PRESCRIBED MARKETS AND QUALIFYING INVESTMENTS

**1.11.1** G<sub>/1</sub> Section 118(1) of the *Act* defines *market abuse* as *behaviour* which amongst other things:

“occurs in relation to qualifying investments traded on a market to which this section applies”

**1.11.2** G<sub>/1</sub> Section 118(3) allows the Treasury to prescribe markets and *qualifying investments*. This is the purpose of the Financial Services and Markets Act 2000 (Prescribed markets and Qualifying investments) Order 2001. This Order, when read in conjunction with the *Act*, makes certain kinds of *investment* “traded on” *prescribed markets qualifying investments*. Treasury has prescribed all markets established under the rules of a *UK RIE* as markets to which section 118 applies. The following is a list of *UK RIEs* as at 31 May 2001:

COREDEAL Limited

The International Petroleum Exchange of London Limited

Jiway Limited

LIFFE Administration and Management

The London Metal Exchange Limited

London Stock Exchange plc

OM London Exchange Limited

virt-x plc

**1.11.3** G<sub>/1</sub> In the majority of cases, there will be no dispute that an *investment* is “traded on” a *prescribed market*. However, in a small number of cases, for example, where an *investment* has traded in the past but not recently, and where an *investment* has not yet started trading, the answer may be less obvious. To avoid any doubt, the following *investments* would be “traded on” a *prescribed market*:

- (1) *investments* which have not yet traded subject to the rules of a *prescribed market* from the point they start trading subject to the rules of a *prescribed market* (including the first trade);
- (2) *investments* which are currently trading subject to the rules of a *prescribed market*; and



(3) *investments* which have traded in the past and can still be traded subject to the rules of a *prescribed market*.

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The fact that *behaviour* has occurred in relation to an *investment* “traded on” a *prescribed market* is a necessary condition for *market abuse* to have occurred but it is not a sufficient condition. In addition, the *behaviour* must, among other things, satisfy one or more of the three conditions identified in section 118(2). It is difficult to see how these tests could be satisfied where there is no ongoing market on the *prescribed market* in the *qualifying investment*. If there is no ongoing market for a *qualifying investment* on a *prescribed market*, market participants are unlikely to rely on the *prescribed market* for price discovery or price formation. Equally, any trading in such a *qualifying investment* that is not associated with the *prescribed market* is unlikely to damage confidence in the *prescribed market*. The question of whether there is an ongoing market will depend on a number of factors, including how recently and in what volumes the *qualifying investment* has traded. The importance of these factors is likely to vary from market to market.

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An example shows how this *guidance* might be applied. An *investment* has not traded for a long time or only in insignificant volumes but it can still be traded subject to the rules of a *prescribed market*. The *investment* will be “traded on” a *prescribed market* for the purposes of the regime (MAR 1.11.3G). There will probably be no ongoing market in this *investment* since it has not traded for a long time or only in insignificant volumes. For that reason, *behaviour* in this *investment* is unlikely to amount to *market abuse* (MAR 1.11.4G).

#### BEHAVIOUR OCCURRING IN RELATION TO QUALIFYING INVESTMENTS

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Section 118(1)(a) of the *Act* requires that, in order to amount to *market abuse*, *behaviour* must occur in relation to *qualifying investments* traded on a market to which the section applies. According to section 118(6) of the *Act*:

”the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which:


(a) occurs in relation to anything which is the subject matter, or whose price or value is expressed by reference to the price or value, of those qualifying investments; or


(b) occurs in relation to investments (whether qualifying or not) whose subject matter is those qualifying investments.”

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The definition of *behaviour* in relation to a *qualifying investment* in section 118(6) is not exhaustive. However, there must be a clear relationship between the *behaviour* and a *qualifying investment* for the *behaviour* to be regarded as occurring in relation to a *qualifying investment*. Further, where *behaviour* is engaged in for the purpose of abuse in relation to a *qualifying investment*, it may be regarded as having occurred in relation to a *qualifying investment* even though the *behaviour* is not in a *qualifying investment* or *relevant product* (see MAR 1.11.8E).

**1.11.8**  /1 The statutory definition of *behaviour* which occurs in relation to *qualifying investments* set out at MAR 1.11.6E includes *behaviour* in relation to other *investments* which are not themselves *qualifying investments*, since such *behaviour* can have a damaging effect on confidence in *prescribed markets* and *qualifying investments*. These related *investments* are referred to in this Code as *relevant products*.

**1.11.9**  /1 *Behaviour* in the following *relevant products* is caught by section 118(6) of the Act:

- (1) anything that is the subject matter of a *qualifying investment*;
- (2) anything whose price is expressed by reference to the price of a *qualifying investment*;
- (3) anything whose price is expressed by reference to the value of a *qualifying investment*;
- (4) anything whose value is expressed by reference to the price of a *qualifying investment*;
- (5) anything whose value is expressed by reference to the value of a *qualifying investment*;
- (6) *investments* (whether *qualifying* or not) whose subject matter is a *qualifying investment*.

**1.11.10**  /1 Something will be the subject matter of an *investment* or a *qualifying investment* where there is a clear (for example, contractual, documented) relationship between the two: for example, the subject matter specified in the contract specification of an exchange-traded *investment*. Contract specifications for exchange-traded *investments* which are physically settled will specify the deliverable product under the contract. Contract specifications for exchange-traded instruments which are cash-settled will specify the subject matter of the contract by reference to which the settlement price is to be calculated. In relation to *OTC investments*, the subject matter of the *investment* will be specified in the accompanying contractual documentation. The following are examples of the application of the element of subject matter:

- (1) the subject matter of the gilt *futures* contract traded on LIFFE (which is a *qualifying investment*) is those gilts which are deliverable under the terms of the contract (which are *investments*). The gilts are therefore *relevant products*;
- (2) the subject matter of the FTSE Eurotop 100 index *option* traded on LIFFE (which is a *qualifying investment*) is all the individual *shares* which constitute the index (which are *investments*). The *shares* are all therefore *relevant products*;

- (3) the subject matter of an *OTC option* on a basket of *UK shares* (which is an *investment*) traded on a *prescribed market* is *qualifying investments* and the *OTC option* is therefore a *relevant product*.

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The following are examples of the price and or value relationship between a *qualifying investment* and a *relevant product*:

- (1) the value of a *spread bet* in relation to a basket of *UK shares* traded on a *prescribed market* is expressed by reference to the price of the *shares* (which are *qualifying investments*) and the *spread bet* is therefore a *relevant product*;
- (2) the price of an *OTC contract* in relation to Brent crude is expressed by reference to the price of the Brent crude *futures contract* traded on the IPE (which is a *qualifying investment*) and the *OTC contract* is therefore a *relevant product*;
- (3) the value of a total return swap in relation to a *UK share* traded on a *prescribed market* is expressed by reference to the value (that is the price and any dividend) of the *share* (which is a *qualifying investment*) and the total return swap is therefore a *relevant product*.

# Chapter 2

## Price Stabilising Rules



## 2.1 Application

### APPLICATION: WHO?

#### 2.1.1

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- (1) This chapter applies to every *firm*.
- (2) For the purposes of section 118(8) of the *Act*, *behaviour* (whether by a *firm* or not) conforming with the *price stabilising rules* does not amount to *market abuse*.

#### 2.1.2

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- (1) This chapter is available to any *person*, whether that *person* is a *firm* or not, who wishes to show:
  - (a) that he acted in conformity with the *price stabilising rules* for the purposes of paragraph 5(1) of Schedule 1 to the Criminal Justice Act 1993 (Insider dealing); or
  - (b) that he acted or engaged in conduct in conformity with the *price stabilising rules* for the purposes of section 397(4) or (5)(b) of the *Act* (Misleading statements and practices); or
  - (c) that his *behaviour* conforms with *rules* in accordance with section 118(8) of the *Act* (Market abuse).
- (2) Any *person* concerned with an *offer for cash of securities* might wish to rely on this chapter; there are no legal restrictions on the appointment of *stabilising managers* to whom this chapter may apply. However, the main focus of the chapter is on lead managers when they are contemplating or carrying out an *offer for cash of securities*. Agents appointed by lead managers, on the basis contemplated by this chapter, may also find the chapter especially relevant.

### APPLICATION: WHAT?

#### 2.1.3

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- This chapter applies to an *offer for cash*, that is, an *offer of securities*:
- (1) where the *securities* are *investments* falling within paragraphs 76, 77, 78, 79 or 80 of the *Regulated Activities Order*;
  - (2) where the *offer for cash* is to be, is, or has been, made at a specified price payable in sterling or another currency;
  - (3) where those *securities*:

- (a) have been *admitted to trading* (or are the subject of an application for *admission to trading*) on an exchange or other institution included in MAR 2.1.5R; or
  - (b) are, or may be, traded under the rules of the International Securities Markets Association;
- (4) where the total cost of the *securities* subject to the *offer* at the *offer price* is at least £15,000,000 (or its equivalent in another currency); and
- (5) where the *offer* is public in character and is to be, is, or has been subject of a public announcement.

2.1.4

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The effect of MAR 2.1.3R is to include both initial public offers and public offers of additional *securities* to rank alongside *securities* already in issue. An offer is likely to be regarded as public in character where it is made in a prospectus. Other offers that may be regarded as public are offers to a section of the public, placements that are not essentially private and distributions. But the use of the word "offer" and the fact that there has to be a *public announcement* of the *offer* shows that a sale, for example by means of a block trade, of *securities* already in issue is not included.

2.1.5

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Table Exchanges (see MAR 2.1.3R(3))

**Application: securities admitted to trading or to be admitted to trading on the following exchanges are within the scope of the price stabilising rules (see MAR 2.1.3R(3)).**

**A recognised investment exchange**

**A recognised overseas investment exchange**

**A regulated market**

**Other specific exchanges as listed in MAR 2 Ann 1R**

#### APPLICATION: WHERE?

2.1.6

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This chapter:

- (1) so far as it provides a defence for any *person*, has the same territorial application as the provision which is alleged to have been contravened; and
- (2) in its application to a *firm* for purposes other than those falling within (1), applies to the *firm's* business carried on from an establishment in the *United Kingdom*.

2.1.7

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There are specific provisions in MAR 2.8 about action for stabilising purposes in conformity with provisions made by certain overseas authorities. Accordingly action by *persons* not present in the *United Kingdom*, but where the action may have an effect in the *United Kingdom*, may have to be assessed in terms of the general provisions in this chapter, or the specific provisions in MAR 2.8.

- 2.1.8** **G**<sub>/1</sub> The defences to legal or regulatory procedures referred to in *MAR 2.1.6R (1)* and listed at *MAR 2.1.2G (1)* are conferred by *rules* made under section 144 of the *Act* (price stabilising rules); this means that *MAR 2.6* (Management of stabilisation) and *MAR 2.7* (Recording of action taken), which are made under section 138 of the *Act*, and apply only to *authorised persons*, are not relevant for the purposes of such a defence.
- 2.1.9** **R**<sub>/1</sub> A contravention of the *price stabilising rules* in *MAR 2* does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

## 2.2 Purpose

### 2.2.1

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The purpose of this chapter is to provide *rules* permitting, but also regulating, price support for *offers* of equities and bonds, including new issues such as initial public offers and *offers of securities* of the type and class already traded in the market. It prescribes the circumstances in which the *stabilising manager* and others acting for him are permitted to support the prices of the *relevant securities* offered for a limited period after the *offer*. This is to maintain an orderly initial market in the *securities* offered, and potentially therefore to facilitate new *offers* and reduce the costs to enterprises involved in the making of new *offers* of their *securities*. The *stabilising manager* and his agents are allowed to exert upward pressure on the price in the cash market, by all means permitted by the *price stabilising rules*, including by the purchase of *relevant securities* previously sold short. Under the *rules* in this chapter, there can be only one *stabilising manager* in respect of any particular *offer*.

#### GENERAL EFFECT OF THE RULES

### 2.2.2

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The general effect of this chapter is to enable the *stabilising manager* of an *offer of securities* to enter into the market personally, or through specially appointed agents, to buy or agree to buy *securities* in order to support (though not to suppress) the market price of the *relevant securities* being *offered*. He will, however, be free to do this only if:

- (1) the *stabilising period* is still running;
- (2) he has taken the necessary preliminary steps envisaged by MAR 2.3 and, if applicable, MAR 2.7 (relating to warning the market of the possibility of *stabilising action*, and records of action taken);
- (3) the price is not already false at the start of the *stabilising period* under MAR 2.3.8R; and
- (4) the limits set by MAR 2.5 as to the maximum price at which *stabilising action* may be taken are not exceeded.

### 2.2.3

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During the *stabilising period* the *stabilising manager* may do any or all of the following:

- (1) purchase, or agree to purchase, any of the *relevant securities* (or *associated securities*) with a view to supporting the market price of the *relevant securities*; and
- (2) offer or attempt to do anything in (1) with a view to supporting the market price of the *relevant securities*.



2.2.4

**R**

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But the *stabilising manager* will not be able to rely on the *price stabilising rules* if, at the time of the relevant act or omission, he knew or should reasonably have known that:

- (1) the market had not been properly informed in accordance with *MAR 2.3.2R(1)* and (2); or
- (2) proper records are obliged to be but have not been or are not being kept in accordance with *MAR 2.3.2R(3)*; or
- (3) the price of any *associated securities* or of the *relevant securities* was already false at the time when the *offer price* was determined in the circumstances described at *MAR 2.3.8R*.

## 2.3 Preparation before and restrictions upon stabilising action

### 2.3.1

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<sup>/1</sup>

Before *stabilising action* is taken, the *stabilising manager* is required (under MAR 2.3.2R) to take, or check that others have taken, proper steps to inform the market (and, so far as relevant, the issuer) that *stabilising action* may be taken and (under MAR 2.3.8R) to verify that the price of any *relevant securities* or *associated securities* is not already false. He must also:

- (1) be satisfied (under MAR 2.3.2R) that proper systems have been set up (where required) for the central recording of any *stabilising action*; and
- (2) (under MAR 2.3.9R) not stabilise shares and certificates associated to bonds, loans, debentures, etc, if one is to be convertible into the other but the terms of conversion have not yet been announced.

### 2.3.2

**R**

<sup>/1</sup>

The *stabilising manager* may not take any *stabilising action* in any *relevant securities* or *associated securities* in accordance with this chapter unless he has taken all reasonable steps to satisfy himself that:

- (1) from the beginning of the *introductory period* (or where relevant the period mentioned in MAR 2.3.5E(3)(b)) adequate disclosure is made, in relevant communications issued by or on behalf of the issuer or the *stabilising manager*, of the fact that *stabilising action* may take place in relation to the *offer*;
- (2) any requirement of the relevant exchange (see MAR 2.5.6R note (2)) or other institution on which the *relevant securities* or *associated securities* are or will be traded (see MAR 2.1.3R(3)) to inform it that *stabilising action* in those *securities* may take place during the *stabilising period* has been complied with;
- (3) the *stabilising manager* has established the register required by MAR 2.7.2R(1) (if that paragraph is binding upon him) for recording each *stabilising action* effected by him in the *relevant securities* or *associated securities* and the matters required to be recorded by MAR 2.7.2R(2) in relation to it; and
- (4) where the *offer* relates to an issue of *relevant securities* the issuer has been informed of the existence of the FSA informational guidance (MAR 2 Ann 2G), either in relation to the *offer* in question or to a previous one.

2.3.3



- (1) A *stabilising manager* who is required to comply with MAR 2.3.2R(1) should ensure that the communications there referred to, if they fall within items 1 to 5 of MAR 2.3.4E, contain the words suggested in, or otherwise fairly comply with, any relevant note to that table.
- (2) Compliance with (1) may be relied on as tending to establish compliance with MAR 2.3.2R(1).

2.3.4



Table Communication referring to the offer (see MAR 2.3.2R(1))

Item	Communication	Relevant Notes (See MAR 2.3.5E)
1	Any screen-based statement	1, 2, 3, 5 and 6
2	Press announcement (or other <i>public announcement</i> )	2, 3, 5 and 6
3	Invitation telex (or similar)	2, 5 and 6
4	Preliminary offering circular (or draft prospectus)	4, 5 and 6
5	Final offering circular (or prospectus)	4, 5 and 6

2.3.5



Table Notes to MAR 2.3.4E

(1) Item 1 extends to any statement made by the *stabilising manager* or issuer on screen facilities (whether provided by the *stabilising manager* or not) conveying prices for a purchase or sale of *securities*.

(2) For items 1, 2 and 3, adequate disclosure is given if the communication contains some indication of the fact that the *offer* may be stabilised in accordance with the *price stabilising rules*. The term "stabilisation / FSA" is sufficient for this purpose. During the *introductory period* a reference to the future prospectus or to the prospectus can be used instead if preferred.

(3) Items 1 and 2 apply from the beginning of the shorter of two periods, that is:

(a) the *introductory period*; or

(b) the period beginning 45 days before the day proposed for the issue of the *relevant securities* and ending with the start of the *stabilising period*.

(4) For Items 4 and 5 adequate disclosure is given if the communication contains wording substantially similar to the following:

"In connection with this [issue] [*offer*], [name of *stabilising manager*] [or any *person* acting for him] may over-allot or effect transactions with a view to supporting the market price of [description of *relevant securities* and any *associated securities*] at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there may be no obligation on [name of *stabilising manager*] [or any agent of his] to do this. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period."

(5) Where any communication referred to in items 1 to 5 is not to be issued to or directed at *persons* in the *United Kingdom*, the notice required by those items may be adapted or omitted.

(6) Where any communication referred to in items 1 to 5 is to be issued to or directed at *persons* in the *United Kingdom* and *persons* elsewhere, the notice required by those items may be adapted or omitted so as not to require the *stabilising manager* or any agent of his to commit any breach of any legal rule or requirement in respect of any communication issued to or directed at *persons* outside the *United Kingdom*.

## 2.3.6

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The requirement in MAR 2.3.2R (1) to make adequate disclosure in communications does not apply to any communication which is not mentioned in table MAR 2.3.4E.

## 2.3.7

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An FSA consumer factsheet has been prepared which explains to potential investors the significance of the fact that stabilisation may take place in the *relevant securities* offered. The factsheet is available on the FSA's website and may in addition be obtained from the FSA by post, free of charge. The *stabilising manager* acting for the issuer should consider drawing attention to the availability of this factsheet in prospectuses which are aimed at *private customers*.

2.3.8

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- (1) The *stabilising manager* may not take *stabilising action* in any case where:
- (a) there are in existence *associated securities*;
  - (b) at the time when the *offer price* of the *relevant securities* was determined, the market price of the *associated securities* was falsely higher than the true market price; and
  - (c) the *stabilising manager* knew or ought reasonably to have known that the falsity in the market price was attributable in whole or in part to any act or course of conduct on the part of any *person* which was in breach of section 397(2) or (3) of the *Act*.
- (2) The *stabilising manager* may not take *stabilising action* in any case where:
- (a) at the time when the *offer price* of the *relevant securities* was determined, the market price of the *relevant securities* or of rights to them, whether in informal trading or otherwise, was falsely higher than the price which would otherwise have prevailed; and
  - (b) the *stabilising manager* knew or ought reasonably to have known that the falsity in the market price was attributable in whole or in part to any act or course of conduct on the part of any *person* which was in breach of section 397(2) or (3) of the *Act*.

2.3.9

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The *stabilising manager* may not take *stabilising action* in any case where:

- (1) the *relevant securities* fall within article 77 (instruments creating or acknowledging indebtedness), 78 (Government and public securities) or 79 (instruments giving entitlements to investments) of the *Regulated Activities Order*;
- (2) there are, in relation to those *relevant securities*, *associated securities* falling within article 76 (shares, etc) or 80 (certificates representing certain securities) of the *Regulated Activities Order*, into which those *relevant securities* can be converted or to the purchase of which those *relevant securities* give rights; and
- (3) the terms of the conversion, purchase or subscription have not yet been publicly announced.

2.3.10

**G**

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The general purpose of MAR 2.3.9R is to place a restriction on stabilising bonds convertible into equities, and warrants for equities, in cases where the terms of the conversion or right to purchase have not yet been settled. Prime examples would be a convertible loan stock of a public limited company, but MAR 2.3.9R also

covers similar cases such as government debt instruments which are convertible into shares, for example a privatisation in the *United Kingdom* or overseas.

2.3.11

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The *stabilising manager* may not take *stabilising action* in any case where:

- (1) he or an *associate* of his has, in connection with the *offer*, an *option* or other right to purchase *relevant securities* from the issuer; and
- (2) that *option* or right may be exercised or relied on after the start of the *introductory period* and during or after the remainder of the *stabilising period*;

unless the existence and principal terms of the *option* or right have been disclosed in the relevant prospectus or offering document or in a *public announcement*.

## 2.4 Ancillary permitted stabilising action

- 2.4.1** **G** /1 MAR 2.4.2R and 2.4.3R enable the *stabilising manager* to over-allot or go short of *securities*, so as to facilitate his subsequent purchase of them by *stabilising action*; and he may buy or sell on the market in order to close out or liquidate positions established by *stabilising action* or by going short.

### PERMITTED ANCILLARY ACTION

- 2.4.2** **R** /1 The *stabilising manager* may, subject to MAR 2.4.3R:
- (1) with a view to supporting the price of the *relevant securities* by action under MAR 2.2.3R:
    - (a) make allotments of a greater number of the *relevant securities* than will be offered; or
    - (b) sell or agree to sell *relevant securities* or *associated securities* so as to establish a short position in them; or
    - (c) achieve a result equivalent to that in (b) by use of *derivatives*; or
  - (2) buy or subscribe for or agree to buy or subscribe for *relevant securities* or *associated securities* in order to close out or liquidate any position established under (1); or
  - (3) sell or agree to sell *relevant securities* or *associated securities* in order to close out or liquidate any position that has been established by *stabilising action*; or
  - (4) achieve a result equivalent to that in (3) by use of *derivatives*; or
  - (5) offer or attempt to do anything permitted by (1)(b) or (c), (2), (3) or (4).

- 2.4.3** **R** /1 MAR 2.4.2R applies only if the *stabilising manager* has reasonable grounds for believing, and does believe, that the requirements in MAR 2.3 have been complied with.

## PRICE LIMITS

- 2.4.4 **R** *Ancillary action* under MAR 2.4.2R(2) may be taken without regard to the limits on pricing in MAR 2.5.  
/1
- 2.4.5 **G** Long or short positions can be established either in the cash market or by the use of *derivatives*. The extent to which *derivatives* may be used in *stabilising action* or in *ancillary action* is strictly limited. MAR 2 contemplates the use of *derivatives* only on the “selling” side, that is as permitted *ancillary action*, under MAR 2.4.2R(1)(c) and (4). This is because of the need for market transparency in any purchase transactions and because of the requirements which are applicable to *firms* in MAR 2.7.2R for a single record of *stabilising action* taken.
- 2.4.6 **G** MAR 2.4.2R(2) extends to the purchase from the issuer during the *stabilising period*, or shortly after, by exercise of an *option* or other right, of further *securities* not previously allotted.  
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## 2.5 Pricing

### LIMIT ON PRICING: GENERAL

- 2.5.1** **G**<sub>/1</sub> The principal purpose of this section is to put an upper limit on the price at which certain *securities* may be stabilised.
- 2.5.2** **G**<sub>/1</sub> The price limits are broadly similar whether the *stabilising action* is concerned with *relevant securities* or *associated securities* (including call options). However, the price limits do not extend to *debt securities* in the form of bonds, etc., and pricing for them is subject instead to the requirements in MAR 2.2.3R that the *stabilising action* is taken to support the market price.
- 2.5.3** **G**<sub>/1</sub> The initial *stabilising price* (Price X) cannot exceed the *offer price* (or starting price) (Price Y), and subsequent *stabilising action* must equally be at or below the level of Price X. If there are no sales and purchases which are independent of the *stabilising manager* on both sides on the relevant exchange above Price X, the *stabilising manager* can operate at a price or at prices below Price X, moving up or down in that area as he wishes. But if an independent buyer and seller do a deal on the relevant exchange, at a price (Price Z) between Price X and Price Y, then the *stabilising manager* has a new maximum price (Price Z) instead of Price X.

### MAXIMUM PRICES

- 2.5.4** **R**<sub>/1</sub> (1) No bid may be made or transaction effected in the case of action described in MAR 2.2.3R at a price higher than any relevant price indicated in accordance with MAR 2.5.5R (including any relevant note in MAR 2.5.6R).
- (2) The prohibition in (1) does not apply to *stabilising action* related to *investments* falling within Articles 77 or 78 of the *Regulated Activities Order* (bonds, etc), nor within Article 80 (certificates, etc) that confer rights in respect of any of those *investments*.
- 2.5.5** **R**<sub>/1</sub> Table Limits on pricing (see MAR 2.5.4R(1))

Time of Action	Column A	Column B	Column C
	<i>Relevant securities (including associated securities which are in all respects uniform with them)</i>	<i>Associated securities (other than associated call options) excluding those in column A</i>	<i>Associated call options</i>
(1) Initial stabilising action	The offer price	The market bid price of the associated securities at the beginning of the stabilising period	The market price of an option at the beginning of the stabilising period
(2) Later, but where there has been a deal at a price above the stabilising price on the relevant exchange	The offer price, or the price at which that deal was done, whichever is the lower	The market bid price in B(1), or the price at which that deal in the associated securities was done, whichever is the lower	The market price in C(1), or the price at which that deal in an option was done, whichever is the lower
(3) Later, but where there has been no deal in (2)	The offer price, or the initial stabilising price, whichever is the lower	The market bid price in B(1), or the initial stabilising price for the associated securities, whichever is the lower	The market price in C(1), or the initial stabilising price of the option, whichever is the lower

2.5.6

**R**

Table Pricing Notes (see MAR 2.5.5R)

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- (1) Deals done. For the purposes of *MAR 2.5.5R(2)*, a deal done by or on the instructions of the *stabilising manager* does not count.
- (2) Relevant Exchange. For the purposes of *MAR 2.3.2R(2)*, *MAR 2.5.5R(2)* and *MAR 2.5.6R* the relevant exchange means the investment exchange which the *stabilising manager* reasonably believes to be the principal investment exchange on which those *securities*, or as the case may be *options*, are dealt in at the time of the transaction.
- (3) Convertible bonds, etc. For the purposes of *MAR 2.5.5R* and *MAR 2.5.6R* any investment falling within Article 76 and also within Article 77 or 79 of the *Regulated Activities Order* shall be treated as if it fell only within Article 76.
- (4) References in column B of *MAR 2.5.5R* to *associated securities* do not include call *options*.
- (5) Currency fluctuations. Where the price of any *relevant securities* or associated securities on the relevant exchange is in a currency other than the currency of the price of the *securities* to be stabilised, stabilising bids may be made or transactions effected at a price that reflects any change in the relevant rate of exchange; but this does not permit *stabilising action*, in column A of *MAR 2.5.5R*, at a price above the equivalent, in the other currency, of the *offer price* in the currency on the relevant exchange.
- (6) New *securities*: Where there is no market bid price for any *associated securities* (including *associated call options*) at the beginning of the *stabilising period* because those *securities* or *options* are not in existence or capable of being traded at that time, *MAR 2.5.5R* shall be read as if references to the market bid price of the *associated securities* or *options* at the beginning of the *stabilising period* were a reference to the first market bid price of the *associated securities* or *options* during the *stabilising period* of which the *stabilising manager* is, or reasonably should be, aware.

## 2.6 Management of stabilisation

- 2.6.1** **G**<sup>/1</sup> The purpose of this section and of section 2.7 is to provide an orderly structure for the management of *stabilising action* even where it is to be carried out on a devolved basis, whether in the *United Kingdom* or elsewhere. The central management has to be in the hands of one *stabilising manager*. If authorised in the *United Kingdom*, the *stabilising manager* has to set up, operate and be legally responsible for a single stabilisation register (MAR 2.7.2R) which must be kept in the *United Kingdom* or be capable of being inspected by the relevant regulators. These sections accordingly build on the base requirement for *authorised persons* at MAR 2.3.2R(3).
- 2.6.2** **R**<sup>/1</sup> (1) This section, and section MAR 2.7, apply only where the *stabilising manager* is a *firm* or is employed by a *firm*.
- (2) Where the *stabilising manager* is employed by a *firm*, this section and MAR 2.7 shall have effect as if the obligations imposed on the *stabilising manager* were imposed on the *firm*.
- 2.6.3** **R**<sup>/1</sup> No bid may be made or transaction effected in the course of stabilising action unless the stabilising manager:
- (1) has established the relevant register in compliance with MAR 2.7.2R; and
- (2) is in compliance with the registration requirements in MAR 2.7.2R in respect of all earlier transactions effected in the course of *stabilising action* in connection with the *offer* in question.
- 2.6.4** **R**<sup>/1</sup> No bid may be made or transaction effected in the course of *stabilising action* except by:
- (1) the *stabilising manager* himself; or
- (2) a *person* appointed by the *stabilising manager* to act as his agent on terms which:
- (a) make the agent responsible to the *stabilising manager*; and
- (b) make the *stabilising manager* as responsible to others for the acts or omissions of the agent as if they had been done or omitted by the *stabilising manager*.

2.6.5

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- (1) The *stabilising manager* may not during the *stabilising period* enter into a transaction as principal in *relevant securities* or *associated securities* with any agent of his appointed under MAR 2.6.4R.
- (2) Paragraph (1) does not apply if, at the time of the transaction, neither the *stabilising manager* nor the agent knew or could reasonably have been expected to know the identity of his counterparty.

## 2.7 Recording of action taken

2.7.1

G

For the application of this section see MAR 2.6.2R.

2.7.2

R

- (1) The *stabilising manager* must establish and keep a register in respect of each *offer of securities* covered by this chapter.
- (2) He must ensure that it contains, either in real time or updated overnight (from *business day* to *business day*):
- (a) the names of all agents appointed under MAR 2.6.4R, and details of the terms of the appointment of each;
  - (b) the general parameters (including the initial *stabilising price*) laid down by the *stabilising manager* for his agents and the date and time of their communication, variation or revocation;
  - (c) each transaction effected in the course of *stabilising action* including:
    - (i) the type of *security*;
    - (ii) the unit price;
    - (iii) the size;
    - (iv) the date and time; and
    - (v) details of the counterparty;
  - (d) details of the allotment of *relevant securities* (allottee and amount allotted); and
  - (e) details (so far as known to the *stabilising manager*) of any deal which “counts” as a deal at a price above the then *stabilising price* for the purposes of MAR 2.5.5R(2) (pricing after independent deals).
- (3) The register must be kept in the *United Kingdom*, or else be capable of being brought to, or reconstituted in, the *United Kingdom* within 48 hours of a request for access from anyone entitled to inspect it.

2.7.3

**R**  
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- (4) If the *register* is not kept in English, it must be capable of being converted into English within the 48 hour period mentioned in (3).
- (1) During the three months from the end of the *stabilising period*, the *stabilising manager* must permit the issuer of the *securities*, on any *business day*, to inspect that part of the register which is kept under MAR 2.7.2R (2) (c) (i) to (iv).
- (2) The obligation in (1) arises only if the *offer* related to an issue of *relevant securities*.

2.7.4

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The register must be retained for a period of at least three years from the date of the end of the *stabilising period*.

## 2.8 Overseas Stabilisation

### 2.8.1

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Under sections 144(3) and (6) of the *Act*, the *FSA* may make *rules* which confer a “safe harbour” in respect of one type of market manipulation (section 397(3)) on *persons* who act in conformity with specified provisions of foreign laws. Under that power, the *FSA* “specifies” certain legislative provisions having effect in the United States of America and in Japan. It should be noted that conformity with these provisions may assist in proceedings under section 397(3) but not in proceedings under section 397(2) nor in proceedings under Part V of the Criminal Justice Act 1993 (insider dealing). This is because of the wording of section 144(3).

### 2.8.2

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(1) A person who, in any place outside the *United Kingdom*, acts or engages in conduct:

- (a) for the purposes of stabilising the price of *investments*; and
- (b) in conformity with the provisions specified in (2) or, as the case may be, in (3); and
- (c) in relation to an offer which is governed by the law of a country (or a state or territory in a country) so specified;

is to be treated for the purposes of section 397(5) of the *Act* (misleading statements and practices) as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.

(2) In relation to the United States of America, the specified provisions are:

Regulation M made by the *Securities and Exchange Commission* (17 CFR 242, # 100-105).

(3) In relation to Japan, the specified provisions are:

- (a) The Securities and Exchange Law of Japan, (Law No 25, April 13 1948), Article 159, paragraphs 3 and 4;
- (b) Cabinet Orders for the Enforcement of the Securities and Exchange Law of Japan (Cabinet Order 321, September 30, 1965), Articles 20 to 26;



- (c) Ministerial Ordinance concerning the Registration of Stabilisation Trading (Ordinance of the Ministry of Finance No 43, June 14, 1971);
  - (d) Ministerial Ordinance concerning rules and otherwise governing the soundness of securities companies (Ordinance of the Ministry of Finance, No 60, November 5, 1965), Article 2.
- (4) A *person* who is treated under (1) as acting or engaging in conduct in conformity with the *price stabilising rules* is also to be treated to an equivalent extent as so acting or engaging for the purposes of MAR 2.1.1R (2) above, and of Part XIV (Disciplinary measures) and Part XXV (Injunctions and Restitution) of the *Act*.
- (5) The provisions in (2) and (3) are specified as they have effect from time to time, so long as this paragraph has effect.

## 2.8.3

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- (1) The effect of MAR 2.8.2R (4) is to confer a defence in the following classes of cases:
- (a) proceedings under Part VIII of the *Act* in cases of *market abuse*;
  - (b) disciplinary proceedings under Part XIV of the *Act* in cases of a breach of other *price stabilising rules*;
  - (c) proceedings under Part XXV of the *Act* (Injunctions and Restitution) in relation to *market abuse* or a breach of other *price stabilising rules*.
- (2) The *FSA* and, if necessary, the *Financial Services and Markets Tribunal* and the court will need, in such cases, to consider whether, and if so how, the overseas stabilising rule has been complied with or broken in relation to conduct of the kind which otherwise would be proscribed under section 397(3) of the *Act*.

## 2.8.4

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The provisions in this section are separate and distinct from other provisions in these *rules* which may be relevant to overseas stabilisation whether by *persons* who are authorised in the *United Kingdom* or by other *persons*. In particular, MAR 2.6.4R enables overseas agents appointed by a *UK* authorised *stabilising manager* to obtain the benefit of the *price stabilising rules*.

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## MAR 2 Ann 1R

- 1 Table List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.1.5R)

**American Stock Exchange (AMEX)**  
**Australian Stock Exchange**  
**Bolsa Mexicana de Valores**  
**Canadian Venture Exchange**  
**Hong Kong Stock Exchange**  
**Johannesburg Stock Exchange**  
**Korea Stock Exchange**  
**Midwest Stock Exchange**  
**Montreal Stock Exchange**  
**New York Stock Exchange (NYSE)**  
**New Zealand Stock Exchange**  
**Osaka Securities Exchange (OSE)**  
**Pacific Stock Exchange**  
**Philadelphia Stock Exchange**  
**Singapore Exchange Securities Trading Limited**  
**Tokyo Stock Exchange (TSE)**  
**Toronto Stock Exchange**

## MAR 2 Ann 2G

### 1 Table Information for issuers on stabilisation (see MAR 2.3.2R (4))

1.	Introduction
1.1	This guidance has been produced by the FSA to help issuers identify the information they might seek when engaging underwriters and <i>stabilising managers</i> to manage their new offers for them. <i>Stabilising managers</i> are encouraged by the <i>price stabilising rules</i> to alert issuers to the existence of this guidance.
2	When stabilisation can be used
2.1	It is a common market practice in the <i>United Kingdom</i> for <i>stabilising managers</i> of both debt and equity issues to reserve the right to stabilise offers by including in the offer documentation wording which gives notice that the issue may be stabilised. <i>FSA rules</i> allow the <i>stabilising manager</i> /underwriter to stabilise a new offer, which means that it may purchase securities to support the price: <ol style="list-style-type: none"> <li>1 where the <i>offer</i> is for cash;</li> <li>2 where the <i>offer</i> is public and is subject to the rules of an exchange specified under the <i>price stabilising rules</i>; and</li> <li>3 only for a limited period, (the <i>stabilising period</i>).</li> </ol>
3	Common market practice when undertaking stabilisation
3.1	<i>Stabilising action</i> involves supporting the price of <i>securities</i> made in public offers. The <i>stabilising manager</i> undertakes this action by purchasing or agreeing to purchase the relevant <i>securities</i> . Supporting a price may potentially lead to distortions of price signals. For the <i>stabilising manager</i> to obtain the ‘safe harbour’ (effectively a defence against a charge of market manipulation, insider dealing or <i>market abuse</i> ) provided by the <i>price stabilising rules</i> , a number of disclosures must be made to the market (see 5 below).

3.2	<p>It is common practice for the <i>stabilising manager</i> to over-allot a new <i>offer</i> as an <i>ancillary action</i> to stabilisation. This leaves the <i>stabilising manager</i> with a net short position in the <i>securities</i>, having pre-sold more than 100% of the issue. When the <i>offer</i> begins to trade in the after-market, if the price does not go above the <i>offer price</i>, the <i>stabilising manager</i> can make purchases of <i>securities</i> in order to close out this short position. The purchases that the <i>stabilising manager</i> makes to close out the position will be part of the <i>price stabilising activity</i>. It is common for the <i>stabilising manager</i> to take out an over-allotment (or Green Shoe) option, so that further <i>securities</i> can be obtained from the issuer at the <i>offer price</i>. Thus, if the price has risen, the <i>stabilising manager</i> can still close out the short position.</p>
4	Use of the Green Shoe unconnected with stabilisation
4.1	<p>It is possible for the <i>stabilising manager</i> to obtain a Green Shoe option that is not intended for the purpose of filling any short position arising from over-allotment. The reason for the option should be explicitly disclosed to the issuer. The issuer may wish to ensure that it understands why the <i>stabilising manager</i> wants a Green Shoe option, and may wish to secure that its agreement specifies the circumstances in which it can be exercised</p>
5	FSA rules and disclosure
5.1	<p>The <i>price stabilising rules</i> require the <i>stabilising manager</i> to make certain disclosures:</p> <ol style="list-style-type: none"> <li data-bbox="341 1469 1230 1547">1 to the market, providing notification that <i>stabilising action</i> may be taken; and</li> <li data-bbox="341 1559 1230 1693">2 in the prospectus, or offering circular, concerning the existence of an over-allotment or Green shoe option, and the terms on which it has been agreed.</li> </ol>
5.2	<p>In addition, where the stabilising manager is an authorised person in the <i>United Kingdom</i>, MAR 2.7.3R gives the issuer certain rights to inspect parts of the register of <i>stabilising action</i> which such a <i>stabilising manager</i> must maintain.</p>
6	Information that issuers may wish to request from the stabilising manager

6.1	<p>When negotiating the terms of agreement for the <i>offer</i>, the parties will no doubt wish to consider how the <i>offer</i> will be managed and what information the issuer might wish to seek from the <i>stabilising manager</i>. In considering what information might be requested, the issuer may wish to arrange for the following:</p>
	<ol style="list-style-type: none"> <li data-bbox="363 510 1256 611">1 information on how the issue is proceeding during the <i>stabilising period</i> (nature of demand, types of investors, etc.); and</li> <li data-bbox="363 611 1256 801">2 information on the level of <i>stabilising activity</i> which is being undertaken (though it may not be desirable, for reasons of confidentiality, for this to be disclosed in any detail until the <i>stabilising period</i> has ended).</li> </ol>
6.2	<p>The issuer may also request information on the reasons for the exercise of the right to additional allotment by the <i>stabilising manager</i>. In particular, the issuer may wish to know how far the additional allotment is attributable to:</p> <ol style="list-style-type: none"> <li data-bbox="363 992 1256 1093">1 a need to deliver <i>relevant securities</i> to <i>persons</i> who are unconnected with the <i>stabilising manager</i>; and</li> <li data-bbox="363 1093 1256 1182">2 a need to make good any failures to deliver by other counterparties.</li> </ol> <p>The issuer may also wish to consider whether the additional allotment might have led to a profit for the <i>stabilising manager</i>.</p>
6.3	<p>The <i>stabilising manager</i> is not under any obligation to identify the names of individual clients to the issuer.</p>

# Chapter 3.

# Inter-Professional Conduct

3.



## 3.1 Application

### APPLICATION: WHO?

**3.1.1** **R** This chapter applies to every *firm* except:

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- (1) a *service company*;
- (2) a *non-directive friendly society*;
- (3) a *non-directive insurer*;
- (4) a *UCITS qualifier*.

### APPLICATION: WHAT?

**3.1.2** **R** This chapter applies to a *firm*:

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- (1) when it carries on:
  - (a) *regulated activities*; or
  - (b) related *ancillary activities*;
- (2) to the extent that the *regulated activity* the *firm* is carrying on is:
  - (a) *dealing in investments as principal*; or
  - (b) *dealing in investments as agent*; or
  - (c) acting as an *arranger*; or
  - (d) *giving transaction-specific advice*;
- (3) but only if the activity referred to in (1) and (2) is in or is in respect of an *inter-professional investment* and is undertaken with or for a *market counterparty*.

**3.1.3** **R** This chapter does not apply to the carrying on of the following activities:

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- (1) the *approval* by a *firm* of a *financial promotion*; or
- (2) activities carried on between *operators*, or between *operators* and *depositories*, of the same *collective investment scheme* (when acting in that capacity); or
- (3) *corporate finance business*; or
- (4) *Safeguarding* and *administering investments* and agreeing to carry on that *regulated activity*.

**APPLICATION: WHERE?**

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3.1.4

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This chapter applies only with respect to a *firm's* activities carried on from an establishment maintained by the *firm* in the *United Kingdom*.



## 3.2 Purpose

### 3.2.1

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The main objective of this chapter (*MAR 3*) is the maintenance of confidence in the *financial system*, although it is also relevant to the *FSA's* other *regulatory objectives* under the *Act*. However, many of its provisions relate to the conduct of bilateral dealings and it seeks to secure good market practice by *firms* undertaking *inter-professional business* in three ways:

- (1) by increasing certainty by explaining how the *Principles* apply to *inter-professional business*, whilst acknowledging that what is required to meet the proper standards of conduct for a *firm* may differ depending on whether or not the *firm* is *dealing* with a *market counterparty* (see *PRIN 1.2.1G* (Characteristics of the client));
- (2) by setting out *rules* for *inter-professional business* in cases when it is not appropriate to rely on the *Principles* alone; and
- (3) by setting out the *FSA's* understanding of certain market practices and conventions; drawing this information together in this way will assist certainty, reduce the scope for disputes and make it easier to resolve disputes that do arise.



### 3.3 Contents and status of this chapter



3.3.1

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MAR 3 Ann 1G provides *guidance* on the scope of this chapter.

3.3.2

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MAR 3 is not the only chapter of the *Handbook* that applies to *firms* doing *inter-professional business*. *Firms* should always consider what other parts of the *Handbook* may apply to them. A table listing the applicable *Principles* is set out in MAR 3 Ann 2G. The table also sets out the key provisions of *COB* that may also apply to *firms* doing *inter-professional business*, but it should not be read as an exhaustive list. *Firms* should also consider the other provisions of the *Handbook*, especially but not exclusively *ML* and *IPRU*.

3.3.3

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MAR 3 Ann 3G is a statement of what the *FSA* understands to be generally regarded as good *market* practice and conventions in certain areas. It is not *guidance* on *rules*.

## 3.4 Standards expected of firms when undertaking inter-professional business

**3.4.1** **G** This section 3.4 provides *guidance* on the interpretation of the *Principles* and in particular *Principle 1* (Integrity), *Principle 2* (Skill, care and diligence), *Principle 5* (Market conduct) and *Principle 7* (Communications with clients.)  
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**3.4.2** **G** The *Principles*, as they apply to *inter-professional business*, will be interpreted on the basis that *market counterparties* do not need or expect the level of protection provided to *private customers* or *intermediate customers*. In many respects, inter-professional dealings are mutually self-disciplining. *Market counterparties* have commercial sanctions available if they consider the conduct of someone they conduct business with is unacceptable, and are responsible for their own decisions. These factors are relevant also to the *FSA*'s interpretation of the provisions of this chapter.  
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### SUITABILITY AND ADVICE

**3.4.3** **G** The *Principles* do not require a *firm* to assess the suitability of a particular transaction for its *client* once it has established that it is dealing with a *market counterparty*. For example, the *firm* is not obliged to ensure that the *market counterparty* understands the risks involved; nor is it under any duty to provide best *execution* or other *dealing* protections (but see *MAR 3.4.5G* to *MAR 3.4.9G*).  
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**3.4.4** **G** Similarly, a *firm* is not obliged to give advice to a *market counterparty*. The mere passing of information does not mean the *firm* has assumed responsibility for giving advice. Although *Principle 7* (Communications with clients) requires a *firm* to pay due regard to the information needs of its "*clients*", the only requirement of *Principle 7* relating to *market counterparties* is that a *firm* must communicate information to *market counterparties* in a way that is not misleading. (See *PRIN 3.4.1R*.)  
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### COMMUNICATION OF INFORMATION

**3.4.5** **G** *Principle 7* (Communications with clients) requires that a *firm's* communications with a *market counterparty* should not be misleading. Otherwise, for the reasons explained in *MAR 3.4.4G*, *Principle 7* does not apply to a *firm's* communications with *market counterparties*.  
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**3.4.6** **G** If a *firm* volunteers information to a *market counterparty*, but no formal advisory arrangement is agreed, the *firm* need not advise a *market counterparty* about the reliability, relevance or importance of that information. Silence on the part of a *firm* does not result in a breach of *Principle 7*, unless, in the circumstances, it results in a *communication* made by a *firm* being misleading.  
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- 3.4.7** G<sub>/1</sub> (1) It is for a *firm* to decide whether it wishes to provide information to a *market counterparty*. If it does so the *firm* is not obliged to keep the *market counterparty* informed of any changes to the information, unless the *firm* has agreed to do so.
- (2) Because the duties owed by a *firm* to a *market counterparty* are limited, it will frequently be the case that there will be no clash between the duties owed by the *firm* to the *market counterparty* and the *firm's* interests. There will in those cases be no requirement on the *firm* to disclose its interests.
- (3) When a *firm* does owe a duty to a *market counterparty* that arises under the general law of contract (see as an example MAR 3.4.8G) it should manage any conflict of interest. This can be achieved by the operation of internal *Chinese Walls* (in accordance with (Chinese Walls) COB 2.4). Otherwise, before it transacts, the *firm* should disclose the nature and extent of any material conflict to the *market counterparty*.
- (4) This paragraph, MAR 3.4.7G, is *guidance* on *Principle 1* (Integrity) and *Principle 5* (Market conduct).

- 3.4.8** G<sub>/1</sub> The following are examples of where there may be responsibilities that potentially give rise to a duty to disclose material conflicts of interest to the *market counterparty*:
- (1) the *firm* is acting as agent for the *market counterparty*;
- (2) the *firm* has agreed to advise the *market counterparty*;
- (3) the *firm* otherwise owes fiduciary duties to the *market counterparty*.

- 3.4.9** G<sub>/1</sub> Thus, a *firm* acting as an *arranger* for a *market counterparty*, when the *firm* is an *affiliated company* of the other *principal*, should disclose that relationship to the *market counterparty*.

**CLARITY OF ROLE**

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- 3.4.10** G<sub>/1</sub> A *firm* should take reasonable steps to ensure that it is clear to the *market counterparty* whether it is acting on its own account, as agent, or as *arranger* before it enters into a transaction. If a *firm* is acting as a *wholesale market broker*, it should indicate what type of *broker* it is, for example *name-passing broker* or *matched principal broker*. This paragraph, MAR 3.4.10G, is *guidance* on *Principle 7* (Communications with clients).

- 3.4.11** G<sub>/1</sub> If a *firm* has agreed with a *market counterparty* to act in one capacity in a transaction, it should not then act in any other capacity in that *transaction* without the consent of that *market counterparty*. For example, if a *firm* bids to transact on an agency basis, it should not, without consent, execute any part of the trade against its own book.

- 3.4.12** G<sub>/1</sub> It is not consistent with acting solely as an *arranger* (or *name-passing broker*) to take positions, even fleetingly, or act on a *matched principal basis* in the course of that transaction.

MARKETING INCENTIVES, INDUCEMENTS AND PAYMENTS IN KIND

- 3.4.13 G<sub>/1</sub> MAR 3.4.14G and MAR 3.4.16G provide *guidance* on the interpretation of the *Principles* and in particular *Principle 1* (Integrity), *Principle 3* (Management and control) and *Principle 5* (Market conduct) as they apply to marketing incentives, inducements and payments in kind.
- 3.4.14 G<sub>/1</sub> A *firm* should take reasonable steps to ensure that it, or any person acting on its behalf, does not offer, give, solicit or accept an inducement if it is likely to conflict to a material extent with any duty which a recipient *firm* owes to another person. Inducement can include entertainment and soft commissions.
- 3.4.15 G<sub>/1</sub> If a *firm* gives an inducement and the recipient, although a *market counterparty*, is acting on behalf of *customers*, the *firm* may be subject to the provisions of COB 2.2 (Inducements and soft commission).
- 3.4.16 G<sub>/1</sub> A *firm* should make and implement appropriate systems, controls and policies consistent with MAR 3.4.14G.

## 3.5 Transactions at Non-Market Prices

### INTRODUCTION

- 3.5.1** **G**<sub>/1</sub> A *firm* should not enter into a transaction which it knows to be improper, or which it ought reasonably to have realised is improper, whether on its own account or for a third party. *Firms* often do not have the information to be able to assess the reasons why a *market counterparty* is entering into a transaction, but from past experience, a good indication that the purpose may be improper is if the transaction is undertaken at a price other than at the prevailing market price. Failure to use prevailing rates or prices may result in a firm participating, whether deliberately or unknowingly, in the concealment of a profit or loss, or in the perpetration of a fraud. There may, however, be legitimate reasons for entering into transactions at non-market prices, and MAR 3.5.4R requires that a *firm* take reasonable steps to check this.
- 3.5.2** **G**<sub>/1</sub> *Firms* acting as *arrangers* (or *name-passing brokers*) have a more limited role in the transaction and MAR 3.5.4R and MAR 3.5.7E do not apply to them. Under *Principle 1* (Integrity) and *Principle 5* (Market conduct), a *firm* acting as *arranger* (or *name-passing broker*) should not conclude the arrangement if there is information from which it ought reasonably to conclude that the transaction is improper, whether or not it is at a non-market price. Notwithstanding their limited role, *firms* acting as *arrangers* (or *name-passing brokers*) as well as other *firms* should also comply with obligations upon them arising from ML.
- 3.5.3** **G**<sub>/1</sub> The *requirements* upon *firms* when conducting *designated investment business* with or for a *customer* are set out in COB 7.15 (Non-market-price transactions).

### NON-MARKET-PRICE TRANSACTIONS

- 3.5.4** **R**<sub>/1</sub> Except where MAR 3.5.6R applies, a *firm* must not enter into, as agent or principal, a *non-market-price transaction* under which it *deals* in an *inter-professional investment* unless it has taken reasonable steps to ascertain that the transaction is not being entered into by the *market counterparty* for an improper purpose (see also MAR 3.5.7E).
- 3.5.5** **R**<sub>/1</sub> A *firm* must make and retain, for a period of three years, a record of the steps it has taken under MAR 3.5.4R, in relation to each *transaction*.

3.5.6

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MAR 3.5.4R does not apply to a *non-market-price transaction* if it is subject to the rules of an *RIE*.

3.5.7

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(1) To take reasonable steps as required by MAR 3.5.4R a *firm* should:

(a) have in place procedures to enable it to identify *non-market-price transactions* (for *guidance* on this, see MAR 3.5.8G to MAR 3.5.12G);

(b) have in place, and *approved* by an individual holding a senior position with the *firm*, a policy and procedure for the review (to take place before the *firm* commits itself to that transaction) of the *non-market-price transaction*:

(i) by an individual holding a senior position with the *firm*; or

(ii) in accordance with (2);

and should follow that *policy* and procedure (for *guidance* on this, see MAR 3.5.17G to MAR 3.5.21G);

(c) ensure the review considers the reasons for the *transaction* (for *guidance* on this, see MAR 3.5.13G to MAR 3.5.16G); and

(d) check whether it has been put on notice that the *transaction* is for an improper purpose.

(2) A *firm* may have the review in (1)(b) carried out by an individual working for the *firm* who does not hold a senior position in the *firm* if:

(a) the policy and procedures established under (1) cover such reviews;

(b) that policy sets out the categories of transaction that may be reviewed in this way;

(c) the transaction falls into one of those categories;

(d) the *firm* can demonstrate that these categories of transactions are routinely entered into by *firms* and are so defined that there is a high probability that transactions coming within them will be for proper purposes;

(e) the factors defining those categories do not in substance involve any judgment of whether any purpose is improper;

(f) the policy provides for matters to be referred to a senior level in appropriate circumstances;

- (g) those approving the policy are satisfied that all those who are eligible under the policy to participate in the review have the appropriate level of skills;
  - (h) the policy has due regard to segregation of responsibilities; and
  - (i) the *firm* keeps under review whether the categories of transaction established under (2) do have the result described in (2)(d).
- (3) Compliance with (1) and, to the degree relevant, (2) may be relied on as tending to show compliance with *MAR 3.5.4R*.
- (4) Contravention of (1) or, to the degree relevant, (2) may be relied on as tending to show contravention of *MAR 3.5.4R*.

#### WHETHER A TRANSACTION IS TO BE CONSIDERED A NON-MARKET-PRICE TRANSACTION

##### 3.5.8

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A *non-market-price* transaction is a transaction where:

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- (1) the dealing rate or price paid by the *firm* or its *client* differs from the prevailing market rate or price to a material extent; or
- (2) the *firm* or its *client* otherwise gives materially more or less in value than it receives in return.

##### 3.5.9

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Certain types of transactions or structured transactions are undertaken at non-market rates or prices, but are not necessarily considered to be *non-market-price transactions*. Examples are:

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- (1) a transaction with more than one component, where the individual components are entered into at non-market rates or prices, so long as the sum of the whole transaction produces an overall market rate or price, for example:
  - (a) asset swaps, where the underlying asset is sometimes sold at a non-market price; the fixed cash flows from the asset are then passed back to the seller, also at a non-market rate; where neither the asset trade nor the swap is at a market rate, the overall transaction can be considered to be at the market price where the combination of the two components delivers this result; and
  - (b) other types of swaps, where one or both legs is not on the forward curve (showing implied forward rates or prices), for example when up-front or final payments are involved;
- (2) the purchase and sale of out of the money *options*. The fact that the strike price is away from the market price is not in itself sufficient to give rise to a *non-market-price transaction*; other factors, such as the level of premium, must also be considered;
- (3) in tax-based transactions, a tax gain or liability should be taken into account in order to determine whether it is a *non-market-price transaction*.



**3.5.10** G<sub>/1</sub> Certain circumstances may result in a transaction being undertaken at a price other than the market price, for example:

- (1) the transaction is not for a marketable amount; or
- (2) an order has been carried out over a period of time; or
- (3) a transaction is executed outside normal market hours; or
- (4) a transaction is executed in illiquid markets; or
- (5) a transaction has a non-standard settlement period;

and these circumstances may be relevant in assessing whether the transaction constitutes a *non-market-price transaction*.

**3.5.11** G<sub>/1</sub> The question of whether a transaction is a *non-market-price transaction* is to be judged as at the time it is effected and not with hindsight.

**3.5.12** G<sub>/1</sub> The variation or rolling over of an existing transaction should be regarded as a new transaction for the purposes of MAR 3.5.4.

#### WHETHER A TRANSACTION IS TO BE CONSIDERED TO BE FOR IMPROPER PURPOSES

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**3.5.13** G<sub>/1</sub> Examples of improper purposes for transactions (see MAR 3.5.4R) include:

- (1) the perpetration of a fraud;
- (2) the disguising or concealment of the nature of a transaction or of profits, losses or cashflows;
- (3) transactions which amount to *market abuse*;
- (4) vulnerable transactions under the Insolvency Act 1986; and
- (5) "window dressing", in particular around the year end, to disguise the true financial position of the *person* concerned.

**3.5.14** G<sub>/1</sub> A transaction may be for one or more of the purposes stated in MAR 3.5.13G yet still not be a *non-market-price transaction*. MAR 3.5 should not be taken as qualifying in any way obligations on *firms*, however these arise, regarding these transactions.

**3.5.15** G<sub>/1</sub> When a *non-market price transaction* has more than one component, the assessment of whether or not the transaction is improper should be made by reference to the transaction as a whole. Although the judgment is formed with reference to the whole transaction, a *firm* may conclude that the rationale for one component would cause it to be in breach of MAR 3.5.4R.

**3.5.16** G<sub>/1</sub> A transfer between a *firm* and its nominee or an intra-group transfer for risk management purposes may not be at a market price, but will often be for proper purposes. Where that is so, the *firm* may take part in it. However a *firm* should establish, and act in accordance with, a policy dealing with these transfers, and other intra-group *non-market-price transactions*, and be able to demonstrate that it has considered the consequences of participating in them.

**PROCEDURES TO BE TAKEN BY A FIRM**

- 3.5.17** G<sub>/1</sub> The procedures a *firm* has in place to identify *non-market-price transactions* should be appropriate for the types of transaction in question, bearing in mind MAR 3.5.8G to MAR 3.5.12G.
- 3.5.18** G<sub>/1</sub> When a *firm* proposes to enter into a *non-market-price transaction*, the personnel considering the transaction should:
- (1) consider the justification and rationale of the other parties to the proposed transaction and whether the decision to enter into it was taken by the parties concerned at a senior level, and not by an individual trader or treasurer; and
  - (2) (if the transaction is approved) be satisfied that all the material terms of the *non-market-price transaction* (so far as they affect the *firm*) have been agreed before the transaction is entered into and that they are promptly recorded in accordance with MAR 3.5.7E; material terms are likely to include the amounts each counterparty is to pay and receive and whether any amounts are to be netted against or offset against any amounts due and owing under a separate transaction.
- 3.5.19** G<sub>/1</sub> The degree of seniority referred to in MAR 3.5.7E(1)(b) may depend on the nature of the transaction.
- 3.5.20** G<sub>/1</sub> A *firm* operating an electronic matching system should consider implementing appropriate systems to identify potential *non-market-price transactions*. In these circumstances, it may be appropriate for such identification, and appropriate resulting action, to occur after the transaction has taken place.
- 3.5.21** G<sub>/1</sub> A *firm* may take reasonable steps to ascertain its *market counterparty's* rationale for entering into the transaction, as set out in MAR 3.5.18G, but still be unable to find this out. It is up to the *firm*, having regard to the circumstances, to decide whether it is appropriate to enter into the transaction. One relevant circumstance is whether or not the *market counterparty* is another *firm*, in which case the *firm* is entitled to assume that the other *firm* is acting properly, in the absence of any further information to the contrary.

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## 3.6 Taping

- 3.6.1** G<sub>/1</sub> (1) This section MAR 3.6 provides *guidance* on the interpretation of the *Principles*, and in particular *Principle 3* (Management and control), as they apply to the capture of certain transactional information and other matters. MAR 3.6 applies only to *inter-professional business* and there are other requirements in the *Handbook* which relate to record-keeping requirements.
- (2) MAR 3.6 also provides additional *guidance* on the record-keeping requirements of SYSC 3.2.20R (Records).
- 3.6.2** G<sub>/1</sub> MAR 3.6 does not apply:
- (1) to a *firm* acting in the course of carrying on the *regulated activity* of *establishing, operating or winding up a collective investment scheme*; or
- (2) to an *insurer*; or
- (3) in respect of a transaction if the *firm* is subject to record-keeping requirements in *COB* for that transaction.
- 3.6.3** G<sub>/1</sub> A *firm* should implement appropriate systems and controls with a view to ensuring that the material terms of all transactions to which it is a party, and other material information about such transactions, are promptly and accurately recorded in its books or records. The manner in which this information may be recorded include:
- (1) voice recordings of transactions;
- (2) voice recordings of oral confirmations;
- (3) written trading logs or blotters; and
- (4) automated electronic records.
- 3.6.4** G<sub>/1</sub> A *firm* acting as an *arranger* (or *name-passing broker*) need record only those terms that are necessary for the *transaction* to be identified in its records or that are otherwise relevant to its role as *arranger* (or *name passing broker*). For example, it would not normally know the payment and settlement instructions.
- 3.6.5** G<sub>/1</sub> A *firm* should be able to access all records as promptly as necessary. Records should be kept in comprehensible form or should be capable of being promptly so reproduced. The *firm* should make and implement appropriate procedures to avoid unauthorised alteration of its records.
- 3.6.6** G<sub>/1</sub> If the records identified in MAR 3.6.3G are substituted by written or electronic confirmations produced in accordance with SYSC 3.2.20R (Records), then that confirmation may be an adequate record of the transaction.

- 3.6.7** G<sub>/1</sub> If a transaction is agreed or arranged through an electronic trading, matching and order-routing system, then the records provided by that system may be an adequate record of the transaction.
- 3.6.8** G<sub>/1</sub> A *firm* should keep under review whether, and to what extent, to make and retain voice recordings of its front and back office telephone lines used for negotiating, agreeing, arranging and confirming transactions and for the passing of payment instructions. (See also *MAR* 3.6.10G.)
- 3.6.9** G<sub>/1</sub> If a *firm* undertakes oral confirmations of the transactions it executes or *brings about*, voice recordings of these conversations can constitute an adequate record of that confirmation.
- 3.6.10** G<sub>/1</sub> In undertaking a review under *MAR* 3.6.8G, it is likely to be a relevant factor that voice recordings:
- (1) provide an immediate record of all transactions and therefore may assist firms in resolving any disputes;
  - (2) may assist a *firm* to identify whether any personnel of the *firm* or of its *market counterparty* are involved in inappropriate behaviour; *market counterparties* may take comfort in knowing that their transactions are immediately recorded and that this provides evidence that can be relied upon; and
  - (3) can provide evidence of the rationale for a particular trading strategy or other aspects of *inter-professional business* and thereby provide protection to the *firm*.
- 3.6.11** G<sub>/1</sub> A *firm* should make and implement policies on the length of time it keeps tapes. The *FSA* does not expect tapes to be kept for the full period required by the general record-keeping requirement, except where a *firm* relies upon voice recordings to comply with record-keeping requirements, in which case it should retain those recordings in accordance with the relevant requirements. One factor in setting that policy may be the use of tapes to assist the *firm* in resolving any disputes with *market counterparties*.



### 3.7 Firms acting as Wholesale market brokers and those undertaking transactions through them; provisions concerning brokers and arrangers generally

**3.7.1** **G** /1 MAR 3.7 provides *guidance* on the interpretation of the *Principles*, and in particular *Principle 5 (Market conduct)*, as they apply to certain responsibilities of *firms* acting as *wholesale market brokers* and of *persons* undertaking transactions through them. In particular, it covers the passing of names and differences.

**3.7.2** **G** /1 The use of various terms for brokers and arrangers are based on the understanding that *name-passing brokers* are, in simple terms, what *arrangers* are called in certain wholesale markets. As such, the terms are virtually interchangeable and in MAR both terms have generally been used for the avoidance of doubt. Similarly, *name-passing brokers* and “matched principal brokers” are both subsets of *wholesale market brokers*. The use of the latter term is intended to reduce confusion.

#### PASSING OF NAMES

**3.7.3** **G** /1 A *firm* acting as a *name-passing broker* should not prematurely divulge the names of the prospective counterparties to each other, for example before both sides display a serious intention to transact. However, as soon as the material terms of a transaction have been agreed, a *firm* acting as a *name-passing broker* should aim to achieve a mutual and immediate exchange of names. When a *market counterparty* name is unacceptable to another, it is quite proper for a *firm* acting as a *name-passing broker* not to divulge by whom the name was refused.

#### SETTLEMENT OF DIFFERENCES

**3.7.4** **R** /1 MAR 3.7.5R to MAR 3.7.8G apply:

- (1) to a *firm* when it acts as a *name-passing broker*; and
- (2) to a *firm* whether acting as *principal* or agent, when its transaction is *brought about* by a *firm* acting as a *name-passing broker*.

**3.7.5** **R** /1 (1) If a *firm* acting as a *name-passing broker* compensates a *market counterparty* for a difference, that difference must be settled in *money* (which for these purposes includes payment by discounting, reducing or rebating commission).

(2) A “difference” means (in MAR 3.7.5R to MAR 3.7.8G) any difference between a rate or price quoted by a *firm* acting as a *name-passing broker* and the rate or price at which the transaction is ultimately concluded.

3.7.6 **G**<sub>/1</sub> When arranging a transaction, a *name-passing broker* is trying to achieve a mutual and immediate exchange of names, based on firm quotation of prices. Inevitably, for non-electronic *arrangers*, there will be occasions when the transaction is not completed at the original price (for instance because a firm price has been hit by another counterparty). The *name-passing broker* is said to have missed the original price when a *market counterparty* accepts a firm quote at that price, but the *name-passing broker* is unable to arrange for the deal to be completed at that price.

3.7.7 **G**<sub>/1</sub> A *firm* acting as a *name-passing broker* should not ordinarily accept liability for differences and should provide its services on the basis that it does not do so. (This is because accepting liability for differences amounts to taking a position legally and economically, and the *name-passing broker* would not be following MAR 3.4.12G.) A *firm* doing business with a *name-passing broker* should not, in the ordinary course, ask the latter for compensation for differences. However, once a difference has arisen, a *firm* acting as a *name-passing broker* may offer to compensate its *market counterparty* for some or all of the difference to preserve the relationship with the *market counterparty* concerned or for other legitimate commercial reasons. That compensation should be in accordance with MAR 3.7.5R.

3.7.8 **G**<sub>/1</sub> When a price has been missed, a *firm* acting as principal or agent should generally complete the transaction at the next available price through the *name-passing broker* that has missed the original price. To do otherwise can be prejudicial to the smooth operation of the markets. If the *firm* does not proceed with the transaction, it should first consider whether withdrawing would be likely to affect the market concerned, and should immediately communicate its decision to the *name-passing broker*. The *firm* should not decline to enter into the transaction at the new price if it would breach a reasonable expectation on the part of the *name-passing broker* that it would not do this.

**GENERAL PROVISIONS ON WHOLESALE MARKET BROKERS AND ARRANGERS**

3.7.9 **G**<sub>/1</sub> Any payment for broking or arranging services rendered by a *firm*, other than on a matched principal basis, should be in *money* (which for these purposes includes payment by discounting, reducing or rebating commission) unless otherwise agreed in writing between the parties.

3.7.10 **G**<sub>/1</sub> A *firm* acting as a *wholesale market broker* or *arranger* should not unfairly favour one *market counterparty* client over another. Treatment that would otherwise have been unfair is not unfair if the *market counterparty* concerned has expressly consented to it. The “client” of a *wholesale market broker* or *arranger* means (in MAR 3.7.10G and MAR 3.7.11G) a *person* for whom it is providing its services as *wholesale market broker* or *arranger*.

3.7.11 **G**<sub>/1</sub> A *firm* should not place an order with a *firm* acting as a *wholesale market broker* or *arranger* if the main purpose is to ascertain either the identity of any client of that *firm*, or information about transactions into which that *client* may be interested in entering. For example, a *firm* that wishes to purchase 1000 bonds should not have a *firm* arrange for the purchase of 100, in order to discover the identity of a *person* willing to sell those bonds, and then transact with that other *person* direct for the other 900.



### 3.8 Codes of Practice

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The FSA does not endorse individual codes of practice applying to *inter-professional business* (except for the *Takeover Code*) that are in place in some markets. It will, however, take into account the differing standards and practices operating in markets when interpreting the *Principles* as they apply to *inter-professional business*. Further, non-compliance with those codes, or of the Non-Investment Products Code in respect of certain non-authorisable activities, may raise issues such as the integrity or competence of a *firm* which are relevant to the *threshold conditions* (see *COND 2.5.6G(4)*).

## MAR 3 Ann 1G

### 1 Table Guidance on scope of the code (see MAR 3.3.1G)

1	<p>This chapter, <i>MAR 3</i>, applies to <i>firms</i> in their dealings with <i>market counterparties</i>, as set out in <i>MAR 3.1.2R</i>. When <i>market counterparties</i> have opted to be treated as <i>intermediate customers</i> under <i>COB 4.1.7R</i> (Classification of another firm or an overseas financial services institution), this chapter does not apply. The requirements on <i>firms</i> in such circumstances are those set out in <i>COB</i>. <i>MAR 3</i> does, however, apply to <i>firms</i> in their dealings with <i>intermediate customers</i> who have opted to be treated as <i>market counterparties</i> under <i>COB 4.1.12R</i> (Large intermediate customer described as a market counterparty).</p>
2	<p>This chapter sets out the <i>requirements</i> upon <i>firms</i> in their dealings with <i>market counterparties</i>. The way a <i>firm</i> is assessed under <i>COB 4.1</i> (Client classification) has no bearing on its obligations to assess its own <i>clients</i>.</p>
3	<p>The list of activities in <i>MAR 3.1.2R</i> (Application: What?) is not based on types of <i>permission</i>. It is based on the activities of <i>dealing</i>, <i>arranging</i> and <i>advice on investments</i>. This means, for example, that a <i>firm</i> may be subject to <i>MAR 3</i> if it purchases securities in the course of:</p> <ol style="list-style-type: none"> <li>(1) operating a <i>collective investment scheme</i>; or</li> <li>(2) acting as a life insurance company; or</li> <li>(3) acting as agent for a <i>customer</i>;</li> </ol> <p>in making that purchase. This is notwithstanding that the operation of a <i>collective investment scheme</i>, acting as a life insurance company and acting as agent for a customer for a <i>private customer</i> are not activities that are covered by this chapter in their own right.</p>
4	<p><i>MAR 3</i> does not affect the application provisions of the <i>Principles</i> (see <i>PRIN 3</i> (Rules about application)). The purpose of the application provisions of <i>MAR 3</i>, as they apply to the <i>guidance</i> on the <i>Principles</i>, is to explain in what situations <i>MAR 3</i> may be used as <i>guidance</i> for interpreting the <i>Principles</i>. If <i>MAR 3</i> is silent about how the <i>Principles</i> apply to a particular situation, the <i>Principles</i> still apply.</p>
5	<p><i>MAR 3</i> is intended to cover the whole range of <i>inter-professional business</i>. It is not, in general, specifically tailored for particular types of business, nor is it a comprehensive statement of how the <i>Principles</i> apply to <i>inter-professional business</i> in all situations. The <i>guidance</i> on the <i>Principles</i> in <i>MAR 3</i> should be read in the light of other <i>requirements</i> that may be applicable in a particular case. For example, this <i>guidance</i> applies to <i>on-exchange</i> business, and does not take into account specific <i>rules</i> of exchanges.</p>
6	<p>The application provisions in <i>MAR 3.1.2R</i> (Application: What?) mean that <i>corporate finance business</i> will normally be outside the scope of this chapter. However, <i>firms</i> should note that some activities, such as <i>dealing</i>, carried out in connection with <i>corporate finance business</i>, may be subject to this chapter.</p>
7	<p>This chapter does not apply to the <i>approval</i> by <i>firms</i> of a <i>financial promotion</i> (see <i>MAR 3.1.3R</i>); <i>rules</i> and <i>guidance</i> relating to <i>financial promotions</i> are in <i>COB 3</i>. Most <i>financial promotions</i> by <i>unauthorised persons</i> to <i>market counterparty</i> are exempt under the <i>Financial Promotion Order</i>, (for example, article 19 (investment professionals)) so <i>approval</i> should not be required. In addition, the application of <i>COB 3</i> to approval of a <i>financial promotion</i> for communication to a <i>market counterparty</i> is limited (see <i>COB 3.2.4R</i> (2) and <i>COB 3.2.5R</i>(1) (Exemptions)).</p>



- 8 The same transaction may give rise to obligations under this chapter and another sourcebook, such as *COB*. For example, if a *firm* purchases an *inter-professional investment* from a *market counterparty* on behalf of a *customer*, this chapter applies to the relationship between the *firm* and the *market counterparty*. *COB* governs the relationship between the *firm* and the *customer*.
- 9 In some cases, a deal carried out abroad by the firm's overseas branch or by another member of the firm's group may be subject to this chapter if the final booking is to the firm's balance sheet in the United Kingdom. In all cases, the question is whether the activity involves a firm carrying on inter-professional business from an establishment maintained by the firm in the United Kingdom. For the purposes of this discussion, booking does not include doing a deal with a counterparty and transferring it to the United Kingdom balance sheet by an intra-group back-to-back transaction. It is about putting the transaction with the market counterparty directly onto the UK balance sheet.
- (1) In some cases, the transaction involves the *firm* and an overseas affiliate. The overseas affiliate negotiates and arranges the *deal* with the *market counterparty* abroad. However, the actual contract is between the *firm* in the *United Kingdom* and the *market counterparty*. It is likely that this chapter will apply to the *firm*. This is because the firm's entry into the contract amounts to dealing and that dealing is done from an establishment maintained by the *firm* in the *United Kingdom*.
- (2) If the booking is merely an internal accounting exercise, and the transaction has no other *United Kingdom* connection, it is likely that this chapter will not apply. For example, the transaction may be negotiated and *executed* by an overseas branch of the *firm* but booked to the *firm's United Kingdom* balance sheet. If the booking to the *United Kingdom* balance sheet is the only involvement of the *firm* in the *United Kingdom*, it is likely that this chapter will not apply to the *firm*. This is because, even though the *firm* is party to the contract and is carrying out a *dealing* transaction, all the *dealing* activity takes place at the foreign branch. A mere bookkeeping entry in the *United Kingdom*, not involving the counterparty in any way, does not mean that the dealing activity is carried on from an establishment maintained by the firm in the *United Kingdom*. It is carried on from the overseas branch.
- 10 The territorial application of this chapter does not modify those of any other part of the *Handbook*. In particular, *firms* should note the application of *Principle 5* (Market conduct), which applies to activities which have, or might reasonably be regarded as likely to have, a negative effect on confidence in the *financial system*, wherever they are carried on (see *PRIN* 3.3.1R).
- 11 Nothing in this chapter:
- (1) modifies any duty owed by a *firm* to a *private customer* or *intermediate customer* under the provisions of any other part of the *Handbook*; or
- (2) relieves a *firm* of any other obligation to which it may be subject under the general law; or
- (3) should be read as qualifying or modifying the *Code of Market Conduct*, the *Code of Practice for Approved Persons* or the *Statement of Principle*.

## MAR 3 Ann 2G

This table lists the Principles that apply to firms carrying on inter-professional business, and also sets out some of the key provisions of COB that apply.

### 1 Table Other relevant Handbook provisions (see MAR 3.3.2G)

Rule	Description
Principle 1	A <i>firm</i> must conduct its business with integrity.
Principle 2	A <i>firm</i> must conduct its business with due skill, care and diligence.
Principle 3	A <i>firm</i> must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
Principle 4	A <i>firm</i> must maintain adequate financial resources.
Principle 5	A <i>firm</i> must observe proper standards of market conduct.
Principle 7	A <i>firm</i> must ..... <i>communicate</i> information [to its <i>clients</i> ] in a way which is .... not misleading.
Principle 10	A <i>firm</i> must arrange adequate protection for <i>clients'</i> assets when it is responsible for them.
Principle 11	A <i>firm</i> must deal with its regulators in an open and cooperative way, and must disclose to the <i>FSA</i> appropriately anything relating to the <i>firm</i> of which the <i>FSA</i> would reasonably expect notice.
COB 3	Financial promotion (relating to the approval of a financial promotion, see paragraph 7 in <i>MAR 3 Ann 1G</i> )
COB 2.4	Chinese Walls
COB 4.1	Client classification
COB 7.13	Personal Account Dealing
COB 9	Client assets

## MAR 3 Ann 3G

### 1 Table General information on good market practice (see MAR 3.3.3G)

	INTRODUCTION
1	This annex, <i>MAR 3 Ann 3G</i> , is a statement of what the <i>FSA</i> understands to be generally regarded as good market practice and conventions in certain areas. It is not <i>guidance on rules</i> and is issued under section 157(1)(d) of the <i>Act</i> . This annex applies to all kinds of <i>inter-professional business</i> . It will be evident that much of the content is equally applicable to <i>market counterparties</i> as well as <i>firms</i> .
	CONFIDENTIALITY
2	When information is received from a <i>market counterparty</i> under conditions of confidentiality, that confidentiality is likely to be enforceable by the owner of that information. Confidentiality should be respected, subject to regulatory and legal requirements.
3	<i>Firms</i> are reminded that the use of loudspeakers in broking and dealing rooms in close proximity to other lines of communication could result in breaches of confidentiality.
	NEGOTIATION OF TRANSACTIONS
4	It is good practice for a <i>firm</i> to agree expressly all the economic terms of a transaction before it commits itself to the transaction. A <i>firm</i> should negotiate the remaining terms in good faith and try to agree them as soon as possible.
5	It is good practice for a <i>firm</i> to regard itself as bound to transact once the rate or <i>price</i> and any other key commercial terms have been agreed (whether orally or in written form), unless the parties explicitly and unambiguously agree to the contrary.
6	Generally, a <i>firm</i> that regularly uses the services of a <i>firm</i> acting as a <i>name-passing broker</i> should indicate to it the <i>market counterparties</i> with which, and the <i>investments</i> in which, it is not prepared to transact. That indication should not be in a form which would damage or lower the standing or reputation of the <i>market counterparty</i> in the estimation of reasonable <i>market counterparties</i> if they knew of it. A <i>firm</i> which is given an indication should treat it as confidential.
	FIRMNESS OF QUOTATION
7	It is good practice for a <i>firm</i> to follow market conventions regarding quotation, unless it has specifically agreed otherwise with its <i>market counterparty</i> in advance. It should be clear to a <i>market counterparty</i> ;
	(1) whether the quote is firm or not;
	(2) whether the quote is subject to any conditions, and, if it is, what they are;
	(3) for how long the quote remains firm (in fast moving markets, when practicable); and
	(4) whether the quote is firm only for the normal marketable amount (if appropriate, otherwise the <i>firm</i> should state the size of the quote).
8	Express clarification of these matters is not necessary to the extent that the <i>firm</i> quotes in accordance with the relevant market convention or exchange rules (if applicable).

- 9 When a *firm* quotes to a *market counterparty* a firm rate or price (whether through an arranger, or *name-passing broker*, or directly), it is not good practice for the *firm* then to withdraw that quote or, if that quote is accepted during the period for which the quote remains firm, to decline to deal at that rate or price. A *firm* may decline to deal with a *market counterparty* in these circumstances if it was unaware of its identity when the *firm* gave the quote and the name turns out to be unacceptable, for example, on the grounds of credit risk.
- LIMIT ORDERS
- 10 Before a *firm* accepts any limit order from a *market counterparty*, it is good practice to have made and implemented appropriate:
- (1) policies on these orders and in particular the circumstances in which and the terms on which it will accept these orders; and
  - (2) systems and controls for carrying them out.
- 11 A limit order means a stop loss order and any other instruction from a *market counterparty* to execute transactions if rates or prices reach specified levels. These orders may be time limited or may be for an indefinite period.
- OUT OF HOURS/OFFICE DEALING
- 12 It is good practice for *firms* to issue guidelines to their staff on transactions entered into after normal hours or from outside premises, either by mobile phone or any other equipment. The guidelines should cover:
- (1) the type of transactions which may be undertaken in this way;
  - (2) where and with whom these transactions may be executed;
  - (3) permitted limits;
  - (4) how and when these transactions should be booked into and recorded on the front and back office systems; and
  - (5) how and when these transactions are to be confirmed.
- 13 When answering machines are used for instant reporting and recording of all off-premises transactions, they should be installed and located in such a way that reported transactions cannot subsequently be erased without senior management approval.
- 14 The use of mobile phones for business purposes from within the dealing room, except in an emergency, is considered bad practice.
- SETTLEMENT ERRORS
- 15 If a *firm* becomes aware of a settlement error that benefits it at the cost of a *market counterparty*, it is good practice to inform the *market counterparty* promptly and reverse the error.
- 16 If a *firm*, acting as a *broker*, becomes aware that it is holding assets on behalf of a *market counterparty* because of a settlement error which adversely affects that *market counterparty*, it is good practice to inform the *market counterparty* promptly and try to rectify the situation.
- CONFIRMATIONS
- 17 Confirmations provide a useful safeguard against dealing errors and can be a valuable element in the control of the *firm's inter-professional business* and exposures. It is good practice for a *firm* to make available to, or provide to, the *market counterparty* written confirmation of the material terms of a transaction between them, as soon as possible after the transaction has been agreed or executed.
- 18 It is acceptable market practice for the *firm* to agree with its *market counterparty* that only one party need send a confirmation. If a *firm* undertakes this practice to a material extent, it is advisable to identify the legal and other risks involved and address them in the *firm's* risk control policies.

- 19 If there is a standard form of confirmation that applies to a transaction a *firm* enters into, it is good practice to ensure that that form is used, unless there is good reason not to. One example of when there is an applicable standard form confirmation is when the parties enter into the transaction under the terms of a master agreement that provides for an applicable form of confirmation. Another is when it is customary in the market concerned to use a particular form of confirmation for transactions of that kind.
- 20 In general, it is not good practice for confirmations to be issued by or sent to the individual dealer responsible for the transaction. It is good practice to ensure that the dealer concerned is not responsible for checking confirmations unless there are exceptional circumstances. If the dealer is given that responsibility, it is good practice to subject the process to independent monitoring.
- 21 In general, it is good practice for a *firm* which *arranges* a transaction to try to ensure that the parties agree who is to issue a confirmation.
- 22 Some transactions are matched through an electronic matching system that does not provide for the issue of confirmations, but instead makes and retains records of transactions itself. In these cases, it may be appropriate for a *firm* neither to receive nor issue confirmations, provided the system allows for the back offices of users to verify the details of transactions entered into on the system.
- 23 The statements of good practice in paragraphs 17 to 22 do not apply to on-exchange business.
- STANDARD SETTLEMENT INSTRUCTIONS
- 24 It is good practice for a *firm* to make and implement appropriate policies on the use of standard settlement instructions (SSIs) to reduce the incidence and size of differences arising from a mistaken settlement of funds. These are especially appropriate when the *firm* has a relationship with a *market counterparty* which suggests there will be regular payment of significant amounts.
- 25 It is good practice to establish SSIs in a secure and verifiable format. A *firm* acting as an *arranger* (or *name-passing broker*) has no responsibility for ensuring that its *market counterparties* have SSIs in place.
- MASTER AGREEMENTS
- 26 *Firms* are encouraged to negotiate and execute master agreements. These govern the relationship between the parties and how such a relationship and all transactions under it shall be terminated in the event of one party's default upon a transaction. It is recognised that executed documentation can be and should be used as an efficient risk management tool. *Firms* should consider the benefits of valid close out netting provisions (see *IPRU*).
- 27 If it is the policy of a *firm* to use master agreements, it is good practice to make and implement policies for what transactions should be subject to the terms of which master agreement and have systems and controls for ensuring compliance with that policy. If a *firm* has a policy that transactions should be entered into with a *market counterparty* only after a master agreement has been implemented, it is advisable to have procedures to ensure that any exceptions are agreed at an appropriate level.
- COMMISSION/BROKERAGE
- 28 It is good practice for *firms* acting as principals to pay due brokerage bills promptly. Overdue payments can seriously disadvantage *wholesale market brokers*, since overdue payments result, in their treatment by the *FSA* for regulatory purposes, as an increase in their cost of capital.
- DISPUTES
- 29 In the event of a dispute between a *firm* and a *market counterparty*, it is preferable for the parties to seek to resolve the issues themselves. If they cannot reach agreement, they should consider the advantages of using established arbitration or mediation services.

## Handbook Modules

### Transitional Provisions

1 Table

G *GEN* contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*. These include transitional provisions relevant to record keeping and *notification rules*.

**1) Transitional Provisions for The Code of Market Conduct – (MAR 1)**

There are no transitional provisions for *MAR 1* (The Code of Market Conduct).

**2) Transitional Provisions for Price stabilising rules (MAR 2)**

*SUP* contains transitional provisions which carry forward into *MAR 2* (Price stabilising rules) written concessions relating to pre-commencement provisions.

2 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material provision to which transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force

1	MAR 2	R	<p><b>Part 10 of the Financial Services (Conduct of Business) Rules 1990 applies in relation to an <i>offer for cash</i>, instead of MAR 2, if:</b></p> <p><b>(1) a <i>public announcement of the offer</i> which stated the <i>offer price</i> has been made before <i>commencement</i>; or</b></p> <p><b>(2) the <i>introductory period</i> for the <i>offer</i> started not more than 60 days before <i>commencement</i> and the <i>firm</i> or other <i>person</i> so chooses and makes a written record of that choice before <i>commencement</i>.</b></p> <p><b>A record in (2) must be retained for 3 years from the end of the <i>stabilising period</i> for the <i>offer</i>.</b></p> <p><b>This transitional provision applies to an offer as defined in the 1990 Rules, and has effect as a <i>price stabilising rule</i>.</b></p>	<p><i>Commence-</i> <i>ment</i> until the end of the <i>stabilis-</i> <i>ing period</i> for the offer</p>	<p><i>Commence-</i> <i>ment</i></p>
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## Handbook Modules

### Schedule1 Record Keeping requirements

1 G  
Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
MAR 2.7R	Price stabilising action	Full details as noted in MAR 2.7.2R	On initiation of stabilising action	3 years
MAR 3.5.4	Non Market Price Transactions	Details of steps taken in consideration of NMPTs	On considering the transaction	3 years



## Handbook Modules

### Schedule2 Notification requirements

G

There are no notification requirements in MAR.

## Handbook Modules

### Schedule3 Fees and other required payments

G

There are no requirements for fees or other payments in MAR.

## Handbook Modules

### Schedule4 Powers Exercised

1            G  
              Table

The following powers in the *Act* have been exercised by the *FSA* to make the *rules* in *MAR*:

- Section 118(8) (Market abuse)
- Section 138 (General rule-making power)
- Section 144 (Price stabilising rules)
- Section 145 (Financial promotion rules)
- Section 149 (Evidential provisions)
- Section 150(2) (actions for damages)
- Section 156 (General supplementary powers)

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *MAR* (including the *guidance* comprising of the *Code of market conduct*):

- Section 119 (The Code)
- Section 120 (Provisions included in the Authority's code be reference to the City Code)
- Section 157(1) (Guidance)

## Handbook Modules

### Schedule5 Rights of action for damages

G

1 Table

1. The table below sets out the *rules* in *MAR* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
2. If a "yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 150 unless a "yes" appears in the column headed "Removed". A "yes" in the column headed "Removed" indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. In accordance with the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a "*private person*" is:
  - i. any individual, except when acting in the course of carrying on a *regulated activity*; and
  - ii. any *person* who is not an individual, except when acting in the course of carrying on business of any kind;
 but does not include a government, a local authority or an international organisation.
4. The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person*, in accordance with those Regulations. If so, an indication of the type of *person* by whom the *rule* is actionable is given.

2 Table

Chapter / Appendix	Section / Annex	Paragraph	For Private Person?	Removed	For other person?
MAR 1					
(no rules)					

All rules in MAR 2 except MAR 2.3.3E and MAR 2.3.4E MAR 2.3.3E, MAR 2.3.4E and MAR 2.3.5E All rules in MAR 3 except MAR 3.5.7E MAR 3.5.7E			Yes	Yes	No	
			No	MAR 2.1.9R	No	
			Yes	Yes	No	
			No	MAR 3.1.5R	No	

## Handbook Modules

### Schedule6 Rules that can be waived

1            G  
              Table

The rules in *MAR* can be waived by the FSA under section 148 of the Act (Modification or waiver of rules), except for:

*MAR* 2.1.1R(2) (Application)

*MAR* 2.1.9R (Actions for damages)

*MAR* 3.1.5R (Actions for damages)

## MARKET CONDUCT SOURCEBOOK

### Derivations

G References to 'LCC' are to the June 1999 edition of the London Code of Conduct published by the FSA

Ch/App	S/Ann	P		Subject	Source	Reference
MAR 1	nil return					
MAR 2 (except MAR 2.7)			<b>R</b> <b>G</b>	Price stabilising rules	FSA rules	Part 10 of the Financial Services (Conduct of Business) Rules 1990
MAR 2.7			<b>R</b>	Access to the stabilisation register	FSA rules	Part 16.17, part 16.18 of the Financial Services (Conduct of Business) Rules 1990 and SFA rules 5-54(5)
MAR 3	4	8	<b>G</b>	Communication of information	LCC	57
MAR 3	4	9	<b>G</b>	Communication of information	LCC	57
MAR 3	4	11	<b>G</b>	Clarity of role	LCC	24
MAR 3	4	13	<b>G</b>	Clarity of role	LCC	29
MAR 3	4	15	<b>G</b>	Inducements	LCC	61
MAR 3	5	1	<b>G</b>	NMPTs	LCC	50
MAR 3	5	4	<b>R</b>	NMPTs	LCC	50, 51
MAR 3	5	7	<b>E</b>	NMPTs	LCC	50, 51
MAR 3	6	5	<b>G</b>	Taping	LCC	49
MAR 3	6	8	<b>G</b>	Taping	LCC	48
MAR 3	6	10	<b>G</b>	Taping	LCC	48
MAR 3	6	11	<b>G</b>	Taping	LCC	49
MAR 3	7	3	<b>G</b>	Passing of names	LCC	82
MAR 3	7	5	<b>G</b>	Settlement of differences	LCC	114
MAR 3	7	6	<b>G</b>	Settlement of differences	LCC	114
MAR 3	7	7	<b>G</b>	Settlement of differences	LCC	114
MAR 3	7	8	<b>G</b>	Settlement of differences	LCC	114
MAR 3	7	9	<b>G</b>	Gen. provisions on brokers	LCC	121, 122
MAR 3	7	11	<b>G</b>	Gen. provisions on brokers	LCC	45
MAR 3	Ann 3	2		Confidentiality	LCC	41, 42
MAR 3	Ann 3	3		Confidentiality	LCC	43
MAR 3	Ann 3	4		Negotiation of transactions	LCC	78

Ch/App	S/Ann	P		Subject	Source	Reference
MAR 3	Ann 3	5		Negotiation of transactions	LCC	78
MAR 3	Ann 3	6		Negotiation of transactions	LCC	81
MAR 3	Ann 3	7		Firmness of quote	LCC	74, 76
MAR 3	Ann 3	8		Firmness of quote	LCC	76
MAR 3	Ann 3	9		Firmness of quote	LCC	73, 77
MAR 3	Ann 3	10		Limit orders	LCC	55
MAR 3	Ann 3	11		Limit orders	LCC	55
MAR 3	Ann 3	12		Out of hours/office dealing	LCC	54
MAR 3	Ann 3	12		Out of hours/office dealing	LCC	54
MAR 3	Ann 3	15		Settlement errors	LCC	117
MAR 3	Ann 3	17		Confirmations	LCC	Intro to para 88
MAR 3	Ann 3	18		Confirmations	LCC	92
MAR 3	Ann 3	19		Confirmations	LCC	Intro to para 88
MAR 3	Ann 3	20		Confirmations	LCC	98
MAR 3	Ann 3	24		SSIs	LCC	100
MAR 3	Ann 3	25		SSIs	LCC	101
MAR 3	Ann 3	26		Master agreements	LCC	Intro to para 107
MAR 3	Ann 3	28		Commission/ brokerage	LCC	123
MAR 3	Ann 3	29		Disputes	LCC	9



## MARKET CONDUCT SOURCEBOOK

**Title of Sources**      **London Code of Conduct (references are to June 1999 edition)**  
**Part 10 of the Financial Services (Conduct of Business) Rules 1990**

### Destinations

G

The *rules* in *MAR* can be *waived* by the *FSA* under section 148 of the *Act* (Modification or waiver of rules), except for:

*MAR* 2.1.1R(2) (Application)

*MAR* 2.X.XR (Actions for damages)

*MAR* 3.1.5R (Actions for damages)

Source reference	Subject	Module	Ch/App	S/Ann	P		
Nil return		MAR	1				
Part 10 of the Financial Services (Conduct of Business) Rules 1990	Price stabilising rules	MAR	2, excluding 2.7			R G	2
Part 16.17, part 16.18 of the Financial Services (Conduct of Business Rules) 1990 and SFA rule 5-54(5)	Access to the stabilisation register	MAR	2.7			R	2.7
9	Disputes	MAR	3	Ann 3	29		
24	Responsibilities	MAR	3	4	11	G	
29	Role of brokers	MAR	3	4	13	G	
41, 42	Confidentiality	MAR	3	Ann 3	2		
43	Confidentiality	MAR	3	Ann 3	3		
48	Taping	MAR	3	6	8	G	
48	Taping	MAR	3	6	10	G	
49	Taping	MAR	3	6	5	R	
49	Taping	MAR	3	6	11	G	
50	NMPTs	MAR	3	5	1	G	
50	NMPTs	MAR	3	5	4	R	
50	NMPTs	MAR	3	5	7	E	
50	NMPTs	MAR	3	5	3	G	
51	NMPTs	MAR	3	5	4	R	
51	NMPTs	MAR	3	5	7	E	
54	Out of hours/office dealings	MAR	3	Ann 3	12		
55	Stop loss orders	MAR	3	Ann 3	10		
56	Personal account dealing	COBS	7	14	4	R	

Source reference	Subject	Module	Ch/App	S/Ann	P		
57	Dealing using a connected broker	MAR	3	4	8	<b>G</b>	
57	Dealing using a connected broker	MAR	3	4	9	<b>G</b>	
61	Entertainment, gifts and gambling	MAR	3	4	15	<b>G</b>	
73	Firmness of quote	MAR	3	Ann 3	9		
74	Firmness of quote	MAR	3	Ann 3	7		
76	Firmness of quote	MAR	3	Ann 3	7		
77	Firmness of quote	MAR	3	Ann 3	9		
78	Concluding a deal	MAR	3	Ann 3	4		
78	Concluding a deal	MAR	3	Ann 3	5		
81	Passing of names	MAR	3	Ann 3	6		
100	Payment instructions	MAR	3	Ann 3	24		
101	Payment instructions	MAR	3	Ann 3	25		
107	Terms and documentation	MAR	3	Ann 3	26		
114	Settlement of differences	MAR	3	7	5	<b>G</b>	
114	Settlement of differences	MAR	3	7	6	<b>R</b>	
114	Settlement of differences	MAR	3	7	7	<b>G</b>	
114	Settlement of differences	MAR	3	7	8	<b>G</b>	
117	Settlement errors	MAR	3	Ann 3	15		
121	Commission/ brokerage	MAR	3	7	9	<b>G</b>	
122	Commission/ brokerage	MAR	3	7	9	<b>G</b>	
123	Commission/ brokerage	MAR	3	Ann 3	28		