

MARKET ABUSE DIRECTIVE INSTRUMENT 2005**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 118(8) (Market abuse);
 - (b) section 119 (The code);
 - (b) section 120 (Provisions included in the Authority’s code by reference to the City Code);
 - (c) section 138 (General rule-making power);
 - (d) section 144 (Price stabilising rules);
 - (e) section 147 (Control of information rules);
 - (f) section 149 (Evidential provisions);
 - (g) section 156 (General supplementary powers); and
 - (h) section 157(1) (Guidance); and
 - (2) the other rule-making powers referred to in Schedule 4 to the General Provisions.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 July 2005.

Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2):

(1)	(2)
Glossary of definitions	Annex A
Market Conduct sourcebook (MAR) (MAR 1)	Annex B
Market Conduct sourcebook (MAR) (MAR 2)	Annex C
Conduct of Business sourcebook (COB)	Annex D
Supervision manual (SUP)	Annex E
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex F

Notes

- E. (1) In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.
- (2) Although European Union legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

Citation

- F. This instrument may be cited as the Market Abuse Directive Instrument 2005.

By order of the Board
17 March 2005

Amended by Addendum
18 August 2005

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where entirely new definitions are inserted, or where definitions are deleted, these are not shown underlined or struck through.

Insert the following new definitions in the appropriate alphabetical positions

- accepted market practice* (as defined in section 130A(3) of the *Act*) practices that are reasonably expected in the financial market or markets in question and are accepted by the *FSA* or, in the case of a market situated in another *EEA State*, the competent authority of that *EEA State* within the meaning of the *Market Abuse Directive*.
- allotment* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the process or processes by which the number of *relevant securities* to be received by investors who have previously subscribed or applied for them is determined.
- ancillary stabilisation* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the exercise of an *overallotment facility* or of a *greenshoe option* by *investment firms* or *credit institutions*, in the context of a *significant distribution* of *relevant securities*, exclusively for facilitating *stabilisation* activity.
- adequate public disclosure* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) disclosure made in accordance with the procedure laid down in Articles 102(1) and 103 of the *Consolidated Admissions and Reporting Directive*.
- associated instrument* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) any of the following *financial instruments* (including those which are not admitted to trading on a *regulated market*, or for which a request for admission to trading on such a market has not been made, provided that the relevant competent authorities have agreed to standards of transparency for transactions in such *financial instruments*):
- (a) contracts or rights to subscribe for, acquire or dispose of *relevant securities*;
 - (b) financial derivatives on *relevant securities*;
 - (c) where the *relevant securities* are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged;
 - (d) instruments which are issued or guaranteed by the *issuer* or guarantor of the *relevant securities* and whose market price is likely to materially influence the price of the *relevant securities*, or vice versa; and

- (e) where the *relevant securities* are *securities* equivalent to *shares*, the *shares* represented by those *securities* (and any other *securities* equivalent to those *shares*).

Buy-back and Stabilisation Regulation

Commission Regulation (EC) of 22 December 2003 implementing the *Market Abuse Directive* as regards exemptions for buy-back programmes and stabilisation of financial instruments (No 2273/2003).

buy-back programme

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) trading in own shares in accordance with Articles 19 to 24 of the *PLC Safeguards Directive*.

Consolidated Admissions and Reporting Directive

Directive of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities (No 2001/34/EC).

financial instrument

(as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*):

- (a) transferable securities as defined in the *ISD*;
- (b) units in collective investment undertakings,
- (c) money-market instruments;
- (d) financial-futures contracts, including equivalent cash-settled instruments;
- (e) forward interest-rate agreements;
- (f) interest-rate, currency and equity swaps;
- (g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;
- (h) derivatives on commodities; and
- (i) any other instrument admitted to trading on a *regulated market* in an *EEA State* or for which a request for admission to trading on such a market has been made.

greenshoe option

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) an option granted by the *offeror* in favour of the *investment firm(s)* or *credit institution(s)* involved in the *offer* for the purpose of covering *overallocments*, under the terms of which such firm(s) or institution(s) may purchase up to a certain amount of *relevant securities* at the offer

*inside
information*

price for a certain period of time after the *offer* of the relevant securities.

(as defined in section 118C of the *Act*):

- (1) in relation to *qualifying investments*, or *related investments*, which are not commodity derivatives, *inside information* is information of a precise nature which:
 - (a) is not generally available,
 - (b) relates, directly or indirectly, to one or more issuers of the *qualifying investments* or to one or more of the *qualifying investments*, and
 - (c) would, if generally available, be likely to have a significant effect on the price of the *qualifying investments* or on the price of *related investments*.
- (2) in relation to *qualifying investments*, or *related investments*, which are commodity derivatives, *inside information* is information of a precise nature which:
 - (a) is not generally available,
 - (b) relates, directly or indirectly, to one or more such derivatives, and
 - (c) users of markets in which the derivatives are traded would expect to receive in accordance with *accepted market practices* on those markets.
- (3) in relation to a person charged with the execution of orders concerning any *qualifying investments* or *related investments*, *inside information* includes information conveyed by a client and related to the client's pending orders which:
 - (a) is of a precise nature;
 - (b) is not generally available;
 - (c) relates, directly or indirectly, to one or more issuers of *qualifying investments* or to one or more *qualifying investments*; and
 - (d) would, if generally available, be likely to have a significant effect on the price of those *qualifying investments* or the price of *related investments*;
- (4) information is precise if it:
 - (a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has

occurred or may reasonably be expected to occur; and

- (b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of *qualifying investments* or *related investments*;
- (5) information would be likely to have a significant effect on price if and only if it is information of that kind which a reasonable investor would be likely to use as part of the basis of his investment decisions;
- (6) for the purposes of (2)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any *accepted market practices*, which is:
 - (a) routinely made available to the users of those markets; or
 - (b) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market;
- (7) information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of *market abuse*, as being generally available to them.

insider

(as defined in section 118B of the Act) a *person* who has *inside information*:

- (a) as a result of his membership of the administrative, management or supervisory bodies of an *issuer* of *qualifying investments*;
- (b) as a result of his holding in the capital of an *issuer* of *qualifying investments*;
- (c) as a result of having access to the information through the exercise of his employment, profession or duties;
- (d) as a result of his criminal activities; or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is *inside information*.

market abuse
(*dissemination*)

the *behaviour* described in section 118(7) of the Act, which is the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a *qualifying investment* by a *person* who knew or could reasonably be expected to have known that the information was false or misleading.

<i>market abuse (distortion)</i>	<p>the <i>behaviour</i> described in section 118(8) of the <i>Act</i> which satisfies the condition in section 118(8)(b) and is <i>behaviour</i> (not falling within sections 118(5), (6) or (7)) which:</p> <p>(a) would be, or would be likely to be, regarded by a <i>regular user</i> of the market as behaviour that would distort, or would be likely to distort, the market in a <i>qualifying investment</i>; and</p> <p>(b) is likely to be regarded by a <i>regular user</i> of the market as a failure on the part of the <i>person</i> concerned to observe the standard of <i>behaviour</i> reasonably expected of a <i>person</i> in his position in relation to the market.</p>
<i>market abuse (improper disclosure)</i>	<p>the <i>behaviour</i> described in section 118(3) of the <i>Act</i>, which is an <i>insider</i> disclosing <i>inside information</i> to another <i>person</i> otherwise than in the proper course of the exercise of employment, profession or duties.</p>
<i>market abuse (insider dealing)</i>	<p>the <i>behaviour</i> described in section 118(2) of the <i>Act</i>, which is an <i>insider dealing</i>, or attempting to <i>deal</i>, in a <i>qualifying investment</i> or <i>related investment</i> on the basis of <i>inside information</i> relating to the <i>investment</i> in question.</p>
<i>market abuse (manipulating devices)</i>	<p>the <i>behaviour</i> described in section 118(6) of the <i>Act</i>, which is effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.</p>
<i>market abuse (manipulating transactions)</i>	<p>the <i>behaviour</i> described in section 118(5) of the <i>Act</i>, which is <i>behaviour</i> effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with <i>accepted market practices</i> on the relevant market) which:</p> <p>(a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price, one or more <i>qualifying investments</i>; or</p> <p>(b) secure the price of one or more such investments at an abnormal or artificial level.</p>
<i>market abuse (misleading behaviour)</i>	<p>the <i>behaviour</i> described in section 118(8) of the <i>Act</i> which satisfies the condition in section 118(8)(a) and is <i>behaviour</i> (not falling within sections 118(5), (6) or (7)) which:</p> <p>(a) is likely to give a <i>regular user</i> of the market a false or misleading impression as to the supply of, demand for or price or value of, <i>qualifying investments</i>, and</p> <p>(b) is likely to be regarded by a <i>regular user</i> of the market as a failure on the part of the <i>person</i> concerned to observe the standard of <i>behaviour</i> reasonably expected of a <i>person</i> in his position in</p>

relation to the market.

*market abuse
(misuse of
information)*

the *behaviour* described in section 118(4) of the *Act*, which is *behaviour* (not falling within sections 118 (2) or (3) of the *Act*):

- (a) 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 be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in *qualifying investments* should be effected; and
- (b) 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 his position in relation to the market.

*Market Abuse
Directive*

Directive of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (No 2003/6/EC).

*overallotment
facility*

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase a greater number of *relevant securities* than originally offered.

Part 6 rules

(as defined in section 73A of the *Act*) *rules* made for the purposes of Part VI of the *Act*.

*person
discharging
managerial
responsibilities*

(in accordance with section 96B(1) of the *Act*):

- (a) a *director* of an *issuer*:
 - (i) registered in the *United Kingdom* that has requested or approved admission of its *shares* to trading on a *regulated market*; or
 - (ii) not registered in the *United Kingdom* or any other *EEA State* but has requested or approved admission of its *shares* to trading on a *regulated market* and who is required to file annual information in relation to *shares* in the *United Kingdom* in accordance with Article 10 of the *Prospectus Directive*; or
- (b) a senior executive of such an *issuer* who:
 - (i) has regular access to *inside information* relating, directly or indirectly, to the *issuer*; and
 - (ii) has power to make managerial decisions affecting the future development and business prospects of the *issuer*.

<i>PLC Safeguards Directive</i>	the Second Council Directive of 13 December 1976 on coordination of safeguards for the protection of the interests of members and others in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (No 77/91/EEC).
<i>regulatory information service or RIS</i>	a Regulatory Information Service that is approved by the <i>FSA</i> as meeting the Primary Information Provider criteria and that is on the list of Regulatory Information Services maintained by the <i>FSA</i> .
<i>related investment</i>	(as defined in section 130A(3) of the <i>Act</i>) in relation to a <i>qualifying investment</i> , means an investment whose price or value depends on the price or value of the <i>qualifying investment</i> .
<i>research recommendation</i>	research or other information: <ul style="list-style-type: none"> (a) concerning one or several <i>financial instruments</i> admitted to trading on <i>regulated markets</i>, or in relation to which an application for admission to trading has been made, or <i>issuers</i> of such <i>financial instruments</i>; (b) intended for distribution so that it is, or is likely to become, accessible by a large number of <i>persons</i>, or for the public, but not including: <ul style="list-style-type: none"> (i) an informal short-term investment personal recommendation expressed to <i>clients</i>, which originates from inside the sales or trading department, and which is not likely to become publicly available or available to a large number of persons; or (ii) advice given by a <i>firm</i> to a <i>body corporate</i> in the context of a <i>takeover bid</i> and disclosed only as a result of compliance with a legal or regulatory obligation, including rule 3 of the <i>Takeover Code</i> or its equivalents outside the <i>UK</i>; and (c) which: <ul style="list-style-type: none"> (i) explicitly or implicitly, recommends or suggests an investment strategy; or (ii) directly or indirectly, expresses a particular investment recommendation; or (iii) expresses an opinion as to the present or future value or price of such instruments.
<i>significant distribution</i>	(as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) an initial or secondary <i>offer</i> of <i>relevant securities</i> , publicly announced and distinct from ordinary trading both in terms of the amount in value of the <i>securities</i> offered and the selling methods employed.
<i>stabilisation</i>	(in <i>MAR 2</i>) (as defined in Article 2 of the <i>Buy-back and Stabilisation</i>

Regulation) any purchase or offer to purchase *relevant securities*, or any transaction in *associated instruments* equivalent thereto, by *investment firms* or *credit institutions*, which is undertaken in the context of a *significant distribution* of such *relevant securities* exclusively for supporting the market price of these *relevant securities* for a predetermined period of time, due to a selling pressure in such securities.

*time-scheduled
buy-back
programme*

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) a *buy-back programme* where the dates and quantities of *securities* to be traded during the time period of the programme are set out at the time of the public disclosure of the *buy-back programme*.

*trading
information*

information of the following kinds:

- (1) 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; or
- (2) that *investments* of a particular kind have not been or are not to be acquired or disposed of; or
- (3) the quantity 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; or
- (4) 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 *investments* whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of; or
- (5) the identity of the *persons* involved or likely to be involved in any capacity in an acquisition or disposal.

Delete the current definition of ‘market abuse’ and replace it with the following:

market abuse

(in accordance with section 118 of the Act (Market abuse)) behaviour (whether by one person alone or by two or more persons jointly or in concert) which:

- (a) occurs in relation to qualifying investments traded or admitted to trading on a prescribed market or in respect of which a request for admission to trading on such a market has been made; and
- (b) falls within any one or more of the types of behaviour set out in sections 118(2) to (8) of the Act.

Amend the following definitions in the Glossary as shown:

<i>dealing</i>	<p>(1) <u>(other than in MAR 1 (The Code of Market Conduct))</u> (in accordance with paragraph 2 of Schedule 2 to the <i>Act</i> (Regulated activities)) buying, selling, subscribing for or underwriting <i>investments</i> or offering or agreeing to do so, either as a <i>principal</i> or as an agent, including, in the case of an <i>investment</i> which is a <i>contract of insurance</i>, carrying out the contract.</p> <p>(2) <u>(in MAR 1) (as defined as in section 130A(3) of the Act), in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it.</u></p>
<i>offer</i>	<p>(1) (in MAR 1 (The Code of Market Conduct)) an offer as defined in the <i>Takeover Code</i></p> <p>(2) <u>(in MAR 2 (Buy-backs and Stabilisation) an offer or invitation to make an offer and (except in MAR 2.2.3R, MAR 2.4.2R(5) and MAR 2.8.2R(1)(c)) an issue.</u></p>
<i>offeror</i>	<p>(1) (in MAR 1 (The Code of Market Conduct)) an offeror as defined in the <i>Takeover Code</i>.</p> <p>(2) <u>(in MAR 2 (Buy-backs and Stabilisation)) (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the prior holders of, or the entity issuing, the <i>relevant securities</i>).</u></p>
<i>offer price</i>	<p>(1) (except in MAR 2 (Price stabilising rules)) the price at which a <i>person</i> could purchase a <i>unit</i> in a <i>dual-priced AUT</i> or a <i>security</i></p> <p>(2) (in MAR 2) the specified price at which the <i>relevant security</i> is offered without deducting any <i>selling concession</i> or <i>commission</i>.</p>
<i>prescribed market</i>	a market which has been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> (see MAR 1.11.2G (Prescribed markets and qualifying investments)) .
<i>price stabilising rules</i>	the <i>rules</i> made under section 144 of the <i>Act</i> , and appearing in MAR 2.1 to MAR 2.45, together with any provisions available for their interpretation.
<i>qualifying investment</i>	An <i>investment</i> which has been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> (see MAR 1 (Prescribed markets and qualifying investments))
<i>regular user</i>	(as defined in section 130A(3) 118(10) of the <i>Act</i> (Market Abuse)) a <i>person</i> who is, in relation to a particular market, a reasonable <i>person</i> who regularly deals on that market in <i>investments</i> of the kind in question.
<i>relevant investment</i>	(1) <u>(in COB, in relation to <i>investment research</i>, a <i>research recommendation</i> or a <i>public appearance</i>), a <i>designated investment</i> that is the subject of that <i>research, recommendation</i> or <i>appearance</i>.</u>

- (2) otherwise (in accordance with Article 3(1) of the *Regulated Activities Order* (Interpretation)):
- (a) a *contractually based investment*;
 - (b) a *pure protection contract*;
 - (c) a *general insurance contract*;
 - (d) rights to or interests in an *investment* falling within (a).
- relevant issuer* (1a) (in relation to a *designated investment* that is the subject of *investment research*, a *research recommendation* or a *public appearance*) the *issuer* of that *designated investment*; or
- (2b) (in relation to a *related designated investment* that is the subject of *investment research* or a *public appearance*) either the *issuer* of the *related designated investment* or the *issuer* of a *designated investment* that might reasonably be expected directly to affect the value of the *related designated investment*.
- relevant security* (1) (in MAR 2, when used with reference to the *Buy-back and Stabilisation Regulation*) a security subject to an offer falling within MAR 2.1.3R(1) and (3). (in accordance with Article 2(6) of the Buy-back and Stabilisation Regulation) shares, debentures, government and public securities, warrants and certificates representing certain securities which are admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made, and which are the subject of a significant distribution.
- (2) (otherwise in MAR 2) shares, debentures, government and public securities, warrants and certificates representing certain securities.

Delete the following definitions from the *Glossary*; the text is not shown struck through:

ancillary action

associated security

introductory period

offer for cash

relevant product

stabilising action

stabilising manager

stabilising period

stabilising price

Annex B

Amendments to the Market Conduct sourcebook (MAR 1)

In this Annex all the text is new and is not underlined.

Delete the existing text in MAR, Chapter 1 and replace with the following text:

1. The Code of Market Conduct
 - 1.1 Application and interpretation
 - Application and purpose
 - 1.1.1 G This chapter (which contains the *Code of Market Conduct*) applies to all *persons* seeking guidance on the *market abuse* regime.
 - 1.1.2 G This chapter provides assistance in determining whether or not *behaviour* amounts to *market abuse*. It also forms part of the *UK's* implementation of the *Market Abuse Directive* (including its EU implementing legislation, that is Directive 2003/124/EC, Directive 2003/125/EC, Regulation 2273/2003 and Directive 2004/72/EC). It is therefore likely to be helpful to *persons* who:
 - (1) want to avoid engaging in *market abuse* or to avoid requiring or encouraging another to do so; or
 - (2) want to determine whether they are required by *SUP* 15.10 (Reporting suspicious transactions (market abuse)) to report a transaction to the *FSA* as a suspicious one.
 - 1.1.3 G The *FSA's* statement of policy about the imposition and amount of penalties in cases of *market abuse* (required by section 124 of the *Act*) is in *ENF* 14.
 - Using MAR 1
 - 1.1.4 G
 - (1) Assistance in the interpretation of *MAR* 1 (and the remainder of the *Handbook*) is given in the Readers' Guide to the *Handbook* and in *GEN* 2 (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six of the Readers' Guide to the *Handbook*).
 - (2) Provisions designated with "C" indicate *behaviour* which conclusively, for the purposes of the *Act*, does not amount to *market abuse* (see section 122(1) of the *Act*).
 - 1.1.5 G Part VIII of the *Act*, and in particular section 118, specifies seven types of *behaviour* which can amount to *market abuse*. This chapter considers the general concepts relevant to *market abuse*, then each type of behaviour in turn and then describes exceptions to *market abuse* which are of general application. In doing so, it sets out the relevant provisions of the *Code of*

Market Conduct, that is:

- (1) descriptions of *behaviour* that, in the opinion of the *FSA*, do or do not amount to *market abuse* (see section 119(2)(a) and (b) and section 122 of the *Act*);
- (2) descriptions of *behaviour* that are or are not *accepted market practices* in relation to one or more identified markets (see section 119(2)(d) and (e) and section 122(1) of the *Act* (subject to the *behaviour* being for legitimate reasons)); and
- (3) factors that, in the opinion of the *FSA*, are to be taken into account in determining whether or not *behaviour* amounts to *market abuse* (see section 119(2)(c) and section 122(2) of the *Act*).

1.1.6 G The *Code* does not exhaustively describe all types of *behaviour* that may or may not amount to *market abuse*. In particular, the descriptions of *behaviour* which, in the opinion of the *FSA*, amount to *market abuse* should be read in the light of:

- (1) the elements specified by the *Act* as making up the relevant type of *market abuse*; and
- (2) any relevant descriptions of *behaviour* which, in the opinion of the *FSA*, do not amount to *market abuse*.

1.1.7 G Likewise, the *Code* does not exhaustively describe all the factors to be taken into account in determining whether *behaviour* amounts to *market abuse*. If factors are described, they are not to be taken as conclusive indications, unless specified as such, and the absence of a factor mentioned does not, of itself, amount to a contrary indication.

1.1.8 G For the avoidance of doubt, it should be noted that any reference in the *Code* to "profit" refers also to potential profits, avoidance of loss or potential avoidance of loss.

1.2 Market Abuse: general

1.2.1 G Provisions in this section are relevant to more than one of the types of *behaviour* which may amount to *market abuse*.

1.2.2 UK Table: section 118(1) of the Act

"For the purposes of this Act, [*market abuse*] is [*behaviour*] (whether by one person alone or by two or more persons jointly or in concert) which—

(a) occurs in relation to:

(i) [*qualifying investments*] admitted to trading on a [*prescribed market*], or

(ii) [*qualifying investments*] in respect of which a request for admission to trading on such a market has been made, or

(iii) in the case of subsections (2) and (3), investments which are [*related investments*] in relation to such [*qualifying investments*], and

(b) falls within any one or more of the types of [*behaviour*] set out in subsections (2) to (8).

1.2.3 G Section 118(1)(a) of the *Act* does not require the *person* engaging in the *behaviour* in question to have intended to commit *market abuse*.

1.2.4 G Statements in this chapter to the effect that *behaviour* will amount to *market abuse* assume that the test in section 118(1)(a) of the *Act* has also been met.

Prescribed markets and qualifying investments: "in relation to": factors to be taken into account

1.2.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* prior to a request for admission to trading or the admission to or the commencement of trading satisfies section 118(1)(a) of the *Act*, and are indications that it does:

(1) if it is in relation to *qualifying investments* in respect of which a request for admission to trading on a *prescribed market* is subsequently made; and

(2) if it continues to have an effect once an application has been made for the *qualifying investment* to be admitted for trading, or it has been admitted to trading on a *prescribed market*, respectively.

1.2.6 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not refraining from action amounts to *behaviour* which satisfies section 118(1)(a) of the *Act* and are indications that it does:

- (1) if the *person* concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or
- (2) if the *person* concerned has created a reasonable expectation of him acting in a particular manner, as a result of his representations (by word or conduct), in circumstances which give rise to a duty or obligation to inform those to whom he made the representations that they have ceased to be correct, and he has not done so.

Insiders: factors to be taken into account

1.2.7 UK Table: section 118B of the *Act*

"For the purposes of [*market abuse*] an [*insider*] is any person who has [*inside information*] -

- (a) as a result of his membership of the administrative, management or supervisory bodies of an [*issuer*] of [*qualifying investments*],
- (b) as a result of his holding in the capital of an [*issuer*] of [*qualifying investments*],
- (c) as a result of having access to the information through the exercise of his employment, profession or duties,
- (d) as a result of his criminal activities, or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is [*inside information*]."

1.2.8 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person* could reasonably be expected to know that information in his possession is *inside information* and therefore whether he is an *insider* under section 118B(e) of the *Act*, and indicate that the *person* is an *insider*:

- (1) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that the *person* from whom he received it is an *insider*; and
- (2) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that it is *inside information*.

1.2.9 G For the purposes of the other categories of *insider* specified by section 118B(a) to (d), the *person* concerned does not need to know that the information concerned is *inside information*.

Inside information: factors to be taken into account

1.2.10 UK Table: section 118C(2) and (3) of the *Act*

"... [*inside information*] is information of a precise nature which -

(a) is not generally available; ..."

1.2.11 G The phrase "precise nature" is defined in section 118C(5) of the *Act*. This phrase is also relevant to section 118C(4) of the *Act*.

1.2.12 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not information is generally available, and are indications that it is (and therefore not *inside information*):

- (1) whether the information has been disclosed to a *prescribed market* through a *regulatory information service* or otherwise in accordance with the rules of that market;
- (2) whether the information is contained in records which are open to inspection by the public;
- (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;
- (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and
- (5) the extent to which the information can be obtained by analysing or developing other information which is generally available. [**Note:** Recital 31 *Market Abuse Directive*]

1.2.13 E (1) In relation to the factors in *MAR* 1.2.12E it is not relevant that the information is only generally available outside the *UK*.

(2) In relation to the factors in *MAR* 1.2.12E (1), (3), (4) and (5) it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.

1.2.14 G For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be acting on information which is generally available, since it is information which has been obtained by legitimate means through observation of a public event.

1.2.15 UK Table: section 118C(4) of the *Act*

"In relation to a person charged with the execution of orders ... [*inside*

information] includes information conveyed by a client and related to the client's pending orders ..."

- 1.2.16 E In the opinion of the *FSA*, a factor which indicates that there is a pending order for a client is, if a *person* is approached by another in relation to a transaction, and:
- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
 - (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

Inside information: commodity derivatives

- 1.2.17 G The *Act* (and the *Market Abuse Directive*) recognise that there are differences in the nature of information which is important to commodity derivatives markets and that which is important to other markets. In particular, *inside information* is limited by reference to what the market participants expect to receive information about.

- 1.2.18 UK Table: section 118C(3) of the *Act*

"In relation to [*qualifying investments*] or [*related investments*] which are commodity derivatives, [*inside information*] is information of a precise nature which ... (c) users of markets in which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets."

- 1.2.19 UK Table: section 118C(7) of the *Act*

"For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information ... which is –

- (i) routinely made available to the users of those markets, or
- (ii) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market."

The regular user

- 1.2.20 G In section 118 of the *Act*, the *regular user* decides:
- (1) whether information that is not generally available would or would be likely to be relevant when deciding the terms on which transactions in *qualifying investments* or *related investments* should be effected (section 118(4)(a) of the *Act*); and
 - (2) whether *behaviour*:

- (a) based on information meeting the criteria in section 118(4)(a) is below the expected standard (section 118(4)(b)); or
- (b) creates or is likely to create a false or misleading impression or distorts the market (section 118(8)); or
- (c) which creates or is likely to create a false or misleading impression or distorts the market is below the expected standard (section 118(8)).

1.2.21 G The *regular user* is a hypothetical reasonable *person* who regularly deals on the market and in the investments of the kind in question. The presence of the *regular user* imports an objective element into the elements listed in MAR 1.2.15G while retaining some subjective features of the markets for the investments in question.

Requiring or encouraging

1.2.22 UK Table: section 123(1)(b) of the Act

"If [the FSA] is satisfied that a person ("A") - ...

(b) 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*],

it may impose on him a penalty of such amount as it considers appropriate.

1.2.23 G The following are examples of *behaviour* that might fall within the scope of section 123(1)(b):

- (1) a director of a company, while in possession of *inside information*, instructs an employee of that company to *deal in qualifying investments* or *related investments* in respect of which the information is *inside information*;
- (2) a *person* recommends or advises a friend to engage in *behaviour* which, if he himself engaged in it, would amount to *market abuse*.

1.3 Market abuse (insider dealing)

1.3.1 UK Table: section 118(2) of the *Act*

"The first type of [*behaviour*] is where an [*insider*] [*deals*], or attempts to [*deal*], in a [*qualifying investment*] or [*related investment*] on the basis of [*inside information*] relating to the investment in question."

Descriptions of behaviour that amount to market abuse (insider dealing)

- 1.3.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (insider dealing)*:
- (1) *dealing* on the basis of *inside information* which is not *trading information*;
 - (2) front running/pre-positioning – that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market price;
 - (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *qualifying investment*, on the basis of *inside information* concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a *spread bet* on the target *company's share price*); and
 - (4) in the context of a takeover, a *person* who acts for the *offeror* or potential *offeror* *dealing* for his own benefit in a *qualifying investments* or *related investments* on the basis of information concerning the proposed bid which is *inside information*.

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

- 1.3.3 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is "on the basis of" *inside information*, and are each indications that it is not:
- (1) if the decision to *deal* or attempt to *deal* was made before the *person*

possessed the relevant *inside information*; or

- (2) if the *person* concerned is *dealing* to satisfy a legal or regulatory obligation which came into being before he possessed the relevant *inside information*; or
- (3) if a *person* is an *organisation*, if none of the individuals in possession of the *inside information*:
 - (a) had any involvement in the decision to *deal*; or
 - (b) behaved in such a way as to influence, directly or indirectly, the decision to engage in the *dealing*; or
 - (c) had any contact with those who were involved in the decision to engage in the *dealing* whereby the information could have been transmitted.

1.3.4 E In the opinion of the *FSA*, if the *inside information* is the reason for, or a material influence on, the decision to *deal* or attempt to *deal*, that indicates that the *person's behaviour* is "on the basis of" *inside information*.

1.3.5 E In the opinion of the *FSA*, if the *inside information* is held behind an effective *Chinese wall*, or similarly effective arrangements, from the individuals who are involved in or who influence the decision to *deal*, that indicates that the decision to *deal* by an *organisation* is not "on the basis of" *inside information*.

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: legitimate business of market makers etc:

1.3.6 C A *person* will form an intention to *buy* or *sell* a *qualifying investment* or a *related investment* before doing so. His carrying out of his own intention is not in itself *market abuse (insider dealing)*. [**Note:** Recital 30 *Market Abuse Directive*]

1.3.7 C For market makers and *persons* that may lawfully *deal* in *qualifying investments* or *related investments* on their own account, pursuing their legitimate business of such *dealing* (including entering into an agreement for the underwriting of an issue of *financial instruments*) will not in itself amount to *market abuse (insider dealing)*. [**Note:** Recital 18 *Market Abuse Directive*]

1.3.8 G *MAR* 1.3.7C applies even if the *person* concerned in fact possesses *trading information* which is *inside information*.

1.3.9 E In the opinion of the *FSA*, if the *inside information* is not limited to *trading information*, (except in relation to an agreement for the underwriting of an issue of *financial instruments*) that indicates that the *behaviour* is not in pursuit of legitimate business.

1.3.10 E In the opinion of the *FSA*, the following factors are to be taken into account

in determining whether or not a *person's behaviour* is in pursuit of legitimate business, and are indications that it is:

- (1) the extent to which the relevant trading by the *person* is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the *person's* legitimate business; or
- (2) whether, in the case of a transaction on the basis of *inside information* about a client's transaction which has been executed, the reason for it being *inside information* is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or exchange obligations; or
- (3) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or
- (4) the extent to which the *person's behaviour* was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.

- 1.3.11 E In the opinion of the *FSA*, if the *person* acted in contravention of a relevant legal, regulatory or exchange obligation, that is a factor to be taken into account in determining whether or not a *person's behaviour* is in pursuit of legitimate business, and is an indication that it is not.

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: execution of client orders

- 1.3.12 C The dutiful carrying out of, or arranging for the dutiful carrying out of, an order on behalf of another (including as portfolio manager) will not in itself amount to *market abuse (insider dealing)* by the *person* carrying out that order. [**Note:** Recital 18 *Market Abuse Directive*]
- 1.3.13 G *MAR* 1.3.12C applies whether or not the *person* carrying out the order or the *person* for whom he is acting in fact possesses *inside information*. Also, a *person* that carries out an order on behalf of another will not, merely as a result of that action, be considered to have any *inside information* held by that other *person*.
- 1.3.14 E In the opinion of the *FSA*, if the *inside information* is not limited to *trading information*, that indicates that the *behaviour* is not dutiful carrying out of an order on behalf of a client.
- 1.3.15 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is dutiful execution of an

order on behalf of another, and are indications that it is:

- (1) whether the *person* has complied with the applicable provisions of *COB* or *MAR* 3, or their equivalents in the relevant jurisdiction; or
- (2) whether the *person* has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order; or
- (3) whether the *person's behaviour* was with a view to facilitating or ensuring the effective carrying out of the order; or
- (4) the extent to which the *person's behaviour* was reasonable by the proper standards of conduct of the market concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it.

- 1.3.16 G Some steps which a *person* takes as a result of carrying out a client transaction may be within the scope of *MAR* 1.3.6C to *MAR* 1.3.11E rather than being part of dutiful execution.

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: takeover and merger activity

- 1.3.17 C *Behaviour*, based on *inside information* relating to another *company*, in the context of a public takeover bid or merger for the purpose of gaining control of that *company* or proposing a merger with that *company*, does not of itself amount to *market abuse (insider dealing)* [**Note:** see Recital 29 *Market Abuse Directive*], including:

- (1) seeking from holders of *securities*, issued by the target, 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* that are to be offered as consideration for the takeover or merger *offer* or to be issued in order to fund the takeover or merger *offer*, including making arrangements for the underwriting or placing of those *securities* and any associated hedging arrangements by underwriters or placees which are proportionate to the risks assumed; and
- (3) making arrangements to offer cash as consideration for the takeover or merger *offer* as an alternative to *securities* consideration.

- 1.3.18 G There are two categories of *inside information* relevant to *MAR* 1.3.17C:

- (1) information that an *offeror* or potential *offeror* is going to make, or is

considering making, an offer for the target;

- (2) information that that an *offeror* or potential *offeror* may obtain through due diligence.

1.3.19 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is for the purpose of him gaining control of the target *company* or him proposing a merger with that *company*, and are indications that it is:

- (1) whether the transactions concerned are in the target *company's shares*; or
- (2) whether the transactions concerned are for the sole purpose of gaining that control or effecting that merger.

Examples of market abuse (insider dealing)

1.3.20 G The following examples of *market abuse (insider dealing)* concern the definition of *inside information* relating to *financial instruments* other than *commodity derivatives*.

- (1) X, a director at B PLC has lunch with a friend, Y. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread bet priced or valued by reference to the share price of B PLC based on his expectation that the price in B PLC will increase once the take over offer is announced.
- (2) An employee at B PLC obtains the information that B PLC has just lost a significant contract with its main customer. Before the information is announced over the *regulatory information service* the employee, whilst being under no obligation to do so, sells his shares in B PLC based on the information about the loss of the contract.

1.3.21 G The following example of *market abuse (insider dealing)* concerns the definition of *inside information* relating to commodity derivatives.

Before the official publication of LME stock levels, a metals trader learns (from an *insider*) that there has been a significant decrease in the level of LME aluminium stocks. This information is routinely made available to users of that *prescribed market*. The trader buys a substantial number of *futures* in that metal on the LME, based upon his knowledge of the significant decrease in aluminium stock levels.

1.3.22 G The following example of *market abuse (insider dealing)* concerns the definition of *inside information* relating to pending client orders.

A dealer on the trading desk of a *firm dealing* in oil derivatives accepts a very large order from a *client* to acquire a long position in oil futures deliverable in a particular *month*. Before executing the order, the dealer trades for the *firm* and on his personal account by taking a long position in

those oil futures, based on the expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his *client's* order. Both trades will be *market abuse (insider dealing)*.

- 1.3.23 G The following connected examples of *market abuse (insider dealing)* concerns the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.
- (1) A *person* deals, on a *prescribed market*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
 - (2) A *person* deals, in a commodity futures contract traded on a *prescribed market*, based on the same information, provided that the information is required to be disclosed under the rules of the relevant commodity futures market.

1.4 Market abuse (improper disclosure)

1.4.1 UK Table: section 118(3) of the *Act*

"The second [type of *behaviour*] is where:
an [*insider*]
discloses
[*inside information*]
to another person
otherwise than in the proper course of the exercise of his employment,
profession or duties."

Descriptions of behaviour that amount to market abuse (improper disclosure)

- 1.4.2 E The following *behaviours* are, in the opinion of the FSA, *market abuse (improper disclosure)*:
- (1) disclosure of *inside information* by the *director* of an *issuer* to another in a social context; and
 - (2) selective briefing of analysts by *directors* of *issuers* or others who are *persons discharging managerial responsibilities*.

Descriptions of behaviour that does not amount to market abuse (improper disclosure)

- 1.4.3 C Disclosure of *inside information* will not amount to *market abuse (improper disclosure)*, if it is made:
- (1) to a government department, the Bank of England, the Competition Commission, the *Takeover Panel* or any other *regulatory body* or authority for the purposes of fulfilling a legal or regulatory obligation; or
 - (2) otherwise to such a body in connection with the performance of the functions of that body.

- 1.4.4 C Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) will not amount to *market abuse (improper disclosure)*.

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

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

Examples of market abuse (improper disclosure)

- 1.4.6 G The following is an example of *market abuse (improper disclosure)*:

X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.

- 1.4.7 G The following is an example of encouraging another to engage in *market abuse (improper disclosure)*:

X, an analyst employed by an investment bank, telephones the finance director at B PLC and presses for details of the profit and loss account from the latest unpublished management accounts of B PLC.

- 1.5 Market abuse (misuse of information)

- 1.5.1 UK Table: section 118(4) of the *Act*:

"The third [type of *behaviour*] is where the [*behaviour*] (not [amounting to *market abuse (insider dealing)* or *market abuse (improper disclosure)*])-

- (a) 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 be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in [*qualifying investments*] should be effected; and

- (b) is 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 his position in relation to the market."

Descriptions of behaviour that amount to market abuse (misuse of information)

- 1.5.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (misuse of information)*:

- (1) *dealing* or *arranging deals* in *qualifying investments* based on *relevant information*, which is not generally available and relates to matters which a *regular user* would reasonably expect to be disclosed to users of the particular *prescribed market*, but which does not amount to *market abuse (insider dealing)* (whether because the *dealing* relates to a *qualifying investment* to which section 118(2) does not apply or because the *relevant information* is not *inside information*); and

- (2) a *director* giving *relevant information*, which is not generally available and relates to matters which a *regular user* would

reasonably expect to be disclosed to users of the particular *prescribed market*, to another otherwise than in the proper course of the exercise of his employment or duties, in a way which does not amount to *market abuse (improper disclosure)* (whether because the *relevant information* is not *inside information* or for some other reason).

- 1.5.3 G The following *behaviours* are, in the opinion of the *FSA*, capable of amounting to *market abuse (misuse of information)*:
- (1) *dealing* in a *qualifying investment* based on *relevant information*, which is not generally available and is not *inside information*;
 - (2) *behaviour*, other than *dealing* in a *qualifying investment* or a *related investment*, that is based on *relevant information* which is not generally available and is not *inside information*; and
 - (3) entering into a transaction, which is not a *qualifying investment* or a *related investment*, based on *relevant information* which is not generally available and is not *inside information*.

Factors to be taken into account: "generally available"

- 1.5.4 E The factors taken into account in deciding whether or not information is generally available for the purposes of the definition of *inside information* (see *MAR 1.2.12E – MAR 1.2.13E*) will also be relevant when considering whether or not *behaviour* amounts to *market abuse (misuse of information)*.

Factors to be taken into account: "based on"

- 1.5.5 E The factors taken into account in deciding whether or not a *person's behaviour* is "on the basis of" *inside information* (see *MAR 1.3.3E – MAR 1.3.5E*) will also be relevant when considering whether or not *behaviour* is "based on" *relevant information* which is not generally available to those using the market.

Factors to be taken into account: "relevant information"

- 1.5.6 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *regular user* would regard information as *relevant information*, and are indications that he would:
- (1) the extent to which 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; or
 - (2) if the information differs from information which is generally available and can therefore be said to be new or fresh information; or
 - (3) in the case of information relating to possible future developments which are not currently required to be disclosed but which, if they

occur, will lead to a disclosure or announcement being made whether the information provides, with reasonable certainty, grounds to conclude that the possible future developments will, in fact, occur; or

- (4) if there is no other material information which is already generally available to inform users of the market.

Factors to be taken into account: standards of behaviour

1.5.7 E In the opinion of the *FSA*, the following factors are to be taken into account when considering whether a *regular user* would reasonably expect the *relevant information* to be disclosed to users of the particular *prescribed market*, or to be announced, and accordingly whether *behaviour* is likely to be regarded by a *regular user* as failing to meet the expected standard and are indications that he would:

- (1) if the *relevant information* has to be disclosed in accordance with any legal or regulatory requirement, such as:
 - (a) information which is required to be disseminated under the *Takeover Code* or *SARs* (or their equivalents in the relevant jurisdiction) on, or in relation to, *qualifying investments*; or
 - (b) information which is required to be disseminated under the *Part 6 rules* (or their equivalents in the relevant jurisdiction); or
 - (c) information required to be disclosed by an *issuer* under the laws, rules or regulations applying to the *prescribed market* on which its issued *qualifying investments* are traded or admitted to trading; or
- (2) if the *relevant information* is routinely the subject of a public announcement although not subject to any formal disclosure requirement, such as:
 - (a) information which is to be the subject of official announcement by governments, central monetary or fiscal authorities or a *regulatory body* (financial or otherwise, including exchanges); or
 - (b) changes to published credit ratings of *issuers* of *qualifying investments*; or
 - (c) changes to the constituents of a *securities* index, where the *securities* are *qualifying investments*; or
- (3) if *behaviour* is based on information relating to possible future developments, if it is reasonable to believe that the information in question will subsequently become of a type within (1) or (2).

Descriptions of behaviour that does not amount to market abuse (misuse of information)

- 1.5.8 G *Behaviour* falling within the description of *behaviour* which amounts to *market abuse (insider dealing)* or *market abuse (improper disclosure)* is not *market abuse (misuse of information)*.
- 1.5.9 C *Behaviour* falling within the descriptions of *behaviour* that do not amount to *market abuse (insider dealing)* (MAR 1.3.6C, MAR 1.3.7C, MAR 1.3.12C and MAR 1.3.17C), or that would fall within those descriptions, if the references in those descriptions to *inside information* included a reference to *relevant information*, also do not amount to *market abuse (misuse of information)*.

Examples of market abuse (misuse of information)

- 1.5.10 E The following *behaviour* may amount to *market abuse (misuse of information)*:
- (1) X, a director at B PLC, has lunch with a friend, Y. X tells Y that his company has received a takeover offer. Y places a fixed odds bet with a bookmaker that B PLC will be the subject of a bid within a week, based on his expectation that the take over offer will be announced over the next few days.
 - (2) Informal, non-contractual icing of *qualifying investments* by the manager of a proposed issue of convertible or exchangeable bonds, which are to be the subject of a public marketing effort, with a view to subsequent borrowing by it of those *qualifying investments* based on *relevant information* about the forthcoming issue:
 - (a) which is not generally available; and
 - (b) which a *regular user* would reasonably expect to be disclosed to users of the relevant *prescribed market*;where this has the effect of withdrawing those *qualifying investments* from the lending market in order to lend it to the issue manager in such a way that other market participants are disadvantaged.
 - (3) An employee of B PLC is aware of contractual negotiations between B PLC and a customer. Transactions with that customer have generated over 10% of B PLC's turnover in each of the last five financial years. The employee knows that the customer has threatened to take its business elsewhere, and that the negotiations, while ongoing, are not proceeding well. The employee, whilst being under no obligation to do so, sells his shares in B PLC based on his assessment that it is reasonably likely that the customer will take his business elsewhere.

1.6 Market abuse (manipulating transactions)

1.6.1 UK Table: section 118(5) of the *Act*

"The fourth [type of *behaviour*] ... consists of effecting transactions or orders to trade

(otherwise than for legitimate reasons and in conformity with [*accepted market practices*] on the relevant market)

which –

- (a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of one or more [*qualifying investments*] or
- (b) secure the price or one or more such investments at an abnormal or artificial level."

Descriptions of behaviour that amount to market abuse (manipulating transactions): false or misleading impressions

1.6.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (manipulating transactions)* of a type involving false or misleading impressions:

- (1) *buying or selling qualifying investments* at the close of the market with the effect of misleading investors who act on the basis of closing prices, other than for legitimate reasons; [**Note:** Article 1.2(c) *Market Abuse Directive*]
- (2) wash trades – that is, a sale or purchase of a *qualifying investment* where there is no change in beneficial interest or market risk, or where the transfer of beneficial interest or market risk is only between parties acting in concert or collusion, other than for legitimate reasons;
- (3) painting the tape – that is, entering into a series of transactions that are shown on a public display for the purpose of giving the impression of activity or price movement in a *qualifying investment*; and
- (4) entering orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, and withdrawing them before they are executed, in order to give a misleading impression that there is demand for or supply of the *qualifying investment* at that price.

1.6.3 G For the avoidance of doubt a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, do

not constitute a wash trade under MAR 1.6.2E(2).

Descriptions of behaviour that amount to market abuse (manipulating transactions): price positioning

- 1.6.4 E The following *behaviours* are, in the opinion of the FSA, *market abuse (manipulating transactions)* involving securing the price of a *qualifying investment*:
- (1) transactions or orders to trade by a *person*, or *persons* acting in collusion, that secure a dominant position over the supply of or demand for a *qualifying investment* and which have the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions, other than for legitimate reasons; [**Note:** Article 1.2(c) *Market Abuse Directive*]
 - (2) transactions where both buy and sell orders are entered at, or nearly at, the same time, with the same price and quantity by the same party, or different but colluding parties, other than for legitimate reasons, unless the transactions are legitimate trades carried out in accordance with the rules of the relevant trading platform (such as crossing trades);
 - (3) entering small orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, in order to move the price of the *qualifying investment*, other than for legitimate reasons;
 - (4) an abusive squeeze – that is, a situation in which a *person*:
 - (a) has a significant influence over the supply of, or demand for, or delivery mechanisms for a *qualifying investment* or *related investment* or the underlying product of a derivative contract;
 - (b) has a position (directly or indirectly) in an *investment* under which quantities of the *qualifying investment*, *related investment*, or product in question are deliverable; and
 - (c) 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 in relation to a *qualifying investment* (the purpose need not be the sole purpose of entering into the transaction or transactions, but must be an actuating purpose);
 - (5) parties, who have been allocated *qualifying investments* in a primary offering, colluding to purchase further tranches of those *qualifying investments* when trading begins, in order to force the price of the *qualifying investments* to an artificial level and generate interest from other investors, and then sell the *qualifying investments*;
 - (6) transactions or orders to trade employed so as to create obstacles to

the price falling below a certain level, in order to avoid negative consequences for the *issuer*, for example a downgrading of its credit rating; and

- (7) trading on one market or trading platform with a view to improperly influencing the price of the same or a related *qualifying investment* that is traded on another *prescribed market*.

Factors to be taken into account: "legitimate reasons"

- 1.6.5 E In the opinion of the *FSA* the following factors are to be taken into account when considering whether *behaviour* is for "legitimate reasons", and are indications that it is not:
- (1) if the *person* has an actuating purpose behind the transaction to induce others to trade in, or to position or move the price of, a *qualifying investment*;
 - (2) if the *person* has another, illegitimate, reason behind the transactions or order to trade; [**Note:** Recital 20 *Market Abuse Directive*]
 - (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.
- 1.6.6 E In the opinion of the *FSA* the following factors are to be taken into account when considering whether *behaviour* is for "legitimate reasons", and are indications that it is:
- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
 - (2) if the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently;
 - (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
 - (4) if the transaction complied with the rules of the relevant *prescribed markets* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).
- 1.6.7 G 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.
- 1.6.8 G 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.

Factors to be taken into account: behaviour giving a false or misleading impression

- 1.6.9 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* amounts to *market abuse (manipulating transactions)*: [**Note:** Article 4 2003/124/EC]
- (1) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* concerned, in particular when these activities lead to a significant change in the price of the *qualifying investment*;
 - (2) the extent to which orders to trade given or transactions undertaken by *persons* with a significant buying or selling position in a *qualifying investment* lead to significant changes in the price of the *qualifying investment* or related derivative or underlying asset admitted to trading on a *regulated market*;
 - (3) whether transactions undertaken lead to no change in beneficial ownership of a *qualifying investment* admitted to trading on a *regulated market*;
 - (4) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* concerned, and might be associated with significant changes in the price of a *qualifying investment* admitted to trading on a *regulated market*;
 - (5) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
 - (6) the extent to which orders to trade given change the representation of the best bid or offer prices in a *financial instrument* admitted to trading on a *regulated market*, or more generally the representation of the order book available to market participants, and are removed before they are executed; and
 - (7) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

Factors to be taken into account: behaviour securing an abnormal or artificial price level

- 1.6.10 E In the opinion of the *FSA*, the following factors are to be taken into account

in determining whether or not a *person's behaviour* amounts to *market abuse (manipulating transactions)*:

- (1) the extent to which the *person* had a direct or indirect interest in the price or value of the *qualifying investment* or *related investment*;
- (2) the extent to which price, rate or *option* volatility movements, and the volatility of these factors for the *investment* in question, are outside their normal intra-day, daily, weekly or monthly range; and
- (3) whether a *person* has successively and consistently increased or decreased his bid, offer or the price he has paid for a *qualifying investment* or *related investment*.

Factors to be taken into account: abusive squeezes

- 1.6.11 E In the opinion of the *FSA*, the following factors are to be taken into account when determining whether a *person* has engaged in an abusive squeeze:
- (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; for example, *behaviour* is less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question;
 - (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 an abusive squeeze has been effected;
 - (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 an abusive squeeze has been effected; 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.
- 1.6.12 G 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.
- 1.6.13 G 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. Market users can be expected 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.

Descriptions of behaviour that do not amount to market abuse (manipulating transactions): accepted market practices

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

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

Examples of market abuse (manipulating transactions)

1.6.15 E The following are examples of behaviour that may amount to *market abuse (manipulating transactions)*:

- (1) a trader simultaneously *buys* and *sells* the same *qualifying 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 *qualifying investment*. The price of the *qualifying 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 is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level, making him a profit or avoiding a loss from the *option*;
- (2) a trader *buys* a large volume of *commodity futures*, which are *qualifying investments*, (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 false, misleading, abnormal or artificial 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 *qualifying investment*, which is currently a component of an index, falls out of that index. The question of whether the *qualifying investment* will fall out of the index depends on the closing price of the *qualifying investment*. He places a large *sell* order in this *qualifying investment* just before the close of trading. His purpose is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level so that the *qualifying 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 false, misleading, abnormal or artificial level.

1.6.16 E 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 from his original position.

1.7 Market abuse (manipulating devices)

1.7.1 UK Table: section 118(6) of the *Act*

"The fifth [type of *behaviour*] ... consists of effecting transactions or orders to trade

which employ fictitious devices or any other form of deception or contrivance."

Descriptions of behaviour that amount to market abuse (manipulating devices)

1.7.2 E The following *behaviours* are, in the opinion of the FSA, *market abuse (manipulating devices)*:

- (1) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a *qualifying investment* (or indirectly about its *issuer*) while having previously taken positions on that *qualifying investment* and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way; [**Note:** Article 1.2 *Market Abuse Directive*]
- (2) a transaction or series of transactions that are designed to conceal the ownership of a *qualifying investment*, 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. These transactions are often structured so that market risk remains with the seller. This does not include nominee holdings;
- (3) pump and dump – that is, taking a long position in a *qualifying investment* and then disseminating misleading positive information about the *qualifying investment* with a view to increasing its price;
- (4) trash and cash – that is, taking a short position in a *qualifying*

investment and then disseminating misleading negative information about the *qualifying investment*, with a view to driving down its price.

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

- 1.7.3 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a fictitious device or other form of deception or contrivance has been used, and are indications that it has:
- (1) if orders to trade given or transactions undertaken in *qualifying investments* by *persons* are preceded or followed by dissemination of false or misleading information by the same *persons* or *persons* linked to them;
 - (2) if orders to trade are given or transactions are undertaken in *qualifying investments* by *persons* before or after the same *persons* or *persons* linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest. [**Note:** Article 5 2003/124/EC]

1.8 Market abuse (dissemination)

1.8.1 U Table: section 118(7) of the *Act*
K

" The sixth [type of *behaviour*] ... consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a [*qualifying investment*] by a person who knew or could reasonably be expected to have known that the information was false or misleading."

1.8.2 U Table: section 118A(4) of the *Act*
K

"For the purposes of section 118(7), the dissemination of information by a person acting in the capacity of a journalist is to be assessed taking into account the codes governing their profession unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information."

Descriptions of behaviour that amount to market abuse (dissemination)

- 1.8.3 E The following *behaviours* are, in the opinion of the FSA, *market abuse (dissemination)*:
- (1) knowingly or recklessly spreading false or misleading information about a *qualifying investment* through the media, including in particular through an *RIS* or similar information channel;
 - (2) undertaking a course of conduct in order to give a false or misleading impression about a *qualifying investment*.

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

- 1.8.4 E In the opinion of the *FSA*, if a normal and reasonable *person* would know or should have known in all the circumstances that the information was false or misleading, that indicates that the *person* disseminating the information knew or could reasonably be expected to have known that it was false or misleading.

- 1.8.5 E In the opinion of the *FSA*, if the individuals responsible for dissemination of information within an organisation could only know that the information was false or misleading if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements, that indicates that the *person* disseminating did not know and could not reasonably be expected to have known that the information was false or misleading.

Examples of market abuse (dissemination)

- 1.8.6 E The following are examples of *behaviour* which may amount to *market abuse (dissemination)*:
- (1) 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* and the *person* knows that the information is false or misleading;
 - (2) a *person* responsible for the content of information submitted to a *regulatory information service* submits information which is false or misleading as to *qualifying investments* and that *person* is reckless as to whether the information is false or misleading.

1.9 Market abuse (misleading behaviour) & market abuse (distortion)

1.9.1 E Table: section 118(8) of the *Act*:

" The seventh [type of *behaviour*] is where the [*behaviour*] (not [amounting to *market abuse (manipulating transactions)*, *market abuse (manipulating devices)*, or *market abuse (dissemination)*])

- (a) is likely to give, a [*regular user*] of the market a false or misleading impression as to the supply of, demand for or price or value of, [*qualifying investments*] [*market abuse (misleading behaviour)*]; or
- (b) would be, or would be to likely to be, regarded by a [*regular user*] of the market as [*behaviour*] that would distort, or would be likely to distort, the market in such an investment [*market abuse (distortion)*]

and ...is 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 his position in relation to the market

Descriptions of behaviour that amount to market abuse (misleading behaviour) under section 118(8)(a) or market abuse (distortion) under section 118(8)(b)

1.9.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (misleading behaviour)* if they give, or are likely to give, a *regular user* of the market a false or misleading impression:

- (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.

Descriptions of behaviour that does not amount to market abuse (distortion)

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

Factors to be taken into account: false or misleading impressions

1.9.4 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* is likely to give a *regular user* a

false or misleading impression as to the supply of or the demand for or as to the price or value of one or more *qualifying investments* or *related investments*:

- (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;
- (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.

Factors to be taken into account: standards of behaviour

1.9.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* that creates a false or misleading impression as to, or distorts the market for, a *qualifying investment*, has also failed to meet the standard expected by a *regular user*:

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently; or
- (3) the characteristics of the market in question, including the users and applicable rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position, such as under section 198 of the Companies Act 1985);
- (4) the position of the *person* in question and the standards reasonably to be expected of him in light of his experience, skill and knowledge;
- (5) if the transaction complied with the rules of the relevant *prescribed markets* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions); and
- (6) if an *organisation* has created a false or misleading impression, whether the individuals responsible could only know they were likely to create a false or misleading impression if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements.

1.10 Statutory exceptions

Behaviour that does not amount to market abuse (general): buy-back programmes and stabilisation

- 1.10.1 G (1) *Behaviour* which conforms with articles 3 to 6 of the *Buy-back and Stabilisation Regulation* (see *MAR 1 Ann 1*) will not amount to *market abuse*.
- (2) See *MAR 2* in relation to *stabilisation*.
- (3) *Buy-back programmes* which are not within the scope of the *Buy-back and Stabilisation Regulation* are not, in themselves, *market abuse*.

FSA rules

- 1.10.2 G There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*. Some *rules* contain a provision to the effect that *behaviour* conforming with that *rule* does not amount to *market abuse*:
- (1) *COB 2.4.4R(1)* (Chinese walls) (see *COB 2.4.4R(4)*); and
- (2) those parts of the *Part 6 rules* which relate to the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information (see in particular the *Disclosure Rules*).

Takeover Code and SARs

- 1.10.3 G There are no rules in the *Takeover Code* or the *SARs*, which permit or require a *person* to behave in a way which amounts to *market abuse*.
- 1.10.4 C *Behaviour* conforming with any of the rules of the *Takeover Code* or *SARs* about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, does not, of itself, amount to *market abuse*, if:
- (1) the rule is one of those specified in the table in *MAR 1.10.5C*;
- (2) the *behaviour* is expressly required or expressly permitted by the rule in question (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the relevant rule for these purposes); and
- (3) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to that rule.
- 1.10.5 C Table: Provisions of the *Takeover Code* or *SARs* conformity with which will not, of itself, amount to *market abuse* (This table belongs to *MAR 1.10.4C*):

<i>Takeover Code</i> provisions:	
Disclosure of information which is not generally available	1(a) 2.1 plus notes, 2.5, 2.6, 2.9 plus notes 8 19.7 20.1, 20.2, 20.3 28.4 37.3(b) and 37.4(a)
Standards of care	2.8 first sentence and note 4 19.1, 19.5 second sentence and note 2, 19.8 23 plus notes 28.1
Timing of announcements, documentation and dealings	2.2, 2.4(b) 5.4 6.2(b) 7.1 11.1 note 6 only 17.1 21.2 30 31.6(c), 31.9 33 (in so far as it refers 31.6(c) and 31.9 only) 38.5
Content of announcements	2.4 (a) and (b) 19.3
<i>SAR</i> provisions:	
Timing of disclosure	3 4.1(a) and (e), 4.3, 4.4
Content of announcements	4.2

1.10.6 C *Behaviour* conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offerors* and concert parties) does not, of itself, amount to *market abuse*, if:

- (1) the *behaviour* is expressly required or expressly permitted by that rule (the notes for the time being associated with the rules identified

in the *Takeover Code* are treated as part of the rule for these purposes); and

- (2) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to the rule.

MAR 1 Annex 1

MAR 1 Ann 1

- 1.1 Provisions of the *Buy-back and Stabilisation Regulation* relating to *buy-back programmes*
- 1.1.1 G The effect of article 8 of the *Market Abuse Directive* and section 118A(5)(b) of the *Act* is that behaviour which conforms with the buy-back provisions in the *Buy-back and Stabilisation Regulation* will not amount to *market abuse*.
- 1.1.2 G As the *Buy-back and Stabilisation Regulation* is not directed at the protection of shareholder interests, *issuers* will also need to consult both the Companies Act 1985 and the *Part 6 rules* for the shareholder protection requirements applying to a proposed buy-back.
- 1.1.3 EU Table: Article 3 of the *Buy-back and Stabilisation Regulation*

Article 3

Objectives of buy-back programmes

In order to benefit from the exemption provided for in Article 8 of [*the Market Abuse Directive*], a [*buy-back programme*] must comply with Articles 4, 5 and 6 of this Regulation and the sole purpose of that [*buy-back programme*] must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:

- (a) debt financial instruments exchangeable into equity instruments;
- (b) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company.

- 1.1.4 EU Table: Relevant Recitals (Article 3) from the *Buy-back and Stabilisation Regulation*

Recital 3

... the exemptions created by this Regulation only cover behaviour directly related to the purpose of the buy-back and stabilisation activities. Behaviour which is not directly related to the purpose of the buy-back and stabilisation activities shall therefore be considered as any other action covered by [*the Market Abuse Directive*] and may be the object of administrative measures or sanctions, if the competent authority establishes that the action in question constitutes market abuse.

- 1.1.5 EU Table: Article 4 of the *Buy-back and Stabilisation Regulation*

Article 4

Conditions for *buy-back programmes* and disclosure

1. The [*buy-back programme*] must comply with the conditions laid down by Article 19(1) of [*the PLC Safeguards Directive*].

2. Prior to the start of trading, full details of the programme approved in accordance with Article 19(1) of [the *PLC Safeguards Directive*] must be [adequately disclosed to the public] in Member States in which an issuer has requested admission of its shares to trading on a [regulated market].

Those details must include the objective of the programme as referred to in Article 3, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorisation for the programme has been given.

Subsequent changes to the programme must be subject to [adequate public disclosure] in Member States.

3. The issuer must have in place the mechanisms ensuring that it fulfils trade reporting obligations to the competent authority of the [regulated market] on which the shares have been admitted to trading. These mechanisms must record each transaction related to [buy-back programmes], including the information specified in Article 20(1) of the [ISD].
4. The issuer must publicly disclose details of all transactions as referred to in paragraph 3 no later than the end of the seventh daily market session following the date of execution of such transactions.

- 1.1.6 G The information specified in article 20(1) of the *ISD* is the names and numbers of the instruments bought or sold, the dates and times of the transactions, the transaction prices and means of identifying the investment firms concerned.
- 1.1.7 G Article 19(1) of the *PLC Safeguards Directive* is implemented in Great Britain by section 166 of the Companies Act 1985.
- 1.1.8 G The *FSA* accepts disclosure through a *regulatory information service* as *adequate public disclosure*.
- 1.1.9 EU Table: Article 5 of the *Buy-back and Stabilisation Regulation*

Article 5

Conditions for trading

1. In so far as prices are concerned, the issuer must not, when executing trades under a [buy-back programme], purchase shares at a price higher than the higher of the price of the last independent trade and the highest current independent bid on the trading venues where the purchase is carried out.

If the trading venue is not a [regulated market], the price of the last independent trade or the highest current independent bid taken in reference shall be the one of the [regulated market] of the Member State in which the purchase is carried out.

Where the issuer carries out the purchase of own shares through derivative financial instruments, the exercise price of those derivative financial instruments shall not be above the higher of the price of the last independent trade and the highest current independent bid.

2. In so far as volume is concerned, the issuer must not purchase more than 25% of the average daily volume of the shares in any one day on the [regulated market] on which the purchase is carried out.

The average daily volume figure must be based on the average daily volume traded in the month preceding the month of public disclosure of that programme and fixed on that basis for the authorised period of the programme.

Where the programme makes no reference to that volume, the average daily volume figure must be based on the average daily volume traded in the 20 trading days preceding the date of purchase.

3. For the purposes of paragraph 2, in cases of extreme low liquidity on the relevant market, the issuer may exceed the 25 % limit, provided that the following conditions are met:
 - (a) the issuer informs the competent authority of the relevant market, in advance, of its intention to deviate from the 25 % limit;
 - (b) the issuer [makes an *adequate public disclosure* of] the fact that it may deviate from the 25 % limit;
 - (c) the issuer does not exceed 50 % of the average daily volume.

1.1.10 EU Table: Relevant recitals (Article 5) from the *Buy-back and Stabilisation Regulation*

Recital 9

In order to prevent market abuse the daily volume of trading in own shares in buy-back programmes shall be limited. However, some flexibility is necessary in order to respond to given market conditions such as a low level of transactions.

Recital 10

Particular attention has to be paid to the selling of own shares during the life of a [*buy-back programme*] to the possible existence of closed periods within issuers during which transactions are prohibited and to the fact that an issuer may have legitimate reasons to delay public disclosure of inside information.

1.1.11 G Whether a case of extreme low liquidity exists for the purposes of article 5(3) will depend on the circumstance of each case. *Issuers* and their advisers may wish to approach the *FSA* and seek further individual *guidance* on cases that come within article 5(3).

1.1.12 EU Table: Article 6 of the *Buy-back and Stabilisation Regulation*

Article 6

Restrictions

1. In order to benefit from the exemption provided by Article 8 of [*the Market Abuse Directive*], the issuer shall not, during its participation in a [*buy-back programme*], engage in the following trading:
 - (a) selling of own shares during the life of the programme;
 - (b) trading during a period which, under the law of the Member State in which trading takes place, is a closed period;
 - (c) trading where the issuer has decided to delay the public disclosure of inside information in accordance with Article 6(2) of [*the Market Abuse Directive*].

2. Paragraph 1(a) shall not apply if the issuer is an [*investment firm*] or [*credit institution*] and has established effective information barriers (Chinese Walls) subject to supervision by the competent authority, between those responsible for the handling of [*inside information*] related directly or indirectly to the issuer and those responsible for any decision relating to the trading of own shares (including the trading of own shares on behalf of clients), when trading in own shares on the basis of such any decision.

Paragraphs 1(b) and (c) shall not apply if the issuer is an [*investment firm*] or [*credit institution*] and has established effective information barriers (Chinese Walls) subject to supervision by the competent authority, between those responsible for the handling of inside information related directly or indirectly to the issuer (including trading decisions under the "buy-back" programme) and those responsible for the trading of own shares on behalf of clients, when trading in own shares on behalf of those clients.

3. Paragraph 1 shall not apply if:

- (a) the issuer has in place a [*time-scheduled buy-back programme*]; or
- (b) the buy-back programme is lead-managed by an [*investment firm*] or a [*credit institution*] which makes its trading decisions in relation to the issuer's shares independently of, and without influence by, the issuer with regard to the timing of the purchases.

1.1.13 G For the purposes of article 6(1)(b) of the *Buy Back and Stabilisation Regulation*, a close period in the *United Kingdom* is the period during which purchases or early redemptions by a company of its own securities may not be made under the *Part 6 Rules*.

1.1.14 G Article 6(2) of the *Market Abuse Directive*, referred to in article 6(1)(c) of the *Buy Back and Stabilisation Regulation*, is implemented in the *United Kingdom* by the *Disclosure Rules*.

Accepted Market Practices

Table: Part 1 - General

1. G An *accepted market practice* features in section 118 in the following ways:
 - (1) it is an element in deciding what is *inside information* in the commodity markets (and see *MAR 1.2.17G* to *MAR 1.2.19UK*);
 - (2) it provides a defence for *market abuse (manipulating transactions)*.
2. G The *FSA* will take the following non- exhaustive factors into account when assessing whether to accept a particular market practice:
 - (1) the level of transparency of the relevant market practice to the whole market;
 - (2) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand (taking into account the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price);
 - (3) the degree to which the relevant market practice has an impact on market liquidity and efficiency;
 - (4) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
 - (5) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant *financial instrument* within the whole Community;
 - (6) the outcome of any investigation of the relevant market practice by any competent authority or other authority mentioned in Article 12(1) of the *Market Abuse Directive*, in particular whether the relevant market practice breached rules or regulations designed to prevent *market abuse*, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Community; and
 - (7) the structural characteristics of the relevant market including whether it is regulated or not, the types of *financial instruments* traded and the type of market participants, including the extent of retail investors participation in the relevant market.

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

Description of the AMP:

Behaviour conforming with the London Metal Exchange Document "Market Aberrations: the Way Forward" published in October 1998, which governs the behaviour expected of long position holders in this market.

Rationale for why the practice would constitute manipulation

Behaviour which gives rise to the application of the London Metal Exchange Document "Market Aberrations: the Way Forward" published in October 1998 may involve transactions or orders to trade which:

- (i) give or are likely to give, false or misleading signals as to the supply of or demand for or price of *financial instruments*
- (ii) secure, by a persons or persons acting in collaboration, the price of one or several *financial instruments* at an abnormal or artificial level.

List of Factors

The following factors were taken into account by the *FSA* when assessing behaviour conforming with the London Metal Exchange Document "Market Aberrations: the Way Forward" as an accepted market practice:

The level of transparency (to the rest of the market) of the practice in question

The Metal Market Aberrations Regime has been published to the market by the Exchange on which it applies. The transparency criterion is therefore met. Those who have long positions at or above the thresholds specified in the Market Aberrations Regime are required to advertise to the market that they will be prepared to lend stock.

The need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand

The Metal Market Aberrations Regime is designed to facilitate the operation of supply and demand on the market by avoiding abusive squeezes or other circumstances which could result in or involve distortion of the market for the investment in question.

The impact on market liquidity and efficiency

The practice has a positive effect on market liquidity and efficiency as it facilitates the orderly operation of a market in which a participant has a dominant long position.

The degree to which the practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by the practice

The practice in the London Metal Exchange Document "Market Aberrations: the Way Forward" was developed taking into account the trading mechanism of the LME. The behaviour required of long position holders under the London Metal Exchange Document "Market Aberrations: the Way Forward", is monitored by the LME compliance department on a daily basis using public and confidential regulatory information available to it. The LME compliance department takes into account the trading mechanism of the LME when performing this task. Procedures exist for escalating any concerns about market circumstances to a Special Committee that is able to intervene in order to enable market participants to react properly and in a timely manner to any new market situations created by the practices.

The risk inherent in the practice for the integrity of directly or indirectly related markets in the financial instrument, including any market in the financial instrument which exists on an exchange (or other trading venue) and related markets in directly related financial instruments.

The practices in the London Metal Exchange Document "Market Aberrations: the Way Forward" were developed to maintain the integrity of the markets in *financial instruments* traded in the LME. The practices have been shown to be an aid in maintaining the integrity of those markets.

The outcome of any investigation of the practice by any regulatory body, including the extent to which a practice breaches existing rules or regulations designed to prevent market manipulation on the market in question or on directly or indirectly related markets in the EU.

The FSA supports the regime outlined in the London Metal Exchange Document "Market Aberrations: the Way Forward" and, under the previous Code of Market Conduct applying to trading on the LME, provided a safe harbour for behaviour in conformity with the practices outlined in the document.

The structure characteristics of the market in question including whether it is a regulated or OTC market, the type(s) of financial instrument traded on the market and the type of market participants, including the extent of retail participation in the market;

The London Metal Exchange is a commodity derivatives market which has Recognised Investment Exchange status in the UK. It is a professional market with minimal retail involvement.

Overriding Principles

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

- new or emerging market practices were not be assumed to be unacceptable simply because they had not been previously described as acceptable by the FSA;
- the need to safeguard the operation of market forces and the interplay of proper supply and demand;

- the need for market participants to operate fairly and efficiently without interfering in normal market activity.

Conditions relating to legitimate reasons and proper execution.

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

Annex C

Amendments to the Market Conduct sourcebook (MAR 2)

In this Annex all the text is new and is not underlined.

Delete the existing text in MAR, Chapter 2 and replace with the following text:

- 2. Stabilisation
- 2.1 Application and Purpose
 - Application
 - 2.1.1 R This chapter applies to every *firm*.
 - 2.1.2 G This chapter is available to every *person* who wishes to show that he acted in conformity with:
 - (1) the *Buy-back and Stabilisation Regulation*, in accordance with section 118A(5)(b) of the *Act*; or
 - (2) *rules*, in accordance with section 118A(5)(a) of the *Act*; or
 - (3) the *price stabilising rules*, for the purposes of paragraph 5(1) of Schedule 1 to the Criminal Justice Act 1993 (Insider Dealing); or
 - (4) the *price stabilising rules*, for the purposes of section 397(4) or (5)(b) of the *Act* (Misleading statements and practices).
 - 2.1.3 R 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*.
 - Purpose
 - 2.1.4 G The purpose of this chapter is to describe the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse* under the *Buy-back and Stabilisation Regulation* (see MAR 2.2 and 2.3), and to specify by rules the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse (misuse of information)*, *market abuse (misleading behaviour)* or *market abuse (distortion)* (see MAR 2.2 and 2.4), or for the criminal offences referred to in MAR 2.1.2G(3) and (4) (MAR 2.3 – 2.5).
 - 2.1.5 G *Stabilisation* transactions mainly have the effect of providing support for the price of an offering of *relevant securities* during a limited time period if they come under selling pressure, thus alleviating sales pressure generated by short term investors and maintaining an orderly market in the *relevant securities*. This is in the interest of those investors having subscribed or purchased those *relevant securities* in the context of a *significant distribution*, and of *issuers*. In this way, *stabilisation* can contribute to greater confidence of investors and *issuers* in the financial markets. [Note: Recital 11 of the *Buy-back and Stabilisation Regulation*]

2.1.6 G *Stabilisation* activity may be carried out either on or off a *regulated market* and may be carried out by use of *financial instruments* other than those admitted or to be admitted to the *regulated market* which may influence the price of the instrument admitted or to be admitted to trading on a *regulated market*. [Note: Recital 12 *Buy-back and Stabilisation Regulation*]

2.2 Stabilisation: general

Permitted stabilisation

2.2.1 R *Stabilisation* or *ancillary stabilisation* may be carried out by a *firm* in relation to a *significant distribution of securities*, if:

(1) they are *relevant securities* that have been admitted to trading on a *regulated market* or a request for their admission to trading on such a market has been made, and the *stabilisation* is carried out in accordance with the *Buy-back and Stabilisation Regulation* (see MAR 2.3); or

(2) the *securities* are not within (1) and they:

(a) have been admitted to trading on a market, exchange or other institution included in MAR 2 Ann 1R; or

(b) a request for their admission to trading on such a market, exchange or institution has been made; or

(c) are or may be traded under the rules of the International Securities Markets Association; and

the *stabilisation* or *ancillary stabilisation* is carried out in accordance with the provisions in MAR 2.4.

2.2.2 G *Relevant securities* include *financial instruments* that become fungible after an initial period because they are substantially the same, although they have different initial dividend or interest payment rights. [Note: Recital 13 *Buy-back and Stabilisation Regulation*.]

Scope of stabilisation "safe harbours" for market abuse

2.2.3 R For the purposes of section 118A(5)(a) of the *Act*, *behaviour* (whether by a *firm* or not) conforming with the MAR 2.2.1R(2) does not amount to *market abuse*.

2.2.4 G The effect of article 8 of the *Market Abuse Directive* and section 118A(5)(b) of the *Act* is that *behaviour* by any *person* which conforms with the *stabilisation* provisions in the *Buy-back and Stabilisation Regulation* (see MAR 2.3) will not amount to *market abuse*.

2.2.5 G However, the mere fact that *stabilisation* does not conform with the *stabilisation* provisions in the *Buy-back and Stabilisation Regulation* (see MAR 2.3) or with MAR 2.2.1R(2) will not of itself mean that the *behaviour* constitutes *market abuse*. [Note: Recital 2 *Buy-back and Stabilisation Regulation*]

Block trades

- 2.2.6 G In relation to *stabilisation*, block trades are not considered as a *significant distribution of relevant securities* as they are strictly private transactions. [Note: Recital 14 *Buy-back and Stabilisation Regulation*]
- Behaviour not related to stabilisation
- 2.2.7 G On the other hand, the exemptions created by the *Buy-back and Stabilisation Regulation* only cover *behaviour* directly related to the purpose of *stabilisation* activities. *Behaviour* which is not directly related to the purpose of *stabilisation* activities is therefore considered in the same way as any other action covered by the *Market Abuse Directive* and may result in sanctions, if the competent authority establishes that the action in question constitutes *market abuse*. [Note: Recital 3 *Buy-back and Stabilisation Regulation*]
- 2.2.8 G In order to avoid confusion of market participants, *stabilisation* activity should be carried out by taking into account the market conditions and the offering price of the *relevant security* and transactions to liquidate positions established as a result of *stabilisation* activity should be undertaken to minimise market impact having due regard to prevailing market conditions. [Note: Recital 18 *Buy-back and Stabilisation Regulation*]
- Rights of action for damages
- 2.2.9 R A contravention of the *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).

2.3 Stabilisation under the Buy-back and Stabilisation Regulation

Conditions for stabilisation: general

- 2.3.1 EU Table: Article 7 of the *Buy-back and Stabilisation Regulation*

Article 7

Conditions for stabilisation

In order to benefit from the exemption provided for in Article 8 of [the *Market Abuse Directive*], [*stabilisation*] of a [*financial instrument*] must be carried out in accordance with Articles 8, 9 and 10 of this Regulation [see *MAR 2.3.4EU*, *MAR 2.3.5EU* and *MAR 2.3.6EU*].

- 2.3.2 G Article 8 of the *Market Abuse Directive* is implemented in the *United Kingdom* in section 118A(5)(b) of the *Act*.
- 2.3.3 R For the purposes of article 2(8) of the *Buy-back and Stabilisation Regulation* the standards of transparency of the markets, exchanges and institutions referred to in *MAR 2.2.1 R (2)* are considered by the *FSA* to be adequate.
- Time related conditions for stabilisation
- 2.3.4 EU Table: Article 8 of the *Buy-back and Stabilisation Regulation*

Article 8

Time related conditions for stabilisation

1. [*Stabilisation*] shall be carried out only for a limited time period.
2. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of an initial offer publicly announced, start on the date of commencement of trading of the [*relevant securities*] on the [*regulated market*] and end no later than 30 calendar days thereafter.

Where the initial offer publicly announced takes place in a Member State that permits trading prior to the commencement of trading on a [*regulated market*], the time period referred to in paragraph 1 shall start on the date of [*adequate public disclosure*] of the final price of the [*relevant securities*] and end no later than 30 calendar days thereafter, provided that any such trading is carried out in compliance with the rules, if any, of the [*regulated market*] on which the [*relevant securities*] are to be admitted to trading, including any rules concerning public disclosure and trade reporting.

3. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of a secondary offer, start on the date of [*adequate public disclosure*] of the final price of the [*relevant securities*] and end no later than 30 calendar days after the date of [*allotment*].
4. In respect of bonds and other forms of securitised debt (which are not convertible or exchangeable into shares or into other securities equivalent to shares), the time period referred to in paragraph 1 shall start on the date of [*adequate public disclosure*] of the terms of the offer of the [*relevant securities*] (i.e. including the spread to the benchmark, if any, once it has been fixed) and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [*allotment*] of the [*relevant securities*].
5. In respect of securitised debt convertible or exchangeable into *shares* or into other securities equivalent to shares, the time period referred to in paragraph 1 shall start on the date of [*adequate public disclosure*] of the final terms of the offer of the [*relevant securities*] and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [*allotment*] of the [*relevant securities*].

Disclosure and reporting conditions for stabilisation

2.3.5 EU Table: Article 9 of the *Buy-back and Stabilisation Regulation*

Article 9

Disclosure and reporting conditions for stabilisation

1. The following information shall be [*adequately publicly disclosed*] by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons, before the opening of the offer period of the [*relevant securities*]:
 - (a) the fact that [*stabilisation*] may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;
 - (b) the fact that [*stabilisation*] transactions are aimed to support the market price of the [*relevant securities*];
 - (c) the beginning and end of the period during which [*stabilisation*] may occur;
 - (d) the identity of the [*stabilisation*] manager, unless this is not known at the time of publication in which case it must be publicly disclosed before any [*stabilisation*] activity begins;
 - (e) the existence and maximum size of any [*overallocation facility*] or [*greenshoe option*], the exercise period of the [*greenshoe option*] and any conditions for the use of the [*overallocation facility*] or exercise of the [*greenshoe option*].

The application of the provisions of this paragraph shall be suspended for offers under the scope of application of the measures implementing [the *Prospectus Directive*], from the date of application of these measures.

2. Without prejudice to Article 12(1)(c) of [the *Market Abuse Directive*], the details of all [*stabilisation*] transactions must be notified by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons, to the competent authority of the relevant market no later than the end of the seventh daily market session following the date of execution of such transactions.
3. Within one week of the end of the [*stabilisation*] period, the following information must be adequately disclosed to the public by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons:
 - (a) whether or not [*stabilisation*] was undertaken;
 - (b) the date at which [*stabilisation*] started;
 - (c) the date at which [*stabilisation*] last occurred;
 - (d) the price range within which [*stabilisation*] was carried out, for each of the dates during which [*stabilisation*] transactions were carried out.
4. Issuers, [*offerors*], or entities undertaking the [*stabilisation*], acting or not, on behalf of such persons, must record each [*stabilisation*] order or transaction with, as a minimum, the information specified in Article 20(1) of [the *ISD*] extended to *financial instruments* other than those admitted or going to be admitted to the *regulated market*.

5. Where several [*investment firms*] or [*credit institutions*] undertake the [*stabilisation*] acting, or not, on behalf of the issuer or [*offeror*], one of those persons shall act as central point of inquiry for any request from the competent authority of the *regulated market* on which the [*relevant securities*] have been admitted to trading.

- 2.3.6 G The *FSA* accepts as *adequate public disclosure*:
- (1) disclosure through a *regulatory information service* or otherwise in accordance with *Part 6 rules*; or
 - (2) the equivalent disclosure mechanism required to be used in relation to the relevant *regulated market*.
- 2.3.7 G Market integrity requires the *adequate public disclosure* of *stabilisation* activity by *issuers* or by entities undertaking *stabilisation*, acting or not on behalf of these *issuers*. Methods used for *adequate public disclosure* of such information should be efficient and can take into account market practices accepted by competent authorities. [**Note:** Recital 16 *Buy-back and Stabilisation Regulation*]
- 2.3.8 G There should be adequate coordination in place between all *investment firms* and *credit institutions* undertaking *stabilisation*. During *stabilisation*, one *investment firm* or *credit institution* shall act as a central point of inquiry for any regulatory intervention by the competent authority in each *Member State* concerned. [**Note:** Recital 17 *Buy-back and Stabilisation Regulation*]
- 2.3.9 G For the purposes of article 9(2) of the *Buy-back and Stabilisation Regulation*, the *FSA* is the competent authority of those markets listed as *regulated markets* at http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html. Persons undertaking *stabilisation* will be taken to have notified the *FSA* for the purposes of article 9(2) if they email details of all their *stabilisation* transactions to stabilisation@fsa.gov.uk clearly identifying the offer being *stabilised* and the contact details for the *persons* undertaking the *stabilisation*.

Specific price conditions

- 2.3.10 EU Table: Article 10 of the *Buy-back and Stabilisation Regulation*

Article 10

Specific price conditions

1. In the case of an offer of shares or other securities equivalent to shares, [*stabilisation*] of the [*relevant securities*] shall not in any circumstances be executed above the offering price.
2. In the case of an offer of securitised debt convertible or exchangeable into instruments as referred to in paragraph 1, [*stabilisation*] of those instruments shall not in any circumstances be executed above the market price of those instruments at the time of the public disclosure of the final terms of the new offer.

Conditions for ancillary stabilisation

- 2.3.11 EU Table: Article 11 of the *Buy-back and Stabilisation Regulation*

Article 11

Conditions for ancillary stabilisation

In order to benefit from the exemption provided for in Article 8 of [the *Market Abuse Directive*], [*ancillary stabilisation*] must be undertaken in accordance with Article 9 of this Regulation and with the following:

- (a) [*relevant securities*] may be overallocated only during the subscription period and at the offer price;
- (b) a position resulting from the exercise of an [*overallocation facility*] by an [*investment firm*] or [*credit institution*] which is not covered by the [*greenshoe option*] may not exceed 5 % of the original offer;
- (c) the [*greenshoe option*] may be exercised by the beneficiaries of such an option only where [*relevant securities*] have been overallocated;
- (d) the [*greenshoe option*] may not amount to more than 15% of the original offer;
- (e) the exercise period of the [*greenshoe option*] must be the same as the [*stabilisation*] period required under Article 8;
- (f) the exercise of the [*greenshoe option*] must be disclosed to the public promptly, together with all appropriate details, including in particular the date of exercise and the number and nature of [*relevant securities*] involved.

2.3.12 G *Overallocation facilities* and *greenshoe options* are closely related to stabilisation, by providing resources and hedging for *stabilisation* activity. [Note: Recital 19 *Buy-back and Stabilisation Regulation*]

2.3.13 G Particular attention should be paid to the exercise of an *overallocation facility* by an *investment firm* or a *credit institution* for the purpose of *stabilisation* when it results in a position uncovered by the *greenshoe option*. [Note: Recital 20 *Buy-back and Stabilisation Regulation*.]

2.4 Stabilisation when the Buy-back and Stabilisation Regulation does not apply

2.4.1 R To comply with *MAR 2.2.1R(2)* a *firm* must comply with the provisions in articles 8, 9, 10 and 11 of the *Buy-back and Stabilisation Regulation* (see *MAR 2.3*) subject to the modifications set out in the remainder of this section.

2.4.2 R For the purposes of the application of article 2(6) of the *Buy-back and Stabilisation Regulation* to this section, references to "*relevant securities*" are to be taken as references to *securities* which are within *MAR 2.2.1R(2)*.

2.4.3 R For the purposes of the application of article 2(8) of the *Buy-back and Stabilisation Regulation* to this section, the requirement for the competent authority to agree to the standards of transparency does not apply.

2.4.4 R Article 8 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:

- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which provides adequate disclosure of the fact that *stabilisation* may take place in relation to the offer, for example:

- (a) in the case of a screen-based announcement, wording such as "stabilisation/FSA"; or
 - (b) in the case of a final offering circular or prospectus, wording such as "In connection with this [issue][offer], [name of *stabilisation* 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 investments*] 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 *stabilisation* 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."; and
- (2) a *person* is taken to comply the requirements of article 9(1) of the *Buy-back and Stabilisation Regulation* for these purposes if a public announcement before the opening of the offer period indicates (in whatever terms) the fact that *stabilisation* may take place so long as any preliminary or final offering circular (or prospectus) contains the information specified in that article (other than information on the maximum size of any over-allotment facility).
- 2.4.5 R Article 9 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:
- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which complies with *MAR 2.4.4R*;
 - (2) article 9(2) does not apply;
 - (3) article 9(3) does not apply; and
 - (4) in article 9(4) the phrase "order or" does not apply.
- 2.4.6 R Article 10 of the *Buy-back and Stabilisation Regulation* is modified so that the reference to "public disclosure" is to be taken as including any public announcement which complies with *MAR 2.4.4R*.
- 2.4.7 R Article 11 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:
- (1) the reference to "disclosure to the public" is to be taken as including any public announcement which complies with *MAR 2.4.4R*; and
 - (2) article 11(b) and (d) do not apply.

2.5 The Price Stabilising Rules: overseas provisions

- 2.5.1 R (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*;
 - (b) in conformity with the provisions specified in (2), (3) or (4); 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)(b) 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:
- (a) 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) In relation to Hong Kong, the specified provisions are
- (a) The Securities and Futures (Price Stabilizing) Rules, Cap. 571 W made by the Hong Kong Securities and Futures Commission.
- (5) The provisions in (2), (3) and (4) are specified as they have effect from time to time, so long as this paragraph has effect.
- 2.5.2 R A *person* who is treated under *MAR 2.5.1R(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:
- (1) *MAR 2.2.1R(2)* and *MAR 2.2.2R*, provided that the *investments* concerned are not admitted to trading on a *regulated market* and there has been no request for admission to trading on a *regulated market*;
 - (2) Part XIV (Disciplinary measures); and
 - (3) Part XXV (Injunctions and Restitution) of the *Act*.

MAR 2 Annex 1R*

1 R MAR 2 Ann 1R
R

1 List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2))

<i>Any specified market which is not a regulated market</i>
<i>Any recognised overseas investment exchange</i>
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

*See Addendum 18 August 2005

Annex D

Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

...

- 1.2.1 R ...
- (2) for a *UCITS qualifier* and a *service company* that does not operate an *ATS*, only *COB 1.9* (Application to electronic commerce activity providers), ~~and~~ *COB 3* (Financial promotion), *COB 7.17* (Investment research recommendations: required disclosures) and any provision of *COB* incorporated into *COB 1.9* or *COB 3* by reference, apply;
- (2A) for a *service company* that operates an *ATS*, only *COB 1.9* and *COB 3*, any provision of *COB* incorporated into *COB 1.9* or *COB 3* by reference, *COB 7.17* (Investment research recommendations: required disclosures) and, in relation to the operation of the *ATS*, *COB 4.2* (Terms of business), apply;

...

- 1.2.5 G ...
- (2) ...; ~~and~~
- (3) ...; and
- (4) *COB 7.17* which relates to disclosures required to be made in relation to investment research recommendations as a result of the *Market Abuse Directive*.

...

- 1.6.2 R Table: Stock lending activity.
This table belongs to *COB 1.6.1R*.

<i>COB</i>	Subject
...	...
7.13	...
<u>...</u>	
<u>7.16</u>	<u>Investment research</u>

<u>7.17</u>	<u>Investment research recommendations: required disclosures</u>
-------------	--

...

- 1.6.4 R Table: Corporate finance business.
This table belongs to COB 1.6.3R.

COB	Subject
...	...
7.16	...
<u>7.17</u>	<u>Investment research recommendations: required disclosures</u>

...

- 1.6.7 R Table: Provisions applied to oil market activity and energy market activity.
This table belongs to COB 1.6.6R.

COB	Subject
...	...
7.15	...
<u>7.16</u>	<u>Investment research</u>
<u>7.17</u>	<u>Investment research recommendations: required disclosures</u>

...

After COB 7.16 insert the following new section, COB 7.17:

- 7.17 Investment research recommendations: required disclosures
Application
- 7.17.1 R (1) This section applies to a *firm* that prepares or disseminates *research recommendations*.
- (2) This section does not apply to the extent that the Investment Recommendation (Media) Regulations 2005 apply to a *firm*.
- (3) If a *firm* is a *media firm* subject to equivalent appropriate regulation only COB 7.17.2G, COB 7.17.3G, COB 7.17.5R, COB 7.17.16R and COB 7.17.17R apply. [Note: Articles 2(4), 3(4), 5(5) 2003/125/EC]

7.17.2 G Appropriate regulatory or self-regulatory arrangements are sufficient to meet the condition in *COB* 7.17.1R(2). Examples include those listed in regulation 3(5) of the Investment Recommendation (Media) Regulations 2005, that is the Code of Practice issued by the Press Complaints Commission, the Producers' Guidelines issued by the British Broadcasting Corporation, and any code published by the Office of Communications pursuant to section 324 of the Communications Act 2003.

Purpose

7.17.3 G The purpose of this section is to implement the provisions of the *Market Abuse Directive* about the disclosures to be made in and about *research recommendations*.

Use of Chinese walls

7.17.4 G The following obligations to disclose information do not require those producing *research recommendations* to breach effective information barriers put in place to prevent and avoid conflicts of interest. [**Note:** Recital 7 2003/125/EC]

Fair presentation and disclosure

7.17.5 R A *firm* must take reasonable care:

- (1) to ensure that a *research recommendation* produced or disseminated by it is fairly presented; and
- (2) to disclose its interests or indicate conflicts of interest concerning *relevant investments*. [**Note:** Article 6(5) *Market Abuse Directive*]

Identity of producers of recommendations

- 7.17.6 R
- (1) A *firm* must, in a *research recommendation* produced by it:
 - (a) disclose clearly and prominently the identity of the person responsible for its production, and in particular:
 - (i) the name and job title of the individual who prepared the *research recommendation*; and
 - (ii) the name of the *firm*; and
 - (b) include the relevant status disclosure specified in *GEN* 4 Ann 1R.
 - (2) The requirements in (1) may be met for non-written *research recommendations* by referring to a place where the disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the *firm*. [**Note:** Article 2 2003/125/EC]

General standard for fair presentation of recommendations

- 7.17.7 R
- (1) A *firm* must take reasonable care to ensure that:
 - (a) facts in a *research recommendation* are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
 - (b) its sources for a *research recommendation* are reliable or if there is any doubt as to whether a source is reliable, this is clearly indicated;

- (c) all projections, forecasts and price targets in a *research recommendation* are clearly labelled as such and the material assumptions made in producing or using them are indicated; and
 - (d) the substance of its *research recommendations* can be substantiated as reasonable, upon request by the *FSA*.
- (2) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they would be disproportionate.
 - (3) A *firm* must make and retain sufficient records to disclose the basis of the substantiation required in (1)(d). [**Note:** Article 3 2003/125/EC]

Additional obligations in relation to fair presentation of recommendations

- 7.17.8 R (1) In addition a *firm* must take reasonable care to ensure that, in a *research recommendation*, at least:
- (a) all substantially material sources are indicated, including, if appropriate, the *issuer*, and in particular the *research recommendation* indicates whether the *research recommendation* has been disclosed to that *issuer* and amended following this disclosure before its dissemination;
 - (b) any basis of valuation or methodology used to evaluate a *security*, a *derivative* or an *issuer*, or to set a price target for a *security* or a *derivative*, is adequately summarised;
 - (c) the meaning of any recommendation made, such as "buy", "sell" or "hold", which may include the time horizon of the *security* or *derivative* to which the *research recommendation* relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;
 - (d) reference is made to the planned frequency, if any, of updates of the *research recommendation* and to any major changes in the coverage policy previously announced;
 - (e) the date at which the *research recommendation* was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any *security* or *derivative* price mentioned; and
 - (f) if the substance of a *research recommendation* differs from the substance of an earlier *research recommendation*, concerning the same *security*, *derivative* or *issuer* issued during the 12-month period immediately preceding its release, this change and the date of the earlier *research recommendation* are indicated clearly and prominently.
- (2) If the requirements in (1)(a), (b) or (c) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the public (such as a hyperlink to that information on an appropriate internet site of the *firm*) provided that there has been no change in the methodology or basis of valuation used.

- (3) In the case of a non-written *research recommendations*, the requirements of (1) do not apply to the extent that they would be disproportionate. [Note: Article 4 2003/125/EC]

7.17.9 G The disclosures required under (1)(e) and (f) may, if the *firm* so chooses, be made by graphical means (for example by use of a line graph).

General standard for disclosure of interests and conflicts of interest

7.17.10 R (1) A *firm* must disclose, in a *research recommendation*:

- (a) all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the *research recommendation*, in particular a significant financial interest in any *relevant investment* which is the subject of the *research recommendation*, or a significant conflict of interest with respect to a *relevant issuer*; and
 - (b) relationships and circumstances, of the sort referred to in (a), of each legal or natural person working for the *firm* who was involved in preparing the substance of the *research recommendation*, including, in particular, for a *firm* which is an *investment firm*, disclosure of whether his remuneration is tied to investment banking transactions performed by the *firm* or any *affiliated company*.
- (2) If the *firm* is a legal person, the information to be disclosed in accordance with (1) must at least include the following:
- (a) any interests or conflicts of interest of the *firm* or of an *affiliated company* that are accessible, or reasonably expected to be accessible, to the persons involved in the preparation of the substance of the *research recommendation*; and
 - (b) any interests or conflicts of interest of the *firm* or of *affiliated companies* known to *persons* who, although not involved in the preparation of the substance of the *research recommendation*, had or could reasonably be expected to have access to the substance of the *research recommendation* prior to its dissemination, other than *persons* whose only access to the *research recommendation* is to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under *COB 7.17*.
- (3) If the disclosures required under (1) and (2) would be disproportionate in relation to the length of the *research recommendation* distributed, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosures can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*).
- (4) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they are disproportionate. [Note: Article 5 2003/125/EC]

Additional obligations for producers of research recommendations in relation to disclosure of interests or conflicts of interest

- 7.17.11 R (1) A *research recommendation* produced by a *firm* must disclose clearly and prominently the following information on its interests and conflicts of interest:
- (a) major shareholdings that exist between it or any *affiliated company* on the one hand and the *relevant issuer* on the other hand, including at least:
 - (i) shareholdings exceeding 5 % of the total issued share capital in the *relevant issuer* held by the *firm* or any *affiliated company*, or
 - (ii) shareholdings exceeding 5 % of the total issued share capital of the *firm* or any *affiliated company* held by the *relevant issuer*;
 - (b) any other financial interests held by the *firm* or any *affiliated company* in relation to the *relevant issuer* which are significant in relation to the *research recommendation*;
 - (c) if applicable, a statement that the *firm* or any *affiliated company* is a *market maker* or liquidity provider in the *securities* of the *relevant issuer* or in any related *derivatives*;
 - (d) if applicable, a statement that the *firm* or any *affiliated company* has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of *securities* of the *relevant issuer* or in any related *derivatives*;
 - (e) if applicable, a statement that the *firm* or any *affiliated company* is party to any other agreement with the *relevant issuer* relating to the provision of investment banking services, provided that:
 - (i) this would not entail the disclosure of any confidential commercial information; and
 - (ii) the agreement has been in effect over the previous 12 months or has given rise during the same period to a payment or to the promise of payment; and
 - (f) if applicable, a statement that the *firm* or any *affiliated company* is party to an agreement with the *relevant issuer* relating to the production of the *research recommendation*.
- (2) A *firm* must disclose, in general terms, in the *research recommendation* the effective organisational and administrative arrangements set up within the *firm* for the prevention and avoidance of conflicts of interest with respect to *research recommendations*, including information barriers.
- (3) In the case of an *investment firm* or a *credit institution*, if a legal or natural person working for the *firm* who is involved in the preparation of a *research recommendation*, receives or purchases *shares* of the *relevant issuer* prior to a public offering of those *shares*, the price at which the *shares* were acquired and the date of acquisition must also be disclosed in the *research recommendation*.
- (4) A *firm*, which is an *investment firm* or a *credit institution*, must publish the following information on a quarterly basis, and must disclose it in its *research recommendations*:

- (a) the proportion of all *research recommendations* published during the relevant quarter that are "buy", "hold", "sell" or equivalent terms; and
 - (b) the proportion of *relevant investments* in each of these categories, issued by *issuers* to which the *firm* supplied material investment banking services during the previous 12 months.
- (5) If the requirements under (1) to (4) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosure can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*, or, if relevant, to the document published under *COB 7.16.5R(2)*).
- (6) In the case of non-written *research recommendations*, the requirements of (1) do not apply to the extent that they are disproportionate. [**Note:** Article 6 2003/125/EC]

7.17.12 G Nothing in *COB 7.17.11R(1)(a)* prevents a *firm* from choosing to disclose significant shareholdings above a lower threshold (for example, 1%) than is required by *COB 7.17.11R(1)(a)*.

7.17.13 G *COB 7.17.11R(1)(a)* and (b) only requires a *firm* to aggregate its shareholdings with those of *affiliated companies* if they act in concert in relation to those shareholdings.

7.17.14 G In relation to companies limited by shares and incorporated in Great Britain, the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the Companies Act 1985.

7.17.15 G The *FSA* considers that it is important for the proportions published in compliance with *COB 7.17.11R(4)* to be consistent and meaningful to the recipients of the *research recommendations*. Accordingly for non-equity material, the relevant categories should be meaningful to the recipients in terms of the course of action being recommended.

Identity of disseminators of recommendations

7.17.16 R If a *firm* disseminates a *research recommendation* produced by a third party, the *research recommendation* must identify the *firm* clearly and prominently. [**Note:** Article 7 2003/125/EC]

General standard for dissemination of third party recommendations

7.17.17 R (1) If a *research recommendation* produced by a third party is substantially altered before dissemination by a *firm*:

- (a) the disseminated material must clearly describe that alteration in detail; and
- (b) if the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in *COB 7.17.6R* to *COB 7.17.12G* on producers must be met by the *firm*, to the extent of the substantial alteration.

- (2) A *firm* which disseminates a substantially altered *research recommendation* must have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the *research recommendation*, the *research recommendation* itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.
- (3) If a *firm* disseminates a summary of a *research recommendation* produced by a third party, it must:
 - (a) ensure that the summary is fair, clear and not misleading;
 - (b) identify the source *research recommendation*; and
 - (c) identify where (to the extent that they are publicly available) the third party's disclosures relating to the source *research recommendation* can be directly and easily accessed by the public.
- (4) Paragraphs (1) and (2) do not apply to news reporting on *research recommendations* produced by a third party where the substance of the *research recommendation* is not altered. [Note: Article 8 2003/125/EC]

Additional obligations for investment firms and credit institutions disseminating third party recommendations

7.17.18 R If a *firm*, which is an *investment firm* or a *credit institution*, disseminates a *research recommendation* produced by a third party:

- (1) the relevant status disclosure specified in *GEN 4 Ann 1R* for the *firm* must be clearly and prominently indicated on the disseminated material;
- (2) if the producer of the *research recommendation* has not already disseminated it, the requirements in *COB 7.17.11R* must be met by the *firm* as if it had produced the *research recommendation* itself; and
- (3) if the *firm* has substantially altered the *research recommendation*, the requirements laid down in *COB 7.17.5R* to *COB 7.17.11R* must be met by the *firm* as if it had produced the *research recommendation* itself. [Note: Article 9 2003/125/EC]

In Schedule 1, insert the following:

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COB 7.17.7R(3)</u>	<u>Substantiation of a <i>research recommendation</i></u>	<u>The basis of substantiation of a <i>research recommendation</i></u>	<u>When producing the <i>research recommendation</i></u>	

Annex E

Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

15.1.1 G This chapter applies to every *firm* except that only SUP 15.10 applies to an ICVC or a UCITS qualifier.

...

15.2.2 G This chapter sets out:

...

(3) ... those regulators; ~~and~~

(4) ... not only accurate but also complete; and

(5) material (in SUP 15.10 (Notification of suspicious transactions (market abuse))) to implement the provisions of the *Market Abuse Directive* for the reporting of transactions about which there is reasonable suspicion of *market abuse*.

...

After SUP 15.9 insert the following new section, SUP 15.10:

15.10 Reporting suspicious transactions (market abuse)

Application: where

15.10.1 R This section applies in relation to activities carried on from an establishment maintained by the *firm* or its *appointed representative* in the *United Kingdom*.
[Note: Article 7 2004/72/EC]

Notification of suspicious transactions: general

15.10.2 R A *firm* which *arranges* or *executes* a transaction with or for a *client* in a *qualifying investment* admitted to trading on a *prescribed market* and which has reasonable grounds to suspect that the transaction might constitute *market abuse* must notify the *FSA* without delay. [Note: Article 6(9) *Market Abuse Directive*]

Notification of suspicious transactions: investment firms and credit institutions

15.10.3 R A *firm*, that is an *investment firm* or a *credit institution*, must decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves *market abuse*, taking into account the elements constituting *market abuse*.
[Note: Articles 1(3) and 7 2004/72/EC]

- 15.10.4 G (1) Notification of suspicious transactions to the *FSA* requires sufficient indications (which may not be apparent until after the transaction has taken place) that the transaction might constitute *market abuse*. In particular a *firm* will need to be able to explain the basis for its suspicion when notifying the *FSA* (see *SUP* 15.10.6 R). Certain transactions by themselves may seem completely devoid of anything suspicious, but might deliver such indications of possible *market abuse*, when seen in perspective with other transactions, certain behaviour or other information (though *firms* are not expected to breach effective information barriers put in place to prevent and avoid conflicts of interest so as actively to seek to detect suspicious transactions). [Note: Recital 9 2004/72/EC]
- (2) Assistance in identifying the elements constituting *market abuse* may be derived from the *Code of Market Conduct (MAR 1)*, and some example indications of *market abuse* are set out in *SUP* 15 Ann 5 G. A fuller set of example indications is published by the Committee of European Securities Regulators (CESR).

Timeframe for notification: investment firms and credit institutions

- 15.10.5 R If an *investment firm* or a *credit institution* becomes aware of a fact or information that gives reasonable ground for suspicion concerning a transaction, it must make its notification under this section without delay. [Note: Article 8 2004/72/EC]

Content of notification: investment firms and credit institutions

- 15.10.6 R (1) If an *investment firm* or a *credit institution* is obliged to make a notification to the *FSA* under this section, it must transmit to the *FSA* the following information:
- (a) a description of the transaction, including the type of order (such as limit order, market order or other characteristics of the order) and the type of trading market (such as block trade); and
 - (b) the reasons for suspicion that the transaction might constitute *market abuse*.
- (2) In addition the following information must be provided to the *FSA* as soon as it becomes available:
- (a) the means for identification of the *persons* on behalf of whom the transaction has been carried out, and of other *persons* involved in the relevant transaction;
 - (b) the capacity in which the *firm* operates (such as for own account or on behalf of third parties); and
 - (c) any other information which may have significance in reviewing the suspicious transaction. [Note: Article 9 2004/72/EC]

Means of notification: investment firms and credit institutions

- 15.10.7 R An *investment firm* or a *credit institution* making a notification to the *FSA* under this section may do so:

- (1) by mail to:
Market Conduct Team
25 The North Colonnade
Canary Wharf
London E14 5HS; or
- (2) by electronic mail to market.abuse@fsa.gov.uk;
- (3) by facsimile to the Market Conduct Team on 020 7066 1099; or
- (4) by telephone to the market abuse helpline 020 7066 4900. [**Note:** Article 10 2004/72/EC]

- 15.10.8 G (1) If a notification is made by telephone, the *FSA* may subsequently request confirmation of the notification in writing. [**Note:** Article 10 2004/72/EC]
- (2) When making a notification in writing it may be convenient to use the form for suspicious transaction reports provided on the *FSA*'s website. This form follows the common standard approved by CESR.

Liability and professional secrecy: investment firms and credit institutions

- 15.10.9 R (1) An *investment firm* or a *credit institution* which notifies the *FSA* under this section must not inform any other *person*, in particular the *persons* on behalf of whom the transaction has been carried out or parties related to those persons, of this notification, except in accordance with an obligation imposed by or under statute.
- (2) Notwithstanding any other provision of the *Handbook* a notification in good faith under this section to the *FSA* does not constitute a breach of any restriction on disclosure of information imposed by the *Handbook*. [**Note:** Article 11 2004/72/EC]

Note: Section 131A of the *Act* sets out additional protections from liability for a *person* who makes a notification to the *FSA* under this section (or who passes the relevant information to someone designated by his employer to do so).

SUP 15 Ann 1R: Application of SUP 15 to incoming EEA firms and incoming Treaty firms

1 ...

2 Table: Application of SUP 15 to an incoming EEA firm or an incoming Treaty firm which does not have a top-up permission

Applicable sections	Application
...	
<i>SUP</i> 15.8
<u><i>SUP</i> 15.10 Reporting suspicious transactions (market abuse)</u>	<u>Applies in relation to activities carried on from an establishment maintained by the firm or its appointed representative in the United Kingdom. [Note: Article 7 2004/72/EC]</u>

...

After SUP 15 Annex 4 R, insert:

1 G SUP 15 Ann 5G

G

1 Indications of Possible Suspicious Transactions

1. The following examples of indications are intended to be a starting point for consideration of whether a transaction is suspicious. They are neither conclusive nor comprehensive.

Possible Signals of Insider Dealing

2. A client opens an account and immediately gives an order to conduct a significant transaction or, in the case of a wholesale client, an unexpectedly large or unusual order, in a particular security – especially if the client is insistent that the order is carried out very urgently or must be conducted before a particular time specified by the client.
3. A transaction is significantly out of line with the client's previous investment behaviour (e.g. type of security; amount invested; size of order; time security held).
4. A client specifically requests immediate execution of an order regardless of the price at which the order would be executed (assuming more than a mere placing of 'at market' order by the client).
5. There is unusual trading in the shares of a company before the announcement of price sensitive information relating to the company.
6. An employee's own account transaction is timed just before clients' transactions and related orders in the same financial instrument.

Possible signals of Market Manipulation

7. An order will, because of its size in relation to the market in that security, clearly have a significant impact on the supply of or demand for or the price or value of the security, especially an order of this kind to be executed near to a reference point during the trading day – e.g. near the close.
8. A transaction appears to be seeking to modify the valuation of a position while not decreasing/increasing the size of that position.
9. A transaction appears to be seeking to bypass the trading safeguards of the market (e.g. as regards volume limits; bid/offer spread parameters; etc).

Annex F

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook

In this Annex, underlining indicates new text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

Delete the provisions REC 2.12.3D and REC 2.12.13G in their entirety.

2.12.3 D [deleted]

...

2.12.13 G [deleted]

ADDENDUM

MARKET ABUSE DIRECTIVE INSTRUMENT 2005

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

Annex C of this instrument is amended as follows:

MAR 2 Annex 1R

- 1 R MAR 2 Ann 1R
R
1 List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2))

Any specified <u>prescribed</u> market which is not a <i>regulated market</i>
Any <i>recognised overseas investment exchange</i>
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

Addendum
18 August 2005