

- 7A.2.3 **R** ■ CASS 7A.2.2R (4) does not apply so long as:
- (1) the *firm* is taking steps, in consultation with the *FSA*, to establish those records; and
 - (2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

Pooling and distribution

- 7A.2.4 **R** If a *primary pooling event* occurs:
- (1) *client money* held in each *client money* account of the *firm* is treated as pooled; and
 - (2) the *firm* must distribute that *client money* in accordance with ■ CASS 7.7.2 R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with ■ CASS 7A.2.5 R.

- 7A.2.5 **R**
- (1) When, in respect of a *client*, there is a positive individual *client* balance and a negative *client equity balance*, the credit must be offset against the debit reducing the individual *client* balance for that *client*.
 - (2) When, in respect of a *client*, there is a negative individual *client* balance and a positive *client equity balance*, the credit must be offset against the debit reducing the *client equity balance* for that *client*.

- 7A.2.6 **G** A *client's* main claim is for the return of *client money* held in a *client bank account*. A *client* may be able to claim for any *shortfall* against *money* held in a *firm's* own account. For that claim, the *client* will be an unsecured creditor of the *firm*.

Client money received after the failure of the firm

- 7A.2.7 **R** *Client money* received by the *firm* after a *primary pooling event* must not be pooled with *client money* held in any *client money* account operated by the *firm* at the time of the *primary pooling event*. It must be placed in a *client bank account* that has been opened after that event and must be handled in accordance with the *client money rules*, and returned to the relevant *client* without delay, except to the extent that:
- (1) it is *client money* relating to a transaction that has not settled at the time of the *primary pooling event*; or
 - (2) it is *client money* relating to a *client*, for whom the *client money* entitlement, calculated in accordance with ■ CASS 7A.2.5 R, shows that *money* is due from the *client* to the *firm* at the time of the *primary pooling event*.

- 7A.2.8** **G** *Client money* received after the *primary pooling event* relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:
- (1) an equity transaction with a trade date before the date of the *primary pooling event* and a settlement date after the date of the *primary pooling event*; or
 - (2) a *contingent liability investment* that is 'open' at the time of the *primary pooling event* and is due to settle after the *primary pooling event*.
- 7A.2.9** **R** If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:
- (1) pay the full sum into the separate *client bank account* opened in accordance with **■ CASS 7A.2.7 R**; and
 - (2) pay the *money* that is not *client money* out of that *client bank account* into a *firm's* own bank account within one *business day* of the *day* on which the *firm* would normally expect the remittance to be cleared.
- 7A.2.10** **G** Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.
- 7A.2.11** **R** If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.

7A.3 Secondary pooling events

Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events

7A.3.1 **R** A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under ■ CASS 7.4.1 R (1) to ■ CASS 7.4.1 R (3) (Depositing client money) or ■ CASS 7.5.2 R (Transfer of client money to a third party).

7A.3.2 **R** ■ CASS 7A.3.6 R to ■ CASS 7A.3.18 R do not apply if, on the *failure* of the third party, the *firm* repays to its *clients* or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party.

7A.3.3 **G** When *client money* is transferred to a third party, a *firm* continues to owe fiduciary duties to the *client*. Whether a *firm* is liable for a *shortfall* in *client money* caused by a third party failure will depend on whether it has complied with its duty of care as agent or trustee.

Failure of a bank

7A.3.4 **G** When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with ■ CASS 7A.3.6 R. The *firm* would be expected to reflect the *shortfall* that arises at the *failed* bank in its records of the entitlement of *clients* and of *money* held with third parties.

7A.3.5 **G** The *client money distribution rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.

Failure of a bank: pooling

7A.3.6

R

If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, then:

- (1) in relation to every *general client bank account* of the *firm*, the provisions of ■ CASS 7A.3.8 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;
- (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.10 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;
- (3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.11 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply;
- (4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts*, is not pooled with any other *client money*; and
- (5) any *money* held in a *designated client fund account*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money*.

7A.3.7

R

If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* or *designated client fund accounts* are held, then:

- (1) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.10 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply; and
- (2) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of ■ CASS 7A.3.11 R, ■ CASS 7A.3.13 R and ■ CASS 7A.3.14 R will apply.

7A.3.8

R

Money held in each *general client bank account* and *client transaction account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or *client transaction account* of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;

- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.9 **G** The term "which should have been held" is a reference to the *failed* bank's failure to hold the *client money* at the time of the pooling event.

7A.3.10 **R** For each *client* with a *designated client bank account* held at the *failed* bank:

- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each of the relevant *clients* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

7A.3.11 **R** Money held in each *designated client fund account* with the *failed* bank must be treated as pooled with any other *designated client fund accounts* of the *firm* which contain part of the same designated fund and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client fund accounts* that has arisen as a result of the *failure*, must be borne by each of the *clients* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, in accordance with (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;

- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to
 - CASS 7.6.2 R (Records and accounts), and where relevant
 - SYSC 4.1.1 R (General organisational requirements) and
 - SYSC 6.1.1 R (Compliance).

7A.3.12 **R** A *client* whose *money* was held, or which should have been held, in a *designated client bank account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* or *client transaction account* of the *firm*.

Client money received after the failure of a bank

7A.3.13 **R** *Client money* received by the *firm* after the failure of a bank, that would otherwise have been paid into a *client bank account* at that bank:

- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or
 - (b) returned to the *client* as soon as possible.

7A.3.14 **R** If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
- (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

7A.3.15 **G** Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

Failure of an intermediate broker, settlement agent or OTC counterparty: Pooling

- 7A.3.16 **R** If a *secondary pooling event* occurs as a result of the *failure* of an *intermediate broker, settlement agent* or *OTC counterparty*, then in relation to every *general client bank account* and *client transaction account* of the *firm*, the provisions of ■ CASS 7A.3.17 R and ■ CASS 7A.3.18 R will apply.
- 7A.3.17 **R** Money held in each *general client bank account* and *client transaction account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or a *client transaction account* of the *firm*, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed intermediate broker, settlement agent* or *OTC counterparty* until the *client* is repaid; and
 - (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to ■ CASS 7.6.2 R (Records and accounts), and where relevant ■ SYSC 4.1.1 R (General organisational requirements) and ■ SYSC 6.1.1 R (Compliance).

Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty

- 7A.3.18 **R** *Client money* received by the *firm* after the *failure* of an *intermediate broker, settlement agent* or *OTC counterparty*, that would otherwise have been paid into a *client transaction account* at that *intermediate broker, settlement agent* or *OTC counterparty*:
- (1) must not be transferred to the *failed* third party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed intermediate broker, settlement agent* or *OTC counterparty*; and
 - (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:

- (a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or
- (b) returned to the *client* as soon as possible.

Notification to the FSA: failure of a bank, intermediate broker, settlement agent or OTC counterparty

7A.3.19

R

On the *failure* of a third party with which *money* is held, a *firm* must notify the *FSA*:

- (1) as soon as it becomes aware of the *failure* of any bank, *intermediate broker, settlement agent, OTC counterparty* or other entity with which it has placed, or to which it has passed, *client money*; and
- (2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

7A

Client Assets

Chapter 8

Mandates

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LME-003086



8.1 Application

8.1.1 **R** This chapter applies to a *firm* (including in its capacity as trustee under **■** CASS 5.4) in respect of any written authority from a *client* under which the *firm* may control a *client's* assets or liabilities in the course of, or in connection with, the *firm's*:

- (1) *designated investment business* (including *MiFID business*); and
- (2) *insurance mediation activity*, except where it relates to a *reinsurance contract*.

8.1.2 **G** Mandates or similar authorities for the purpose of this chapter include a *firm's* authority over a *client's* safe custody account, for example for stock lending purposes, a *firm's* authority over a *client's* bank or building society account including direct debits in favour of the *firm*, and a *firm* holding a *client's* credit card details.

8.1.3 **G** *Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken (see **■** CASS 1.3).

Purpose

8.1.4 **G** The *mandate rules* apply to those *firms* that control, rather than hold, *clients'* assets or are able to create liabilities in the name of a *client*. These *rules* seek to ensure that *firms* establish and maintain records and *internal controls* to prevent the misuse of the authority granted by the *client*.

General

8.1.5 **R** A *firm* that holds authorities of the sort referred to in this chapter, must establish and maintain adequate records and *internal controls* in respect of its use of the mandates, which must include:

- (1) an up-to-date list of the authorities and any conditions placed by the *client* or the *firm's* management on the use of them;

- (2) a record of all transactions entered into using the authority and *internal controls* to ensure that they are within the scope of authority of the *person* and the *firm* entering into the transaction;
- (3) the details of the procedures and authorities for the giving and receiving of instructions under the authority; and
- (4) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.

Client Assets

Chapter 9

Prime brokerage

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1



LME-003090



9.1 Application

9.1.1

R

This chapter applies to a *firm*:

- (1) to which ■ CASS 6 (Custody rules) applies; and
- (2) which is a *prime brokerage firm*.

9.2 Prime broker's daily report to clients

9.2.1

R

- (1) A *firm* must make available to each of its *clients* to whom it provides *prime brokerage services* a statement in a *durable medium*:
 - (a) showing the value at the close of each *business day* of the items in (3); and
 - (b) detailing any other matters which that *firm* considers are necessary to ensure that a *client* has up-to-date and accurate information about the amount of *client money* and the value of *safe custody assets* held by that *firm* for it.
- (2) The statement must be made available to those *clients* not later than the close of the next *business day* to which it relates.
- (3) The statement must include:
 - (a) the total value of *safe custody assets* and the total amount of *client money* held by that *prime brokerage firm* for a *client*;
 - (b) the cash value of each of the following:
 - (i) Cash loans made to that *client* and accrued interest;
 - (ii) *securities* to be redelivered by that *client* under open short positions entered into on behalf of that *client*;
 - (iii) current settlement amount to be paid by that *client* under any *futures* contracts;
 - (iv) short sale cash proceeds held by the *firm* in respect of short positions entered into on behalf of that *client*;
 - (v) cash margin held by the *firm* in respect of open *futures* contracts entered into on behalf of that *client*;
 - (vi) mark-to-market close-out exposure of any *OTC* transaction entered into on behalf of that *client* secured by *safe custody assets* or *client money*;
 - (vii) total secured obligations of that *client* against the *prime brokerage firm*; and

(viii) all other *safe custody assets* held for that *client*.

- (c) total collateral held by the *firm* in respect of secured transactions entered into under a *prime brokerage agreement*, including where the *firm* has exercised a right of use in respect of that *client's safe custody assets*;
- (d) the location of all of a *client's safe custody assets*, including assets held with a sub-custodian; and
- (e) a list of all the institutions at which the *firm* holds or may hold *client money*, including money held in *client bank accounts* and *client transaction accounts*.

9.3 Prime brokerage agreement disclosure annex

9.3.1

R

- (1) A *firm* must ensure that every *prime brokerage agreement* that includes its right to use *safe custody assets* for its own account includes a disclosure annex.
- (2) A *firm* must ensure that the disclosure annex sets out a summary of the key provisions within the *prime brokerage agreement* permitting the use of *safe custody assets*, including:
 - (a) the contractual limit, if any, on the *safe custody assets* which a *prime brokerage firm* is permitted to use;
 - (b) all related contractual definitions upon which that limit is based;
 - (c) a list of numbered references to the provisions within that *prime brokerage agreement* which permit the *firm* to use the *safe custody assets*; and
 - (d) a statement of the key risks to that *client's safe custody assets* if they are used by the *firm*, including but not limited to the risks to the *safe custody assets* on the *failure* of the *firm*.
- (3) A *firm* must ensure that it sends to the *client* in question an updated disclosure annex if the terms of the *prime brokerage agreement* are amended after completion of that agreement such that the original disclosure annex no longer accurately records the key provisions of the amended agreement.

9.3.2

G

- (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *client's* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *safe custody assets* for which it is responsible.
- (2) A *prime brokerage firm* should not enter into "right to use arrangements" for a *client's safe custody assets* unless:
 - (a) in the case of a CASS *small firm*, the person in that *firm* to whom the responsibilities set out in **■ CASS 1A.3.1 R** have been allocated; or
 - (b) in the case of any other *firm*, the *person* who carries out the CASS *operational oversight function*; and

- (c) those of that *firm's* managers who are responsible for those *safe custody assets*;

are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10* which include:

- (i) the daily reporting obligation in ■ CASS 9.2.1 R; and
- (ii) the record-keeping obligations in ■ CASS 6.5.

Chapter 10

[Not yet in force]



[Chapter Not Yet In Force]

Client Assets

CASS TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	CASS 2 to CASS 4	R	[deleted]		
2	Every <i>rule</i> in the <i>Handbook</i>	R	Expired		
		G	Expired		
2A		G	[deleted]		
3	CASS 5.1 to CASS 5.6	R	Apply in relation to <i>money</i> (and where appropriate <i>designated investments</i>) held by a <i>firm</i> on 14 January 2005 (being <i>money</i> or <i>designated investments</i> to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such <i>money</i> (or <i>designated investments</i>) relate to business carried on before 14 January 2005 and which would, if conducted on or after 14 January 2005, be an <i>insurance mediation activity</i> .	Indefinitely	14 January 2005
4	CASS 5.1.5A	R	A <i>firm</i> will satisfy the requirements of this paragraph, and <i>money</i> is <i>client money</i> , notwithstanding that an <i>insurance undertaking</i> which is the <i>firm's</i> counterparty to an agreement required by CASS 5.1.5A R has not given written consent to its interests under the trusts (or in Scotland agency) in CASS 5.3.2 R or CASS 5.4.7 R being subordinated to	14 January 2005 for 6 months	14 January 2005

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			the interests of the <i>firm's</i> other <i>clients</i> .		
5	CASS 5.3.2 R	R	The interests of a <i>firm's clients</i> which are <i>insurance undertakings</i> will rank equally with the interests of the <i>firm's</i> other <i>clients</i> .	14 January 2005 for 6 months	14 January 2005
6	CASS 5.4.7 R	R	A <i>firm</i> will satisfy the requirements of this rule notwithstanding that the deed referred to in CASS 5.8.3 R provides that <i>money</i> (and if appropriate <i>designated investments</i>) are held on terms which provide for the interests of the <i>firm's clients</i> which are <i>insurance undertakings</i> to rank equally with the interests of the <i>firm's</i> other <i>clients</i> .	14 January 2005 for 6 months	14 January 2005
7	CASS 5.5.65 R	R	A <i>firm</i> may for the purpose of calculating its <i>client money</i> resource disregard any <i>money</i> which the <i>firm</i> had before 14 January 2005 transferred to an intermediate broker in circumstances analogous to those described in CASS 5.5.84 R.	14 January 2005 for 12 months	14 January 2005
8	CASS 6.3.5 R		[deleted]		
8A	CASS 6.3.5 R to CASS 6.3.8 R	R	The <i>rules</i> listed in column (2) do not apply in relation to agreements executed before 1 April 2012.	1 April 2012 until 30 September 2012	1 April 2012
		G	Notwithstanding the operation of CASS TP 1.1R(8A), a <i>firm</i> should as soon as reasonably practicable modify its agreement with that third party so as to meet the requirements of CASS 6.3.5 R to CASS 6.3.8 R.		
9	CASS 6.1.6 R (2) and CASS 6.1.6A R		[deleted]		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
10	CASS 7.2.3 R (2) and CASS 7.2.3A R		[deleted]		

Client Assets

Schedule 1 Record keeping requirements

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 1A.3.3 R	Allocation of the <i>CASS</i> oversight responsibilities in CASS 1A.3.1 R or of the <i>CASS operational oversight function</i> , as relevant	The <i>person</i> to whom the <i>CASS</i> oversight responsibilities have been allocated, subject to the provisions of CASS 1A.3.3 R, or to whom the <i>CASS operational oversight function</i> has been allocated in accordance with CASS 1A.3.1A R	Upon allocation	5 years (from the date the record was made)
				[deleted]
				[deleted]
				[deleted]
				[deleted]
				[deleted]
				[deleted]
				[deleted]
CASS 5.1.1 R (4)	Record of election of compliance with specified <i>CASS</i> rules	Record of compliance with specified <i>CASS</i> rules	Not specified	Not specified
CASS 5.2.3 R (2)	Holding <i>client money</i> as agent	The terms of the agreement	Not specified	Six years
CASS 5.4.4 R (2)	Adequacy of systems and controls	Written confirmation of adequate systems and controls from its auditor	Not specified	Not specified

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 5.5.84 R	<i>Client money</i> calculation	Whether the <i>firm</i> calculates its <i>client money</i> requirements according to CASS 5.5.84 R or CASS 5.5.84 R	Not specified	Not specified
CASS 5.5.84 R	Transactions and commitments for <i>client money</i>	Explanation of the <i>firm's</i> transactions and commitments for <i>client money</i>	Not specified	Three years
CASS 5.8.3 R (1)	Client's title to a <i>contract of insurance</i>	Identity of such <i>documents</i> and/or property and dates received and delivered to <i>client</i>	Not specified	Three years
CASS 6.1.16C R (3)	<i>A personal investment firm</i> that temporarily holds a <i>client's designated investments</i> which is not in the course of <i>MiFID business</i>	Client details and any actions taken by the <i>firm</i>		5 years (from the making of the record)
CASS 6.1.16K R	Client custody assets which the <i>firm</i> has arranged for another to hold or receive	Full details	On receipt	5 years
				[deleted]
CASS 6.3.1R (4)	Appropriateness of a <i>firm's</i> selection of a third party	Grounds upon which a <i>firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>safe custody assets</i> belonging to <i>clients</i>	Date of the selection	5 years (from the date the <i>firm</i> ceases to use the third party to hold <i>safe custody assets</i> belonging to <i>clients</i>)
CASS 6.4.3 R	Details of <i>clients</i> and <i>safe custody assets</i> used for the <i>firm's</i> own account or the account of another <i>client</i> of the <i>firm</i>	Details of the <i>client</i> on whose instructions the use of the <i>safe custody assets</i> has been effected and the number of <i>safe custody assets</i> used belonging to each <i>client</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 6.5.1 R	<i>Safe custody assets</i> held for each <i>client</i> and the <i>firm's</i> own <i>applicable assets</i>	All that is necessary to enable the <i>firm</i> to distinguish <i>safe custody assets</i> held for one <i>client</i> from <i>safe custody assets</i> held for any other <i>client</i> , and from the <i>firm's</i> own <i>applicable assets</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 6.5.2 R	<i>Safe custody assets</i> held for <i>clients</i>	Accurate records which ensure their correspondence to the <i>safe cus-</i>	Maintain up to date records	5 years (from the date the record was made)

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		<i>today assets</i> held for clients		
CASS 6.5.2A R	<i>Client</i> agreements that include a <i>firm's</i> right to use <i>safe custody assets</i> for its own account	A copy of every executed <i>client</i> agreement that includes a <i>firm's</i> right to use <i>safe custody assets</i> for its own account	Maintain up-to-date records	5 years (from the date the record was made)
CASS 7.1.3 R (2)	Record of election to comply with the <i>client money chapter</i>	Record of election to comply with the <i>client money chapter</i> , including the date from which the election is to be effective	Date of the election	5 years (from the date the <i>firm</i> ceases to use the election)
CASS 7.1.15C R	Record of election in relation to CASS 7.1.15C R	Record of election in relation to CASS 7.1.15C R	Date of election	Not specified
CASS 7.4.10 R	Appropriateness of a <i>firm's</i> selection of a third party	Grounds upon which a <i>firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>client money</i>	Date of the selection	5 years (from the <i>firm</i> ceases to use the third party to hold <i>client money</i>)
CASS 7.6.1 R	<i>Client money</i> held for each client and the <i>firm's</i> own money	All that is necessary to enable the <i>firm</i> to distinguish <i>client money</i> held for one <i>client</i> from <i>client money</i> held for any other <i>client</i> , and from the <i>firm's</i> own money	Maintain up to date records	5 years (from the date the record was made)
CASS 7.6.2 R	<i>Client money</i> held for each <i>client</i>	Accurate records to ensure the correspondence between the records and accounts of the entitlement of each <i>client</i> for whom the <i>firm</i> holds <i>client money</i> with the records and accounts of the <i>client money</i> the <i>firm</i> holds in <i>client bank accounts</i> and <i>client transaction accounts</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 7.6.7 R	Internal reconciliation of <i>client money</i> balances	Explanation of method of internal reconciliation of <i>client money</i> balances used by the <i>firm</i> , and if different from the <i>standard method of internal client money reconciliation</i> , an explanation as to how the method used affords equivalent degree of protection to <i>clients</i> ,	Date the <i>firm</i> starts using the method	5 years (from the date the <i>firm</i> ceases to use the method)

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		and how it enables the <i>firm</i> to comply with the <i>client money distribution rules</i>		
CASS 7A.3.8 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7A.3.10 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7A.3.11 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7A.3.17 R (3)	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed intermediate broker, <i>settlement agent</i> or OTC counterparty	Maintain up to date records	Until <i>client</i> is repaid
CASS 8.1.5 R	Adequate records and internal controls in respect of the <i>firm's</i> use of mandates (see CASS 8.1.5R (1) to CASS 8.1.5R (4))	Up to date list of <i>firm's</i> authorities and any conditions regarding the use of authorities, all transactions entered into, details of procedures and authorities for giving and receiving of instructions under authorities, and important <i>client</i> documents held by the <i>firm</i>	Maintain current full details	Not specified

Client Assets

Schedule 2
Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 1A.2.5 R	Election to be treated as a <i>CASS medium firm</i> or a <i>CASS large firm</i>	The fact of that election	The fact of that election	To be made at least one week before the election is intended to take effect
CASS 1A.2.8 R (1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.8 R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.8 R.	The coming into force of CASS 1A.2.8 R	31 January 2011 unless contrary provision is made in CASS 1A.2.8 R.
CASS 1A.2.8 R (4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The coming into force of CASS 1A.2.8 R	31 January 2011 unless contrary provision is made in CASS 1A.2.8 R.
CASS 1A.2.8A R	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in CASS 1A.2.8A R	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in CASS 1A.2.8A R	The need to comply with CASS 1A.2.8A R	31 July 2011 unless contrary provision is made in CASS 1A.2.8A R
CASS 1A.2.9 R (1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9 R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9 R.	The need to comply with CASS 1A.2.9 R (1)-(3)	Within 15 <i>business days</i> from the end of December of the previous calendar year unless contrary provision is made in CASS 1A.2.9 R
CASS 1A.2.9 R (4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The need to comply with CASS 1A.2.9 R (4)	Within 15 <i>business days</i> from the end of December of the previous calendar year un-

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 1A.3.2 R	The <i>person</i> to whom the responsibilities in CASS 1A.3.1 R have been allocated	The name of the <i>person</i>	Upon allocation	less contrary provision is made in CASS 1A.2.9 R Until 31 January 2011 [deleted] [deleted] [deleted] [deleted] [deleted] [deleted] [deleted] [deleted] [deleted] [deleted]
CASS 5.5.84 R	Failure of <i>bank, broker or settlement agent</i>	Full details including whether it intends to make good any <i>shortfall</i> that may have arisen in the amounts involved	As soon as the <i>firm</i> becomes aware	Immediately
CASS 5.5.84 R	Inability to perform the calculation required by CASS 5.5.84 R	Inability to perform the calculation	Inability to perform the calculation	Immediately
CASS 5.5.84 R	Inability to make good any <i>shortfall</i> identified by CASS 5.5.84 R	Inability to make good any <i>shortfall</i> in <i>client money</i>	Inability to make good any <i>shortfall</i>	Immediately
CASS 5.5.84 R	Inability to comply with the requirements in CASS 5.5.84 R; CASS 5.5.84 R; CASS 5.5.84 R; CASS 5.5.84 R; CASS 5.5.84 R	Inability to comply with the requirements of the <i>rules</i> listed	Inability to comply with the requirements of the <i>rules</i> listed	As soon as reasonably practicable
CASS 6.5.13R (1)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.1 R (Records and accounts), CASS 6.5.2 R (Records and ac-	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	counts, including internal reconciliations) or CASS 6.5.6 R (Reconciliations with external records)			
CASS 6.5.13R (2)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.10R (Reconciliation discrepancies)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 7.4.35 R	LME bond arrangements	Issue of an individual letter of credit issued by the <i>firm</i>	Upon issue of an individual letter of credit under an LME bond arrangement	Immediately
CASS 7.6.16 R (1)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.1R (Records and accounts), CASS 7.6.2R (Records and accounts, including internal reconciliations) or CASS 7.6.9R (Reconciliations with external records)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 7.6.16 R (2)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.13R to CASS 7.6.15R (Reconciliation discrepancies)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 7A.3.19 R (1)	Failure of a third party with which <i>money</i> is held - i.e.: bank, <i>intermediate broker</i> , <i>settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i>	Full details	<i>Firm</i> becomes aware of the <i>failure</i> of the entity	As soon as the <i>firm</i> becomes aware
CASS 7A.3.19 R (2)	<i>Failure</i> of a third party with which money is held - i.e.: bank, <i>intermediate broker</i> ,	Intentions regarding making good any <i>shortfall</i> that has arisen or may arise,	<i>Failure</i> of third party with which <i>client money</i> is held	As soon as reasonably practical

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	<i>settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i>	and of the amounts involved		

Client Assets

Schedule 3 Fees and other required payments

There are no requirements for fees or other payments in *CASS*.

Client Assets

Schedule 4 Powers exercised

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *CASS*:

- Section 138 (General rule-making power)
- Section 139(1) (Miscellaneous ancillary matters)
- Section 149 (Evidential provisions)
- Section 156 (General supplementary powers)

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *CASS*:

- Section 157(1) (Guidance)

Client Assets

Schedule 5 Rights of actions for damages

1. The table below sets out the *rules* in *CASS* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention
2. If a 'Yes' appears in the column headed 'For private person?', the *rule* may be actionable by a 'private person' under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A 'Yes' in the column headed 'Removed' indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. The column headed 'For other person?' indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Chapter / Appendix	Section / Annex	Paragraph	Right of action under section 150		
			For private person?	Removed?	For other person?
All <i>rules</i> in <i>CASS</i> with the status letter "E"			No	No	No
All other <i>rule</i> in <i>CASS</i> .			Yes	No	No

Client Assets

Schedule 6 Rules that can be waived

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.



Market Conduct

Market Conduct

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2.6	[Deleted]
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2.8	[Deleted]
2 Annex 1	List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2))
2 Annex 2	[Deleted]
2 Annex 3	[Deleted]

MAR 3	[Deleted]
3.1	[Deleted]
3.2	[Deleted]
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3.5	[Deleted]
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MAR 4	Support of the Takeover Panel's Functions
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Transitional Provisions and Schedules

TP 1	Transitional Provisions
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Market Conduct

Chapter 1

The Code of Market Conduct

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1



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1.1 Application and interpretation

Application and purpose

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See <http://www.fsa.gov.uk/static/pubs/other/esma-guidelines.pdf>]

- 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 **■ DEPP 6**.

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.

1.1.9 [Deleted]

1.1.10 [Deleted]

1.1.11 [Deleted]

1.1.12 [Deleted]

1.1.13 [Deleted]

1.1.14 [Deleted]



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 **A** 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



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



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



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  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  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  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  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 *RIS* or otherwise in accordance with the rules of that market;
- (2) whether the information is contained in records which are open to inspection by the public;
- (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;
- (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  (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 **✠** 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 **⚠** 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 **✠** 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 **✠** 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 1.2.15 UK 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



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."

1.3.2











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

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 investment* 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  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  [deleted]
- 1.3.5  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  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  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  ■ MAR 1.3.7 C applies even if the *person* concerned in fact possesses *trading information* which is *inside information*.
- 1.3.9  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  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  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  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  **■** MAR 1.3.12 C 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  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



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 *COBS*, 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



Some steps which a *person* takes as a result of carrying out a client transaction may be within the scope of ■ MAR 1.3.6 C to ■ MAR 1.3.11 E 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



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 places 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 1.3.17 C:
- (1) information that an *offeror* or potential *offeror* is going to make, or is considering making, an offer for the target;
 - (2) information that an *offeror* or potential *offeror* may obtain through due diligence.
- 1.3.19** **A** 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.
- 1.3.20** **G** **Examples of market abuse (insider dealing)**
 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 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 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 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 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



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; or
- (3) whether:
 - (a) the information disclosed is *trading information*;
 - (b) the disclosure is made by a person ("A") only to the extent necessary, and solely in order, to offer to dispose of the *investment* to, or acquire the *investment* from, the *person* receiving the information; and
 - (c) it is reasonable for A to make the disclosure to enable him to perform the proper functions of his employment, profession or duties.

1.4.5A



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

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.

1.4.8

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1.4.9

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1.4.10

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1.4.11

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1.5 Market abuse (misuse of information)

1.5.1



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



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

A

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 1.2.12 E - ■ MAR 1.2.13 E) 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

A

The factors taken into account in deciding whether or not a *person's behaviour* is "on the basis of" *inside information* (see ■ MAR 1.3.3 E - ■ MAR 1.3.5 E) 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

A

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



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 its equivalent 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 **X** Behaviour falling within the descriptions of *behaviour* that do not amount to *market abuse (insider dealing)* (■ MAR 1.3.6 C, ■ MAR 1.3.7 C, ■ MAR 1.3.12 C and ■ MAR 1.3.17 C), 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 **A** 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.

1.5.11 [Deleted]

1.5.12 [Deleted]

1.5.13	[Deleted]
1.5.14	[Deleted]
1.5.15	[Deleted]
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1.5.29	[Deleted]

1.6 Market abuse (manipulating transactions)

1.6.1



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



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



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



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



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



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 **A** 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



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




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  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  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.


1.6.14  [deleted]

Examples of market abuse (manipulating transactions)

1.6.15  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  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.

1.6.17 [Deleted]

1.6.18 [Deleted]

1.6.19 [Deleted]

1.7 Market abuse (manipulating devices)

1.7.1



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



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



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]

1.7.4

[Deleted]

1.7.5

[Deleted]

1.7.6

[Deleted]

1.7.7

[Deleted]

1.7.8

[Deleted]

1.7.9

[Deleted]

1.7.10

[Deleted]

1.7.11

[Deleted]


1.7.12

[Deleted]


1.7.13

[Deleted]


1.8 Market abuse (dissemination)

1.8.1  Table: section 118(7) of the Act

" 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  Table: section 118A(4) of the Act

"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."


1.8.3  **Descriptions of behaviour that amount to market abuse (dissemination)**

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*.

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

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  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  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.

1.8.7 [Deleted]
 1.8.8 [Deleted]
 1.8.9 [Deleted]
 1.8.10 [Deleted]

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

1.9.1  Table 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 [<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>] [<i>market abuse (misleading behaviour)</i>]; or
-----	--


(b)	would be, or would be to likely to be, regarded by a [<i>regular user</i>] of the market as [<i>behaviour</i>] that would distort, or would be likely to distort, the market in such an investment [<i>market abuse (distortion)</i>]
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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  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.

1.9.2A  (1) [deleted]
 (2) [deleted]
 [deleted]

1.9.2B  [deleted]

Short selling in relation to financial sector companies

1.9.2C  (1) [deleted]
 (2) [deleted]
 (3) [deleted]
 (4) [deleted]


1.9.2D  (1) [deleted]
 (2) [deleted]
 (a) [deleted]
 (b) [deleted]

 (2A) [deleted]
 (3) [deleted]
 (4) [deleted]
 (5) [deleted]

1.9.2E  [deleted]

1.9.3  [deleted]

Factors to be taken into account: false or misleading impressions

1.9.4  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



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 ■ DTR 5;
- (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 Annex 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) the control of information *rule* (■ SYSC 10.2.2 R (1) (see ■ SYSC 10.2.2 R (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* and *Transparency Rules*).

Takeover Code

1.10.3

G

There are no rules in the *Takeover Code*, which permit or require a *person* to behave in a way which amounts to *market abuse*.

1.10.4

X

Behaviour conforming with any of the rules of the *Takeover Code* 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 1.10.5 C;
- (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

1.10.5



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

Table: Provisions of the Takeover Code 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

1.10.6



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.

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1.11 [Deleted]

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 2006 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 701 of the Companies Act 2006.

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* and *Transparency Rules*.

Accepted Market Practices

Table: Part 1 - General

- | | | |
|----|---|--|
| 1. | G | <p>An <i>accepted market practice</i> features in section 118 in the following ways:</p> <ol style="list-style-type: none"> (1) it is an element in deciding what is <i>inside information</i> in the commodity markets (and see MAR 1.2.17 G to MAR 1.2.19 UK); (2) it provides a defence for <i>market abuse (manipulating transactions)</i>. |
| 2. | G | <p>The <i>FSA</i> will take the following non-exhaustive factors into account when assessing whether to accept a particular market practice:</p> <ol style="list-style-type: none"> (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 <i>financial instrument</i> within the whole <i>EEA</i>; (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 <i>Market Abuse Directive</i>, in particular whether the relevant market practice breached rules or regulations designed to prevent <i>market abuse</i>, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the <i>EEA</i>; and (7) the structural characteristics of the relevant market including whether it is regulated or not, the types of <i>financial instruments</i> traded and the type of market participants, including the extent of retail investors participation in the relevant market. |

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Market Conduct

Chapter 2

Stabilisation

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1



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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*.
- 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 ■ MAR 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 ■ MAR 2.4), or for the criminal offences referred to in ■ MAR 2.1.2 G (3) and ■ MAR 2.1.2 G (4) (■ MAR 2.3 - ■ MAR 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*]
- 2.1.7 [Deleted]
- 2.1.8 [Deleted]
- 2.1.9 [Deleted]

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 Annex 1 R; 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 2.2.1 R (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 2.2.1 R (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  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 2.3.4 E, MAR 2.3.5 EU and MAR 2.3.6 G].

2.3.2  Article 8 of the *Market Abuse Directive* is implemented in the *United Kingdom* in section 118A(5)(b) of the *Act*.

2.3.3  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  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