

Market Conduct

Market Conduct

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Chapter 1

The Code of Market Conduct

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 www.esma.europa.eu/system/files/esma_2012_122_en.pdf

1.1.1

FCA

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This chapter (which contains the *Code of Market Conduct*) applies to all *persons* seeking guidance on the *market abuse* regime.

1.1.1A

FCA

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References in ■ MAR 1 to the *Act* should be read to mean the *Act* as modified by the *RAP regulations* where the relevant behaviour occurs in relation to *qualifying investments* which are offered for sale on a *prescribed auction platform*.

1.1.2

FCA

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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) and the *auction regulation*. 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 *FCA* as a suspicious one.

1.1.3

FCA

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The *FCA'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

FCA

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- (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

FCA

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Part VIII of the *Act*, and in particular section 118, specifies 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 *FCA*, 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 *FCA*, 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

FCA

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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 *FCA*, 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 *FCA*, do not amount to *market abuse* .

1.1.7

FCA

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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

FCA

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



1.2 Market Abuse: general

1.2.1

FCA

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

1.2.2

FCA

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).**

1.2.2A

FCA

UK

Table: section 118(1) of the Act as modified by the RAP Regulations

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] which are offered for sale on a [prescribed auction platform], or**
 - (ii) in the case of subsection (2) or (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 (8A).**

1.2.3

FCA

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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

FCA

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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

FCA

A

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

- (1) if it is in relation to *qualifying investments*:
 - (a) in respect of which a request for admission to trading on a *prescribed market* is subsequently made; and
 - (b) 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, or
- (2) if it is in relation to *qualifying investments*:
 - (a) which are subsequently offered for sale on a *prescribed auction platform*; and
 - (b) if it continues to have an effect once the *qualifying investments* are offered for sale on a *prescribed auction platform*.

1.2.6

FCA

A

In the opinion of the *FCA*, 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.

1.2.7

FCA

**Insiders: factors to be taken into account**

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*]."

1.2.7A

FCA



Table: section 118B of the Act as modified by the RAP Regulations

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

- (a) as a result of his membership of an administrative, management or supervisory body of an [*auction platform*] or its operator, an auctioneer or auction monitor,
- (b) as a result of his holding in the capital of an [*auction platform*] or its operator, an auctioneer or auction monitor,
- (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

FCA



In the opinion of the *FCA*, 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

FCA

G

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

Inside information: factors to be taken into account

1.2.10

FCA

✠

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

FCA

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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

FCA

⚠

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

FCA

⚠

- (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

FCA

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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

FCA



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 ..."

1.2.15A

FCA



Table: section 118C(4) of the Act as modified by the RAP Regulations

In relation to a person charged with the execution of bids ... [*inside information*] includes information conveyed by a client and related to the client's pending bids ...

1.2.16

FCA



In the opinion of the *FCA*, a factor which indicates that there is a pending order or bid 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

FCA



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

FCA



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

FCA



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

FCA

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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 or the auction of investments of the kind in question (section 118(8)); or
 - (c) which creates or is likely to create a false or misleading impression or distorts the market or the auction of investments of the kind in question is below the expected standard (section 118(8)).

1.2.21

FCA

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The *regular user* is a hypothetical reasonable *person* who regularly deals on the market and in the investments of the kind in question or bids on the auction platform in relation to 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, or the auction of, the investments in question.

Requiring or encouraging

1.2.22

FCA

UK

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

"If [the FCA] 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

FCA

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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

FCA



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

FCA



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

The following *behaviours* are, in the opinion of the FCA, *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 (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market or auction clearing price;
- (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *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

FCA



In the opinion of the *FCA*, 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.

1.3.5

FCA



In the opinion of the *FCA*, 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

FCA



A *person* will form an intention to *buy* or *sell*, or submit or withdraw a bid for, 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* and article 36(1) of the *auction regulation*]

1.3.7

FCA



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

FCA



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

1.3.9

FCA



In the opinion of the *FCA*, 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

FCA



In the opinion of the *FCA*, 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

FCA



In the opinion of the *FCA*, 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

FCA



The dutiful carrying out of, or arranging for the dutiful carrying out of, an order (including an order relating to a bid) 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* and article 36(1) of the *auction regulation*]

1.3.13

FCA



■ MAR 1.3.12 C applies whether or not the *person* carrying out the order (including an order relating to a bid) 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

FCA

▲

In the opinion of the *FCA*, 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

FCA

▲

In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is dutiful execution of an order (including an order relating to a bid) 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 or auction platform concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.

1.3.16

FCA

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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

FCA

C

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

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

arrangements by underwriters or 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

FCA

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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

FCA

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

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

Examples of market abuse (insider dealing)

1.3.20

FCA

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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

FCA

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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

FCA

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

FCA

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

FCA



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

FCA



The following *behaviours* are, in the opinion of the FCA, *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

FCA



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

FCA



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)*.

1.4.4A

FCA



Disclosure of *inside information* by a *broker* to a potential buyer regarding the fact that the seller of *qualifying investments* is a *person discharging managerial responsibilities* or the identity of the *person discharging managerial responsibilities* or the purpose of the sale by the *person discharging managerial responsibilities* where:

- (1) the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;
- (2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and
- (3) the transaction could not be otherwise completed without creating a disorderly market;

will not, of itself, 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

FCA



In the opinion of the *FCA*, 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*, a *prescribed auction platform*, of the *FCA* 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

FCA

G

■ 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

FCA

G

The following are examples of *market abuse (improper disclosure)*.

- (1) 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.
- (2) A, a *person discharging managerial responsibilities* in B PLC, asks C, a *broker*, to sell some or all of A's shares in B PLC. C discloses to a potential buyer that A is a *person discharging managerial responsibilities* or discloses the identity of A, in circumstances where the fact that A is a *person discharging managerial responsibilities* or the identity of A, is *inside information*, other than in the circumstances set out in ■ MAR 1.4.4A C.

1.4.7

FCA

G

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

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

1.5 Market abuse (misuse of information)

1.5.1

FCA



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."

1.5.1A

FCA



Table: section 118(4) of the Act as modified by the RAP Regulations

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 auction platform but which, if available to a [*regular user*] of the auction platform, 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 auction platform 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 auction platform.

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

1.5.2

FCA



The following *behaviours* are, in the opinion of the FCA, *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* or *prescribed auction platform*, 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

FCA



The following *behaviours* are, in the opinion of the FCA, 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

FCA



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

FCA



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

FCA



In the opinion of the *FCA*, 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

FCA



In the opinion of the *FCA*, 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 *prescribed auction platform*, 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
FCA

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
FCA

C

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
FCA

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.

1.6 Market abuse (manipulating transactions)

1.6.1

FCA



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."**

1.6.1A

FCA



Table: section 118(5) of the Act as modified by the RAP Regulations

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

(otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant auction platform)

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 of 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

FCA



The following *behaviours* are, in the opinion of the FCA, *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*;
- (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, and
- (5) buying or selling on the secondary market of *qualifying investments* or related derivatives prior to the auction with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders in the auctions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and Article 36(1) and Article 37(b) *auction regulation*]

1.6.3

FCA

G

For the avoidance of doubt a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, do not constitute a wash trade under ■ MAR 1.6.2E (2).

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

1.6.4

FCA

A

The following *behaviours* are, in the opinion of the FCA, *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;
 - (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*, and
 - (8) conduct by a *person*, or *persons* acting in collusion, that secure a dominant position over the demand for a *qualifying investment* which has the effect of fixing, directly or indirectly, auction clearing prices or creating other unfair trading conditions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and Article 36(1) and Article 37(b) *auction regulation*]

Factors to be taken into account: "legitimate reasons"

1.6.5

FCA



In the opinion of the *FCA* 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, bid for or to position or move the price of, a *qualifying investment*;
- (2) if the *person* has another, illegitimate, reason behind the transactions, bid 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

FCA



In the opinion of the *FCA* 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 or auction platform 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* or *prescribed auction platform* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

1.6.7

FCA



It is unlikely that the *behaviour* of market or auction platform users when dealing 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 or auction platforms.

1.6.8

FCA



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.

1.6.9

FCA

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

In the opinion of the FCA, 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 and Article 36(1) *auction regulation*]

- (1) the extent to which orders to trade given, bids submitted or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* or *prescribed auction platform* 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, bids submitted 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

FCA



In the opinion of the *FCA*, 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

FCA



In the opinion of the *FCA*, 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.

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29

1.6.12

FCA



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

FCA

G

The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of behaviour to be expected of them in that market. Market users can be expected to settle their obligations and not to put themselves in a position where, to do so, they have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so.

Examples of market abuse (manipulating transactions)

1.6.15

FCA

A

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

FCA



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

1.7 Market abuse (manipulating devices)

1.7.1

FCA



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."

1.7.1A

FCA



Table: section 118(6) of the Act as modified by the RAP Regulations

The fifth [type of *behaviour*] ... consists of effecting transactions, bids 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

FCA



The following *behaviours* are, in the opinion of the FCA, *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*, if applicable) while having previously taken positions on, or submitted bids in relation to, 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

FCA



In the opinion of the FCA, 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, bids submitted 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, bids submitted or transactions are undertaken in *qualifying investments* by *persons* before or after the same *persons* or *persons* linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest. [Note: Article 5 2003/124/EC]

1.8 Market abuse (dissemination)

1.8.1

FCA



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

FCA



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."

Descriptions of behaviour that amount to market abuse (dissemination)

1.8.3

FCA



The following *behaviours* are, in the opinion of the FCA, *market abuse (dissemination)*:

- (1) knowingly or recklessly spreading false or misleading information about a *qualifying investment* through the media, including in particular through an *RIS* or similar information channel;
- (2) undertaking a course of conduct in order to give a false or misleading impression about a *qualifying investment*.

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

1.8.4

FCA



In the opinion of the FCA, 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

FCA



In the opinion of the *FCA*, 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

FCA



The following are examples of *behaviour* which may amount to *market abuse (dissemination)*:

- (1) a *person* posts information on an Internet bulletin board or chat room which contains false or misleading statements about the takeover of a *company* whose *shares* are *qualifying investments* and the *person* knows that the information is false or misleading;
- (2) a *person* responsible for the content of information submitted to a *regulatory information service* submits information which is false or misleading as to *qualifying investments* and that *person* is reckless as to whether the information is false or misleading.



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

1.9.1

FCA



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 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>]
-----	--

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

1.9.1A

FCA



Table: section 118(8) of the Act as modified by the RAP Regulations

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

and the behaviour is likely to be regarded by a [*regular user*] of the auction platform 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
FCA



The following *behaviours* are, in the opinion of the FCA, *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]

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]

1.9.4

FCA

**Factors to be taken into account: false or misleading impressions**

In the opinion of the *FCA*, 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 or auction platform in question;
- (2) the structure of the market or auction platform, including its reporting, notification and transparency requirements;
- (3) the legal and regulatory requirements of the market or auction platform 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

FCA



In the opinion of the *FCA*, 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 or auction platform 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 or auction platform as a whole to operate fairly and efficiently; or
- (3) the characteristics of the market or auction platform 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* or *prescribed auction platform* 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

FCA

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*.

FCA rules

1.10.2

FCA

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

FCA

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

FCA

C

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

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

1.10.5

FCA

C

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

FCA

Ⓒ *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.

Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes

FCA

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 *FCA* 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 *FCA* 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

FCA**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>FCA</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. |

[deleted]

Chapter 2

Stabilisation

2.1 Application and Purpose

Application

2.1.1

FCA

R

This chapter applies to every *firm*.

2.1.2

FCA

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 90(9)(b) (Misleading impressions) or section 91(4)(a) (Misleading statements etc in relation to benchmarks) of the Financial Services Act 2012.

2.1.3

FCA

R

This chapter:

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

Purpose

2.1.4

FCA

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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

FCA

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

FCA

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

2.2 Stabilisation: general

Permitted stabilisation

2.2.1

FCA

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

FCA

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

FCA

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

FCA

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
FCA **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
FCA **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
FCA **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
FCA **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
FCA **R** A contravention of the *rules* in ■ MAR 2 does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those rules is specified under section 138D(3) 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

FCA



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

FCA



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

2.3.3

FCA



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 *FCA* to be adequate.

Time related conditions for stabilisation

2.3.4

FCA



Table: Article 8 of the Buy-back and Stabilisation Regulation

Article 8

Time related conditions for stabilisation

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

Where the initial offer publicly announced takes place in a Member State that permits trading prior to the commencement of trading on a [regulated market], the time period referred to in paragraph 1 shall start on the date of [adequate public disclosure] of the final price of the [relevant securities] and end no later than 30 calendar days thereafter, provided that any such

trading is carried out in compliance with the rules, if any, of the [regulated market] on which the [relevant securities] are to be admitted to trading, including any rules concerning public disclosure and trade reporting.

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

Disclosure and reporting conditions for stabilisation

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

Article 9

Disclosure and reporting conditions for stabilisation

1. The following information shall be [adequately publicly disclosed] by issuers, [offerors], or entities undertaking the [stabilisation] acting, or not, on behalf of such persons, before the opening of the offer period of the [relevant securities]:
 - (a) the fact that [stabilisation] may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;
 - (b) the fact that [stabilisation] transactions are aimed to support the market price of the [relevant securities];
 - (c) the beginning and end of the period during which [stabilisation] may occur;

2.3.5

FCA



- (d) the identity of the [*stabilisation*] manager, unless this is not known at the time of publication in which case it must be publicly disclosed before any [*stabilisation*] activity begins;
- (e) the existence and maximum size of any [*overallotment facility*] or [*greenshoe option*], the exercise period of the [*greenshoe option*] and any conditions for the use of the [*overallotment facility*] or exercise of the [*greenshoe option*].

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

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

2.3.6

FCA

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The FCA accepts as *adequate public disclosure*:

- (1) disclosure through a *regulatory information service* or otherwise in accordance with *Part 6 rules*; or
- (2) the equivalent disclosure mechanism required to be used in relation to the relevant *regulated market*.

2.3.7

FCA

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Market integrity requires the *adequate public disclosure* of *stabilisation* activity by *issuers* or by entities undertaking *stabilisation*, acting or not on behalf of these *issuers*. Methods used for *adequate public disclosure* of such information should be efficient and can take into account market practices accepted by competent authorities. [Note: Recital 16 *Buy-back and Stabilisation Regulation*]

2.3.8

FCA

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There should be adequate coordination in place between all *investment firms* and *credit institutions* undertaking *stabilisation*. During *stabilisation*, one *investment firm* or *credit institution* shall act as a central point of inquiry for any regulatory intervention by the competent authority in each Member State concerned. [Note: Recital 17 *Buy-back and Stabilisation Regulation*]

2.3.9

FCA

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For the purposes of article 9(2) of the *Buy-back and Stabilisation Regulation*, the FCA is the competent authority of those markets listed as *regulated markets* at <http://www.fsa.gov.uk/register/exchanges.do>. *Persons* undertaking *stabilisation* will be taken to have notified the FCA for the purposes of article 9(2) if they email details of all their *stabilisation* transactions to stabilisation@fca.org.uk clearly identifying the offer being *stabilised* and the contact details for the *persons* undertaking the *stabilisation*.

Specific price conditions

2.3.10

FCA



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

Article 10	
Specific price conditions	
1.	In the case of an offer of shares or other securities equivalent to shares, [<i>stabilisation</i>] of the [<i>relevant securities</i>] shall not in any circumstances be executed above the offering price.
2.	In the case of an offer of securitised debt convertible or exchangeable into instruments as referred to in paragraph 1, [<i>stabilisation</i>] of those instruments shall not in any circumstances be executed above the market price of those instruments at the time of the public disclosure of the final terms of the new offer.

Conditions for ancillary stabilisation

2.3.11

FCA



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

Article 11	
Conditions for ancillary stabilisation	

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

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

2.3.12

FCA

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

2.3.13

FCA

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

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

- 2.4.1** **R** To comply with ■ MAR 2.2.1 R (2) a *firm* must comply with the provisions in articles 8, 9, 10 and 11 of the *Buy-back and Stabilisation Regulation* (see ■ MAR 2.3) subject to the modifications set out in the remainder of this section.
- 2.4.2** **R** For the purposes of the application of article 2(6) of the *Buy-back and Stabilisation Regulation* to this section, references to "*relevant securities*" are to be taken as references to *securities* which are within ■ MAR 2.2.1 R (2).
- 2.4.3** **R** For the purposes of the application of article 2(8) of the *Buy-back and Stabilisation Regulation* to this section, the requirement for the competent authority to agree to the standards of transparency does not apply.
- 2.4.4** **R** Article 8 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:
- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which provides adequate disclosure of the fact that *stabilisation* may take place in relation to the offer, for example:
 - (a) in the case of a screen-based announcement, wording such as "*stabilisation/FCA*"; or
 - (b) in the case of a final offering circular or prospectus, wording such as "In connection with this [issue][offer], [name of *stabilisation* manager] [or any *person* acting for him] may over-allot or effect transactions with a view to supporting the market price of [description of *relevant securities* and any associated investments] at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there may be no obligation on [name of *stabilisation* manager] [or any agent of his] to do this. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period."; and
 - (2) a *person* is taken to comply the requirements of article 9(1) of the *Buy-back and Stabilisation Regulation* for these purposes if a

public announcement before the opening of the offer period indicates (in whatever terms) the fact that *stabilisation* may take place so long as any preliminary or final offering circular (or prospectus) contains the information specified in that article (other than information on the maximum size of any overallotment facility).

2.4.5

FCA

R Article 9 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:

- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which complies with ■ MAR 2.4.4 R;
- (2) article 9(2) does not apply;
- (3) article 9(3) does not apply; and
- (4) in article 9(4) the phrase "order or" does not apply.

2.4.6

FCA

R Article 10 of the *Buy-back and Stabilisation Regulation* is modified so that the reference to "public disclosure" is to be taken as including any public announcement which complies with ■ MAR 2.4.4 R.

2.4.7

FCA

R Article 11 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:

- (1) the reference to "disclosure to the public" is to be taken as including any public announcement which complies with ■ MAR 2.4.4 R and
- (2) article 11(b) and (d) do not apply.

2.5 The Price Stabilising Rules: overseas provisions

2.5.1

FCA

R

- (1) A person who in any place outside the *United Kingdom* acts or engages in conduct:
 - (a) for the purposes of *stabilising* the price of *investments*;
 - (b) in conformity with the provisions specified in (2), (3) or (4); and
 - (c) in relation to an offer which is governed by the law of a country (or a state or territory in a country) so specified;is to be treated for the purposes of section 397(5)(b) of the *Act* (misleading statements and practices) as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.
- (2) In relation to the United States of America, the specified provisions are:
 - (a) Regulation M made by the Securities and Exchange Commission (17 CFR 242, # 100-105).
- (3) In relation to Japan, the specified provisions are
 - (a) The Securities and Exchange Law of Japan, (Law No 25, April 13 1948), Article 159, paragraphs 3 and 4;
 - (b) Cabinet Orders for the Enforcement of the Securities and Exchange Law of Japan (Cabinet Order 321, September 30, 1965), Articles 20 to 26;
 - (c) Ministerial Ordinance concerning the Registration of Stabilisation Trading (Ordinance of the Ministry of Finance No 43, June 14, 1971);
 - (d) Ministerial Ordinance concerning rules and otherwise governing the soundness of securities companies (Ordinance of the Ministry of Finance, No 60, November 5, 1965), Article 2.
- (4) In relation to Hong Kong, the specified provisions are:

2.5.2

FCA

R

A *person* who is treated under ■ MAR 2.5.1 R (1) as acting or engaging in conduct in conformity with the *price stabilising rules* is also to be treated to an equivalent extent as so acting or engaging for the purposes of:

- (1) ■ MAR 2.2.1 R (2) and ■ MAR 2.2.2 G, provided that the *investments* concerned are not admitted to trading on a *regulated market* and there has been no request for admission to trading on a *regulated market*;
- (2) Part XIV (Disciplinary measures); and
- (3) Part XXV (Injunctions and Restitution) of the *Act*.

(a) The Securities and Futures (Price Stabilizing) Rules, Cap. 571 W made by the Hong Kong Securities and Futures Commission.

(5) The provisions in (2), (3) and (4) are specified as they have effect from time to time, so long as this paragraph has effect.

List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2))**FCA*****Any prescribed market which is not a regulated market******Any recognised overseas investment exchange*****American Stock Exchange (AMEX)****Australian Stock Exchange****Bolsa Mexicana de Valores****Canadian Venture Exchange****Hong Kong Stock Exchange****Johannesburg Stock Exchange****Korea Stock Exchange****Midwest Stock Exchange****Montreal Stock Exchange****New York Stock Exchange (NYSE)****New Zealand Stock Exchange****Osaka Securities Exchange (OSE)****Pacific Stock Exchange****Philadelphia Stock Exchange****Singapore Exchange Securities Trading Limited****Tokyo Stock Exchange (TSE)****Toronto Stock Exchange**

Chapter 4

Support of the Takeover Panel's Functions



4.1 APPLICATION AND PURPOSE

Application

4.1.1

FCA

R

This chapter applies to every *firm* whose *permission* includes, or ought to include, any *designated investment business*, except as set out in ■ MAR 4.4.1 R.

4.1.2

FCA

G

■ MAR 4.1.1 R applies regardless of whether the *firm's* activity:

- (1) is a *regulated activity*;
- (2) is carried on from an office of the *firm* in the *United Kingdom*; or
- (3) is in respect of a *client* in the *United Kingdom*.



4.3 SUPPORT OF THE TAKEOVER PANEL'S FUNCTIONS

4.3.1

FCA

R

A *firm* must not act, or continue to act, for any *person* in connection with a transaction to which the *Takeover Code* applies (including a *transaction* subject to rule 8 (Disclosure of dealings during the offer period; also indemnity and other arrangements) of the *Takeover Code*) if the *firm* has reasonable grounds for believing that the *person* in question, or his principal, is not complying or is not likely to comply with the *Takeover Code* .

4.3.2

FCA

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- (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code* . It may also, from time to time, name in those notices *persons as persons* that, in the *Takeover Panel's* opinion, are not likely to comply with the *Takeover Code*. Any notices of this type will be available on the *Takeover Panel's* website (www.thetakeoverpanel.org.uk).
- (2) A *firm* should keep itself informed of *Takeover Panel* notices and take them into account in seeking to comply with ■ MAR 4.3.1 R. If the *Takeover Panel* were to name such a *person* in such a notice, the *FCA* would expect a *firm* to comply with ■ MAR 4.3.1 R by not acting or continuing to act for that *person*.
- (3) The *FCA* would not regard a *firm* as in breach of ■ MAR 4.3.1 R where the *Takeover Panel* has indicated that it is content for the *firm* to act in relation to that transaction.

4.3.3

FCA

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- (1) Where a restriction under ■ MAR 4.3.1 R applies, among other things the *firm* is prevented from carrying on any *designated investment business* activity, or *communicating* or *approving* any *financial promotion*, in connection with a transaction to which the *Takeover Code* applies.
- (2) Where a restriction under ■ MAR 4.3.1 R applies, the *firm* is not prevented from carrying on other activities (including *regulated activities*) in relation to that *person*. This includes *designated investment business* activity which is not in connection with a transaction to which the *Takeover Code* applies.

4.3.4

FCA

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- (1) Where a restriction under ■ MAR 4.3.1 R applies, an *authorised professional firm* is not prevented from providing professional advice or representation in any proceedings to the *person* where that falls within section 327(8) of the *Act*. This means that the *person* can obtain legal advice or representation in any

proceedings from a law firm and accounting advice from an accounting firm: see ■ MAR 4.4.1 R (2).

- (2) While the *FCA* recognises the duty of *authorised professional firms* to act in the best interests of their clients, the duty cannot override the provisions of the *Takeover Code* so as to require the *authorised professional firm* to provide services in breach of, or enable breach of, the *Takeover Code*.

4.3.5
FCA

R

A firm must provide to the Takeover Panel:

- (1) any information and documents in its possession or under its control which the *Takeover Panel* requests to enable the *Takeover Panel* to perform its functions; and
- (2) such assistance as the *Takeover Panel* requests and as the *firm* is reasonably able to provide to enable the *Takeover Panel* to perform its functions.

4.3.6
FCA

G

In ■ MAR 4.3.5 R, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to providing documents include references to producing a copy of the information in legible form.

4.3.7
FCA

G

As a result of section 413 of the *Act* (Limitation on powers to require documents), ■ MAR 4.3.5 R does not require a *firm* or an *authorised professional firm* to produce, disclose or permit the inspection of *protected items*.

4.4 EXCEPTIONS

4.4.1

FCA

R

This chapter is subject to the following exceptions:

- (1) this chapter does not require an *authorised professional firm* to contravene any rule or principle of, or requirement of a published guidance note relating to, professional conduct applying generally to members of the profession regulated by its *designated professional body*;
- (2) this chapter does not prevent an *authorised professional firm* from providing professional advice, that is, in accordance with section 327(8) of the *Act*, advice:
 - (a) which does not constitute carrying on a *regulated activity*; and
 - (b) the provision of which is supervised and regulated by a *designated professional body*;
- (3) this chapter does not have effect in relation to an *authorised professional firm* in respect of *non-mainstream regulated activity*; and
- (4) this chapter does not apply to:
 - (a) a *UCITS qualifier*; or
 - (b) an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*.

Chapter 5

Multilateral trading facilities (MTFs)



5.1 Application

[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 www.esma.europa.eu/system/files/esma_2012_122_en.pdf

5.1.1

FCA

R

This chapter applies to:

- (1) a *UK domestic firm* which operates an *MTF* from an establishment in the *United Kingdom* or elsewhere; or
- (2) an *overseas firm* which operates an *MTF* from an establishment in the *United Kingdom*.

5.1.2

FCA

R

In this chapter, provisions marked "EU" apply to an *overseas firm* as if they were *rules*.



5.2 Purpose

5.2.1

FCA

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The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *MTFs*, specifically articles 14, 26, 29 and 30 of *MiFID*. This chapter does not apply to bilateral systems, which are excluded from the *MTF* definition. It sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.

5

5.3.1

FCA

R

A firm operating an *MTF* must have:

- (1) transparent and non-discretionary rules and procedures for fair and orderly trading;

[Note: Article 14(1) of *MiFID*]

- (2) objective criteria for the efficient execution of orders;

[Note: Article 14(1) of *MiFID*]

- (3) transparent rules regarding the criteria for determining the *financial instruments* that can be traded under its systems;

[Note: Subparagraph 1 of Article 14(2) of *MiFID*]

- (4) transparent rules, based on objective criteria, governing access to its facility, which rules must provide that its members or participants are *investment firms*, *BCD credit institutions* or other persons who:

- (a) are fit and proper;
- (b) have a sufficient level of trading ability and competence;
- (c) where applicable, have adequate organisational arrangements;
- (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the *firm* operating the *MTF* may have established in order to guarantee the adequate settlement of transactions; and

[Note: Article 14(4) and 42(3) of *MiFID*]

- (5) where applicable must provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgment, taking into account both the nature of the users and the types of instrument traded.

[Note: Subparagraph 2 of Article 14(2) of *MiFID*]

Publication of pre and post-trade information for shares not admitted to trading on a regulated market

5.3.2

FCA

G

In the case of shares not *admitted to trading* on a *regulated market*, the *FCA* expects that in order to fulfil the requirements in ■ MAR 5.3.1 R as regards fair and orderly trading, the *firm* operating the *MTF* will make public on reasonable commercial terms:

- (1) on a continuous basis during *normal trading hours*, information about the quotes and orders relating to these shares which the *MTF* displays or advertises to its users; and
- (2) as close to real time as possible, information about the price, volume and time of transactions in these shares executed under its systems.

5.3.3

FCA

G

The *firm* may make information about a large quote, order or transaction available under ■ MAR 5.3.2 G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction.

Publication of post-trade information for financial instruments other than shares

5.3.4

FCA

G

Where *financial instruments* other than shares are traded on an *MTF*, and the same or substantially similar instruments are also traded on a *UK RIE*, a *regulated market* or an *EEA commodities market*, the *FSA* expects that in order to fulfil the requirements in ■ MAR 5.3.1 R as regards fair and orderly trading, the *firm* operating the *MTF* will make public, on reasonable commercial terms and as close to real time as possible, the price, volume and time of the transactions executed under its systems.

5.3.5

FCA

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For large transactions in *debt securities*, an indication that volume exceeded a certain figure (not being less than £7 million or its equivalent) instead of the actual volume is sufficient transparency of the volume of a trade.

5.3.6

FCA

G

The *firm* may make information about a large quote, order or transaction available under ■ MAR 5.3.4 G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction.

Operation of a primary market in shares not admitted to trading on a regulated market

5.3.7

FCA

G

The *FCA* will be minded to impose a variation on the *Part 4A Permission* of an *MTF* operator that operates a primary market in shares not *admitted to trading* on a *regulated market* in order to ensure its fulfilment of the requirements in ■ MAR 5.3.1 R as regards fair and orderly trading.

5.3.8

FCA

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Transferable securities traded without issuer consent

Where a *transferable security*, which has been *admitted to trading* on a *regulated market*, is also traded on an *MTF* without the consent of the *issuer*, the *firm* operating the *MTF* must not make the *issuer* subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that *MTF*.

[Note: Article 14(6) of *MiFID*]



5.4 Finalisation of transactions

5.4.1

FCA

R

A firm operating an *MTF* must:

- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in that *MTF*; and
- (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[Note: Article 14(5) of *MiFID*]

5



5.5 Monitoring compliance with the rules of the MTF

5.5.1

FCA

R

A *firm* operating an *MTF* must:

- (1) have effective arrangements and procedures, relevant to the *MTF*, for the regular monitoring of the compliance by its users with its rules; and
- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

[Note: Article 26(1) of *MiFID*]

5.6 Reporting requirements

5.6.1

FCA

R

A *firm* operating an *MTF* must:

- (1) report to the *FCA*:
 - (a) significant breaches of the *firm's* rules;
 - (b) disorderly trading conditions; and
 - (c) conduct that may involve market abuse;
- (2) supply the information required under this *rule* without delay to the *FCA* and any other authority competent for the investigation and prosecution of market abuse; and
- (3) provide full assistance to the *FCA*, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the *firm's* systems.

[Note: Article 26(2) of *MiFID*]

5.7.1

FCA

R



5.7 Pre-trade transparency requirements for shares

- (1) Unless (2),(3) or (4) applies, in respect of shares *admitted to trading on a regulated market*, a *firm* operating an *MTF* must make public, on reasonable commercial terms and on a continuous basis during *normal trading hours*:
 - (a) the current bid and offer prices which are advertised through its systems; and
 - (b) the depth of trading interests at those prices.

[Note: Article 29(1) of *MiFID*]

- (2) Paragraph (1) does not apply to systems operated by an *MTF* to the extent that those systems satisfy one of the criteria in (a) or (b), subject to (c):
 - (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
 - (b) they formalise negotiated transactions, each of which meets one of the criteria in (i) and (ii), subject to the provisions in (iii) and (iv):
 - (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the *MTF* operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;
 - (ii) it is subject to conditions other than the current market price of the share.
 - (iii) For the purposes of (b), the other conditions specified in the rules of the *MTF* for a transaction of this kind must also have been fulfilled.

(iv) Negotiated transaction has the meaning given in Article 19 of the *MiFID Regulation*.

[Note: Article 19 of the *MiFID Regulation* is reproduced in ■ MAR 5.7.9 EU.]

(c) In the case of systems having functionality other than as described in (a) or (b), the disapplication does not apply to that other functionality.

(3) Paragraph (1) does not apply in relation to orders held in an order management facility maintained by the *MTF* pending their being disclosed to the market.

(4) (a) Paragraph (1) does not apply in relation to orders that are large in scale compared to normal market size for the share or type of share in question.

(b) An order will be considered to be large in scale if it meets the criteria set out in Article 20 of the *MiFID Regulation*.

[Note: Article 20 of the *MiFID Regulation* is reproduced in ■ MAR 5.7.10 EU.]

Pre-trade information

5.7.2

FCA



1. **An investment firm or market operator operating an *MTF* or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [of the *MiFID Regulation*], make public the information set out in paragraphs 2 to 6.**
2. **Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.**
3. **Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.**

The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.

5

- In exceptional market conditions, however, one-way prices may be allowed for a limited time.
4. Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its *normal trading hours* the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
 5. Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraph 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share. In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.
 6. A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II [of the *MiFID Regulation*].

[Note: Article 17 of the *MiFID Regulation*]

Table 1: Information to be made public in accordance with Article 17

5.7.3

FCA



Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels
Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously	The best bid and offer by price of each market maker in that share, together with the vol-

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
	made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	umes attaching to those prices
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
Trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first three rows	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit

[Note: Table 1, Annex II of the *MiFID Regulation*]

Publication of pre-trade information

1. A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.
2. Pre-trade information ... shall be made available as close to real time as possible. ...

[Note: Article 29(1) and (2) of the *MiFID Regulation*]

5.7.4
FCA



5.7.5
FCA



Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

[Note: Recital (18) to the *MiFID Regulation*]

5.7.6
FCA



Disapplication of the pre-trade transparency requirements

The obligation in ■ MAR 5.7.1 R (1) to make public certain pre-trade information is disappplied in ■ MAR 5.7.1 R (2) based on the market model or the type and size of orders in the cases identified in the *MiFID Regulation*, and as reproduced for reference in ■ MAR 5.7.8 EU, ■ MAR 5.7.9 EU, ■ MAR 5.7.10 EU and ■ MAR 5.7.11 EU. In particular, the obligation is disappplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.

[Note: Article 29(2) of *MiFID* and Recital 12 and Articles 18, 19, 20, 33 and 34 of the *MiFID Regulation*]

5.7.7
FCA



If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, *competent authorities* should treat all *regulated markets* and *MTFs* equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all *regulated markets* and *MTFs* that they authorise under [the *MiFID*] Directive 2004/39/EC, or to none. *Competent authorities* which grant the waivers or deferrals should not impose additional requirements.

[Note: Recital 12 to the *MiFID Regulation*]

5.7.8
FCA



1. Waivers in accordance with Article 29(2) and 44(2) of [the *MiFID*] Directive 2004/39/EC may be granted by the *competent authorities* for systems operated by an *MTF* or a *regulated market*, if those systems satisfy one of the following criteria:
 - (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
 - (b) they formalise negotiated transactions, each of which meets one of the following criteria:
 - (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the *regulated market* or *MTF* operating that system or, where the share is not traded contin-

uously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;

- (ii) it is subject to conditions other than the current market price of the share.

For the purposes of point (b), the other conditions specified in the rules of the regulated market or *MTF* for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

2. Waivers in accordance with Articles 29(2) and 44(2) of [the *MiFID*] Directive 2004/39/EC based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the *regulated market* or the *MTF* pending their being disclosed to the market.

[Note: Article 18 of the *MiFID Regulation*]

5.7.9

FCA



For the purpose of Article 18(1)(b) [of the *MiFID Regulation*] a negotiated transaction shall mean a transaction involving members or participants of a *regulated market* or an *MTF* which is negotiated privately but executed within the *regulated market* or *MTF* and where that member or participant in doing so undertakes one of the following tasks:

- (a) *dealing on own account* with another member or participant who acts for the account of a *client*;
- (b) dealing with another member or participant, where both are executing orders on own account;
- (c) acting for the account of both the buyer and seller;
- (d) acting for the account of the buyer, where another member or participant acts for the account of the seller;
- (e) trading for own account against a *client* order.

[Note: Article 19 of the *MiFID Regulation*]

5.7.10

FCA



An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [of the *MiFID Regulation*]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33 [of the *MiFID Regulation*].

[Note: Article 20 of the *MiFID Regulation*]

Table 2: Orders large in scale compared with normal market size

5.7.11
FCA



Class in terms of average daily turnover (ADT)	ADT < €500 000	€500 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €25 000 000	€25 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
Minimum size of order qualifying as large in scale compared with normal market size	€50 000	€100 000	€250 000	€400 000	€500 000

[Note: Table 2, Annex II of the *MiFID Regulation*]

5.7.12
FCA



The FCA will publish on its website the calculations and estimates for shares *admitted to trading* on a *regulated market*, made by the FCA under the provisions in Articles 33 and 34 of the *MiFID Regulation*.



5.8 Provisions common to pre- and post-trade transparency requirements for shares

5.8.1

FCA



For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the *MiFID*] Directive 2004/39/EC and of this [*MiFID*] Regulation, pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: Article 30 of the *MiFID Regulation*]

5.8.2

FCA



Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the *MiFID Regulation*], shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) it must facilitate the consolidation of the data with similar data from other sources;
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

[Note: Article 32 of the *MiFID Regulation*]

5.8.3

FCA



The FCA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ MAR 5.8.2 EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

5.8.4

FCA



- (1) In respect of arrangements facilitating the consolidation of data as required in ■ MAR 5.8.2 EU(b), the FCA considers information as being made public in accordance with ■ MAR 5.8.2 EU(b), if it:

- (a) is accessible by automated electronic means in a machine-readable way;
 - (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
 - (c) is accompanied by instructions outlining how users can access the information.
- (2) The *FCA* considers that an arrangement fulfils the 'machine-readable' criteria where the data
- (a) is in a physical form that is designed to be read by a computer;
 - (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
 - (c) is in a format that is known in advance by the party wishing to access the data.
- (3) The *FCA* considers that publication on a non-machine-readable website would not meet the *MiFID* requirements.
- (4) The *FCA* considers that information that is made public in accordance with **■ MAR 5.8.2 EU** should conform to a consistent and structured format based on industry standards. *Firms* operating an *MTF* can choose the structure that they use.



5.9 Post-trade transparency requirements for shares

5.9.1

FCA

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- (1) In respect of shares *admitted to trading on a regulated market*, unless ■ MAR 5.9.1 R (2) applies and ■ MAR 5.9.7 R is satisfied, a *firm* operating an *MTF* must make public, on reasonable commercial terms and as close to real-time as possible, the price, volume and time of the transactions which are advertised through its systems. This requirement does not apply to the details of a transaction executed on an *MTF* that is made public under the systems of a *regulated market*.

[Note: Article 30(1) of *MiFID*]

- (2) A *firm* may defer publication of trade information required in (1) for no longer than the period specified in Table 4 in Annex II of the *MiFID Regulation* for the class of share and transaction concerned, provided that the following criteria in (a) and (b) are satisfied and subject to the provision in (c):
- (a) the transaction is between an *investment firm dealing on own account* and a *client* of that *firm*;
 - (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.
 - (c) In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading on a regulated market* must be classified in accordance with their average daily *turnover* to be calculated in accordance with Article 33 of the *MiFID Regulation*.

Note: Table 4 of Annex II of the *MiFID Regulation* is reproduced in ■ MAR 7 Annex 1 EU.

5.9.2

FCA



Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional

cases where the systems available do not allow for a publication in a shorter period of time.

[Note: Recital 18 to the *MiFID Regulation*]

Post-trade information

5.9.3

FCA



1. *Investment firms, regulated markets and investment firms and market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded by them or, in the case of regulated markets or MTFs, within their systems, make public the following details:*

- (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [of the *MiFID Regulation*];
- (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;
- (c) an indication that the trade was a negotiated trade, where applicable;
- (d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same share taking place at the same price at the same time.

[Note: Article 27(1) of the *MiFID Regulation*]

Publication of post-trade information

5.9.4

FCA



2. ... post-trade information relating to transactions taking place on trading venues within *normal trading hours*, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.

3. Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purpose of determining whether deferred publication in respect of that transaction is available under Article 28 [of the *MiFID Regulation*].

4. Post-trade information relating to transactions taking place on a trading venue but outside its *normal trading hours* shall be made public before the opening of the next trading day of the trading venue on which the transaction took place.

[Note: Article 29 (2) to (4) of the *MiFID Regulation*]

5.9.5

FCA



1. ... A reference to the opening of the trading day shall be a reference to the commencement of the *normal trading hours* of the trading venue....

[Note: Article 4(1) of the *MiFID Regulation*]

Deferred publication of post-trade information

5.9.6

FCA



The deferred publication of information in respect of transactions may be authorised, for a period no longer than the period specified in Table 4 in Annex II [of the *MiFID Regulation*] [reproduced in [MAR 7 Annex 1 EU](#)] for the class of share and transaction concerned, provided that the following criteria are satisfied:

- (a) the transaction is between an *investment firm dealing on own account* and a *client* of that firm;
- (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 [of the *MiFID Regulation*].

[Note: Article 28 of the *MiFID Regulation*]

5.9.6A

FCA



The deferred publication of information, referred to in [MAR 5.9.6 EU](#), is authorised by the *FCA*, to the extent set out in that provision, and, in particular, is given effect in [MAR 5.9.1 R \(2\)](#).

5.9.7

FCA



An *MTF* must obtain the prior approval of the *FCA* to proposed arrangements for deferred post-trade publication and must clearly disclose such arrangements to market participants and the investing public.

[Note: Article 30(2) of *MiFID*]

Chapter 6

Systematic Internalisers

 **6.1 Application**

6.1.1

FCA**R**

Except as regards the reporting requirement in ■ MAR 6.4.1 R, this chapter applies to:

- (1) a *MiFID investment firm* which is a *systematic internaliser* in shares when dealing in sizes up to standard market size; or
- (2) a *third country investment firm* which is a *systematic internaliser* in shares when dealing in the *United Kingdom* in sizes up to standard market size.

6.1.2

FCA**R**

The *systematic internaliser* reporting requirement in ■ MAR 6.4.1 R applies to an *investment firm* which is authorised by the *FCA* .

6.1.3

FCA**R**

In this chapter, provisions marked "EU" apply to a *third country investment firm* which is a *systematic internaliser* as if they were *rules*.



6.2 Purpose

6.2.1

FCA

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The purpose of this chapter is to implement Article 27 of *MiFID*, which deals with the requirements on *systematic internalisers* for pre-trade transparency in shares, the *execution of orders on behalf of clients* and standards and conditions for trading. It also provides a rule requiring *investment firms* to notify the *FCA* when they become, or cease to be, a *systematic internaliser*, and which gives effect to Article 21(4) of the *MiFID Regulation*. The chapter sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.

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6.3 Criteria for determining whether an investment firm is a systematic internaliser

6.3.1

FCA



1. Where an *investment firm deals on own account* by executing *client* orders outside a *regulated market* or an *MTF*, it shall be treated as a *systematic internaliser* if it meets the following criteria indicating that it performs that activity on an organised, frequent and systematic basis:
 - (a) the activity has a material commercial role for the *firm* and is carried on in accordance with non-discretionary rules and procedures;
 - (b) the activity is carried on by personnel, or by means of an automated technical system, assigned to that purpose, irrespective of whether those personnel or that system are used exclusively for that purpose;
 - (c) the activity is available to *clients* on a regular or continuous basis.
2. An *investment firm* will cease to be a *systematic internaliser* in one or more shares if it ceases to carry on the activity specified in paragraph 1 in respect of those shares, provided that it has announced in advance that it intends to cease that activity using the same publication channels for that announcement as it uses to publish its quotes or, where that is not possible, using a channel which is equally accessible to its *clients* and other market participants.
3. The activity of *dealing on own account* by executing *client* orders shall not be treated as performed on an organised, frequent and systematic basis where the following conditions apply:
 - (a) the activity is performed on an ad-hoc and irregular bilateral basis with wholesale counterparties as part of business relationships which are themselves characterised by dealings above standard market size;
 - (b) the transactions are carried out outside the systems habitually used by the *firm* concerned for any business that it carries out in the capacity of a *systematic internaliser*.

[Note: Article 21(1) to (3) of the *MiFID Regulation*]

6.3.2



FCA

An activity should be considered as having a material commercial role for an *investment firm* if the activity is a significant source of revenue, or a significant source of cost. An assessment of significance for these purposes should, in every case, take into account the extent to which the activity is conducted or organised separately, the monetary value of the activity, and its comparative significance by reference both to the overall business of the firm and to its overall activity in the market for the share concerned in which the firm operates. It should be possible to consider an activity to be a significant source of revenue for a firm even if only one or two of the factors mentioned is relevant in a particular case.

[Note: Recital 15 to the *MiFID Regulation*]

6



6.4 Systematic internaliser reporting requirement

6.4.1

FCA

R

An *investment firm*, which is authorised by the *FCA* , must promptly notify the *FCA* in writing of its status as *asystematic internaliser* in respect of shares *admitted to trading* on a *regulated market*:

(1) when it gains that status; or

(2) if it ceases to have that status.

[Note: Article 21(4) of the *MiFID Regulation*]

6.4.2

FCA

G

The notification under ■ MAR 6.4.1 R can be addressed to the *firm's* usual supervisory contact at the *FCA* .

6.5 Obligations on systematic internalisers in shares to make public firm quotes

6.5.1

FCA

R

A *systematic internaliser* in shares when dealing in sizes up to standard market size must publish a firm quote in relation to any share *admitted to trading* on a *regulated market* for which it is:

- (1) a *systematic internaliser* in that share; and
- (2) there is a liquid market for that share.

[Note: Subparagraphs 1 and 2 of Article 27(1) of *MiFID*]

6.5.2

FCA

R

Where there is no liquid market for a share, the *systematic internaliser* must disclose quotes to its clients on request.

[Note: Subparagraph 1 of Article 27(1) of *MiFID*]

6.5.3

FCA

R

A *systematic internaliser* may:

- (1) update a quote at any time; and
- (2) under exceptional market conditions, withdraw a quote.

[Note: Subparagraph 1 of Article 27(3) of *MiFID*]

6.6 Size and content of quotes

6.6.1

FCA

R

- (1) A *systematic internaliser* may decide the size or sizes at which it will quote.
- (2) The quote can be up to standard market size for the class of shares to which the share belongs.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.6.2

FCA

R

Each quote must include:

- (1) a firm bid price; or
- (2) a firm offer price;

in respect of each size for which the *systematic internaliser* quotes.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.6.3

FCA

G

A *systematic internaliser* is not obliged to publish firm quotes in relation to transactions above standard market size.[Note: Recital 51 to *MiFID*]

6.7 Prices reflecting prevailing market conditions

6.7.1

FCA

R

A firm bid or offer price in respect of a particular share must reflect the prevailing market conditions for that share.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.7.2

FCA

EU

A *systematic internaliser* shall, for each liquid share for which it is a *systematic internaliser*, maintain the following:

- (a) a quote or quotes which are close in price to comparable quotes for the same share in other trading venues; and
- (b) a record of its quoted prices, which it shall retain for a period of 12 months or such longer period as it considers appropriate.

The obligation laid down in point (b) is without prejudice to the obligation of the *investment firm* under Article 25(2) [implemented at SUP 17.4.6 G] of [the *MiFID*] Directive 2004/39/EC to keep at the disposal of the competent authority for at least 5 years the relevant data relating to all transactions it has carried out. [Note: Article 24 of the *MiFID Regulation*]

6.8 Liquid market for shares, share class, standard market size and relevant market

6.8.1

FCA

G

A *systematic internaliser* will need to refer to the provisions in ■ MAR 6.8.3 EU , ■ MAR 6.8.4 EU, ■ MAR 6.8.5 EU, ■ MAR 6.8.6 EU and ■ MAR 6.8.7 EU and the material the FCA publishes in relation to those provisions to determine:

- (1) whether there is a liquid market for a share;
- (2) the class to which a share should be allocated;
- (3) the standard market size for each class of shares; and
- (4) the relevant market for a share.

[Note: Article 27(1), (2) and (7) of *MiFID*]

6.8.2

FCA

G

The FCA will publish on its website the material referred to in ■ MAR 6.8.1 G as regards liquid market for shares, share class, standard market size and the relevant market for a share.

6.8.3

FCA

EU

Shares not traded daily should not be considered as having a liquid market for the purposes of [the *MiFID*] Directive 2004/39/EC. However, if, for exceptional reasons, trading in a share is suspended for reasons related to the preservation of an orderly market or force majeure and therefore a share is not traded during some trading days, this should not mean that the share cannot be considered to have a liquid market.

[Note: Recital 16 to the *MiFID Regulation*]

6.8.4

FCA

EU

1. The most relevant market in terms of liquidity for a financial instrument which is *admitted to trading on a regulated market*, hereinafter "the most relevant market", shall be determined in accordance with paragraphs 2 to 8.
2. In the case of a share or other transferable security covered by Article 4(1)(18)(a) of [the *MiFID*] Directive 2004/39/EC or of a unit in a collective investment undertaking, the most relevant market shall be the Member State where the share or the unit was first *admitted to trading on a regulated market*. ...

8. Where a financial instrument covered by paragraphs 2 ... was first *admitted to trading* on more than one *regulated market* simultaneously, and all those *regulated markets* share the same home Member State, that Member State shall be the most relevant market.

Where the *regulated markets* concerned do not share the same home Member State, the most relevant market in terms of liquidity for that instrument shall be the market where the turnover of that instrument is highest.

For the purposes of determining the most relevant market where the turnover of the instrument is highest, each competent authority that has authorised one of the *regulated markets* concerned shall calculate the turnover for that instrument in its respective market for the previous calendar year, provided that the instrument was *admitted to trading* at the beginning of that year.

Where the turnover for the relevant financial instrument cannot be calculated by reason of insufficient or non-existent data and the issuer has its registered office in a Member State, the most relevant market shall be the market of the Member State where the registered office of the *issuer* is situated.

However, where the *issuer* does not have its registered office in a Member State, the most relevant market for that instrument shall be the market where the turnover of the relevant instrument class is the highest. For the purposes of determining that market, each *competent authority* that has authorised one of the *regulated markets* concerned shall calculate the turnover of the instruments of the same class in its respective market for the preceding calendar year.

The relevant classes of financial instrument are the following:

(a) shares; ...

[Note: Article 9(1),(2) and (8) of the *MiFID Regulation*]

6

6.8.5

FCA



1. A share admitted to trading on a *regulated market* shall be considered to have a liquid market if the share is traded daily, with a free float not less than EUR 500 million, and one of the following conditions is satisfied:

(a) the average daily number of transactions in the share is not less than 500;

(b) the average daily turnover for the share is not less than EUR 2 million.

However, a Member State may, in respect of shares for which it is the most relevant market, specify by notice that both those conditions are to apply. That notice shall be made public.

2. A Member State may specify the minimum number of liquid shares for that Member State. The minimum number shall be no greater than five. The specification shall be made public.
3. Where, pursuant to paragraph 1, a Member State would be the most relevant market for fewer liquid shares than the minimum number specified in accordance with paragraph 2, the *competent authority* for that Member State may designate one or more additional liquid shares, provided that the total number of shares which are considered in consequence to be liquid shares for which that Member State is the most relevant market does not exceed the minimum number specified by that Member State.
- The *competent authority* shall designate the additional liquid shares successively in decreasing order of average daily turnover from among the shares for which it is the relevant *competent authority* that are *admitted to trading on a regulated market* and are traded daily.
4. For the purposes of the first subparagraph of paragraph 1, the calculation of the free float of a share shall exclude holdings exceeding 5% of the total voting rights of the *issuer*, unless such a holding is held by a collective investment undertaking or a pension fund.
- Voting rights shall be calculated on the basis of all the shares to which voting rights are attached, even if the exercise of such a right is suspended.
5. A share shall not be considered to have a liquid market for the purposes of Article 27 of [the *MiFID*] Directive 2004/39/EC until six weeks after its first *admission to trading on a regulated market*, if the estimate of the total market capitalisation for that share at the start of the first day's trading after that admission, provided in accordance with Article 33(3) [of the *MiFID Regulation*], is less than EUR 500 million.
6. Each *competent authority* shall ensure the maintenance and publication of a list of all liquid shares for which it is the relevant *competent authority*.
- It shall ensure the list is current by reviewing it at least annually.
- The list shall be made available to the Committee of European Securities Regulators. It shall be considered as published when it is published by the Committee of European Securities Regulators in accordance with Article 34(5) [of the *MiFID Regulation*].
- [Note: Article 22 of the *MiFID Regulation*]



ders executed in accordance with Table 3 in Annex II [of the *MiFID Regulation*].

[Note: Article 23 of the *MiFID Regulation*]

6.8.7

FCA



Table 3: Standard market sizes

Class in terms of average value of transactions (AVT)	AVT < €10 000	€10 000 < AVT < €20 000	€20 000 < AVT < €30 000	€30 000 < AVT < €40 000	€40 000 < AVT < €50 000	€50 000 < AVT < €70 000	€70 000 < AVT < Etc
Standard market size	€7 500 000	€15 000 000	€25 000 000	€35 000 000	€45 000 000	€60 000 000	€80 000 000

[Note: Table 3 of Annex II of the *MiFID Regulation*]

6.8.8

FCA



The FCA will publish on its website a link to the calculations and estimates for shares admitted to trading on a regulated market, made by the FCA under the provisions in Articles 33 and 34 of the *MiFID Regulation*.

6.9 Publication of quotes

6.9.1

FCA

R

Where a publication obligation arises under ■ MAR 6.5.1 R , a *systematic internaliser* must make its quotes public:

- (1) on a regular and continuous basis during normal trading hours; and
- (2) in a manner which is easily accessible to other market participants on a reasonable commercial basis.

[Note: Subparagraphs 1 and 2 of Article 27(3) of *MiFID*]

6.9.2

FCA



1. **A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during *normal trading hours* if that information is published as soon as it becomes available during the *normal trading hours* of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.**
2. **Pre-trade information, and post-trade information relating to transactions taking place within *normal trading hours*, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.**
3. **Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of the transaction is available under Article 28 [of the *MiFID Regulation*].**

[Note: Article 29(1) to (3) of the *MiFID Regulation*]

6.9.3

FCA



Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum

limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

[Note: Recital 18 to the *MiFID Regulation*]

6.9.4



FCA

For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the *MiFID*] Directive 2004/39/EC and of this Regulation, pre- and post-trade information shall be considered to have been made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;**
- (b) the facilities of a third party;**
- (c) proprietary arrangements.**

[Note: Article 30 of the *MiFID Regulation*]

6.9.5



FCA

Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the *MiFID Regulation*] shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;**
- (b) it must facilitate the consolidation of the data with similar data from other sources;**
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.**

[Note: Article 32 of the *MiFID Regulation*]

6.9.6



FCA

For the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ MAR 6.9.5 EU (a)), and in respect of arrangements facilitating the consolidation of data as required in ■ MAR 6.9.5 EU(b), the guidance in ■ MAR 5.8.3 G and ■ MAR 5.8.4 G applies equally to *firms* falling within this chapter, and should be read as if references to provisions and types of *firm* in ■ MAR 5 were references to the corresponding provisions and types of *firm* in this chapter.

 6.10 Execution price of retail client orders

6.10.1

FCA

R

A *systematic internaliser* must, while complying with the obligation to execute orders on terms most favourable to the *client* set out in ■ COBS 11.2 , execute an order up to standard market size received from a *retail client* in relation to shares for which it is a *systematic internaliser*:

- (1) at the price quoted at the time of the reception of the order; or
- (2) if the order does not match the quotation size or sizes, in compliance with the execution price rules in ■ MAR 6.12.1 R or ■ MAR 6.12.2 R.

[Note: Subparagraphs 3 and 6 of Article 27(3) of *MiFID*]

6.11 Execution price of professional client orders

6.11.1

FCA

R

A *systematic internaliser* may execute an order up to standard market size received from a *professional client* in relation to shares for which it is a *systematic internaliser*:

- (1) at the price quoted at the time of the reception of the order; or
- (2) at a better price for the *professional client* where:
 - (a) this price falls within a published range close to market conditions; and
 - (b) the order is of a size bigger than the size customarily undertaken by a retail investor; or
- (3) at a different price which benefits the *professional client* where:
 - (a) execution in several securities is part of one transaction; or
 - (b) the order is subject to conditions other than the current market price.

[Note: Subparagraphs 4 and 5 of Article 27(3) of *MiFID*]

6.11.2

FCA

EU

For the purposes of the fourth subparagraph of Article 27(3) of [the *MiFID*] Directive 2004/39/EC, an order shall be regarded as being of a size bigger than the size customarily undertaken by a retail investor if it exceeds EUR 7 500.

[Note: Article 26 of the *MiFID Regulation*]

6.11.3

FCA

EU

1. For the purposes of the fifth sub-paragraph of Article 27(3) of [the *MiFID*] Directive 2004/39/EC, execution in several securities shall be regarded as part of one transaction if that one transaction is a portfolio trade that involves 10 or more securities.

For the same purposes, an order subject to conditions other than the current market price means any order which is neither an order

for the execution of a transaction in shares at the prevailing market price, nor a *limit order*.

[Note: Article 25(1) of the *MiFID Regulation*]

6.12 Execution price of client orders not matching quotation sizes

6.12.1

FCA

R

Where a *systematic internaliser* quotes:

- (1) in only one quote in a share; or
- (2) its highest quote is lower than the standard market size for the class of shares to which the share belongs;

and it receives a *client* order that is bigger than the quotation size, but lower than the standard market size, the order may be executed, but that part of the order which exceeds the quotation size must either be executed at the quoted price or, if it is a *professional client* order, as permitted under the execution price provisions in ■ MAR 6.11.1 R .

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

6.12.2

FCA

R

Where a *systematic internaliser* quotes in different sizes and it receives a *client* order between those sizes, the order may be executed:

- (1) at one of the quoted prices in compliance with the client order handling rules set out in ■ COBS 11.3, ■ COBS 11.4.1 R and ■ COBS 11.4.5 R; or
- (2) if it is a *professional client* order, as permitted under the execution price provisions in ■ MAR 6.11.1 R.

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

6.13 Standards and conditions for trading

6.13.1

FCA

R

A *systematic internaliser* must have clear standards which set out and govern the basis on which it will decide which investors are given access to its quotes. The standards must operate:

- (1) in an objective, non-discriminatory way within the categories of *retail* and *professional clients*; and
- (2) on the basis of its commercial policy, including considerations such as:
 - (a) investor credit status;
 - (b) counterparty risk; and
 - (c) final settlement of the transaction;

and a *systematic internaliser* may refuse to enter into or discontinue business relationships with investors on this policy basis.

[Note: Recital 50 and Article 27(5) of *MiFID*]

6.13.2

FCA

G

Systematic internalisers might decide to give access to their quotes only to *retail clients*, only to *professional clients*, or to both. They should not be allowed to discriminate within those categories of *clients*.

[Note: Recital 50 to *MiFID*]

6.14 Limiting risk of exposure to multiple transactions

6.14.1

FCA

R

A *systematic internaliser* may limit the number of transactions from the same *client* that it undertakes to enter at the published quote, provided it does so in a non-discriminatory way within the categories of *retail* and *professional clients*.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.2

FCA

R

A *systematic internaliser* may limit the total number of transactions from different *clients* at the same time that it undertakes to enter at the published quote, provided that it does so:

- (1) in a non-discriminatory way within the categories of *retail* and *professional clients*;
- (2) in accordance with the provisions of the *client* order handling rules set out in ■ COBS 11.3, ■ COBS 11.4.1 R and ■ COBS 11.4.5 R; and
- (3) that the number or volume of orders sought by *clients* considerably exceeds the norm.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.3

FCA



2. For the purposes of Article 27(6) of [the *MiFID*] Directive 2004/39/EC, the number or volume of orders shall be regarded as considerably exceeding the norm if a *systematic internaliser* cannot execute those orders without exposing itself to undue risk.

In order to identify the number and volume of orders that it can execute without exposing itself to undue risk, a *systematic internaliser* shall maintain and implement as part of its risk management policy under Article 7 of Commission Directive 2006/73/EC [the *MiFID implementing Directive*] a non-discriminatory policy which takes into account the volume of the transactions, the capital that the firm has available to cover the risk for that type of trade, and the prevailing conditions in the market in which the *firm* is operating.

3. Where, in accordance with Article 27(6) of [the *MiFID*] Directive 2004/39/EC, an *investment firm* limits the number or volume of orders it undertakes to execute, it shall set out in writing, and make available to *clients* and potential *clients*, the arrangements designed to ensure that such a limitation does not result in the discriminatory treatment of *clients*.

[Note: Article 25(2) and (3) of the *MiFID Regulation*]

Chapter 7

Disclosure of information on certain trades undertaken outside a regulated market or MTF



7.1 Application

Who?

7.1.1
FCA

R This chapter applies to:

- (1) a *MiFID investment firm*; and to
- (2) a *third country investment firm*.

What?

7.1.2
FCA

R A *firm*, which, either on its own account or on behalf of *clients*, concludes *transactions* in shares *admitted to trading* on a *regulated market* outside a *regulated market* or *MTF*, must make public the volume and price of those *transactions* and the time at which they were concluded.

[Note: article 28(1) of *MiFID*]

Where?

7.1.3
FCA

R This chapter applies in respect of *transactions* in shares (which are admitted to trading on a *regulated market*) executed in the *United Kingdom*.

7.1.4
FCA

G Article 32 (7) of *MiFID* provides that the *competent authority* of the Member State in which a *branch* is located shall assume responsibility for ensuring that the services provided by the *branch* within its territory comply with the obligations under Article 28.

Status of EU provisions as rules in certain instances

7.1.5
FCA

R In this chapter, paragraphs marked "EU", including ■ MAR 7 Annex 1 EU, shall apply to a *third country investment firm* as if those provisions were *rules*.

7.2 Making post-trade information public

Publication of information

7.2.1

FCA

R

- (1) Unless (2) applies, the information required by ■ MAR 7.1.2 R shall be made public as close to real-time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

[Note: article 28(1) of *MiFID*]

- (2) A firm may defer publication of trade information required in (1), for no longer than the period specified in Table 4 in Annex II of the *MiFID Regulation* for the class of share and *transaction* concerned, provided that the criteria in (a) and (b) are satisfied, subject to the provision in (c):

- (a) the *transaction* is between an *investment firm dealing on own account* and a *client* of that *firm*;
- (b) the size of the *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.
- (c) In order to determine the relevant minimum qualifying size for the purposes of (b), all shares *admitted to trading* on a *regulated market* must be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 of the *MiFID Regulation*.

[Note: Table 4 of Annex II of the *MiFID Regulation* is reproduced in ■ MAR 7 Annex 1 EU.]

7.2.2

FCA

EU

Details of information to be made public

A *firm* ... shall, with regard to *transactions* in respect of shares *admitted to trading on regulated markets* concluded by them ... make public the following details:

- (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Annex I [of the *MiFID Regulation*];
- (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;

- (c) an indication that the trade was a negotiated trade, where applicable;
- (d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each *transaction* or in a form aggregating the volume and price of all *transactions* in the same share taking place at the same time.

[Note: article 27(1) of the *MiFID Regulation*]

Information requirements specific to systematic internalisers

7.2.3

FCA



By way of exception, a *systematic internaliser* shall be entitled to use the acronym 'SI' instead of the venue identification referred to in [MAR 7.2.2 EU \(a\)](#) in respect of a *transaction* in a share that is executed in its capacity as a *systematic internaliser* in respect of that share.

The *systematic internaliser* may exercise that right only as long as it makes available to the public aggregate quarterly data as to the *transactions* executed in its capacity as a *systematic internaliser* in respect of that share relating to the most recent calendar quarter, or part of a calendar quarter, during which the firm acted as a *systematic internaliser* in respect of that share. That data shall be made available no later than one month after the end of each calendar quarter.

It may also exercise that right during the period between 1 November 2007, or the date on which the firm commences to be a *systematic internaliser* in relation to a share, whichever is the later, and the date that aggregate quarterly data in relation to a share is first due to be published.

[Note: article 27(2) of the *MiFID Regulation*. The date, '1 November 2007', is specified in article 41(2) of the *MiFID Regulation*]

7.2.4

FCA



The aggregated quarterly data referred to in the second subparagraph of [MAR 7.2.3 EU](#) shall contain the following information for the share in respect of each trading day of the calendar quarter concerned:

- (a) the highest price;
- (b) the lowest price;
- (c) the average price;
- (d) the total number of shares traded;
- (e) the total number of *transactions*;
- (f) such other information as the *systematic internaliser* decides to make available.

[Note: article 27(3) of the *MiFID Regulation*]

7.2.5

FCA



Arrangements between firms for making information public

Where the *transaction* is executed outside the rules of a *regulated market* or an *MTF*, one of the following ... *firms* shall, by agreement between the parties, arrange to make the information public:

- (a) the *firm* that sells the share concerned;
- (b) the *firm* that acts on behalf of or arranges the *transaction* for the seller;
- (c) the *firm* that acts on behalf of or arranges the *transaction* for the buyer;
- (d) the *firm* that buys the share concerned.

In the absence of such an agreement, the information shall be made public by the *firm* determined by proceeding sequentially from point (a) to point (d) until the first point that applies to the case in question.

The parties shall take all reasonable steps to ensure that the *transaction* is made public as a single *transaction*. For those purposes two matching trades entered at the same time with a single party interposed shall be considered to be a single *transaction*.

[Note: article 27(4) of the *MiFID Regulation*]

7.2.6

FCA



Deferred publication of large transactions

The deferred publication of information in respect of *transactions* may be authorised, for a period no longer than the period specified in **MAR 7 Annex 1 EU** for the class of share and *transaction* concerned, provided that the following criteria are satisfied:

- (a) the *transaction* is between an investment *firm dealing on own account* and a *client* of that firm;
- (b) the size of the *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in **MAR 7 Annex 1 EU**.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading on a regulated market* shall be classified in accordance with their average daily *turnover* to be calculated in accordance with Article 33 of the *MiFID Regulation*.

[Note: article 28 of the *MiFID Regulation*]

7.2.6A

FCA



The deferred publication of information, referred to in **MAR 7.2.6 EU**, is authorised by the *FCA*, to the extent set out in that provision, and, in particular, is given effect in **MAR 7.2.1 R (2)**.

PAGE
5

7.2.7

FCA



Publication and availability of post trade transparency data

Post-trade information relating to *transactions* taking place on *trading venues* and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*.

[Note: article 29(2) of the *MiFID Regulation*]

7.2.8

FCA



Information relating to a *portfolio trade* shall be made available with respect to each constituent *transaction* as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent *transaction* shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under [MAR 7.2.6 EU](#).

[Note: article 29(3) of the *MiFID Regulation*]

7.2.9

FCA



Post-trade information relating to *transactions* taking place on a *trading venue* but outside its normal trading hours shall be made public before the opening of the next *trading day* of the *trading venue* on which the *transaction* took place.

[Note: article 29(4) of the *MiFID Regulation*]

7.2.10

FCA



For *transactions* that take place outside a *trading venue*, post-trade information shall be made public:

- (a) if the *transaction* takes place during a *trading day* of the most relevant market for the share concerned, or during the firm's normal trading hours, as close to real time as possible. Post-trade information relating to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*;
- (b) in a case not covered by point (a), immediately upon the commencement of the firm's normal trading hours or at the latest before the opening of the next *trading day* in the most relevant market for that share.

[Note: article 29(5) of the *MiFID Regulation*]

7.2.11

FCA



Public availability of post-trade information

For the purposes of [MAR 7](#), post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: article 30 of the *MiFID Regulation*]

7.2.12

FCA



Arrangements for making information public

Any arrangement to make information public, adopted for the purposes of [MAR 7.2.11 EU](#), shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) it must facilitate the consolidation of the data with similar data from other sources;
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

[Note: article 32 of the *MiFID Regulation*]

7.2.12A

FCA

G

- (1) The *FCA* considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ MAR 7.2.12 EU(a)), and in respect of arrangements facilitating the consolidation of data as required in ■ MAR 7.2.12 EU(b), the guidance in ■ MAR 5.8.3 G and ■ MAR 5.8.4 G (subject to additional guidance in (2)) applies equally to *firms* falling within this chapter, and should be read as if references to provisions and types of *firm* in ■ MAR 5 were references to the corresponding provisions and types of *firm* in this chapter.
- (2) In addition to ■ MAR 5.8.4 G, as applied to *firms* in this chapter under (1), for the purposes of facilitating the consolidation of transparency data with similar data from other sources, the *FCA* considers information as being made public in accordance with ■ MAR 7.2.12 EU(b), if, in addition to ■ MAR 5.8.4 G (1)(a) to ■ (c), each trade is published through only one primary publication channel.

Publication of results of calculations and estimates made by the FCA

7.2.13

FCA

G

The information relating to 'minimum qualifying size' referred to in Article 28 of the *MiFID Regulation* (see ■ MAR 7.2.6 EU) and the results of calculations and estimates required to be published as a result of Articles 33 and 34 of the *MiFID Regulation* are available at www.fca.org.uk and at <http://mifiddatabase.esma.europa.eu/> .

Trade Data Monitors

7.2.14

FCA

G

The *FCA* considers that a *firm* will satisfy its obligations under ■ MAR 7.2.12 EU if:

- (1) in assessing the arrangements, the *firm* follows the guidelines published on the *FCA*'s website at <http://www.fca.org.uk/your-fca/documents/fsa-guidelines-tdm> ; and
- (2) it has been confirmed that the arrangements will enable the *firm* to comply with the guidelines through either:
 - (a) a statement by the *FCA*; or
 - (b) a report by an external auditor to the provider of the arrangements which is made available to *firms* and, on request, to the *FCA*.

A "trade data monitor" is a provider of such arrangements which has been assessed by the *FCA* or an external auditor as having the capability to provide services and facilities to *firms* in accordance with the guidelines published on the *FCA*'s website at <http://www.fca.org.uk/your-fca/documents/fsa-guidelines-tdm>

Use of a trade data monitor does not affect a *firm's* obligations under ■ MAR 7.2.10 EU regarding the timing of the disclosure of post-trade information.

Deferred publication thresholds and delays

FCA

Table 4: Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily *turnover* (ADT), the minimum qualifying size of *transaction* that will qualify for that delay in respect of a share of that type.

	Class of shares in terms of average daily turnover (ADT)			
	ADT < €100 000	€100 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
	Minimum qualifying size of transaction for permitted delay			
60 minutes	€10 000	Greater of 5% of ADT and €25 000	Lower of 10% of ADT and €3 500 000	Lower of 10% of ADT and €7 500 000
180 minutes	€25 000	Greater of 15% of ADT and €75 000	Lower of 15% of ADT and €5 000 000	Lower of 20% of ADT and €15 000 000
Until end of <i>trading day</i> (or roll-over to noon of next trading day if trade undertaken in final 2 hours of <i>trading day</i>)	€45 000	Greater of 25% of ADT and €100 000	Lower of 25% of ADT and €10 000 000	Lower of 30% of ADT and €30 000 000
Until end of <i>trading day</i> next after trade	€60 000	Greater of 50% of ADT and €100 000	Greater of 50% of ADT and €1 000 000	100% of ADT
Until end of second <i>trading day</i> next after trade	€80 000	100% of ADT	100% of ADT	250% of ADT
Until end of third <i>trading day</i> next after trade		250% of ADT	250% of ADT	

Chapter 8

Benchmarks



8.1 Application and purpose

Application

8.1.1

FCA

R

This chapter applies to every *firm* which is a *benchmark submitter* or a *benchmark administrator*.

Purpose

8.1.2

FCA

G

The purpose of this chapter is to set out the requirements applying to *firms* who are *benchmark submitters* or *benchmark administrators* when carrying out the activities of *providing information in relation to a specified benchmark* or *administering a specified benchmark*

Actions for damages

8.1.3

FCA

R

A contravention of a rule in ■ MAR 8 does not give rise to a right of action by a private person under section 138D(2) of the *Act* (and each rule in ■ MAR 8 is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

8.2 Requirements for benchmark submitters

Organisational and governance arrangements

8.2.1 **R** *A benchmark submitter must establish and maintain adequate and effective organisational and governance arrangements for the process of making benchmark submissions.*

FCA

8.2.2 **G** These arrangements should include:

FCA

- (1) appropriate oversight of the submission process by the *benchmark submitter's senior personnel*;
- (2) appropriate oversight of the submission process by the compliance function of the *firm* to ensure compliance with the *benchmark submitter's* obligations under this section; and
- (3) periodic internal audit reviews.

8.2.3 **R** *A benchmark submitter who maintains an establishment in the United Kingdom must:*

FCA

- (1) **appoint a benchmark manager with responsibility for the oversight of its compliance with this chapter; and**
- (2) **ensure that its benchmark manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.**

8.2.4 **G** The requirements in **■ MAR 8.2.3 R** apply, regardless of the place from which *benchmark submissions* are made. The *FCA* expects that a benchmark manager will be based in the *United Kingdom*.

FCA

8.2.5 **R** *A benchmark submitter must:*

FCA

- (1) **ensure that its *benchmark submissions* are determined using an effective methodology to establish the *benchmark submission* on the basis of objective criteria and relevant information; and**

- (2) review this methodology as and when market circumstances require, but at least every quarter, to ensure that its *benchmark submissions* are credible and robust.

8.2.6

FCA

G

An effective methodology for determining *benchmark submissions* in addition to quantitative criteria may include the use of qualitative criteria, such as the expert judgment of the *benchmark submitter*.

Conflict management

8.2.7

FCA

R

A *benchmark submitter* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of making *benchmark submissions*.

8.2.8

FCA

G

In order to identify and manage conflicts of interest as set out in ■ MAR 8.2.7 R a *benchmark submitter* should:

- (1) establish, implement and maintain a *conflicts of interest policy* which
 - (a) identifies the circumstances that constitute, or may give rise to, a conflict of interest arising from its *benchmark submissions* or the process of gathering information in order to make *benchmark submissions*; and
 - (b) sets out the approach to managing such conflicts;
- (2) establish effective controls to manage conflicts of interest between the parts of the business responsible for the *benchmark submission* and those parts of the business who may use, or have an interest in, the benchmark rate; and
- (3) establish effective measures to prevent or limit any person from exercising inappropriate influence over the *benchmark submission*.

Notification of suspicions of manipulation

8.2.9

FCA

R

A *benchmark submitter* who suspects that any person

- (1) is manipulating, or has manipulated, a *specified benchmark*;
- (2) is attempting, or has attempted, to manipulate a *specified benchmark*; or
- (3) is colluding, or has colluded, in the manipulation or attempted manipulation of a *specified benchmark*;

must notify the *FCA* without delay.

Record keeping

8.2.10

FCA

R

A *benchmark submitter* must:

- (1) keep for at least five years:

- (a) records of its *benchmark submissions*, as well as all information used to enable it to make a *benchmark submission*; and
 - (b) reports on the key sensitivities the *benchmark submitter* may have regarding the *specified benchmark* it is submitting to, including (but not limited to) the *benchmark submitter's* exposure to instruments which may be affected by changes in the *specified benchmark*;
- (2) provide to the relevant *benchmark administrator* all information used to enable it to make a *benchmark submission* on a daily basis; and
 - (3) provide to the relevant *benchmark administrator*, on a quarterly basis, aggregate information which will allow the *benchmark administrator* to produce statistics relevant to the *specified benchmark* as required by ■ MAR 8.3.12 R.

8.2.11

FCA

G

The information provided to the *benchmark administrator* in accordance with ■ MAR 8.2.10R (2) should include:

- (1) a description of the methodology used to establish the *benchmark submission*; and
- (2) if applicable, an explanation of how any quantitative and qualitative criteria were used to establish the *benchmark submission*.

Auditor's report

8.2.12

FCA

R

A *benchmark submitter* must appoint an independent auditor to report to the FCA on the *benchmark submitter's* compliance with the requirements of this section on a regular basis.

8.2.13

FCA

G

- (1) The FCA expects the report required under ■ MAR 8.2.12 R to be issued annually, although the FCA may agree a longer period depending on the *benchmark submitter's* particular circumstances, including the nature and scale of its engagement in the *specified benchmark* and the internal framework for monitoring compliance with the requirements of this chapter.
- (2) A *benchmark submitter* which proposes to appoint an auditor to report to the FCA under ■ MAR 8.2.12 R on a less frequent than annual basis should notify the FCA explaining why it believes it would be appropriate to do so.

8.3 Requirements for benchmark administrators

- 8.3.1** **R** **FCA** A *benchmark administrator* must establish and maintain effective organisational and governance arrangements to enable it to carry out the activity of *administering a specified benchmark*.
- 8.3.2** **R** **FCA** In discharging its duties, the *benchmark administrator* must have regard to the importance of maintaining integrity of the market and the continuity of the *specified benchmark* including the need for contractual certainty for contracts which reference the *specified benchmark*.
- 8.3.3** **R** **FCA** A *benchmark administrator* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of administering a *specified benchmark*.
- 8.3.4** **G** **FCA** The arrangements described in **■** MAR 8.3.3 R should include measures designed to ensure the confidentiality of *benchmark submissions* and additional information received from *benchmark submitters* (to the extent that such submissions and information have not been made public by mutual agreement between the *benchmark administrator* and *benchmark submitter*), for example, through confidentiality agreements for the *benchmark administrator's* employees and members of the oversight committee.
- 8.3.5** **R** **FCA** A *benchmark administrator* must:
- (1) appoint a benchmark administration manager with responsibility for oversight of its compliance with this section; and
 - (2) ensure that its benchmark administration manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.
- 8.3.6** **R** **FCA** A *benchmark administrator* must:
- (1) have effective arrangements and procedures that allow the regular monitoring and surveillance of *benchmark submissions*:

- (2) monitor the *benchmark submissions* in order to identify breaches of its practice standards (set out in ■ MAR 8.3.10R (1)) and conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers and provide to the oversight committee of the *specified benchmark* timely updates of suspected breaches of practice standards and attempted manipulation; and
- (3) notify the FCA and provide all relevant information where it suspects that, in relation to the *specified benchmark* it administers, there has been:
 - (a) a material breach of the *benchmark administrator's* practice standards (set out in ■ MAR 8.3.10R (1));
 - (b) conduct that may involve manipulation or attempted manipulation of the *specified benchmark* it administers; or
 - (c) collusion to manipulate or to attempt to manipulate the *specified benchmark* it administers.

8.3.7

FCA

G

The arrangements and procedures referred to in ■ MAR 8.3.6 R (1) should include (but not be limited to):

- (1) carrying out statistical analysis of *benchmark submissions*, using other relevant market data in order to identify irregularities in *benchmark submissions*; and
- (2) an effective whistle-blowing procedure which allows any person on an anonymous basis to alert the *benchmark administrator* of conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers.

8.3.8

FCA

R

Oversight committee

A *benchmark administrator* must establish an oversight committee (which must be a committee of the *benchmark administrator*) which includes representatives of *benchmark submitters*, market infrastructure providers, users of the *specified benchmark* and at least two independent *non-executive directors* of the *benchmark administrator* approved to carry out the *non-executive director function*.

8.3.9

FCA

G

The oversight committee should be responsible for:

- (1) considering matters of definition and scope of the *specified benchmark*;
- (2) exercising collective scrutiny of *benchmark submissions* if and when required; and
- (3) notifying the FCA of *benchmark submitters* that fail on a recurring basis to follow the practice standards (as set out in ■ MAR 8.3.10R (1)) for the *specified benchmark*.

8.3.10

FCA

R The *benchmark administrator* through its oversight committee must:

- (1) develop practice standards in a published code which set out the responsibilities for *benchmark submitters*, the *benchmark administrator*, and its oversight committee in relation to the relevant *specified benchmark*;
- (2) undertake regular periodic reviews of:
 - (a) the practice standards mentioned in ■ MAR 8.3.10R (1);
 - (b) the setting and definition of the *specified benchmark* it administers;
 - (c) the composition of *benchmark submitter* panels; and
 - (d) the process of making relevant *benchmark submissions*; and
- (3) before making any changes as a result of such review:
 - (a) notify the *FCA*;
 - (b) after doing so, publish a draft of the proposed changes and a notice that representations about the proposed changes may be made to the *benchmark administrator* within a specified time; and
 - (c) have regard to any such representations.

Review of the benchmark and publication of statistics

8.3.11

FCA

R The *benchmark administrator* must provide to the *FCA*, on a daily basis, all *benchmark submissions* it has received relating to the *specified benchmark* it administers.

8.3.12

FCA

R A *benchmark administrator* must publish quarterly aggregate statistics outlining the activity in the underlying market relevant to the *specified benchmark*.

Adequate financial resources

8.3.13

FCA

R Notwithstanding any other financial resource requirements that may apply, a *firm* whose *permitted activities* include *administering a specified benchmark* must:

- (1) be able to meet its liabilities as they fall due; and
- (2) maintain, at all times, sufficient financial resources to be able to cover the operating costs of administering the *specified benchmark* for a period of at least six months.

8.3.14

FCA

G ■ MAR 8.3.13 R sets out the minimum amount of financial resources a *benchmark administrator* must hold in order to carry out *administering a specified benchmark*.

However, the *FCA* expects *benchmark administrators* to normally hold sufficient financial resources to cover the operating costs of administering the *specified benchmark* for a period of nine months.

8.3.15

FCA

G

The financial resources in respect of the requirement in ■ MAR 8.3.13 R (2):

- (1) can include liquid financial assets held on the balance sheet of the *benchmark administrator*, for example, cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect, common stock, retained earnings, disclosed reserves and other instruments generally classified as common equity tier one capital or additional tier one capital; and
- (2) should not include holdings of the *benchmark administrator's* own securities or those of any undertaking in the *benchmark administrator's* group; any amount owed to the *benchmark administrator* by an undertaking in its group under any loan or credit arrangement, and any exposure arising under any guarantee, charge or contingent liability.

8.3.16

FCA

G

The *FCA* may use its powers under section 55L of the *Act* to impose on a *benchmark administrator* a requirement to hold additional financial resources to ■ MAR 8.3.13 R if the *FCA* considers it desirable to meet any of its *statutory objectives*.

Market Conduct

MAR TP 1 Transitional Provisions

FCA

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

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

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

2) Transitional Provisions for Price stabilising rules (Price Stabilising Rules)

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

3) Transitional provisions for *MAR 6* (*systematic internaliser reporting requirements*)

A provision giving effect to Article 21 (4) of the *MiFID Regulation* as regards creating the initial list of all *systematic internalisers*.

FCA

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>MAR 2</i>	R	Expired		

Market Conduct

Schedule 1 Record Keeping requirements

Sch 1.1 G

FCA

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
MAR 2.7R	Price stabilising action	Full details as noted in MAR 2.7.2 R	On initiation of stabilising action	3 years

Market Conduct

Schedule 2 Notification requirements

Sch 2.1 G

FCA

There are no notification requirements in *MAR* .

Market Conduct

Schedule 3 Fees and other required payments

Sch 3.1 G

FCA

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

Market Conduct

Schedule 5 Rights of action for damages

Sch 5.1 G

FCA

1. The table below sets out the *rules* in *MAR* contravention of which by an *authorised person* may be actionable under section 138D 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 138D unless a "yes" appears in the column headed "Removed". A "yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. In accordance with the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a "*private person*" is:
 - i. any individual, except when acting in the course of carrying on a *regulated activity*; and
 - ii. any *person* who is not an individual, except when acting in the course of carrying on business of any kind; but does not include a government, a local authority or an international organisation.
4. The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person*, in accordance with those Regulations. If so, an indication of the type of *person* by whom the *rule* is actionable is given.

Sch 5.2 G

FCA

Chapter / Appendix	Section / Annex	Paragraph	For Private Person?	Removed	For other person?
<i>MAR</i> 1 (no rules)					
All rules in <i>MAR</i> 2 except <i>MAR</i> 2.3.3 R and <i>MAR</i> 2.3.4 EU			Yes	Yes <i>MAR</i> 2.1.9 R	No
<i>MAR</i> 2.3.3 R, <i>MAR</i> 2.3.4 EU and <i>MAR</i> 2.3.5 EU			No		No
All rules in <i>MAR</i> 3 except <i>MAR</i> 3.5.7 E			Yes	Yes <i>MAR</i> 3.1.5 R	No
<i>MAR</i> 3.5.7 E			No		No
<i>MAR</i> 4 (all rules)			Yes	No	No

Market Conduct

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particular rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.