

Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation (2014/596/EU)

November 2015



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The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 4 February 2016.

Comments may be sent by electronic submission using the form on the FCA's website at: <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-35-response-form>.

Alternatively, please send comments in writing to:

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A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

Copies of this Consultation Paper are available to download from our website: www.fca.org.uk.

Abbreviations used in this document

| | |
|-----------------------------|---|
| CA | Competent Authority |
| CBA | Cost benefit analysis |
| COBS | Conduct of Business Sourcebook |
| CoMC | Code of Market Conduct |
| DTR | Disclosure Rules and Transparency Rules |
| Commission | European Commission |
| EAMP | Emission Allowance Market Participant |
| EG | Enforcement Guidance |
| ESMA | European Securities and Markets Authority |
| EU | European Union |
| FCA | Financial Conduct Authority |
| FI | Financial Instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU |
| FSMA | Financial Services and Markets Act 2000 |
| ITS | Implementing Technical Standard |
| LR | Listing Rules |
| EU MAD | EU Market Abuse Directive |
| EU MAR | EU Market Abuse Regulation |
| MAR 1 | First chapter of the MAR sourcebook |
| MIFID II | Markets in Financial Instruments Directive II |
| MTF | Multilateral Trading Facility |
| OTF | Organised Trading Facility |
| RAP | Recognised Auction Platforms Regulations |
| REC | Recognised Investment Exchanges Sourcebook |
| RTS | Regulatory Technical Standard |
| Statutory Instrument | The Statutory Instrument to be made by the Treasury under section 2(2) of the European Communities Act 1972 |
| STOR | Suspicious Transaction and Order Report |
| SUP | Supervision Sourcebook |
| SYSC | Senior Management Arrangements, Systems & Controls Sourcebook |
| the Treasury | Her Majesty's Treasury |

1. Overview

Introduction

- 1.1** In October 2011, the European Commission published proposals for a Regulation on insider dealing, market manipulation and the improper disclosure of inside information. The resulting Market Abuse Regulation (EU MAR) was adopted by the European Parliament and the Council of the European Union and published in its final form in the Official Journal of the European Union in June 2014. EU MAR updates the civil market abuse framework formerly established by the EU Market Abuse Directive (EU MAD) and will apply from 3 July 2016.
- 1.2** In the UK, the obligations under EU MAD were implemented principally by changes to the Financial Services and Markets Act 2000 (FSMA). This regime was supplemented by the FCA Handbook (the Handbook), which is made under powers given to the FCA by FSMA. The FSMA civil market abuse regime and the relevant Handbook provisions will continue to apply until July 2016.
- 1.3** The Treasury is preparing secondary legislation to repeal or modify existing domestic law, where it conflicts with EU MAR, to meet the UK's amended obligations under the new regime. This secondary legislation will also cover new EU MAR obligations which are not covered by the existing market abuse regime, such as the requirement for employers to have internal procedures for employees to report infringements of EU MAR.
- 1.4** In this consultation document, we set out our proposals for the necessary changes to the Handbook required in implementing this new regime. We seek feedback on these proposals and also invite comments on the different options for implementation the regime offers Member States in two areas.
- 1.5** From 3 July 2016, the principal legal requirements relating to market abuse will be set out in EU MAR and its implementing measures. It is proposed that the Handbook will provide guidance on, and signposts to, EU MAR where we determine it is appropriate following this consultation. However, the Handbook should not be regarded as the source of all provisions relating to market abuse. Persons in scope of EU MAR should be aware of, and will need to comply with, all of EU MAR (including implementing measures) and any relevant ESMA guidelines from July 2016.

Issues arising from the implementation of EU MAR

- 1.6** This consultation invites comments on two issues. The first issue is about alternative options for implementing two specific EU MAR requirements, and how they may apply in the UK. These areas are discussed in Chapter 2.

- 1.7** The second issue relates to the step-change in the legal status of the European market abuse regime from a Directive to a Regulation and the resulting changes to the existing domestic regime. Whereas EU MAD had to be implemented via UK legislation (in FSMA and FCA Rules) EU MAR repeals EU MAD with effect from 3 July 2016 and will have direct application in the UK. It is therefore necessary to make relevant changes to the UK's existing domestic regime to ensure that national law complies with EU MAR. This will include deleting provisions of the Handbook where EU MAR contains an equivalent provision. We propose to retain in the Handbook any existing guidance that is compatible with EU MAR, and provide signposting to relevant the EU legislation. This issue is discussed in Chapters 3 and 4.
- 1.8** A change created by the move from Directive to Regulation relates to the Code of Market Conduct (CoMC). This sits within the FCA Handbook as we are currently obliged by FSMA to create a CoMC to give guidance on determining whether or not behaviour amounts to market abuse. The CoMC also contains evidential provisions. We understand that the Treasury intend to ask Parliament to repeal the relevant provisions in FSMA. As a result we have reviewed the CoMC to decide if we should restate any compatible conduct or evidential provisions as guidance under our powers to give general guidance.
- 1.9** The proposals in this Consultation Paper relate only to the changes to the civil regime regarding the implementation of EU MAR. They do not cover the UK criminal market abuse regime as set out in Part 5 of the Criminal Justice Act 1993 and Part 7 of the Financial Services Act.

Relationship with other upcoming FCA consultations

- 1.10** We intend to consult in the next few months on a modification to current guidance in the Disclosure Rules and Transparency Rules (DTR) for delaying disclosure of inside information. This proposal may impact one of the chapters included in this consultation.
- 1.11** We will also be consulting separately on our approach to implementing MiFID II. For example, the framework for the requirements on the production and dissemination of investment research are currently set out in COBS 12. These are drawn from provisions in both MiFID and EU MAD, and will be reviewed again under MiFID II implementation.
- 1.12** We have not proposed any change to the Decision Procedures and Penalties (DEPP) and Enforcement Guide (EG) sourcebooks in this consultation. This is because they are highly dependent on the details to be set out in the Treasury's Statutory Instrument to be made under section 2(2) of the European Communities Act 1972 which is still under discussion. The changes proposed to these sections of the Handbook will be covered by a further consultation.
- 1.13** We will assess the feedback on areas of cross-over from these consultations to ensure we take all perspectives into account when we make the final changes to these sections of the Handbook.

Who does this consultation affect?

- 1.14** This Consultation Paper will be of interest to, among others:
- Any firm or individual who directly or indirectly deals in, or any firm who issues, any financial instruments (FI):

- admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made
- traded on a Multilateral Trading Facility (MTF), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made
- traded on an Organised Trading Facility (OTF)
 - not admitted to trading on one of those venues, but the price or value of which depends on or has an effect on the price or value of an FI.

1.15 This includes any transaction, order or behaviour concerning any FI referred to above irrespective of whether or not such transaction, order, or behaviour takes place on a trading venue

1.16 This Consultation Paper will also be of interest to emission allowance market participants (EAMPs), and any person discharging managerial responsibilities within issuers or EAMPs or any person closely associated with them.

Is this of interest to consumers?

1.17 This Consultation Paper will be of interest to consumers who directly or indirectly deal and invest in any of the FIs indicated above.

Equality and diversity considerations

1.18 We have assessed the likely equality and diversity impacts of these proposals and do not think they give rise to any concerns, but would welcome any comments.

Next steps

1.19 We want to know what you think about our proposals. Please send us your comments in writing by 4 February 2016. Please use the online response form on our website or write to us at the address on page 2.

1.20 We will consider your feedback and publish our final Handbook provisions in a Policy Statement in spring 2016.

2. Areas with options for implementation

2.1 EU MAR is an EU Regulation, which means it applies directly in the UK without the need for any domestic implementing legislation. As a result, Member States and competent authorities (CAs) have limited policy discretion in how the provisions of EU MAR take effect in the UK other than in two specific areas where it provides an alternative option for implementation by the Member State or CA. In the section below we provide background on these two areas, the options available, and our proposed approach.

Article 17: Public disclosure of inside information

2.2 Article 17 EU MAR requires issuers and EAMPs to inform the public of inside information which directly concerns that issuer or, for EAMPs, concerns emission allowances they hold. This is essential to avoid insider dealing and ensure that investors are not misled. However, this obligation may, under certain circumstances, prejudice the legitimate interests of the issuer or EAMP. Article 17(4) therefore permits issuers and EAMPs to make a decision to delay public disclosure provided that certain conditions are met. These are:

- immediate disclosure is likely to prejudice the legitimate interests of the issuer or EAMP
- delay of disclosure is not likely to mislead the public
- the issuer or EAMP is able to ensure the confidentiality of that information

2.3 The delay and these conditions are similar to those under the current regime as set out in the FCA Handbook (see DTR 2.5).

2.4 EU MAR requires that, where an issuer or EAMP has delayed the disclosure of inside information under Article 17(4), it informs the relevant CA about the delay and provides a written explanation of how the above conditions were met as soon as the information is disclosed to the public.

2.5 Alternatively, EU MAR allows for an issuer or EAMP to only be required to give this explanation if the relevant CA requests it. Issuers and EAMPs would still be required to routinely notify the CA of the fact of their decision to delay after the event.

2.6 There are benefits to requiring issuers and EAMPs to provide a written explanation with their notification of the decision to delay disclosure of inside information on a routine basis. It gives CAs the information immediately, without them having to request it. It also allows decisions to be queried or challenged and allows for some analysis of trends for reasons for delay.

2.7 This requirement could also be burdensome for issuers and EAMPs, who will need to provide this information for every notification of delay. Delays of disclosure of inside information may be a common occurrence in some firms.

2.8 The Treasury's and FCA's current preference is to require this explanation to be given only if the FCA requests it. To avoid doubt, the notification of the delay would be required after the event in all cases.

Q1: Do respondents agree that the issuer/EAMP should provide a written explanation following notification of delayed disclosure to the FCA only upon its request?

Q2: Are you able to provide information on the number of written notifications you anticipate that you would make a year under the proposed regime?

Q3: Would it be too burdensome to automatically provide the explanation without waiting for a specific FCA request? Please could you provide data regarding the resources required?

Article 19: Managers' transactions

2.9 Article 19 EU MAR creates a notification regime. This requires persons discharging managerial responsibilities (PDMRs) within an issuer or EAMP, and persons closely associated with them, to notify all transactions in specified FIs to the issuer or the EAMP. These FIs include the shares or debt instruments of the issuer or emission allowances and the notification must be made once a threshold has been passed within a calendar year. The issuer or EAMP is then obliged to make this information public. This notification is also sent by the PDMR or persons closely associated with the PDMR to the CA.

2.10 This disclosure regime is a preventative measure against market abuse and can provide a highly valuable source of information to investors about the PDMR's possible view on the issuer.

2.11 However, to ensure an appropriate balance between the level of transparency and the number of reports made to competent authorities, EU MAR introduces a *de minimis* threshold of €5,000 within a calendar year below which transactions need not be notified. To calculate the threshold, all transactions referred to in Article 19 EU MAR and related implementing measures are added without netting.

2.12 Alternatively, EU MAR provides that a CA may decide to increase the threshold to €20,000. If the CA chooses to do this, they must inform ESMA of its decision and the justification for it, with specific reference to market conditions, before they apply the increased threshold. ESMA will then publish the thresholds that apply on its website.

2.13 EU MAD contains similar provisions, but Member States can opt to either have a *de minimis* threshold of €5,000 or no threshold at all. Chapter 3 of the Disclosure Rules and Transparency Rules (DTR3) sets out the requirements for disclosure of dealing by PDMRs. There is currently no threshold for notifications specified in the current UK regime.

2.14 The threshold that is selected by the FCA under EU MAR will be set out in DTR 3. The proposed text reflecting the approach is included in the draft instrument set out in Appendix 1.

2.15 Our view is that the notification of transactions conducted by PDMR on their own account, or by a person closely associated with them, provides both valuable information for market participants and a useful tool for competent authorities to supervise markets.

2.16 We are not currently aware of any specific market conditions that adequately justify setting the threshold at €20,000. Therefore, we are proposing to adopt the default position of a €5,000 threshold.

Q4: Do you agree with our proposal to adopt the €5,000 threshold? If not, please specify the market conditions that you consider would justify the decision to increase it to €20,000.

Q5: Please provide quantitative data on the number of transactions you would have to notify at a threshold at €5,000 and €20,000 respectively in a calendar year?

3.

Impact of implementation of the Market Abuse Regulation

Introduction

- 3.1** This section sets out the existing and forthcoming EU market abuse framework and the impact that the change from a Directive to a Regulation has on domestic law. We explain below our approach to making the amendments to the FCA Handbook required as a consequence of this change.
- 3.2** The implementation of EU MAR will also involve amendments to primary and secondary legislation, including FSMA. These amendments will be made by the Treasury via a Statutory Instrument.

Background

- 3.3** In 2001 the UK's FSMA introduced a comprehensive civil regime which prohibited market abuse. This was updated in 2005 as part of the UK's implementation of the 2003 EU Market Abuse Directive (EU MAD).
- 3.4** EU MAD set out minimum standards for a market abuse regime in each Member State to promote market integrity across Europe's financial markets. It did this by introducing a common EU legal framework for preventing and detecting market abuse and for ensuring a proper flow of information to participants and the public.
- 3.5** EU MAD's provisions were similar but not identical to the UK's then-existing market abuse regime. When implementing EU MAD, the UK chose to amend its existing civil regime to meet the minimum requirements of EU MAD while maintaining certain existing provisions where these were wider in scope. The result of this is that the current UK market abuse regime, set out in FSMA and the Handbook, goes beyond the minimum requirements of EU MAD in a number of areas.
- 3.6** Agreed in 2011, EU MAR will update the EU market abuse framework. It will do this, for example, by extending its scope to financial instruments traded on platforms other than regulated markets and over the counter (OTC) and adapting rules to new technology and behaviour. EU MAR clarifies that market abuse occurring across spot commodity and related derivative markets is prohibited, and reinforces cooperation between financial and commodity regulators. EU MAR also includes measures to ensure regulators have the information they need to detect and sanction market abuse. To ensure the costs of EU legislation do not create a barrier for small and medium sized issuers (SME) to access financial markets, EU MAR also tailors the rules for SME issuers in several respects.

- 3.7** EU MAR applies from 3 July 2016 but where there are references to OTFs, SME growth markets, emission allowances or related auctioned products, those provisions will apply to OTFs, SME growth markets etc. on the date that MiFID II applies (3 January 2017). The Treasury is liaising with the Commission to establish exactly how the delay in references to emission allowances or related products coming into force will work in practice.
- 3.8** EU MAR is made under the ‘Lamfalussy process’ for financial services legislation in the EU which is composed of three levels, each focusing on a specific stage of implementation of legislation.
- 3.9** EU MAR is established as a regulation (the Level 1 text).¹ Further details of implementation are provided by implementing or delegated measures (Level 2) which are made by the Commission. These measures are based on technical advice and technical standards provided by ESMA.
- 3.10** The technical advice is found here² and the regulatory and implementing technical standards can be found here.³ The Level 2 texts for EU MAR are still being adopted at the time of writing this Consultation Paper.⁴ They may be amended during the adoption process.
- 3.11** EU MAR also requires ESMA to issue Level 3 guidelines in the areas outlined in Articles 7(5), 11(11) and 17(11). These are not yet available and are not considered as part of this consultation, though they may necessitate further amendments to the Handbook in due course.
- 3.12** The UK must ensure that our national laws are compatible with EU MAR by its application on 3 July 2016. This deadline makes it necessary to consult on changes to the Handbook before the Level 2 measures are finalised.

The change from a Directive to a Regulation

- 3.13** EU MAR marks a step change in the EU market abuse framework. It takes the form of a Regulation rather than a Directive which, under EU law, applies directly in all Member States. This will ensure consistency across the EU by preventing different approaches in the way Member States implement the legislation.
- 3.14** UK legislation is not required to transpose directly effective provisions in an EU regulation i.e. new domestic legislation is not required. However, the UK must still make sure existing domestic law is compatible with EU regulations and, if necessary, amend existing law to ensure this. Regulations can, and often do, contain particular provisions such as the powers for competent authorities under Article 23 EU MAR which require implementation by Member States via domestic legislation.
- 3.15** In the case of EU MAR, the Treasury has responsibility for amending the relevant primary and secondary legislation. The Treasury will amend FSMA and other relevant legislation to ensure that UK law is compatible with EU MAR and implements those provisions of MAR that require further domestic implementation. One notable change will be the removal of the FCA’s power under section 119 FSMA to make a code giving guidance on whether or not behaviour

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN>

² www.esma.europa.eu/content/ESMA%E2%80%99s-technical-advice-possible-delegated-acts-concerning-Market-Abuse-Regulation

³ www.esma.europa.eu/system/files/2015-esma-1455_-_final_report_mar_ts.pdf

⁴ The adoption process for Level 2 measures involves the European Securities and Markets Authority (ESMA) providing either Technical Advice or Technical Standards to the Commission for review and adoption. The European Parliament and Council of the EU then have the opportunity to approve or object to the texts. For MAR, the Technical Advice was provided in February 2015 and the draft Technical Standards were submitted in September 2015.

amounts to market abuse. This code is currently in the FCA Handbook as the Code of Market Conduct (CoMC). The changes to legislation will be set out in a Statutory Instrument that is currently being drafted by the Treasury.

- 3.16** The FCA Handbook also contains various provisions, including many implementing EU MAD or giving guidance about implementing provisions, which will be replaced by, or may conflict with, the directly effective provisions in EU MAR. So the FCA will need to revise the Handbook to ensure it is compatible with the new regime. The specifics of these changes are the subject of the following chapter.
- 3.17** We are obliged to consult on all changes to the Handbook under sections 138I and 139A of FSMA.

Our approach to the implementation of EU MAR

- 3.18** The Handbook is a key element of the UK market abuse regime under FSMA and is one of the tools with which the UK implemented EU MAD. It contains a wide range of provisions on financial regulation. In relation to market abuse, these provisions include, amongst others, disclosure rules, guidance relating to investment recommendations and the CoMC which provides assistance in determining if behaviour is market abuse.
- 3.19** EU MAR is substantially based on EU MAD and carries over a number of key concepts. So there are a significant number of provisions in the Handbook which are equivalent to provisions in the new EU MAR legislation. There are also a number of provisions in the new EU MAR which are new aspects to the regime (such as the requirements around market soundings) and so not in EU MAD. These are not covered in the Handbook.
- 3.20** This consultation considers how to amend existing provisions in the Handbook to conform with and complement the new EU Regulation. This consultation does not deal with matters of new policy.
- 3.21** From 3 July 2016, directly effective provisions and any delegated and implementing acts made under EU MAR will govern matters including the scope of the civil market abuse regime, the disclosure of inside information, managers' transactions and investment recommendations. These directly effective provisions will be supplemented by the new legislation in the Treasury's Statutory Instrument and the revised Handbook.
- 3.22** After 3 July 2016 the Handbook will provide guidance on matters governed by EU MAR and will not take the form of binding rules as it does currently. The Handbook will only provide guidance where we decide it is appropriate so the Handbook will not be the sole source for provisions relating to market abuse. Persons to whom EU MAR applies should be aware of and will need to comply with all its provisions from July 2016.
- 3.23** Feedback from market participants tells us that the existing guidance provided by the Handbook is important and useful to them. So we will seek to keep the structure and content of the Handbook as long as this does not conflict with EU MAR.
- 3.24** Three areas of the Handbook will be significantly affected. These are the CoMC (within MAR 1), the Model Code (part of the Listing Rules) and the DTRs. A summary of these changes is listed below and more detail can be found in Chapter 4.

- 3.25** With regard to the CoMC, the Treasury proposes to repeal sections 119 and 122 FSMA in their Statutory Instrument. These sections of FSMA required us to provide guidance on what behaviours constituted market abuse and the factors to take into account when deciding this. Our guidance is currently provided in the CoMC. This change to the FCA's powers, along with the requirements to conform to EU law, has required changes to the content and the legal status of the current CoMC.
- 3.26** We consider that the Model Code, which is part of the Listing Rules, is partially incompatible with EU MAR which brings in new European rules to govern dealing during closed periods. We understand listed companies and their advisers are keen to retain the 'benchmark' of the current Model Code. So we propose to replace this Model Code with guidance for firms to use when developing their processes to allow PDMRs to apply for clearance to deal.
- 3.27** Due to the direct applicability of EU MAR, the Treasury propose to repeal our powers to make the Disclosure Rules. We are proposing to remove the rules and replace them with signposts to the relevant EU MAR provision. The 'Disclosure Rules' will be renamed as 'Disclosure Guidance'.
- 3.28** We retain the power under section 139A FSMA to provide guidance which we may choose to exercise to give clarification on EU MAR where necessary. Where additional clarification is required in future, this may be done either domestically or in conjunction with ESMA. When new EU guidance is published, this may require further changes to the Handbook.
- 3.29** We invite comments from stakeholders and interested parties about our proposals for changes to the Handbook.

4.

Proposed changes to the Handbook

Introduction

- 4.1** This section sets out our proposed changes to the Handbook as a consequence of EU MAR. Our proposals are based on our analysis of relevant Handbook provisions against EU MAR and its draft implementing measures.
- 4.2** The chapters of the Handbook principally covered in this consultation are MAR 1, MAR 2, MAR 8, COBS 12.4, SUP 15.10, DTR 1–3, LR 9 and SYSC 18. For the majority of chapters, to improve readability, we have set out details in separate tables, of:
- the relevant provisions
 - how these map across to EU MAR
 - our proposed treatment of the existing provision
- 4.3** These should be considered alongside the draft Handbook text set out in Appendix 1.
- 4.4** We discuss below some common types of treatment proposed and the rationale behind that analysis. This is then summarised in the table set out below which provides a key to the terms used in the later detailed analysis. Where we think it is useful, we have provided narrative for the tables explaining our proposed approach for certain provisions.

Overview of the analysis

- 4.5** We have set out below a discussion of some of the common scenarios that we considered through our analysis and our proposals for treating them.
- 4.6** At present, to provide context, the Handbook copies out parts of domestic legislation, such as FSMA, and FSMA as amended by the RAP Regulations. Where this legislation will be repealed, we propose to delete these copied-out sections from the Handbook and to signpost the relevant articles of EU MAR ('Removed and replaced with a signpost').
- 4.7** Where there is a current provision which is now sufficiently addressed by an equivalent provision in EU MAR, we propose to replace it with a signpost to the relevant article in EU MAR (or the accompanying implementing measure) for ease of reference ('Removed and replaced with a signpost'). It is worth noting that the EU provision we provide a signpost to may not be an exact match of what the current Handbook provision covers.

- 4.8** If there is not an equivalent provision in EU MAR, and the Handbook provision provides clarification on the interpretation of a concept in EU MAR, we propose to maintain these provisions as long as they are compatible with EU law ('Maintained unchanged'). Such provisions do not require amendment.
- 4.9** In some instances, we propose to make minor conforming changes to the wording of provisions to make them consistent with EU MAR terminology, but with no change to the intention of the provision ('Maintained and conformed').
- 4.10** On occasion, concepts in EU MAR materially differ from the previous FSMA provision. In these cases, the existing guidance on interpreting a FSMA provision may no longer be relevant because the term or concept does not appear in EU MAR. Where this occurs, we have deleted this guidance ('Removed (no longer compatible with EU MAR)').
- 4.11** Several provisions within CoMC currently have 'Evidential' or 'Conduct' status. Evidential provisions within CoMC specify descriptions of behaviour that we consider amount to market abuse, and factors that we will take into account when determining whether or not behaviours amount to market abuse. Conduct provisions indicate behaviour which do not amount to market abuse.
- 4.12** As explained in Chapter 3, EU law prevents us from issuing binding rules on the topic of market abuse which are within the scope of EU MAR. For any Handbook provision which take rules, evidential or conduct status but where we have determined that their content could be redrafted to provide useful guidance we propose to amend the provisions accordingly ('Removed and new provision added').
- 4.13** Please see below a summary of how our analysis maps to the proposed treatment of a given provision:

| Analysis conclusion | Term used in the table | Summary of proposed treatment |
|---|--------------------------------------|--|
| There is an equivalent EU MAR provision covering the content of the current Handbook provision. | Removed and replaced with a signpost | The current provision is removed and a signpost provision added to direct the reader to the relevant EU MAR article or implementing measure. |
| No equivalent provision in EU MAR and provision remains relevant. Terms used in the provision are consistent with EU MAR. | Maintained unchanged | No change to the existing provision. |
| No equivalent provision in EU MAR and provision remains relevant. Terms used in the provision are inconsistent with EU MAR. | Maintained and conformed | The content of the provision is unchanged but specific terms are amended to conform to terms used in EU MAR. |

| Analysis conclusion | Term used in the table | Summary of proposed treatment |
|--|--|---|
| The provision is not relevant under EU MAR as it provides interpretation of terms that are no longer used in the EU MAR context or are incompatible with EU MAR. | Removed (no longer compatible with EU MAR) | The current provision is to be removed. |
| No equivalent provision in EU MAR and provision remains relevant but current provision is legally binding. New replacement guidance has therefore been provided. | Removed and new provision added | The content is materially preserved but is in the form of new guidance. |

In the following sections, the chapters are broken down by Handbook sub-chapters where appropriate. For each sub-chapter we have provided:

- An overview of its current subject coverage of the sub-chapter.
- A summary of the equivalent provisions which cover the same subject within EU MAR.
- A table showing whether there is an equivalent EU MAR provision for the specific existing provision, whether EU MAR has made the existing provision irrelevant and the proposed treatment of each of the provisions (in accordance with 4.13 above). Where we consider that further explanation of our analysis is necessary for a specific provision, we have provided this below the table.

Potential uncertainties

- 4.14** We are consulting based on current working drafts of EU MAR implementing measures and the Treasury's Statutory Instrument which have not yet been finalised. If these core documents are subject to material change, it may be necessary to review our analysis and reach a different conclusion. If this is the case, we may need to consult again on specific issues.

MAR 1: Code of Market Conduct (the CoMC)

- 4.15** Under section 119 FSMA, we must issue a code with provisions we consider provide guidance to those determining whether or not behaviour amounts to market abuse. Section 122 FSMA sets out the legal effect of the code.
- 4.16** This code is currently provided in MAR 1, and called the Code of Market Conduct (CoMC). It contains a comprehensive set of provisions which give appropriate guidance to those determining whether or not behaviour amounts to insider dealing, or different types of market manipulation. The guidance provides descriptions of behaviour that do and do not amount to market abuse. It also identifies factors we use to decide whether behaviour amounts to market abuse.

4.17 We understand that the Treasury plans to repeal various FSMA provisions including sections 118-122 in their Statutory Instrument as a result of EU MAR. One option we considered was to delete the CoMC. However, we know from users that the CoMC is highly regarded. Our view is that preserving its content as much as possible will help the industry to understand our views and expectations about market abuse in more detail.

4.18 We therefore intend to preserve the content of the CoMC as far as legally permitted (in accordance with the principles set out in Chapter 3). Because there will no longer be a requirement for a formal code, the chapter will simply be referred to in shorthand as MAR 1, in line with other Handbook references.

Handbook changes to emission allowances in MAR 1

4.19 The Emission Allowance regime is currently included in the Handbook through references to existing FSMA provisions as modified by the RAP Regulations. EU MAR provisions covering emission allowances will apply from January 2017, rather than 3 July 2016. During this interim period the market abuse regime in Regulation 1030/2010/EU will apply to those auctioned instruments which are not FIs under MiFID I. This will mean that the provisions in the RAP Regulation which extends Part 8 of FSMA to these products will be repealed and the related sections of the Handbook updated.

4.20 The drafting of Article 39(4) EU MAR on this point presents difficulties in interpretation, so the Treasury are liaising with the European Commission to establish whether EU MAR will apply in the interim period for other emission allowance instruments that are not covered by the market abuse regime in Regulation 1031/2010/EU.

4.21 Given this uncertainty we are not currently able to propose how the parts of MAR 1 which give guidance on how the market abuse regime for emission allowances should be amended. As the expectation is that these provisions will cease to apply at some point, we have proposed they are removed in the analysis below and the draft instrument. However, we intend to revisit the treatment of these provisions as soon as we have clarity about timing. These provisions are marked as 'Removed (RAP related)' in the table set out below.

MAR 1.1: application and interpretation

4.22 MAR 1.1 currently contains introductory information about the application and interpretation of MAR 1. There is no specific overlap of MAR 1.1 with EU MAR but the new legal basis of the market abuse regime and subsequent proposals to repeal sections of FSMA all require changes, including removing some provisions.

4.23 Some new provisions such as MAR 1.1.9G have been introduced to explain how the revised MAR 1 will be approached. New provisions have been added to direct readers to EU MAR and the Statutory Instrument which are of relevance to readers.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 1.1.1G | N/A | Maintained and conformed |
| 1.1.1AG | | Removed (RAP related) |
| 1.1.2G | | Maintained and conformed |
| 1.1.3G | | Maintained and conformed |
| 1.1.4G* | | Maintained and conformed |
| 1.1.5G* | | Removed (no longer compatible with EU MAR) |
| 1.1.6G | | Maintained and conformed |
| 1.1.7G | | Maintained and conformed |
| 1.1.8G | | Maintained and conformed |
| 1.1.9G | New | |

* Please see further explanation below

4.24 MAR 1.1.4G(2) provides guidance of the meaning of 'conduct' provisions. These are incompatible with EU MAR, so we are therefore proposing the removal of this guidance.

4.25 MAR 1.1.5G explains the basis for the provision and content of what is currently the CoMC within FSMA, but will simply be known as MAR 1 from July 2016. The Treasury proposes to repeal these FSMA provisions and therefore this guidance is no longer relevant or compatible with EU MAR. The types of provisions referenced under MAR 1.1.5G(1)–(3) are also incompatible with EU MAR.

Q6: Do you have any comments or suggestions with the proposed amendments to MAR 1.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

4.26 **MAR 1.2: Market abuse – general**
MAR 1.2 currently relates to the behaviour described in section 118(1) FSMA. There is some overlap between the provisions contained in MAR 1.2 and Articles 2 (Scope), 7 (Inside Information) and 8 (Insider Dealing) of EU MAR.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 1.2.1G | N/A | Maintained and conformed |
| 1.2.2UK | Article 14, 15, 2 | Removed and replaced with a signpost |
| 1.2.2AUK | N/A | Removed (RAP related) |
| 1.2.3G | N/A | Maintained and conformed |
| 1.2.4G* | N/A | Removed (no longer compatible with EU MAR) |
| 1.2.5E* | N/A | Removed and new provision added |
| 1.2.6E* | N/A | Removed and new provision added |

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 1.2.7UK | Article 8(4), 8(5) | Removed and replaced with a signpost |
| 1.2.7AUK | N/A | Removed (RAP related) |
| 1.2.8E* | N/A | Removed and new provision added |
| 1.2.9G | N/A | Maintained and conformed |
| 1.2.10UK | Article 7 | Removed and replaced with a signpost |
| 1.2.11G | Article 7(2) | Removed (no longer compatible with EU MAR) |
| 1.2.12E* | N/A | Removed and new provision added |
| 1.2.13E* | N/A | Removed and new provision added |
| 1.2.14G | N/A | Maintained and conformed |
| 1.2.15UK | Article 7(1)(d) | Removed and replaced with a signpost |
| 1.2.15AUK | N/A | Removed (RAP related) |
| 1.2.16E* | N/A | Removed and new provision added |
| 1.2.17G | Article 7(1)(b) | Removed and replaced with a signpost |
| 1.2.18UK | Article 7(1)(b) | Removed and replaced with a signpost |
| 1.2.19UK | N/A | Removed (no longer compatible with EU MAR) |
| 1.2.20G* | N/A | Removed (no longer compatible with EU MAR) |
| 1.2.21G* | N/A | Removed (no longer compatible with EU MAR) |
| 1.2.22UK* | N/A | Removed (no longer compatible with EU MAR) |
| 1.2.23G* | N/A | Maintained and conformed |

* Please see further explanation below

- 4.27** MAR 1.2.4G provides guidance that the behaviour within the CoMC which amounts to market abuse assumes that the test in section 118(1)(a) FSMA has also been met. The Treasury propose to repeal this section of FSMA and therefore this guidance is no longer relevant nor compatible with EU MAR.
- 4.28** MAR 1.2.5E details the degree to which behaviour prior to a request for admission to trading could be market abuse. Article 2(1) and Recitals 8–10 of EU MAR do not cover pre-admission behaviours but there is no statement in MAR which is inconsistent with that in MAR 1.2.5E. Therefore we have concluded that the content of this provision is permitted to be retained with amendments.
- 4.29** MAR 1.2.6E provides more guidance on the factors to take into account when deciding if omissions in behaviour may be indications of market abuse. Our view is that EU MAR has not fully occupied the field in terms of outlining omissions in behaviour which could be market abuse, and therefore that the content of this provision, with amendments, can be retained.

- 4.30** MAR 1.2.8E provides further guidance on the factors to take into account in deciding whether or not someone with inside information could reasonably be expected to know he or she was in possession of it. The final sentence in Article 8(4) EU MAR states that Article 8 ‘also applies to any person who possess inside information under circumstances other than those referred to in the first sub-paragraph [of Article 8(4)] where that persons knows or ought to know that it is inside information’. Therefore, we have concluded that the content of MAR 1.2.8E is permitted to be retained as it provides additional interpretation and guidance on this point.
- 4.31** Given the evidential status of several MAR 1.2 provisions, which are no longer compatible with EU MAR as explained above, where appropriate these provisions will be remade as guidance, under section 139A FSMA.
- 4.32** MAR 1.2.20G and MAR 1.2.21G replicate parts of section 118 FSMA, which cover the concept of the ‘regular user’. We have concluded that EU MAR does not recognise the concept of the ‘regular user’. Thus, applying the ‘regular user’ test would mean a narrower UK application of what constitutes market manipulation than will exist in the EU under MAR. Therefore it is not compatible with a maximum-harmonising regime. The Treasury also propose to repeal section 130A FSMA, which defines the ‘regular user’.
- 4.33** MAR 1.2.22UK relates to behaviour which requires or encourages persons to engage in market abuse. Whilst EU MAR prohibits recommending or inducing a person to engage in insider dealing, it does not extend this to the other offences. Therefore, the provisions which relate to market abuse in general are no longer compatible with EU MAR. MAR 1.2.23G is permitted to be retained with amendments.

Q7: Do you have any comments or suggestions on the proposed amendments to MAR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 1.3: Market Abuse (insider dealing)

- 4.34** MAR 1.3 currently relates to the behaviour described in section 118(2) FSMA as insider dealing, and gives appropriate guidance by describing behaviour to help those deciding whether or not these behaviours amount to insider dealing. The sub-chapter also identifies factors which we consider when deciding if behaviour amounts to insider dealing. There is some overlap between the provisions contained in MAR 1.3 and Articles 7 (Inside Information), 8 (Insider dealing) and 9 (Legitimate behaviour) in light of Recital 30 EU MAR.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 1.3.1UK | Article 8 | Removed and replaced with a signpost |
| 1.3.2E* | N/A | Removed and new provision added |
| 1.3.3E | N/A | Removed (no longer compatible with EU MAR) |
| 1.3.5E* | N/A | Removed (no longer compatible with EU MAR) |
| 1.3.6C | Article 9(5) | Removed and replaced with a signpost |
| 1.3.7C* | N/A | Removed (no longer compatible with EU MAR) |

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 1.3.8G* | N/A | Removed (no longer compatible with EU MAR) |
| 1.3.9E* | N/A | Removed (no longer compatible with EU MAR) |
| 1.3.10E | N/A | Removed and new provision added |
| 1.3.11E | Article 9(3)(b) | Removed and replaced with a signpost |
| 1.3.12C | Article 9(2)(b) | Removed and replaced with a signpost |
| 1.3.13G | Article 9(3)(b) | Removed and replaced with a signpost |
| 1.3.14E* | N/A | Removed (no longer compatible with EU MAR) |
| 1.3.15E | N/A | Removed and new provision added |
| 1.3.16G* | N/A | Removed (no longer compatible with EU MAR) |
| 1.3.17C | N/A | Removed and new provision added |
| 1.3.18G | N/A | Maintained and conformed |
| 1.3.19E | N/A | Removed and new provision added |
| 1.3.20G | N/A | Maintained and conformed |
| 1.3.21G | N/A | Maintained and conformed |
| 1.3.22G | N/A | Maintained and conformed |
| 1.3.23G | N/A | Maintained and conformed |

* Please see further explanation below

- 4.35** MAR 1.3.2E contains descriptions of behaviour that amount to market abuse. Various provisions within Articles 7 and 9 of EU MAR contain corresponding descriptions. Whilst EU MAR will now provide the legal definitions of what constitutes insider dealing, we believe the specification of behaviours in MAR 1.3.2E will provide useful additional guidance and are not beyond the scope of the new regime. We therefore propose to retain most of these. However the examples of behaviours listed are not exhaustive.
- 4.36** MAR 1.3.5E provides that an effective 'Chinese wall' or similar arrangement indicates that the decision to deal is not 'on the basis of' inside information. EU MAR does not provide for this and we have therefore concluded that it is not compatible with EU MAR.
- 4.37** MAR 1.3.7C provides that market makers and persons lawfully dealing on their own account and pursuing their legitimate business of such dealing will not in itself amount to market abuse. We have concluded this is not compatible with EU MAR as it narrows the scope of the Regulation.
- 4.38** MAR 1.3.8G elaborates on the applicability of MAR 1.3.7C, which we have concluded is not compatible with EU MAR. Hence MAR 1.3.8G is not compatible either.

4.39 MAR 1.3.9E and 1.3.14E indicate that, in the opinion of the FCA, if inside information is not limited to trading information, that indicates that the behaviour is not in pursuit of legitimate business, and that it is not dutiful carrying out of an order on behalf of a client. We believe it is beyond the scope of EU MAR to continue to provide such guidance as it makes no reference to trading information. Therefore we propose to delete these three provisions.

4.40 MAR 1.3.16G details the distinction between legitimate business and dutiful execution under EU MAD. No such distinction in concepts exists under EU MAR. We have concluded that this provision is no longer relevant under the new regime and therefore propose to delete it.

Q8: Do you have any comments or suggestions on the proposed amendments to MAR 1.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 1.4: Market Abuse (improper disclosure)

4.41 MAR 1.4 currently relates to the descriptions of behaviour in section 118(3) FSMA (improper disclosure), and indicates descriptions of behaviour to help those determining whether or not those behaviours amount to improper disclosure. This sub-chapter also identifies factors we consider when deciding whether behaviour amounts to improper disclosure. The offence of improper disclosure has been replaced in EU MAR by the offence of unlawful disclosure. There is overlap between the provisions contained in MAR 1.4 and Article 10 EU MAR (Unlawful disclosure of inside information).

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 1.4.1UK | Article 10(1) | Removed and replaced with a signpost |
| 1.4.2E | N/A | Removed and new provision added |
| 1.4.3C | N/A | Removed and new provision added |
| 1.4.4C | N/A | Removed and new provision added |
| 1.4.4AC | N/A | Removed and new provision added |
| 1.4.5E* | N/A | Removed and new provision added |
| 1.4.5AG* | N/A | Removed (no longer compatible with EU MAR) |
| 1.4.6G | N/A | Maintained and conformed |
| 1.4.7G* | N/A | Removed (no longer compatible with EU MAR) |

* Please see further explanation below

4.42 MAR 1.4.5E provides factors to be taken into account when deciding whether or not behaviour amounts to market abuse (improper disclosure). Aspects of this provision are not compatible with EU MAR, particularly 1.4.5(3)(a) which references trading information. We have concluded that the concept of "trading information" is no longer compatible with EU MAR. We therefore propose to delete this part, as well as other MAR 1 provisions which reference "trading information". As noted above, such evidential provisions are not compatible with EU MAR, and so the content of this provision will be conformed with EU MAR and reissued as guidance made under section 139A FSMA.

4.43 MAR 1.4.5AG provides more detail about where MAR 1.4.5E(3) applies. As above, we have concluded that the concept of ‘trading information’ is no longer compatible with EU MAR. We therefore propose to delete this provision.

4.44 MAR 1.4.7G contains an example of encouraging another person to engage specifically in improper disclosure of inside information. This practice is no longer relevant under EU MAR and we propose its deletion.

Q9: Do you have any comments or suggestions on the proposed amendments to MAR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

4.45 **MAR 1.6: Market abuse (manipulating transactions)**
MAR 1.6 currently relates to the descriptions of behaviour in section 118(5) FSMA (manipulating transactions), and provides descriptions of behaviour to help those deciding whether or not these behaviours amount to manipulating transactions. This sub-chapter also identifies factors which we consider in determining whether behaviour amounts to manipulating transactions. There is overlap between the provisions contained in MAR 1.6 and Article 12 (Market manipulation) and Annex 1(A) (Indicators of manipulative behaviour relating to false or misleading signals and to price securing). There will also be Commission delegated acts under Article 12(5) which will provide further detail on the indicators in Annex 1 EU MAR.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|---|--------------------------------------|
| 1.6.1UK | Article 12(1)(a), Annex 1A | Removed and replaced with a signpost |
| 1.6.1AUK | N/A | Removed (RAP related) |
| 1.6.2E | Annex 1A, Commission delegated acts under Article 12(5) | Removed and replaced with a signpost |
| 1.6.3G* | N/A | Maintained and conformed |
| 1.6.4E | Annex 1A, Commission delegated acts under Article 12(5) | Removed and replaced with a signpost |
| 1.6.5E* | N/A | Removed and new provision added |
| 1.6.6E* | N/A | Removed and new provision added |
| 1.6.7G | N/A | Maintained and conformed |
| 1.6.8G | N/A | Maintained unchanged |
| 1.6.9E | Annex 1A | Removed and replaced with a signpost |
| 1.6.10E | Commission Delegated acts under Article 12(5) | Removed and replaced with a signpost |
| 1.6.11E | N/A | Removed and new provision added |
| 1.6.12G | N/A | Maintained and conformed |
| 1.6.13G | N/A | Maintained unchanged |
| 1.6.15E* | Commission Delegated acts under Art 12(5) | Removed and replaced with a signpost |

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|---------------------------------|
| 1.6.16E | N/A | Removed and new provision added |

* Please see further explanation below

- 4.46** MAR 1.6.3G states that a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving collateral being provided does not constitute a wash trade, which MAR 1.6.2E states is a form of market abuse. There is overlap between the provisions in MAR 1.6.3G and Article 12. However, we believe that an amended MAR 1.6.3G, which is consistent with EU MAR, could provide useful additional guidance on the application of the new regime in practice and we propose to retain it.
- 4.47** MAR 1.6.5E provides factors to consider when deciding whether behaviour is for legitimate reasons, and the indications that it is not. There is overlap between the provisions in MAR 1.6.5E and Article 12(1)(a) which gives descriptions of activities which amounts to market manipulation. However, we believe that it continues to provide useful guidance and therefore propose to retain it with amendments.
- 4.48** Similarly, MAR 1.6.6E provides factors to consider when deciding whether behaviour is for legitimate reasons, and which indicate legitimacy. There is partial overlap between the provisions within MAR 1.6.6E and Article 12(1)(a) but we believe that it continues to provide useful guidance and therefore propose to retain it with amendments.
- 4.49** MAR 1.6.15E provides examples of behaviour that may amount to manipulating transactions. There is partial overlap between MAR 1.6.15E and the delegated acts under Article 12(5) EU MAR. As it is likely to be confusing to have two distinct but similar sets of indicators, we propose to delete it.

Q10: Do you have any comments or suggestions on the proposed amendments to MAR 1.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

Q11: As discussed in paragraph 4.49 above and also discussed in paragraphs 4.52, 4.55 and 4.86, we propose to delete some potential indicators of behaviour such as those included in MAR 1 and Sup 15.10 Annex 5 from the Handbook and, instead, direct the industry to the list of indicators provided under the delegated acts under Article 12(5). If you disagree with this approach, please suggest an alternative approach with rationale and indicate, if relevant, whether there are particular indicators proposed for deletion which should be preserved and why.

- 4.50** **MAR 1.7: Market Abuse (manipulating devices)**
MAR 1.7 covers the descriptions of behaviour in section 118(6) FSMA (manipulating devices), and provides descriptions of behaviour to help determine whether or not these behaviours amount to market abuse (manipulating devices). The sub-chapter also identifies factors which we consider when deciding the same.

- 4.51** There is overlap between the provisions contained in MAR 1.7 and Annex 1(B) (indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance) and Article 12(1)(b). There will also be Commission delegated acts under Article 12(5) which will provide further detail on this aspect of market manipulation.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--|--------------------------------------|
| 1.7.1UK | Article 12(1)(b) | Removed and replaced with a signpost |
| 1.7.1AUK | N/A | Removed (RAP related) |
| 1.7.2E | Commission Delegated Act under Article 12(5) | Removed and replaced with a signpost |
| 1.7.3E | Annex 1B | Removed and replaced with a signpost |

- 4.52** Please see para 4.49 and the related question 11 with regards the provision of indicators of market manipulation and its compatibility with EU MAR. We would welcome your views on this.

Q12: Do you have any comments or suggestions on the proposed amendments to MAR 1.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 1.8: Market Abuse (dissemination)

- 4.53** MAR 1.8 currently relates to descriptions of behaviour in section 118(7) FSMA (dissemination), and provides descriptions of behaviour to help those determining whether or not these behaviours amount to market abuse (dissemination). The chapter also identifies factors which we consider when deciding whether behaviour amounts to market abuse (dissemination).

- 4.54** There is overlap between the provisions contained in MAR 1.8 and Article 12(1)(c) EU MAR (read in connection with Recital 47) which relate to the dissemination of false or misleading information.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|---|--------------------------------------|
| 1.8.1UK | Article 12(1)(c) | Removed and replaced with a signpost |
| 1.8.2UK | N/A | Removed (no compatible with EU MAR) |
| 1.8.3G | Article 12(1)(c) | Removed and replaced with a signpost |
| 1.8.4E | N/A | Removed and new provision added |
| 1.8.5E* | N/A | Removed and new provision added |
| 1.8.6G | Article 12(1)(c), Commission Delegated acts under Article 12(5) | Removed and replaced with a signpost |

* Please see further explanation below

- 4.55** MAR 1.8.5E provides a factor to be taken into account in determining whether or not a person disseminating information did know, or could reasonably have been expected to know, that the information was false or misleading. We believe the content of MAR 1.8.5E continues to provide useful guidance for market participants in how to interpret EU MAR. We therefore believe that the content of this provision can be retained with amendments.

As described in para 4.49 and 4.52, MAR 1.8.6E contains examples of manipulative behaviours. There is partial overlap between these provisions and the delegated acts under Article 12(5) EU MAR. Again we propose to remove this provision and replace with a signpost to the relevant EU texts. Please see Question 11 with regards to this proposed treatment.

- 4.56** Given that the evidential status of these MAR 1.8 provisions are no longer compatible with EU MAR, we propose to reissue these as guidance, made under section 139A FSMA.

Q13: Do you agree with the proposed amendments to MAR 1.8? If not, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 1.9: Market abuse (misleading behaviours) and market abuse (distortion)

- 4.57** MAR 1.9 currently relates to descriptions of behaviour in section 118(8) FSMA (misleading behaviours and distortion), and provides descriptions of behaviour to help those determining whether or not these behaviours amount to distortion or misleading behaviour. The sub-chapter also identifies factors which we consider when deciding whether behaviour amounts to misleading behaviour or distortion.

- 4.58** There is overlap between the provisions contained in MAR 1.9 and Article 12(1)(c) (dissemination of false or misleading information) EU MAR.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 1.9.1E | Article 12(1)(c) | Removed and replaced with a signpost |
| 1.9.1AUK | N/A | Removed (RAP related) |
| 1.9.2E* | N/A | Removed (no longer compatible with EU MAR) |
| 1.9.4E* | N/A | Removed (no longer compatible with EU MAR) |
| 1.9.5E* | N/A | Removed (no longer compatible with EU MAR) |

* Please see further explanation below

- 4.59** MAR 1.9.2E, 1.9.4E and 1.9.5E provide factors to be taken into account in determining whether or not behaviour creates a false or misleading impression. As per the discussion of MAR 1.2.20G and 1.2.21G, our view is that these rules are incompatible with EU MAR because EU MAR does not recognise the concept of the 'regular user' in this context. We therefore propose to delete these provisions.

Q14: Do you have any comments or suggestions on the proposed amendments to MAR 1.9? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 1.10: Statutory exceptions:

- 4.60** MAR 1.10 contains several provisions which set out behaviours that do not amount to market abuse. There is overlap between some of the provisions contained in MAR 1.10 and Article 5 (Exemption for buy-back programmes and stabilisation) EU MAR. The Commission-adopted regulatory technical standards under Article 5(6) of EU MAR will provide further detail on this exemption.

| MAR 1.10 Statutory exceptions | | |
|--------------------------------------|---|--------------------------------------|
| Handbook reference | Related EU MAR provision | Comment |
| 1.10.1G | Article 5(1), Article 5(4), Commission-adopted regulatory technical standards under Article 5(6) | Removed and replaced with a signpost |
| 1.10.2G | N/A | Maintained and conformed |
| 1.10.3G | N/A | Maintained unchanged |
| 1.10.4C* | N/A | Removed and new provision added |
| 1.10.5C* | N/A | Removed and new provision added |
| 1.10.6C | N/A | Removed and new provision added |

Q15: Do you have any comments or suggestions on the proposed amendments to MAR 1.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 1: Annex 1

4.61

MAR 1 Annex 1 replicates the provisions of the existing Buy-back and Stabilisation Regulation which relate to buy-back programmes. There is overlap between the provisions contained within MAR 1 Annex 1 and Article 5 EU MAR (Exemption for buy-back programmes and stabilisation) and the Commission-adopted regulatory technical standards under Article 5(6) EU MAR. We propose to delete MAR 1 Annex 1 completely and replace it with a reference to Article 5 EU MAR and the Commission-adopted regulatory technical standards of Article 5(6) EU MAR.

Q16: Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 1: Annex 2

4.62

MAR 1 Annex 2 contains provisions about accepted market practices. There is overlap between the provisions contained with MAR 1 Annex 2 and Article 13 EU MAR (Accepted market practices) and what will be the Commission-adopted technical standards under Article 13(7) of EU MAR. We propose to delete MAR 1 Annex 2 completely and replace it with a reference to Article 13 EU MAR and the Commission-adopted regulatory technical standards of Article 13(7) EU MAR.

Q17: Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 2: Stabilisation

4.63

MAR 2 currently describes the extent to which stabilisation activity can provide a 'safe harbour' for market abuse. Broadly speaking, MAR 2 has two sections: a direct copy of the existing Buyback and Stabilisation Regulation, and the UK 'Price Stabilisation' rules. The UK Price

Stabilisation rules existed before EU MAD came into force, but were maintained as the scope of EU MAD was narrower.

4.64 There are provisions on stabilisation in Article 5 EU MAR, therefore the majority of the current MAR 2 provisions will be removed and replaced with references to the relevant EU MAR and RTS which replicate them.

4.65 We propose to retain, with amendments, the provisions in MAR 2.5 which are relevant for the criminal market abuse regime. Maintaining an amended MAR 2.5 will allow a person to continue to be offered a defence if he or she acted in ways that meet certain overseas legislation about stabilisation, plus any future price stabilising rules we may develop under section 137Q. We retain the power to create price stabilising rules at some point in the future.

4.66 There are two additional MAR 2 provisions that we propose to preserve: MAR 2.3.6G which describes what the FCA accepts as 'adequate public disclosure' and MAR 2.3.9G which outlines details of where notifications are to be made.

| Handbook provision | Related EU MAR provision | Comment |
|--------------------|--|--|
| 2.1.1R | Article 5 | Removed and replaced with a signpost |
| 2.1.2G | N/A | Removed (no longer compatible with EU MAR) |
| 2.1.3R | N/A | Removed (no longer compatible with EU MAR) |
| 2.1.4G | N/A | Removed (no longer compatible with EU MAR) |
| 2.1.5G | N/A | Removed (no longer compatible with EU MAR) |
| 2.1.6G | N/A | Removed (no longer compatible with EU MAR) |
| 2.2.1R | Article 5(4), Commission-adopted Regulatory Technical Standards under Article 5(6) | Remove and replaced with a signpost |
| 2.2.2G | N/A | Removed (no longer compatible with EU MAR) |
| 2.2.3R | N/A | Removed (no longer compatible with EU MAR) |
| 2.2.4G | N/A | Removed (no longer compatible with EU MAR) |
| 2.2.5G | N/A | Removed (no longer compatible with EU MAR) |
| 2.2.6G | N/A | Removed (no longer compatible with EU MAR) |
| 2.2.7G | N/A | Removed (no longer compatible with EU MAR) |
| 2.2.8G | N/A | Removed (no longer compatible with EU MAR) |

| Handbook provision | Related EU MAR provision | Comment |
|--------------------|--|--|
| 2.2.9R | N/A | Removed (no longer compatible with EU MAR) |
| 2.3.1EU | Commission-adopted Regulatory Technical Standards under Article 5(6) | Remove and replaced with a signpost |
| 2.3.2G | N/A | Removed (no longer compatible with EU MAR) |
| 2.3.3R | N/A | Removed (no longer compatible with EU MAR) |
| 2.3.4EU | Commission-adopted Regulatory Technical Standards under Article 5(6) | Remove and replaced with a signpost |
| 2.3.5EU | Commission-adopted Regulatory Technical Standards under Article 5(6) | Remove and replaced with a signpost |
| 2.3.6G | N/A | Maintained and conformed |
| 2.3.7G | N/A | Removed (no longer compatible with EU MAR) |
| 2.3.8G | N/A | Removed (no longer compatible with EU MAR) |
| 2.3.9G | N/A | Maintained and conformed |
| 2.3.10EU | Commission-adopted Regulatory Technical Standards under Article 5(6) | Removed and replaced with a signpost |
| 2.3.11EU | Commission-adopted Regulatory Technical Standards under Article 5(6) | Removed and replaced with a signpost |
| 2.3.12G | N/A | Removed (no longer compatible with EU MAR) |
| 2.3.13G | N/A | Removed (no longer compatible with EU MAR) |
| 2.4.1R | N/A | Removed (no longer compatible with EU MAR) |
| 2.4.2R | N/A | Removed (no longer compatible with EU MAR) |
| 2.4.3R | N/A | Removed (no longer compatible with EU MAR) |
| 2.4.4R | N/A | Removed (no longer compatible with EU MAR) |
| 2.4.5R | N/A | Removed (no longer compatible with EU MAR) |

| Handbook provision | Related EU MAR provision | Comment |
|--------------------|--------------------------|--|
| 2.4.6R | N/A | Removed (no longer compatible with EU MAR) |
| 2.4.7R | N/A | Removed (no longer compatible with EU MAR) |
| 2.5.1R | N/A | Maintained and conformed |

Q18: Do you have any comments or suggestions with the changes proposed to MAR 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

MAR 8: Benchmarks

- 4.67** The regime in MAR 8 covers the supervisory requirements for the administration and the submission of eight specified benchmarks.
- 4.68** EU MAR introduces a new civil prohibition on manipulating benchmarks under Article 2(2). These new requirements, which apply to a broader population and wider range of benchmarks than MAR 8, do not alter the provisions already set out in MAR 8.
- 4.69** In order to ensure benchmarks submitters and administrators know that the requirements of EU MAR apply to them, we propose to add in MAR 8.1a signpost to Articles 2(2), 12 and 15 EU MAR.

Q19: Do you have any comments or suggestions on the proposed amendments to MAR 8.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

SYSC 18: Reporting of infringements

- 4.70** Article 32 EU MAR contains provisions on reporting infringements of the Regulation. Article 32(1) states that competent authorities must establish effective mechanisms to enable the reporting of infringements to them. Article 32(3) states that Member States shall require employers who carry out activities that are regulated by financial services regulation to have in place appropriate internal procedures for their employees to report infringements of EU MAR. The Treasury, in their Statutory Instrument, set out this obligation and clarify that Article 32(3) applies to employers who (a) provide regulated financial services; (b) carry on regulated activities in reliance on the exemption in section 327 of FSMA; or (c) are recognised bodies, EEA central counterparties, third country central counterparties, EEA central counterparties or third country central security depositories.
- 4.71** In October 2015, we published Policy Statement 15/24⁵, presenting a set of whistleblowing rules to build on and formalise examples of good practice (the FCA's whistleblowing regime). This regime only applies rules to certain UK deposit-takers, PRA-designated investment firms, and certain insurance and reinsurance firms. These changes will take effect next year and will amend the existing text related to whistleblowing in the FCA's Handbook at SYSC 18. Some provisions will apply from March 2016 and others will apply from September 2016.

⁵ Policy Statement 15/24: Whistleblowing in deposit-takers, PRA-designated investment firms and insurers

- 4.72** Article 32(3) of EU MAR applies to a broader scope of firms. These are described above and outlined in the Treasury’s Statutory Instrument.
- 4.73** From September 2016, the firms covered by the FCA’s whistleblowing regime must follow its requirements when handling any reportable concern, including a disclosure about an infringement of EU MAR. Between 3 July 2016 when EU MAR applies, and September 2016 when the FCA’s new rules start to apply in full, these firms must still have internal procedures for their employees to report infringements of EU MAR specifically, in line with the Treasury’s Statutory Instrument. How firms implement the requirement to have internal procedures is left up to them.
- 4.74** Firms we regulate that are outside the scope of the FCA’s whistleblowing regime, but within scope of the Treasury’s Statutory Instrument, must comply with the Treasury regulations. They must have internal procedures in place, but, at this stage, they again have discretion as to how they implement this requirement. We will provide guidance if we believe it is appropriate.
- 4.75** We propose the following amendments. The addition of a new provision in SYSC 18.2.2G(1), signposting readers to the Treasury’s Statutory Instrument to help them in the interim period between 3 July 2016 and September 2016. From September 2016, we will include the signpost under SYSC 18.3.1 as SYSC 18.2 will cease to exist.

Q20: Do you have any comments or suggestions on the changes proposed to SYSC 18? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

COBS 12.4: Research recommendations

- 4.76** COBS 12.4 sets out our specific requirements about the production and dissemination of investment recommendations.
- 4.77** The majority of provisions within COBS 12.4 are equivalent to those set out in EU MAR Article 20 (Investment recommendations and statistics) and the accompanying Commission-adopted regulatory technical standards.

| Handbook provision | Related EU provision | Comment |
|--------------------|--|--------------------------------------|
| 12.4.1R | Article 20(1), Commission-adopted Regulatory Technical Standards under Article 20(3) | Removed and replaced with a signpost |
| 12.4.2G | N/A | Removed (not compatible with EU MAR) |
| 12.4.3G* | N/A | Removed (not compatible with EU MAR) |
| 12.4.4R | Article 20(1) | Removed and replaced with a signpost |
| 12.4.5R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |
| 12.4.6R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |

| Handbook provision | Related EU provision | Comment |
|--------------------|---|--|
| 12.4.7R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |
| 12.4.8G | N/A | Maintained and conformed |
| 12.4.9R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |
| 12.4.10R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |
| 12.4.11G* | N/A | Maintained and conformed |
| 12.4.12G* | N/A | Removed (no longer compatible with EU MAR) |
| 12.4.13G | N/A | Maintained unchanged |
| 12.4.14G | N/A | Maintain and conformed |
| 12.4.15R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |
| 12.4.16R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |
| 12.4.17R | Commission-adopted regulatory technical standards under Article 20(3) | Removed and replaced with a signpost |

* Please see further explanation below

- 4.78** COBS 12.4.3G states that the obligations to disclose information do not require those producing research recommendations to breach effective information barriers which exist to prevent and avoid conflicts of interest. Our view is that this is incompatible with EU MAR as the EU text does not allow this concession.
- 4.79** COBS 12.4.11G allows for firms to disclose significant shareholdings at a threshold lower than that required under EU MAD. The RTS will establish a new threshold for materiality in this area, but we believe this provision is still permitted to be retained.
- 4.80** COBS 12.4.12G only requires firms to aggregate their shareholdings with those of affiliated companies for disclosure purposes under EU MAD, if they act in concert. As the methodology for disclosing shareholdings is likely to change under the Commission-adopted Regulatory technical standards, we believe this provision will no longer be relevant and therefore propose to delete it.

Q21: Do you have any comments or suggestions on the proposed amendments to COBS 12.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

SUP 15.10: Reporting Suspicious Transactions

- 4.81** SUP 15.10 sets out the notification requirements for reporting suspicious transactions. This chapter is equivalent to the provisions of Article 16 (Prevention and Detection of Market Abuse) and the related RTS and ITS which set out the obligation and requirements for reporting suspicious transactions and orders. As a result all provisions, with the exception of SUP 15.10.7R, will be removed and their content will be replaced with references to the relevant MAR and RTS articles.
- 4.82** We propose to retain SUP 15.10.7R in an amended form, to reflect the fact that all notifications must be made via a secure electronic means. Once finalised, details of our automated system for receiving STORs will be included in the chapter.
- 4.83** The obligations under Article 16 EU MAR relating to preventing and detecting market abuse apply to a wider group than their equivalent obligations under EU MAD. We also note that there are distinct obligations applying to (a) market operators and investment firms that operate a trading venue; and (b) any person professionally arranging or executing transactions, per Article 16(1) and (2) EU MAR.
- 4.84** We propose to amend SUP 15.10 to conform to EU MAR. We are not proposing to create new Handbook provisions to signpost the relevant EU MAR provisions to market operators as market operators will have not previously relied on Handbook guidance in this area and therefore do not require a signpost of this nature.
- 4.85** SUP 15 Annex 5 covers indications of possible suspicious transactions. There is overlap between some of these indicators and the indicators of market manipulation that will be included in the Commission-adopted delegated acts under Article 12(5) EU MAR. However EU MAR does not cover possible indicators of insider dealing and we have therefore concluded that indicators 2–6 in SUP 15 Annex 5 (possible signals of insider dealing) can be retained.
- 4.86** Please see paragraph 4.49 and the related question 11 with regards to the provision of indicators of market manipulation and its compatibility with EU MAR. We would welcome your views on this as well as on the changes proposed for the Annex.

| Handbook provision | Related EU provision | Comment |
|--------------------|---|--|
| 15.10.1R | N/A | Removed (no longer compatible with EU MAR) |
| 15.10.2R | Article 16, Commission adopted Regulatory Technical Standards under Article 16(5) | Removed and replaced with a signpost |
| 15.10.3R | N/A | Removed (no longer compatible with EU MAR) |
| 15.10.4G | N/A | Maintained and conformed |
| 15.10.5R | Commission-adopted Regulatory Technical Standards under Article 16(5) | Removed and replaced with a signpost |
| 15.10.6R | Commission-adopted Regulatory Technical Standards under Article 16(5) | Removed and replaced with a signpost |
| 15.10.7R | N/A | Maintained and conformed |

| Handbook provision | Related EU provision | Comment |
|--------------------|---|--|
| 15.10.8G | N/A | Removed (no longer compatible with EU MAR) |
| 15.10.9R | Commission-adopted Regulatory Technical Standards under Article 16(5) | Removed and replaced with a signpost |
| Annex 5 | | |
| 2–6 | N/A | Maintained unchanged |
| 7–8 | Commission delegated Acts under Article 12(5) | Removed and replaced with a signpost |

Q22: Do you have any comments or suggestions on the changes proposed to SUP 15.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 1–3: Disclosures of inside information and managers transactions

- 4.87** Much of the content of DTR 1–3 was made under ‘Disclosure Rules’ powers which were added to Part 6 FSMA to align with EU MAD provisions, particularly Article 6. Article 6 EU MAD requires the UK to ensure that issuers disclose inside information to the public and draw up insider lists. It also requires persons discharging managerial responsibilities within issuers, and those closely associated with them, to notify competent authorities of transactions they conduct on their own account. DTR 1–3 implement these requirements in UK law.
- 4.88** EU MAR carries over these requirements from EU MAD in Articles 17 (Public disclosure of inside information), 18 (insider lists) and 19 (Managers’ transactions). These are largely equivalent to EU MAD and the current Disclosure Rules.
- 4.89** As a consequence of the implementation of EU MAR, the Treasury intends to repeal the FSMA powers used to make DTR 1-3. However, Article 23 EU MAR requires the Member States to have a range of powers to police and enforce the Regulation, including powers to gather information, require the publication of corrective statements and suspend trading in financial instruments. The use of these powers is described further in DTR 1–3. The Treasury plans to use their Statutory Instrument to give us these powers when DTR 1–3 are repealed.
- 4.90** The power to make ‘Disclosure Rules’ will cease to exist under Part 6 FSMA. However we considered it would be appropriate to maintain elements that would be helpful in this area so we have renamed the DTRs the Disclosure Guidance and Transparency Rules Sourcebook. These changes are reflected in the proposed drafting.

DTR 1: Introduction

DTR 1.1: Application and purpose (Disclosure Rules)

- 4.91** DTR 1 sets out the application and purpose of the Disclosure Rules; procedures for modifying rules and consulting with the FCA; rules on information gathering and publication of information; the suspension of trading; and market abuse safe harbours and sanctions.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|---------------------------------|
| DTR 1.1.1R* | N/A | Removed and new provision added |
| DTR 1.1.2G | N/A | Maintained and conformed |
| DTR 1.1.3G | N/A | Maintained and conformed |

* Please see further explanation below

- 4.92** EU MAR contains its own provisions on the application of Articles 17–19 EU MAR so the need to have application rules as set out in DTR 1.1.1R will end. To replace the current rules in DTR 1-3, we will provide guidance in the Disclosure Guidance Sourcebook and have included some introductory text in DTR 1.1 to reflect this.

Q23: Do you have any comments or suggestions on our proposed amendments to DTR 1.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 1.2 Modifying rules and consulting the FCA

- 4.93** DTR 1.2 relates to our ability to waive or amend the Disclosure Rules, as well as how we should be consulted about these.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--|
| DTR 1.2.1R* | N/A | Removed (no longer compatible with EU MAR) |
| DTR 1.2.2R* | N/A | Removed (no longer compatible with EU MAR) |
| DTR 1.2.3G* | N/A | Removed (no longer compatible with EU MAR) |
| DTR 1.2.4G* | N/A | Maintained and conformed |
| DTR 1.2.5G* | N/A | Maintained and conformed |

* Please see further explanation below

- 4.94** We intend to remove DTR 1.2.1R, DTR 1.2.2R and DTR 1.2.3G as EU MAR does not allow for the competent authority to modify or dispense with disclosure requirements.

- 4.95** However, we propose to maintain DTR 1.2.4G and DTR 1.2.5G as they provide useful guidance for those who want to consult with us on disclosure requirements.

Q24: Do you have any comments or suggestions on our proposed amendments to DTR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 1.3 Information gathering and publication

4.96 DTR 1.3 relates to the FCA's powers to gather information from PDMRs or their connected persons; to require an issuer to publish information; and the requirements for issuers about publishing information.

4.97 This chapter contains provisions overlapping with Articles 17(1) (Public disclosure of inside information) and 23 EU MAR (Powers of competent authority). There are also overlaps with the forthcoming Commission-adopted implementing technical standards under Article 17(10) EU MAR.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--|
| DTR 1.3.1R* | Article 23(2)(a) Article 23(2)(b) | Removed (no longer compatible with EU MAR) |
| DTR 1.3.2G | Article 23(2)(a) Article 23(2)(b) | Maintained and conformed |
| DTR 1.3.3R* | Article 23(2)(m) | Removed (no longer compatible with EU MAR) |
| DTR 1.3.4R* | N/A | Removed (no longer compatible with EU MAR) |
| DTR 1.3.5R | Article 17(1) | Removed (no longer compatible with EU MAR) |
| DTR 1.3.6R | N/A | Maintained and conformed |
| DTR 1.3.7G | N/A | Maintained unchanged |
| DTR 1.3.8R | Article 17(10) | Removed and replaced with a signpost |

* Please see further explanation below

4.98 DTR 1.3.1R states that an issuer, persons discharging managerial responsibilities or connected persons must provide information as soon as possible after we request it. The Treasury are proposing to repeal the statutory power to make this rule (sections 73A and 96A in Part VI FSMA). However, we will continue to have similar powers under the Treasury's Statutory Instrument which give us the powers we need to meet the UK's obligations under Article 23 EU MAR.

4.99 DTR 1.3.3R allows us to require an issuer to publish information, in such form and within such time limits as we consider appropriate to protect investors or to ensure the smooth operation of the market. It also allows us to publish this information if the issuer fails to comply. We are repealing this provision because the Treasury have indicated that they plan to provide this power to us through its Statutory Instrument.

4.100 DTR 1.3.4R requires an issuer to take all reasonable care to make sure the information notified to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information. This provision will need to be deleted as the rule making powers is being repealed. However, our view is that this content should remain because there is no direct equivalent provision within EU MAR. We are therefore discussing with the Treasury the appropriate method to retain this power.

Q25: Do you have any comments or suggestions on our proposed amendments to DTR 1.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 1.4 Suspension of trading

4.101 DTR 1.4 covers our powers to suspend trading in FIs when we have reasonable grounds to suspect non-compliance with the Disclosure Rules.

4.102 There is overlap of these provisions with some of the powers competent authorities must have under Article 23 EU MAR.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--|
| DTR 1.4.1R* | Article 23(2)(j) | Removed and replaced with a signpost |
| DTR 1.4.2R* | Article 23(2)(j) | Removed (no longer compatible with EU MAR) |
| DTR 1.4.3R* | Article 23(2)(j) | Removed (no longer compatible with EU MAR) |
| DTR 1.4.4R | N/A | Maintained and conformed |
| DTR 1.4.5G | N/A | Maintained and conformed |

* Please see further explanation below

4.103 The power to suspend trading in the Disclosure Rules is given to us by section 96C FSMA. The Treasury is repealing this section leading us to remove DTR 1.4.1R, DTR 1.4.2R and DTR 1.4.3R. A similar power will be inserted in Part 8 FSMA to satisfy Article 23(3)(j) EU MAR, which will provide us with the power to suspend trading of FIs.

Q26: Do you have any comments or suggestions on our proposed amendments to DTR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 1.5 Fees, market abuse safe harbours and sanctions

4.104 DTR 1.5 relates to fees payable by the issuer, market abuse safe harbours and to applicable sanctions under the disclosure rules.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--|
| DTR 1.5.1G | N/A | Maintained unchanged |
| DTR 1.5.2R* | N/A | Removed (no longer compatible with EU MAR) |
| DTR 1.5.3G | N/A | Maintained and conformed |

* Please see further explanation below

4.105 Section 118A(5) FSMA, which is the subject of DTR 1.5.2R, will be repealed by the Treasury's Statutory Instrument as it is not compatible with EU MAR.

Q27: Do you have any comments or suggestions on our proposed amendments to DTR 1.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2: Disclosure and control of inside information by issuers

4.106 DTR 2 contains rules and guidance on how issuers disclose and control inside information. It promotes prompt and fair disclosure of relevant information to the market and sets out specific circumstances when an issuer can delay publicly disclosing inside information. This chapter also includes requirements to ensure that this type of information stays confidential to protect investors and prevent insider dealing.

4.107 DTR 2 contains certain provisions which are the equivalent of Articles 17 (Public disclosure of inside information) and 18 (insider lists) EU MAR.

DTR 2.1: Introduction and Purpose

4.108 DTR 2.1 gives an introduction and description of the purpose of this section of the Disclosure Rules.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|---------------------------|--|---------------------------------|
| DTR 2.1.1G* | N/A | Maintained and conformed |
| DTR 2.1.2R* | N/A | Removed and new provision added |
| DTR 2.1.3G* | N/A | Maintained and conformed |

* Please see further explanation below

4.109 We propose maintaining DTR2.1.1G and DTR2.1.3G as they provide useful guidance and will continue to be relevant as there are no equivalent provisions in EU MAR. However, they will need updating so that they accurately refer to EU MAR.

4.110 DTR2.1.2R provides that an issuer involved in a matter falling within the scope of the Takeover Code must also comply with its obligations under Chapter 2 of the DTR. We are removing this rule as it will no longer be relevant under EU MAR but we consider it would be useful to have guidance indicating that issuers involved in matters relating to the Takeover Code should be mindful of their obligations under EU MAR.

Q28: Do you have any comments or suggestions on our proposed changes to DTR 2.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2.2: Disclosure of Inside information

4.111 DTR 2.2 provides rules on disclosing inside information, including how to identify inside information, when to disclose it and communicating it to third parties.

4.112 There is overlap with Articles 7 (Inside information) and 17 (Public disclosure of inside information) EU MAR. There will also be Commission-adopted implementing technical standards under Article 17(10), covering the technical ways to make appropriate disclosure.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--|
| DTR 2.2.1R | Article 17 (1), RTS under Article 17(10) | Removed and replaced with a signpost |
| DTR 2.2.2R | Article 17(4) | Removed (no longer compatible with EU MAR) |
| DTR 2.2.3G | N/A | Maintained unchanged |
| DTR 2.2.4G | Article 7(4) | Maintained and conformed |
| DTR 2.2.5G | Article 7 | Maintained and conformed |
| DTR 2.2.6G | Article 7(4) | Maintained and conformed |
| DTR 2.2.7G | N/A | Maintained unchanged |
| DTR 2.2.8G | N/A | Maintained and conformed |
| DTR 2.2.9G | Article 17(1) | Maintained and conformed |
| DTR 2.2.10G | N/A | Maintained and conformed |

Q29: Do you have any comments or suggestions on our proposed changes to DTR 2.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2.3: Publication of information on internet site

4.113 DTR 2.3 covers how issuers must publish information on their website, including rules and guidance on publishing inside information. This sub-chapter also contains rules on the time at which inside information has to be made available on the issuer’s website and how long it must remain there.

4.114 These provisions are covered by Article 17(1) EU MAR. There will also be Commission-adopted implementing technical standards under Article 17(10) EU MAR which will give further detail on the technical means for the appropriate public disclosure of inside information.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--|
| DTR 2.3.1R | ITS under Article 17(10) | Removed (no longer compatible with EU MAR) |
| DTR 2.3.2R | Article 17(1) and RTS under Article 17(10) | Removed (no longer compatible with EU MAR) |
| DTR 2.3.3R | ITS under Article 17(10) | Removed (no longer compatible with EU MAR) |
| DTR 2.3.4G | ITS under Article 17(10) | Removed (no longer compatible with EU MAR) |
| DTR 2.3.5R | Article 17(1) and Article 17(9) | Removed and replaced with a signpost |

Q30: Do you have any comments or suggestions on our proposed changes to DTR 2.3? If yes, please provide your

rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2.4: Equivalent information

4.115 DTR 2.4 relates to the requirement for disclosing inside information to the public in a synchronised manner across jurisdictions.

4.116 There is overlap of these provisions with Article 17 EU MAR, and in particular Article 17(10), which allows the Commission to adopt implementing technical standards on the technical means for appropriate public disclosure on inside information.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|---------------------------|--|--|
| DTR 2.4.1R | ITS under Article 17(10) | Removed (no longer compatible with EU MAR) |
| DTR 2.4.2R | ITS under Article 17(10) | Removed (no longer compatible with EU MAR) |

Q31: Do you have any comments or suggestions on our proposed changes to DTR 2.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2.5: Delaying disclosure of inside information

4.117 DTR 2.5 covers the circumstances in which an issuer can delay disclosing inside information. Equivalent provisions can be found in Articles 4, 5 and 17 EU MAR.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|---------------------------|--|--------------------------------------|
| DTR 2.5.1R | Article 17(4), 17(5) | Removed and replaced with a signpost |
| DTR 2.5.2G* | N/A | Maintained unchanged |
| DTR 2.5.3R* | N/A | Maintained and new provision added |
| DTR 2.5.4G* | N/A | Maintained and conformed |
| DTR 2.5.5G* | N/A | Maintained and conformed |
| DTR 2.5.5(A)R | Article 17(5) | Removed and replaced with a signpost |
| DTR 2.5.6R | Article 17(8) | Removed and replaced with a signpost |
| DTR 2.5.7G* | N/A | Maintained and conformed |
| DTR 2.5.8G* | N/A | Maintained and conformed |
| DTR 2.5.9G* | N/A | Maintained and conformed |

* Please see further explanation below

4.118 EU MAR does not currently give guidance on which factors should be included when deciding if there are legitimate reasons for delaying disclosure and that this delay will not mislead the public. However, Article 17(11) EU MAR requires ESMA to produce guidelines which will establish a non-exhaustive indicative list of the legitimate interests of issuers, as referred to in Article 17(4)(a) EU MAR, and of situations in which delay of disclosure of inside information

is likely to mislead the public, as referred to in Article 17(4)(b) EU MAR. These are expected in summer 2016. When the FCA has a clearer idea of what these guidelines will contain and when they will be produced, the FCA will reassess the status and continuance of DTR 2.5.2G, DTR 2.5.4G, DTR 2.5.5G, DTR 2.5.7G, DTR 2.5.8G, DTR 2.5.9G, which may result in further changes to these provisions.

- 4.119** We consider that DTR 2.5.3R in its form as a rule setting out non-exhaustive circumstances regarding legitimate interests is not compatible with EU MAR. However, the content of this provision, which helps interpreting the term 'legitimate interest', is not currently covered by EU MAR. We therefore propose to maintain the content by providing guidance.

Q32: Do you have any comments or suggestions on our proposed changes to DTR 2.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2.6: Control of inside information

- 4.120** DTR 2.6 provides rules and guidance on denying access to inside information by issuers to persons other than those who require it for the exercise of their functions within the issuer. This sub-chapter also contains provisions for dealing with a breach of confidentiality.

- 4.121** There is overlap between these provisions and Article 17 (Public disclosure of inside information) EU MAR.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--------------------------------------|
| DTR 2.6.1R* | N/A | Maintained and new provision added |
| DTR 2.6.2R | Article 17(7) | Removed and replaced with a signpost |
| DTR 2.6.3G | Article 17(4) Article 17(5) | Maintained and conformed |
| DTR 2.6.4G | N/A | Maintained and conformed |

* Please see further explanation below

- 4.122** DTR 2.6.1R sets out rules on arrangements an issuer must have to deny access to inside information to persons other than those who require it for the exercise of their functions. It is a legally binding provision and so has to be deleted. However, this specification is important and would provide useful additional information to issuers to maintain this concept as there is no direct equivalent within EU MAR. So we propose to maintain the content of this provision in the form of guidance.

Q33: Do you have any comments or suggestions on our proposed changes to DTR 2.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2.7: Dealing with rumours

- 4.123** DTR 2.7 provides issuers with guidance on disclosing inside information when there are press speculations or market rumours about the issuer.

- 4.124** There is overlap with Article 17(7) EU MAR.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--------------------------------------|
| DTR 2.7.1G | N/A | Maintained and conformed |
| DTR 2.7.2G | Article 17(7) | Removed and replaced with a signpost |
| DTR 2.7.3G | N/A | Maintained and conformed |

Q34: Do you have any comments or suggestions on our proposed changes to DTR 2.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 2.8: Insider lists

4.125

DTR 2.8 covers the obligations of an issuer, or a person acting on its behalf, to draw up an insider list; a list of persons who have access, in the course of their activity, to inside information relating directly or indirectly to the issuer. This section of the Handbook sets out requirements for the content and maintenance of the insider lists.

4.126

EU MAR addresses the concept of insider lists and the relevant requirements are set out in Article 18 EU MAR (Insider lists). There is extensive overlap with DTR 2.8. Article 18(10) EU MAR gives the Commission power to adopt implementing technical standards to specify the format of insider lists and process for updating them.

| Handbook reference | Related EU MAR provision (where applicable) | Comment |
|--------------------|---|--|
| DTR 2.8.1R | Article 18(1) | Removed and replaced with a signpost |
| DTR 2.8.2R | Article 18(1)(c) | Removed and replaced with a signpost |
| DTR 2.8.3R | Article 18(3) ITS under Article 18(9) | Removed and replaced with a signpost |
| DTR 2.8.4R | Article 18(4) | Removed and replaced with a signpost |
| DTR 2.8.5R | Article 18(5) | Removed and replaced with a signpost |
| DTR 2.8.6G | Article 18(2) | Removed and replaced with a signpost |
| DTR 2.8.7G | Article 18(1)(a) Article 18(2) | Removed and replaced with a signpost |
| DTR 2.8.8G | N/A | Removed (no longer compatible with EU MAR) |
| DTR 2.8.9R | Article 18(2) | Removed and replaced with a signpost |
| DTR 2.8.10R | Article 18(2) | Removed and replaced with a signpost |

Q35: Do you have any comments or suggestions on our proposed changes to DTR 2.8? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

DTR 3: Transactions by persons discharging managerial responsibilities and their

connected persons

4.127

DTR 3 contains rules and guidance about the notification requirements of issuers, and of PDMRs and connected persons in respect of transactions conducted on their own account in shares of the issuer, or derivatives or any other financial instrument relating to those shares. Article 19 EU MAR (Managers' transactions) contains several equivalent provisions. The Commission will have the power to adopt delegated acts under Article 19(14) EU MAR to state which types of transactions will trigger the notification requirements under Article 19 EU MAR. It will also have the power to adopt implementing technical standards under Article 19(15) that specify the level of information that must be reported, as well as the forms which must be used to report it.

| Handbook reference | Related EU MAR provision | Comment |
|--------------------|--|--|
| DTR 3.1.1G* | N/A | Maintained and conformed |
| DTR 3.1.2R | Article 19 (1) | Removed and replaced with a signpost |
| DTR 3.1.2(A)G | N/A | Maintained and conformed |
| DTR 3.1.2BG* | New | |
| DTR 3.1.3R | Article 19(6) and ITS under Article 19(15) | Removed and replaced with a signpost |
| DTR 3.1.4R | Article 19(3) | Removed (no longer compatible with EU MAR) |
| DTR 3.1.5R | Article 19(3) | Removed (no longer compatible with EU MAR) |
| DTR 3.1.6R | Article 19 | Removed (no longer compatible with EU MAR) |
| DTR 3.1.7G | Article 19(6) | Removed (no longer compatible with EU MAR) |
| DTR 3.1.8R | Article 19 | Removed (no longer compatible with EU MAR) |

* Please see further explanation below

4.128

We believe DTR 3.1.1G provides useful information so we propose maintaining it, but amended to include reference to Article 19 EU MAR.

4.129

We propose including DTR 3.1.2B, to indicate the applicable thresholds above which subsequent transactions must be notified in accordance with Article 19(1) and (8) EU MAR. Please see Chapter 2 for a discussion on this topic.

Q36: Do you have any comments or suggestions on our proposed changes to DTR 3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

Listing Rules (LR) Chapter 9 and Annex 1

4.130

LR 9.2.8R currently states:

'A listed company must require every person discharging managerial responsibilities, including directors to comply with the Model Code and to take all proper and reasonable steps to secure their compliance.'

- 4.131** The Model Code is set out in Annex 1 to Chapter 9 of the LR. Its purpose is to ensure that PDMRs of premium listed companies do not abuse, or place themselves under suspicion of abusing, inside information, especially in the run-up to an announcement of a company's results. The Model Code sets out:
- the types of dealing in scope
 - the prohibited period for dealing
 - the prohibitions to dealing without clearance
 - the internal process to obtain clearance to deal which a firm must have in place
 - the circumstances where the firm must refuse clearance to deal
 - the situations when dealing is permitted during a prohibited period such as exceptional circumstances, awards of securities and options and exercise of options
- 4.132** A key aspect of the Model Code is that it prohibits dealing without obtaining clearance to deal. Clearance to deal may not be given during a prohibited period or when such dealing is of a short term nature i.e. less than one year. The prohibited period is any close period (the periods leading up to the announcement of the company's results) and any period when there exists any matter constituting inside information. However, in exceptional circumstances, a PDMR can be given clearance to deal during these periods, but only if he or she is not in possession of inside information.
- 4.133** Article 19(11) EU MAR will establish a new definition of 'closed period' and prohibit dealing by PDMRs during this period. Article 19(12) EU MAR also provides for certain circumstances where, subject to the issuer's approval, PDMRs can be permitted to deal. These provisions apply directly to PDMRs and their dealing and do not relate to the systems and controls needed for an issuer to provide clearance to deal.
- 4.134** There is a clear overlap between the rules in the Model Code and EU MAR covering the definition of close/closed periods and the prohibitions to trading and exemption to the prohibitions. As discussed above, it is not compatible with EU law to have domestic rules that conflict or overlap with or duplicate EU regulation. Therefore it is not possible to retain the Model Code as it stands.
- 4.135** Premium listed companies, their advisers and investors, have told us that, subject to EU law, they are keen to maintain the concept of the Model Code as far as possible. It provides a benchmark for premium listed companies to manage the reputational risk associated with PDMR trading and encourages a consistency in approach across the market.
- 4.136** We understand this view and have considered carefully how best we can achieve the stakeholders' preferences while ensuring that we do not conflict or overlap with the EU legal provisions. We propose replacing the existing Model Code with a guidance for companies to use when creating internal procedures for PDMRs applying for clearance to deal. We believe this will be the most helpful way of supporting premium listed companies, who have told us they want to maintain the substance of the existing provisions as far as possible.

4.137 The EU MAR requirements and restrictions would need to be considered in designing these procedures and companies would need to build them into their processes when considering whether to grant clearance. Premium listed companies and their PDMRs must comply with these EU MAR requirements. The guidance and rules being discussed in this section neither over-ride nor provide a safe harbour to any of the provisions of EU MAR.

4.138 We propose to create new rules that require applicants for premium listing and premium listed companies to have effective systems and controls regarding dealing clearance procedures (LR 6.1.29R and LR 9.2.8R).

4.139 In addition, we propose to provide guidance for premium listed companies to consider when developing these procedures. We will include this in LR 9 Annex 2G so that companies can use it as a benchmark for their procedures (and satisfying the relevant rule).

- when a PDMR must obtain clearance to deal before dealing
- who is an appropriate person within the company to grant such requests
- what is an appropriate timeframe for the company to respond to such requests
- what is an appropriate timeframe for a PDMR to deal once they have received clearance
- how a company will assess whether clearance to deal will be given
- how a company keeps records of the clearance process

4.140 Given the constraints of EU law noted above, it is difficult to maintain the provisions currently present in the Model Code related to the avoidance of short term dealing by PDMRs and to dealings by connected persons. We have not therefore included provisions in these areas. However we would welcome observations or suggestions on these points.

4.141 Change to the status of Model Code also impacts various provisions in LR 9. We propose to amend LR 9.2.8R and delete LR 9.2.10R as this rule is no longer relevant. LR 9.2.7R imposes restrictions on a premium listed company's own dealings by reference to the Model Code. Due to EU MAR and our Model Code proposals, it is not possible to maintain LR 9.2.7R in its current form. LR 12 also contains a number of provisions that relate to the circumstances in which a company may deal in its own securities and as such we need to consider their interaction with EU MAR. As such, we propose to delete LR 9.2.7R in this consultation and will consult on any necessary amendments to the premium listing rules on company dealings in due course.

Q37: Do you agree with the proposal to delete the provisions of the Model Code and replace it with rules and guidance on systems and procedures for companies to have clearance procedures regarding PDMR dealing?

Q38: Do you have any suggestions on how the formulation of the rule (LR 6.1.29R and LR 9.2.8R) could be improved?

Q39: Do you have any suggestions for additions or deletions on the content of the proposed guidance in LR9 Annex2G including on the areas noted above on which we have not included provisions? Please could you also justify your suggestions?

Consequential amendments

4.142 The following modules of the FCA's Handbook and guide listed below are amended in accordance with the Annexes in Market Abuse Regulation (Consequential Amendments) Instrument 2016.

- Statements of Principle and Code of Practice for Approved Persons (APER)
- General Provisions (GEN)
- Fees Manual (FEES)
- Recognised Investment Exchanges sourcebook (REC)
- Energy Market Participants Guide (EMPS)
- Oil Market Participants Guide (OMPS)
- Service Companies Guide (SERV)
- General guidance on Benchmark Submission and Administration (BENCH)
- Financial Crime: a guide for firms (FC)

Note there are also consequential changes arising from the changes we made to the primary instrument.

4.143 There are likely to be further consequential amendments required to the FCA Handbook going forward, in order to reflect the repeal of the Market Abuse Directive and its implementing legislation.

4.144 We have amended transitional provisions in the Handbook, where applicable, for the purposes of implementation of the Market Abuse Regulation, as this is the standard Handbook drafting convention with regards to transitional provisions

Glossary: various

4.145 There are changes to several glossary terms. Please see Appendix 1 for the proposed changes to these terms.

The Handbook Guide

4.146 The status of provisions section of the Reader's Guide will need to be updated as Evidential Provisions and Conclusive Provisions within the Code of Market Conduct will no longer exist.

Next steps

- 4.147** Please provide your responses to the questions included in this consultation to the contact details provided on page 2 by February 4, 2016. A complete list of the questions can be found in Annex 1.
- 4.148** We intend to provide a policy statement in spring 2016 and we intend to make the relevant Handbook changes by 3 July 2016.

Annex 1: List of questions

- Q1:** Do respondents agree that the issuer/EAMP should provide a written explanation following notification of delayed disclosure to the FCA only upon its request?
- Q2:** *Are you able to provide information on the number of written notifications you anticipate that you would make a year under the proposed regime?*
- Q3:** *Would it be too burdensome to automatically provide the explanation without waiting for a specific FCA request? Please could you provide data regarding the resources required?*
- Q4:** *Do you agree with our proposal to adopt the €5,000 threshold? If not, please specify the market conditions that you consider would justify the decision to increase it to €20,000.*
- Q5:** *Please provide quantitative data on the number of transactions you would have to notify at a threshold at €5,000 and €20,000 respectively in a calendar year.*
- Q6:** *Do you have any comments or suggestions with the proposed amendments to MAR 1.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q7:** *Do you have any comments or suggestions on the proposed amendments to MAR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q8:** *Do you have any comments or suggestions on the proposed amendments to MAR 1.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q9:** *Do you have any comments or suggestions on the proposed amendments to MAR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*

- Q10:** *Do you have any comments or suggestions on the proposed amendments to MAR 1.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q11:** *As discussed in paragraph 4.49 above and also discussed in paragraphs 4.52, 4.55 and 4.86, we propose to delete some potential indicators of behaviour such as those included in MAR 1 and Sup 15.10 Annex 5 from the Handbook and, instead, direct the industry to the list of indicators provided under the delegated acts under Article 12(5). If you disagree with this approach, please suggest an alternative approach with rationale and indicate, if relevant, whether there are particular indicators proposed for deletion which should be preserved and why.*
- Q12:** *Do you have any comments or suggestions on the proposed amendments to MAR 1.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q13:** *Do you agree with the proposed amendments to MAR 1.8? If not, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q14:** *Do you have any comments or suggestions on the proposed amendments to MAR 1.9? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q15:** *Do you have any comments or suggestions on the proposed amendments to MAR 1.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q16:** *Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q17:** *Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q18:** *Do you have any comments or suggestions with the changes proposed to MAR 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q19:** *Do you have any comments or suggestions on the proposed amendments to MAR 8.1? If yes, please*

provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- Q20:** *Do you have any comments or suggestions on the changes proposed to SYSC 18? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q21:** *Do you have any comments or suggestions on the proposed amendments to COBS 12.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q22:** *Do you have any comments or suggestions on the changes proposed to SUP 15.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q23:** *Do you have any comments or suggestions on our proposed amendments to DTR 1.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q24:** *Do you have any comments or suggestions on our proposed amendments to DTR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q25:** *Do you have any comments or suggestions on our proposed amendments to DTR 1.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q26:** *Do you have any comments or suggestions on our proposed amendments to DTR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q27:** *Do you have any comments or suggestions on our proposed amendments to DTR 1.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q28:** *Do you have any comments or suggestions on our proposed changes to DTR 2.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q29:** *Do you have any comments or suggestions on our proposed changes to DTR 2.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*

- Q30:** *Do you have any comments or suggestions on our proposed changes to DTR 2.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q31:** *Do you have any comments or suggestions on our proposed changes to DTR 2.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q32:** *Do you have any comments or suggestions on our proposed changes to DTR 2.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q33:** *Do you have any comments or suggestions on our proposed changes to DTR 2.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q34:** *Do you have any comments or suggestions on our proposed changes to DTR 2.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q35:** *Do you have any comments or suggestions on our proposed changes to DTR 2.8? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q36:** *Do you have any comments or suggestions on our proposed changes to DTR 3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.*
- Q37:** *Do you agree with the proposal to delete the provisions of the Model Code and replace it with rules and guidance on systems and procedures for companies to have clearance procedures regarding PDMR dealing?*
- Q38:** *Do you have any suggestions on how the formulation of the rule (LR 6.1.29R and LR 9.2.8R) could be improved?*
- Q39:** *Do you have any suggestions for additions or deletions on the content of the proposed guidance in LR9 Annex2G including on the areas noted above on which we have not included provisions? Please could you also justify your suggestions?*

Annex 2: Cost benefit analysis

Competition and Economic implications

This paper recommends removing Handbook provisions that will be superseded by the directly applicable Market Abuse Regulation. We also recommend maintaining some measures which are not overridden by MAR and which provide interpretive guidance to the industry.

This will accurately reflect that, depending on the rules involved, the FCA has either no discretion in their implementation or that the rules will not be substantially different from the status quo.

Our view is that the costs for firms will be of minimal significance if compared with any reasonable counterfactual and that no CBA is required. Similarly, we do not see any implication for the FCA's competition remit.

Annex 3: Compatibility statement

Compatibility with the FCA's general duties

This annex follows the requirements set out in section 138I of the Financial Services and Markets Act 2000 (FSMA).

When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we believe the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons. We also note the application of section 139A (5) relating to consulting on guidance.

This annex also includes our assessment of the equality and diversity implications of these proposals.

The FCA's objectives and regulatory principles

The proposals set out in this Consultation Paper are compatible with our strategic objective of ensuring that the relevant markets function well and are primarily intended to advance our operational objectives of:

Enhancing market integrity – protecting and enhancing the integrity of the UK financial system, by ensuring that the market abuse regulation is proportionate and effective.

Securing consumer protection – maintaining and securing an appropriate degree of protection for consumers, by ensuring that market practices do not abuse the functioning of the markets.

In preparing our proposals, we have had regard to the regulatory principles set out in section 3B FSMA. In particular:

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons.

We do not believe that our proposals discriminate against any particular business model or approach.

The principle that we should exercise our functions as transparently as possible.

We believe that by consulting on our proposals we are acting in accordance with this principle.

The need to use our resources in the most efficient and economical way.

The proposals in this Consultation Paper will have minimal impact on our resources.

The principle that a burden or restriction should be proportionate to the benefits.

We believe the proposals in this Consultation Paper containing burdens or restrictions are proportionate to the benefits.

The desirability of publishing information relating to persons.

We believe that our proposals do not undermine this principle.

Expected effect on mutual societies

Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. The relevant rules we propose to amend will apply, according to the powers exercised and to whom they addressed, equally to persons regardless of whether they are a mutual society or another authorised person.

Equality and diversity

We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

Our equality impact assessment suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics (i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender), nor do we believe that our proposals should give rise to indirect discrimination against any of these groups. We would nevertheless welcome any comments respondents may have on any equality issues they believe may arise.

Appendix 1: Draft Handbook text

MARKET ABUSE REGULATION (PRIMARY) INSTRUMENT 2016

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 rules);
 - (2) section 96 (Obligations of issuers of listed securities);
 - (3) section 137A (General rule-making power);
 - (4) section 137Q (Price stabilising rules);
 - (5) section 137T (General supplementary powers); and
 - (6) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [date] 2016.

Amendments to the Handbook

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

| (1) | (2) |
|---|---------|
| Glossary of definitions | Annex A |
| Senior Management Arrangements, Systems and Controls (SYSC) | Annex B |
| Conduct of Business sourcebook (COBS) | Annex C |
| Market Conduct sourcebook (MAR) | Annex D |
| Supervision manual (SUP) | Annex E |
| Listing Rules sourcebook (LR) | Annex F |
| Disclosure Rules and Transparency Rules sourcebook (DTR) | Annex G |

Renaming of sourcebook

- E. The Disclosure Rules and Transparency Rules sourcebook (DTR) is renamed the Disclosure Guidance and Transparency Rules sourcebook (DTR).

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

European Union Legislation

- G. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

Citation

- H. This instrument may be cited as the Market Abuse Regulation (Primary) Instrument 2016.

By order of the Board
[Date] 2016

[Editor's Note: This instrument should be read in conjunction with the Market Abuse Regulation (Consequential Amendments) Instrument 2016.]

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position.

| | |
|--|---|
| <u>disclosure guidance</u> | <u>the guidance contained in DTR 1 to 3</u> |
| <u>FSMA 2000 (Market Abuse) Regulations 2016</u> | <u>[citation to be given in due course; refers to the statutory instrument anticipated to be laid before Parliament in 2016 and entitled the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016.]</u> |
| <u>insider dealing</u> | <u>the behaviour described in article 8 of the Market Abuse Regulation.</u> |
| <u>investment recommendation</u> | <u>as defined in article 3(1)(35) of the Market Abuse Regulation.</u> |
| <u>Market Abuse Regulation</u> | <u>regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing the Market Abuse Directive and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.</u> |
| <u>unlawful disclosure</u> | <u>the behaviour described in article 10 of the Market Abuse Regulation.</u> |

Amend the following definitions as shown.

| | |
|----------------------------|---|
| <i>breach</i> | ... |
| | (4) behaviour amounting to market abuse, or to requiring or encouraging market abuse, in respect of which the FCA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) a contravention for the purposes of [sections 123, 123A, 123B or 123B] of the Act; |
| | ... |
| <i>competent authority</i> | ... |
| | (6) (in COBS 13.4) the authority designated by each EEA State in accordance with Article 11 of the Market Abuse Directive. [Note: article 1(7) of the Market Abuse Directive] [deleted] |
| | ... |
| <i>connected person</i> | ... |

- (5) (in *DTR* and *LR* in relation to a *person discharging managerial responsibilities* within an *issuer*) has the ~~same meaning as in section 96B(2) of the Act~~ meaning given to “person closely associated” in article 3(1)(26) of the *Market Abuse Regulation* and the *FSMA 2000 (Market Abuse) Regulations 2016*.
- dealing*
- (1) (other than in ~~*MAR 1 (The Code of Market Conduct)*~~) for the purposes of *LR 6.1.29R*, *LR 9.2.8R* and *LR 9 Annex 2G* (in accordance with paragraph 2 of Schedule 2 to the *Act (Regulated activities)*) buying, selling, subscribing for or underwriting *investments* or offering or agreeing to do so, either as a *principal* or as an agent, including, in the case of an *investment* which is a *contract of insurance*, carrying out the contract.
- (2) ~~(in *MAR 1*) (as defined as in section 130A(3) of the Act), in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it. [deleted]~~
- (3) for the purposes of *LR 6.1.29R*, *LR 9.2.8R* and *LR 9 Annex 2G*, conducting a transaction on a *person’s* own account or for the account of another *person*.
- debt security*
- (1) (in ~~*DTR 2*, *DTR 3* and *LR*~~) *debentures*, *alternative debentures*, *debenture stock*, *loan stock*, *bonds*, *certificates of deposit* or any other instrument creating or acknowledging indebtedness.
- ...
- disclosure rules requirements*
- ~~(in accordance with sections 73A(1) and 73A(3) of the Act) rules relating to the disclosure of information in respect of *financial instruments* which have been admitted to trading on a *regulated market* or for which a request for *admission to trading* on such a market has been made~~ articles 17, 18 and 19 of the *Market Abuse Regulation*.
- DTR*
- the Disclosure ~~Rules~~ Guidance and Transparency Rules sourcebook containing the ~~*disclosure rules guidance*~~, *transparency rules*, *corporate governance rules* and the *rules* relating to *primary information providers*.
- financial instrument*
- ...
- (2) (in *MAR 1* and *MAR 2*, *DTR 1*, 2 and 3 and otherwise where used in relation to the ~~*Market Abuse Directive*~~) ~~(as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse*~~

~~Directive, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*): Market Abuse Regulation, as defined in article 3(1)(1) of the Market Abuse Regulation.~~

...

inside information

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

- ~~(a) in relation to *qualifying investments*, or *related investments*, which are not commodity derivatives, *inside information* is information of a precise nature which:

 - ~~(i) is not generally available,~~
 - ~~(ii) relates, directly or indirectly, to one or more issuers of the *qualifying investments* or to one or more of the *qualifying investments*, and~~
 - ~~(iii) would, if generally available, be likely to have a significant effect on the price of the *qualifying investments* or on the price of *related investments*.~~~~
- ~~(b) in relation to *qualifying investments*, or *related investments*, which are commodity derivatives, *inside information* is information of a precise nature which:

 - ~~(i) is not generally available,~~
 - ~~(ii) relates, directly or indirectly, to one or more such derivatives, and~~
 - ~~(iii) users of markets in which the derivatives are traded would expect to receive in accordance with *accepted market practices* on those markets.~~~~
- ~~(c) in relation to a person charged with the execution of orders concerning any *qualifying investments* or *related investments*, *inside information* includes information conveyed by a client and related to the client's pending orders which:

 - ~~(i) is of a precise nature;~~
 - ~~(ii) is not generally available;~~
 - ~~(iii) relates, directly or indirectly, to one or more issuers of *qualifying investments* or to one or more *qualifying investments*; and~~
 - ~~(iv) would, if generally available, be likely to have a significant effect on the price of those *qualifying investments* or the price of *related investments*;~~~~

- (d) ~~information is precise if it:~~
 - (i) ~~indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and~~
 - (ii) ~~is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of *qualifying investments* or *related investments*;~~
- (e) ~~information would be likely to have a significant effect on price if and only if it is information of that kind which a reasonable investor would be likely to use as part of the basis of his investment decisions;~~
- (f) ~~for the purposes of (b)(iii), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any *accepted market practices*, which is:~~
 - (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;~~
- (g) ~~information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of *market abuse*, as being generally available to them.~~

as described in article 7 of the *Market Abuse Regulation*.

insider

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

- (a) ~~as a result of his membership of the administrative, management or supervisory bodies of an *issuer* of *qualifying investments*;~~
- (b) ~~as a result of his holding in the capital of an *issuer* of *qualifying investments*;~~
- (c) ~~as a result of having access to the information through the exercise of his employment, profession or duties;~~
- (d) ~~as a result of his criminal activities; or~~

- (e) ~~which he has obtained by other means and which he knows, or could reasonably be expected to know, is *inside information*.~~

as described in article 8(4) of the Market Abuse Regulation.

intermediaries offer ...

- (2) ~~(for the purposes of the *Code of Market Conduct (MAR 1)*) a marketing of *securities* not yet in issue, by means of an *offer* by, or on behalf of, the *issuer* to intermediaries for them to allocate to their own clients. [deleted]~~

issuer ...

- (2) (in MAR 1, chapters 1, 2 and 3 of *DTR* and *FEES* in relation to *DTR*) ~~any *company* or other legal person or undertaking (including a *public sector issuer*), any class of whose *financial instruments*:~~

(a) ~~have been *admitted to trading on a regulated market*; or~~

(b) ~~are the subject of an application for *admission to trading on a regulated market*;~~

~~other than *issuers* who have not requested or approved admission of their *financial instruments* to trading on a *regulated market* as defined in article 3(1)(21) of the *Market Abuse Regulation*.~~

...

market abuse

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

(a) ~~occurs in relation to *qualifying investments* traded or admitted to trading on a *prescribed market* or in respect of which a request for admission to trading on such a market has been made; and~~

(b) ~~falls within any one or more of the types of *behaviour* set out in section 118(2) to (8) of the *Act*.~~

behaviour prohibited by:

(a) articles 14 and 15 of the *Market Abuse Regulation*; or

(b) articles 38 to 42 of regulation (EU) No 1031/2010 and as referred to in the *RAP Regulations*.

| | |
|---|---|
| | ... |
| <i>non-independent research</i> | <p>a research <u>an investment recommendation</u> which:</p> <p>(a) relates to <i>financial instruments</i> (as specified in Section C of Annex 1 of <i>MiFID</i>, whether or not they are admitted to trading on a <i>regulated market</i>); and</p> <p>(b) does not constitute <i>investment research</i>.</p> <p>[Note: article 24(2) of the <i>MiFID implementing Directive</i>]</p> |
| | ... |
| <i>offer</i> | <p>(1) (in <i>MAR 1 (Code of market conduct Market Abuse)</i>) an offer as defined in the <i>Takeover Code</i>.</p> <p>(2) (in <i>MAR 2 (Buy backs and Stabilisation)</i>) an offer or invitation to make an offer. <u>[deleted]</u></p> |
| | ... |
| <i>offeror</i> | <p>(1) (in <i>MAR 1 (The Code of Market Conduct Market Abuse)</i>) and <i>LR5.2.10R to LR5.2.11DR</i>) an offeror as defined in the <i>Takeover Code</i>.</p> <p>(2) (in <i>MAR 2 (Buy backs and Stabilisation)</i>) (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the prior holders of, or the entity issuing, the <i>relevant securities</i>. <u>[deleted]</u></p> |
| | ... |
| <i>person discharging managerial responsibilities</i> | <p>(in accordance with section 96B(1) of the Act):</p> <p>(a) a director of an issuer:</p> <p>(i) registered in the <i>United Kingdom</i> that has requested or approved admission of its <i>shares</i> to trading on a <i>regulated market</i>; or</p> <p>(ii) not registered in the <i>United Kingdom</i> or any other <i>EEA State</i> but has requested or approved admission of its <i>shares</i> to trading on a <i>regulated market</i> and for whom the <i>United Kingdom</i> is its <i>Home Member State</i>; or</p> <p>(b) a senior executive of such an issuer who:</p> <p>(i) has regular access to <i>inside information</i> relating, directly or indirectly, to the issuer; and</p> |

- (ii) ~~has power to make managerial decisions affecting the future development and business prospects of the issuer.~~

as defined in article 3(1)(25) of the *Market Abuse Regulation*.

prescribed auction platform

an *auction platform* which ~~has~~ had been prescribed by the Treasury in the *Prescribed Markets and Qualifying Investments Order* as it was in force on 2 July 2016.

[Note: regulation 6(3) of the *RAP Regulations*. Also, note that the *Prescribed Markets and Qualifying Investments Order* is now repealed.]

prescribed market

a market which ~~has~~ had been prescribed by the Treasury in the *Prescribed Markets and Qualifying Investments Order* (as it was in force on 2 July 2016).

...

price stabilising rules

~~the rules made under section 137Q of the *Act*, and appearing in *MAR 2.1 to MAR 2.4*, together with any other provisions available for their interpretation.~~

...

regulated information

all information which an *issuer* or any other *person* who has applied for the admission of *financial instruments* to trading on a *regulated market* without the *issuer's* consent, is required to disclose under:

- (a) the *Transparency Directive*;
- (b) ~~article 6 of the *Market Abuse Directive*~~ articles 17 to 19 of the *Market Abuse Regulation*; or
- (c) *LR*, and *DTR*.

related investment

~~(as defined in section 130A(3) of the *Act*)~~ in relation to a *qualifying investment financial instrument*, means an investment instrument whose price or value depends on the price or value of the *qualifying investment financial instrument*.

relevant articles

(in *REC*):

...

- (1) Article 6.1 to 6.4 of the *Market Abuse Directive*; Articles 17 and 19 of the *Market Abuse Regulation*

...

relevant investment

- (1) ~~(in *COBS 12.4*, in relation to a *research recommendation* or a public appearance),~~ a *designated investment* that is the subject

~~of that research recommendation or public appearance,~~
~~[deleted]~~

- (2) (other than in ~~COBS 4 or COBS 12.4~~) (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)):
- (a) a contractually based investment;
 - (b) a pure protection contract;
 - (c) a general insurance contract;
 - (d) rights to or interests in an *investment* falling within (a).

...

security

- (1) ...
- (2) (in *LR*, except in *LR 6.1.29R*, *LR 9.2.8R* and *LR 9 Annex 2G*) (in accordance with section 102A of the *Act*) anything which has been, or may be admitted to the *official list*.

...

- (4) (in *LR 6.1.29R*, *LR 9.2.8R* and *LR 9 Annex 2G*) securities of the company means any publicly traded or quoted securities of the company or any member of its group or any securities that are convertible into such securities.

stabilisation

~~(in *MAR 2*) (as defined in Article 2 of the *Buy back and Stabilisation Regulation*) any purchase or offer to purchase relevant securities, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities article 3(2)(d) of the *Market Abuse Regulation*.~~

trading venue

- (1) (except in *FINMAR* and *MAR*) a regulated market, MTF or systematic internaliser acting in its capacity as such, and, where appropriate, a system outside the *EU* with similar functions to a regulated market or MTF. [Note: article 2(8) of the *MIFID Regulation*]
- (2) (in *FINMAR*) (as defined in article 2(1)(1) of the *short selling regulation*) a regulated market or an MTF.
- (3) (in *MAR*) a regulated market or MTF.

Delete the following definitions.

| | |
|--|--|
| <i>accepted channel for dissemination of information</i> | (in relation to any <i>prescribed market</i>) an approved channel of communication by which information concerning <i>investments</i> traded on the market is formally disseminated to other market users on a structured and equitable basis. <u>[deleted]</u> |
| <i>accepted market practice</i> | (as defined in section 130A(3) of the <i>Act</i>) practices that are reasonably expected in the financial market or markets in question and are accepted by the <i>FCA</i> or, in the case of a market situated in another <i>EEA State</i>, the competent authority of that <i>EEA State</i> within the meaning of the <i>Market Abuse Directive</i>. <u>[deleted]</u> |
| <i>adequate public disclosure</i> | (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) disclosure made in accordance with the procedure laid down in Articles 102(1) and 103 of the <i>Consolidated Admissions and Reporting Directive</i>. <u>[deleted]</u> |
| <i>allotment</i> | (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the process or processes by which the number of <i>relevant securities</i> to be received by investors who have previously subscribed or applied for them is determined. <u>[deleted]</u> |
| <i>ancillary stabilisation</i> | (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the exercise of an <i>overallotment facility</i> or of a <i>greenshoe option</i> by <i>investment firms</i> or <i>credit institutions</i>, in the context of a <i>significant distribution of relevant securities</i>, exclusively for facilitating <i>stabilisation</i> activity. <u>[deleted]</u> |
| <i>associated call option</i> | a right to acquire a particular amount of the <i>relevant security</i> or of any <i>associated security</i> at a future date at a particular <i>price</i>. <u>[deleted]</u> |
| <i>Buy-back and Stabilisation Regulation</i> | Commission Regulation (EC) of 22 December 2003 implementing the <i>Market Abuse Directive</i> as regards exemptions for buy-back programmes and stabilisation of financial instruments (No 2273/2003). <u>[deleted]</u> |
| <i>buy-back programme</i> | (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) trading in own shares in accordance with Articles 19 to 24 of the <i>PLC Safeguards Directive</i>. <u>[deleted]</u> |
| <i>close period</i> | as defined in paragraph 1(a) of the <i>Model Code</i>. <u>[deleted]</u> |
| <i>Code of Market Conduct</i> | the provisions in <i>MAR</i> 1 indicated by an "E" or "C" in the margin or heading, issued by the <i>FCA</i> as required by section 119 of the <i>Act</i> (<i>The Code</i>). <u>[deleted]</u> |
| <i>greenshoe option</i> | (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) an option granted by the <i>offeror</i> in favour of the <i>investment firm(s)</i> or <i>credit institution(s)</i> involved in the <i>offer</i> for the purpose of covering <i>overallotments</i>, under the terms of which such |

| | |
|---|---|
| | firm(s) or institution(s) may purchase up to a certain amount of relevant securities at the offer price for a certain period of time after the offer of the relevant securities. [deleted] |
| <i>insider list</i> | a list, as required by DTR 2.8.1 R, of persons with access to inside information. [deleted] |
| <i>MAD Investment Recommendations Directive</i> | The Commission Directive of 22 December 2003 implementing the Market Abuse Directive as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (No. 2003/125/EC). [deleted] |
| <i>market abuse (dissemination)</i> | the behaviour described in section 118(7) of the Act, which is the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading. [deleted] |
| <i>market abuse (distortion)</i> | <p>(1) (in accordance with section 118(8) of the Act (Market abuse)) the behaviour described in section 118(8) of the Act which satisfies the condition in section 118(8)(b) and is behaviour (not falling within sections 118(5), (6) or (7)) which:</p> <p style="padding-left: 40px;">(a) would be, or would be likely to be, regarded by a regular user of the market as behaviour that would distort, or would be likely to distort, the market in a qualifying investment; and</p> <p style="padding-left: 40px;">(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.</p> <p>(2) (in accordance with section 118(8) of the Act (Market abuse) as modified by the RAP Regulations) the behaviour described in section 118(8) of the Act as modified by the RAP Regulations which satisfies the condition in section 118(8)(b) and is behaviour (not falling within sections 118(5), (6) or (7)) which:</p> <p style="padding-left: 40px;">(a) would be, or would be likely to be, regarded by a regular user of the auction platform as behaviour that would distort, or would be likely to distort, the auction of such an investment,</p> <p style="padding-left: 40px;">(b) and 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. [deleted]</p> |
| <i>market abuse (improper disclosure)</i> | the behaviour described in section 118(3) of the Act, which is an insider disclosing inside information to another person otherwise than in the proper course of the exercise of employment, profession or duties. [deleted] |

| | |
|---|---|
| <i>market abuse (insider dealing)</i> | the <i>behaviour</i> described in section 118(2) of the <i>Act</i>, which is an <i>insider dealing</i>, or attempting to <i>deal</i>, in a <i>qualifying investment</i> or <i>related investment</i> on the basis of <i>inside information</i> relating to the <i>investment in question</i>. [deleted] |
| <i>market abuse (manipulating devices)</i> | <p>(1) (in accordance with section 118(6) of the <i>Act</i> (Market abuse)) the <i>behaviour</i> described in section 118(6) of the <i>Act</i>, which is effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.</p> <p>(2) (in accordance with section 118(6) of the <i>Act</i> (Market abuse) as modified by the <i>RAP Regulations</i>) the <i>behaviour</i> described in section 118(6) of the <i>Act</i>, which is effecting transactions, bids or orders to trade which employ fictitious devices or any other form of deception or contrivance. [deleted]</p> |
| <i>market abuse (manipulating transactions)</i> | <p>(1) (in accordance with section 118(5) of the <i>Act</i> (Market abuse)) the <i>behaviour</i> described in section 118(5) of the <i>Act</i>, which is <i>behaviour</i> effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with <i>accepted market practices</i> on the relevant market) which:</p> <p style="padding-left: 40px;">(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 <i>qualifying investments</i>; or</p> <p style="padding-left: 40px;">(b) secure the price of one or more such investments at an abnormal or artificial level.</p> <p>(2) (in accordance with section 118(5) of the <i>Act</i> (Market abuse) as modified by the <i>RAP Regulations</i>) the <i>behaviour</i> described in section 118(5) of the <i>Act</i> as modified by the <i>RAP Regulations</i>, which is <i>behaviour</i> effecting transactions, bids or orders to trade (otherwise than for legitimate reasons and in conformity with <i>accepted market practices</i> on the relevant auction platform) which:</p> <p style="padding-left: 40px;">(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 <i>qualifying investments</i>; or</p> <p style="padding-left: 40px;">(b) secure the price of one or more such investments at an abnormal or artificial level. [deleted]</p> |
| <i>market abuse (misleading behaviour)</i> | <p>(1) (in accordance with section 118(8) of the <i>Act</i> (Market abuse)) the <i>behaviour</i> described in section 118(8) of the <i>Act</i> which satisfies the condition in section 118(8)(a) and is <i>behaviour</i> (not falling within sections 118(5), (6) or (7)) which:</p> <p style="padding-left: 40px;">(a) is likely to give a <i>regular user</i> of the market a false or misleading impression as to the supply of, demand for or price or value of, <i>qualifying investments</i>, and</p> <p style="padding-left: 40px;">(b) is likely to be regarded by a <i>regular user</i> of the market as a failure on the part of the <i>person</i> concerned to observe the standard of <i>behaviour</i> reasonably expected of a <i>person</i> in his</p> |

| | |
|--------------------------|--|
| | position in relation to the market. |
| | (2) (in accordance with section 118(8) of the <i>Act</i> (Market abuse) as modified by the <i>RAP Regulations</i>) the <i>behaviour</i> described in section 118(8) of the <i>Act</i> which satisfies the condition in section 118(8)(a) and is <i>behaviour</i> (not falling within sections 118(5), (6) or (7)) which: <ul style="list-style-type: none"> (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>, or (b) and is likely to be regarded by a <i>regular user</i> of the auction platform as a failure on the part of the <i>person</i> concerned to observe the standard of <i>behaviour</i> reasonably expected of a <i>person</i> in his position in relation to the market. <u>[deleted]</u> |
| Market Abuse Directive | Directive of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (No 2003/6/EC). <u>[deleted]</u> |
| Model Code | The Model Code of <i>directors' dealings in securities</i> set out in LR 9 Annex 1. <u>[deleted]</u> |
| overallotment facility | (as defined in Article 2 of the <i>Buy back and Stabilisation Regulation</i>) a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase a greater number of <i>relevant securities</i> than originally offered. <u>[deleted]</u> |
| PLC Safeguards Directive | the Second Council Directive of 13 December 1976 on coordination of safeguards for the protection of the interests of members and others in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (No 77/91/EEC). <u>[deleted]</u> |
| prohibited period | (in <i>LR</i>) as defined by paragraph 1(e) of the <i>Model Code</i> . <u>[deleted]</u> |
| qualifying investment | an <i>investment</i> which has been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> . <u>[deleted]</u> |
| relevant issuer | (1) (in relation to a <i>designated investment</i> that is the subject of a <i>research recommendation</i> or a public appearance) the <i>issuer</i> of that <i>designated investment</i> ; or (2) (in relation to a <i>related designated investment</i> that is the subject of a public appearance) either the <i>issuer</i> of the <i>related designated investment</i> or the <i>issuer</i> of a <i>designated investment</i> that might reasonably be expected directly to affect the value of the <i>related designated investment</i> . <u>[deleted]</u> |
| relevant security | (1) (in <i>MAR 2</i> , when used with reference to the <i>Buy back and</i> |

~~Stabilisation Regulation) (in accordance with Article 2(6) of the Buy-back and Stabilisation Regulation) transferable securities which are admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made, and which are the subject of a significant distribution.~~

~~(2) (otherwise in MAR 2) transferable securities~~

~~(3) [deleted] [deleted]~~

requiring or encouraging

~~taking or refraining from taking any action which requires or encourages another person to engage in behaviour which, if engaged in by the person requiring or encouraging, would amount to market abuse. [deleted]~~

research recommendation

~~research or other information:~~

~~(a) concerning one or several financial instruments admitted to trading on regulated markets, or in relation to which an application for admission to trading has been made, or issuers of such financial instruments;~~

~~(b) intended for distribution so that it is, or is likely to become, accessible by a large number of persons, or for the public, but not including:~~

~~(i) an informal short-term investment personal recommendation expressed to clients, which originates from inside the sales or trading department, and which is not likely to become publicly available or available to a large number of persons; or~~

~~(ii) advice given by a firm to a body corporate in the context of a takeover bid and disclosed only as a result of compliance with a legal or regulatory obligation, including rule 3 of the Takeover Code or its equivalents outside the UK; and~~

~~(e) which:~~

~~(i) explicitly or implicitly, recommends or suggests an investment strategy; or~~

~~(ii) directly or indirectly, expresses a particular investment recommendation; or~~

~~(iii) expresses an opinion as to the present or future value or price of such instruments.~~

~~In this definition, "financial instruments" means the following (as defined in Article 5 of the Prescribed Markets and Qualifying Investments Order and Article 1(3) of the Market Abuse Directive, and which consequently carries the same meaning in the Buy-back and Stabilisation Regulation):~~

~~(a) transferable securities;~~

~~(b) units in collective investment undertakings;~~

| | |
|--|---|
| | <p>(c) money market instruments;</p> <p>(d) financial futures contracts, including equivalent cash-settled instruments;</p> <p>(e) forward interest rate agreements;</p> <p>(f) interest rate, currency and equity swaps;</p> <p>(g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;</p> <p>(h) derivatives on commodities; and</p> <p>(i) any other instrument admitted to trading on a regulated market in an EEA State or for which a request for admission to trading on such a market has been made. <u>[deleted]</u></p> |
| <i>securities derivative</i> | a derivative instrument admitted to trading on a regulated market or prescribed market, the value of which is dependent on an underlying equity or debt instrument or index/basket of equity or debt instruments. <u>[deleted]</u> |
| <i>significant distribution</i> | (as defined in Article 2 of the Buy-back and Stabilisation Regulation) an initial or secondary offer of relevant securities, publicly announced and distinct from ordinary trading both in terms of the amount in value of the securities offered and the selling methods employed. <u>[deleted]</u> |
| <i>time scheduled buy-back programme</i> | (as defined in Article 2 of the Buy-back and Stabilisation Regulation) a buy-back programme where the dates and quantities of securities to be traded during the time period of the programme are set out at the time of the public disclosure of the buy-back programme. <u>[deleted]</u> |
| <i>trading information</i> | <p>information of the following kinds:</p> <p>(1) that investments of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation; or</p> <p>(2) that investments of a particular kind have not been or are not to be acquired or disposed of; or</p> <p>(3) the quantity of investments acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation; or</p> <p>(4) the price (or range of prices) at which investments have been or are to be acquired or disposed of or the price (or range of prices) at which investments whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of; or</p> <p>(5) the identity of the persons involved or likely to be involved in</p> |

~~any capacity in an acquisition or disposal. [deleted]~~

trading plan

~~(in LR) a written plan between a restricted person and an independent third party which sets out a strategy for the acquisition and/or disposal of *securities* by a specified person and:~~

~~(a) specifies the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in; or~~

~~(b) gives discretion to that independent third party to make trading decisions about the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in; or~~

~~(c) includes a written formula or algorithm, or computer program, for determining the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in.~~

~~[deleted]~~

Annex B

**Amendments to the Senior Management Arrangements, Systems and Controls
sourcebook (SYSC)**

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

10 Conflicts of interest

...

10.2 Chinese walls

...

10.2.2 R ...

- (4) ~~For the purposes of section 118A(5)(a) of the Act, behaviour conforming with paragraph (1) does not amount to market abuse.~~
[deleted]

10.2.3 G ...

- (1) acting in conformity with SYSC 10.2.2.R(1) provides a defence against proceedings brought under sections 89(2), 90(1) and 91(1) of the Financial Services Act 2012 (Misleading statements, Misleading impressions and Misleading statements etc. in relation to benchmarks) – see sections 89(3)(b), 90(9)(c) and 91(3)(b);
- (2) ~~behaviour in conformity with SYSC 10.2.2 R (1) does not amount to market abuse (see SYSC 10.2.2 R (4)); and~~ [deleted]

...

...

18 Guidance on Public Interest Disclosure Act: Whistleblowing

...

18.2 Practical measures

...

Internal Procedures

- 18.2.2 G (1) *Firms* are encouraged to consider adopting (and encouraged to invite their *appointed representatives* or, where applicable, their *tiered agents* to consider adopting) appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about

matters which are relevant to the functions of the *FCA* or *PRA*.

...

[Note: For the purposes of article 32 of the *Market Abuse Regulation*, note [regulation 6] of the [Financial Services and Markets Act 2000 (Market Abuse Regulations) 2016]]

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

11 Dealing and managing

...

11.7 Personal account dealing

Rule on personal account dealing

11.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Directive Regulation* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him on behalf of the *firm*:

(1) entering into a *personal transaction* which meets at least one of the following criteria:

(a) that *person* is prohibited from entering into it under the *Market Abuse Directive Regulation*;

...

...

...

11.7.2 G The requirements of this section are without prejudice to the prohibition under article 3(a) 14(c) of the *Market Abuse Directive Regulation* which prohibits any *person* who possesses inside information under article 2 of that directive from disclosing that information to any other *person* unless that disclosure is made in the normal course of the exercise of his employment, profession or duties.

A

...

11.8 Recording telephone conversations and electronic communications

Application - Who?

11.8.1 R This section applies to a *firm*:

...

- (2) to the extent that the activities referred to in (1) relate to:
- (a) ~~qualifying investments~~ financial instruments admitted to trading on a *prescribed market*;
 - (b) ~~qualifying investments~~ financial instruments in respect of which a request for admission to trading on such a market has been made;
 - (c) ~~investments~~ instruments which are *related investments* in relation to such ~~qualifying investments~~ financial instruments.

...

12 Investment research

12.1 Purpose and application

Purpose

- 12.1.1 G The purpose of this chapter is to:

...

- (2) ~~implementing the provisions of~~ provide guidance on matters in the Market Abuse Directive Regulation relating to the disclosures to be made in, and about, ~~research~~ investment recommendations.

...

...

12.4 ~~Research~~ Investment recommendations: ~~required disclosures~~

Application

- 12.4.1 R (1) ~~This section applies to a firm that prepares or disseminates research recommendations.~~
- (2) ~~This section does not apply to the extent that the Investment Recommendation (Media) Regulations 2005 apply to a firm.~~
- (3) ~~If a firm is a media firm subject to equivalent appropriate regulation, only COBS 12.4.2G, COBS 12.4.4R, COBS 12.4.15R and COBS 12.4.16R apply.~~

~~[Note: articles 2(4), 3(4), 5(5) of the MAD Investment Recommendations Directive] [deleted]~~

[Note: article 20 of the *Market Abuse Regulation*; Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the *Market Abuse Regulation*]

- 12.4.2 G ~~Appropriate regulatory or self-regulatory arrangements are sufficient to meet the condition in COBS 12.4.1R(3). Examples include those listed in regulation 3(5) of the Investment Recommendation (Media) Regulations 2005, that is the Code of Practice issued by the Press Complaints Commission, the Producers' Guidelines issued by the British Broadcasting Corporation, and any code published by the Office of Communications pursuant to section 324 of the Communications Act 2003. [deleted]~~

Use of information barriers

- 12.4.3 G ~~Obligations to disclose information do not require those producing *research recommendations* to breach effective information barriers put in place to prevent and avoid conflicts of interest.~~

[Note: recital 7 of the *MAD Investment Recommendations Directive*] [deleted]

Fair presentation and disclosure

- 12.4.4 R ~~A *firm* must take reasonable care:~~
EU
- (1) ~~to ensure that a *research recommendation* produced or disseminated by it is fairly presented; and~~
 - (2) ~~to disclose its interests or indicate conflicts of interest concerning *relevant investments*.~~

[Note: article 6(5) of the *Market Abuse Directive*] [deleted]

[article 20(1) of the *Market Abuse Regulation*]

Identity of producers of recommendations

- 12.4.5 R (1) ~~A *firm* must, in a *research recommendation* produced by it:~~
EU
- (a) ~~disclose clearly and prominently the identity of the *person* responsible for its production, and in particular:~~
 - (i) ~~the name and job title of the individual who prepared the *research recommendation*; and~~
 - (ii) ~~the name of the *firm*; and~~

(b) ~~(where the firm is an investment firm or a credit institution) disclose the identity of the competent authority of the firm.~~

~~(2) The requirements in (1) may be met for non-written research recommendations by referring to a place where the disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the firm.~~

~~[Note: article 2 of the MAD Investment Recommendations Directive] [deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the Market Abuse Regulation]~~

General standard for fair presentation of recommendations

- 12.4.6 R (1) ~~A firm must take reasonable care to ensure that:~~
EU
- ~~(a) facts in a research recommendation are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;~~
 - ~~(b) its sources for a research recommendation are reliable or if there is any doubt as to whether a source is reliable, this is clearly indicated;~~
 - ~~(c) all projections, forecasts and price targets in a research recommendation are clearly labelled as such and the material assumptions made in producing or using them are indicated; and~~
 - ~~(d) the substance of its research recommendations can be substantiated as reasonable, upon request by the FCA.~~
- ~~(2) The requirements in (1) do not apply, in the case of non-written research recommendations, to the extent that they would be disproportionate.~~
- ~~(3) A firm must make and retain sufficient records to disclose the basis of the substantiation required in (1)(d).~~

~~[Note: article 3 of the MAD Investment Recommendations Directive] [deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the Market Abuse Regulation]~~

Additional obligations in relation to fair presentation of recommendations

- 12.4.7 R (1) In addition a *firm* must take reasonable care to ensure that, in a *research recommendation*, at least:
- EU
- (a) all substantially material sources are indicated, including, if appropriate, the *issuer*, and in particular the *research recommendation* indicates whether the *research recommendation* has been disclosed to that *issuer* and amended following this disclosure before its dissemination;
 - (b) any basis of valuation or methodology used to evaluate a *security*, a *derivative* or an *issuer*, or to set a price target for a *security* or a *derivative*, is adequately summarised;
 - (c) the meaning of any recommendation made, such as "buy", "sell" or "hold", which may include the time horizon of the *security* or *derivative* to which the *research recommendation* relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;
 - (d) reference is made to the planned frequency, if any, of updates of the *research recommendation* and to any major changes in the coverage policy previously announced;
 - (e) the date at which the *research recommendation* was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any *security* or *derivative* price mentioned; and
 - (f) if the substance of a *research recommendation* differs from the substance of an earlier *research recommendation*, concerning the same *security*, *derivative* or *issuer* issued during the 12-month period immediately preceding its release, this change and the date of the earlier *research recommendation* are indicated clearly and prominently.
- (2) If the requirements in (1)(a), (b) or (c) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the public (such as a hyperlink to that information on an appropriate internet site of the *firm*)

~~provided that there has been no change in the methodology or basis of valuation used.~~

- ~~(3) In the case of a non-written *research recommendation*, the requirements of (1) do not apply to the extent that they would be disproportionate.~~

~~[Note: article 4 of the *MAD Investment Recommendations Directive*] deleted~~

~~[article [x] of the Commission-adopted *Regulatory Technical Standards* pursuant to article 20(3) of the *Market Abuse Regulation*]~~

- 12.4.8 G The disclosures required under ~~*COBS 12.4.7R(1)(e)*~~ and ~~*COBS 12.4.7R(1)(f)*~~ [article [x] of the Commission-adopted *Regulatory Technical Standards* pursuant to article 20(3) of the *Market Abuse Regulation*] may, if the *firm person* so chooses, be made by graphical means (for example by use of a line graph).

General standard for disclosure of interests and conflicts of interest

- 12.4.9 R (1) A *firm* must disclose, in a *research recommendation*:
EU
- (a) ~~all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the *research recommendation*, in particular a significant financial interest in any *relevant investment* which is the subject of the *research recommendation*, or a significant conflict of interest with respect to a *relevant issuer*; and~~
- (b) ~~relationships and circumstances, of the sort referred to in (a), of each legal or natural person working for the *firm* who was involved in preparing the substance of the *research recommendation*, including, in particular, for a *firm* which is an *investment firm*, disclosure of whether his remuneration is tied to investment banking transactions performed by the *firm* or any *affiliated company*.~~
- (2) ~~If the *firm* is a legal person, the information to be disclosed in accordance with (1) must at least include the following:~~
- (a) ~~any interests or conflicts of interest of the *firm* or of an *affiliated company* that are accessible, or reasonably expected to be accessible, to the *persons* involved in the preparation of the substance of the *research recommendation*; and~~

- (b) ~~any interests or conflicts of interest of the *firm* or of *affiliated companies* known to *persons* who, although not involved in the preparation of the substance of the *research recommendation*, had or could reasonably be expected to have access to the substance of the *research recommendation* prior to its dissemination, other than *persons* whose only access to the *research recommendation* is to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under this section.~~
- (3) ~~If the disclosures required under (1) and (2) would be disproportionate in relation to the length of the *research recommendation* distributed, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosures can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*).~~
- (4) ~~The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they are disproportionate.~~

~~[Note: article 5 of the *MAD Investment Recommendations Directive*] [deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the *Market Abuse Regulation*]~~

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

- 12.4.10 R (1) ~~A *research recommendation* produced by a *firm* must~~
 EU ~~disclose clearly and prominently the following information on its interests and conflicts of interest:~~
- (a) ~~major shareholdings that exist between it or any *affiliated company* on the one hand and the *relevant issuer* on the other hand, including at least:~~
- (i) ~~shareholdings exceeding 5% of the total issued share capital in the *relevant issuer* held by the *firm* or any *affiliated company*; or~~
- (ii) ~~shareholdings exceeding 5% of the total issued share capital of the *firm* or any *affiliated*~~

company held by the relevant issuer;

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

- (4) ~~A firm, which is an investment firm or a credit institution, must publish the following information on a quarterly basis, and must disclose it in its research recommendations:~~
- (a) ~~the proportion of all research recommendations published during the relevant quarter that are "buy", "hold", "sell" or equivalent terms; and~~
 - (b) ~~the proportion of relevant investments in each of these categories, issued by issuers to which the firm supplied material investment banking services during the previous 12 months.~~
- (5) ~~If the requirements under (1) to (4) would be disproportionate in relation to the length of the research recommendation, a firm may, instead, make clear and prominent reference in the research recommendation to the place where such disclosure can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the firm, or, if relevant, to the firm's conflicts of interest policy).~~
- (6) ~~In the case of non-written research recommendations, the requirements of (1) do not apply to the extent that they are disproportionate.~~

~~[Note: article 6 of the MAD Investment Recommendations Directive] [deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the Market Abuse Regulation]~~

- 12.4.11 G ~~Nothing in COBS 12.4.10R(1)(a) prevents a firm from choosing to disclose significant shareholdings above a lower threshold (for example, 1%) than is required by COBS 12.4.10R(1)(a). [deleted]~~
- 12.4.12 G ~~COBS 12.4.10R(1)(a) and COBS 12.4.10R(1)(b) only require a firm to aggregate its shareholdings with those of affiliated companies if they act in concert in relation to those shareholdings. A person may choose to disclose significant shareholdings above a lower threshold than is required by [article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the Market Abuse Regulation]~~
- ...
- 12.4.14 G ~~The FCA considers that it is important for the proportions published in compliance with COBS 12.4.10R(4) to be consistent~~

~~and meaningful to the recipients of the *research recommendations*. Accordingly for non-equity material, the relevant categories should be meaningful to the recipients in terms of the course of action being recommended. Where the Commission-adopted Regulatory Technical Standards prescribed under article 20(3) of the *Market Abuse Regulation* require a disclosure of the proportions of all *investment recommendations* published that are “buy”, “hold”, “sell” or equivalent terms, the *FCA* considers it important for these equivalent terms to be consistent and meaningful to the recipients in terms of the course of actions being recommended, particularly for non-equity material.~~

Identity of disseminators of recommendations

- 12.4.15 ~~R~~ ~~If a *firm* disseminates a *research recommendation* produced by a~~
 EU ~~third party, the *research recommendation* must identify the *firm* clearly and prominently.~~

~~[Note: article 7 of the *MAD Investment Recommendations Directive*] [deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the *Market Abuse Regulation*]~~

General standard for dissemination of third party recommendations

- 12.4.16 ~~R~~ (1) ~~If a *research recommendation* produced by a third party is~~
 EU ~~substantially altered before dissemination by a *firm*:~~
- ~~(a) the disseminated material must clearly describe that alteration in detail; and~~
 - ~~(b) if the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in *COBS 12.4.5R* to *COBS 12.4.11G* on producers must be met by the *firm*, to the extent of the substantial alteration.~~
- ~~(2) A *firm* which disseminates a substantially altered *research recommendation* must have a formal written policy so that the *persons* receiving the information may be directed to where they can have access to the identity of the producer of the *research recommendation*, the *research recommendation* itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.~~

- (3) ~~If a firm disseminates a summary of a research recommendation produced by a third party, it must:~~
- ~~(a) ensure that the summary is fair, clear and not misleading;~~
 - ~~(b) identify the source research recommendation; and~~
 - ~~(c) identify where (to the extent that they are publicly available) the third party's disclosures relating to the source research recommendation can be directly and easily accessed by the public.~~
- (4) ~~Paragraphs (1) and (2) do not apply to news reporting on research recommendations produced by a third party where the substance of the research recommendation is not altered.~~

~~[Note: article 8 of the MAD Investment Recommendations Directive] [deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the Market Abuse Regulation]~~

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

- 12.4.17 **R** ~~If a firm, which is an investment firm or a credit institution,~~
EU ~~disseminates a research recommendation produced by a third party:~~
- ~~(1) the name of the competent authority of the firm must be clearly and prominently indicated on the disseminated material;~~
 - ~~(2) if the producer of the research recommendation has not already disseminated it, the requirements in COBS 12.4.10R must be met by the firm as if it had produced the research recommendation itself; and~~
 - ~~(3) if the firm has substantially altered the research recommendation, the requirements laid down in COBS 12.4.4R to COBS 12.4.10R must be met by the firm as if it had produced the research recommendation itself.~~

~~[Note: article 9 of the MAD Investment Recommendations Directive] [deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 20(3) of the Market Abuse Regulation]~~

Regulation]

...

Sch 1 Record keeping requirements

...

Sch 1.3 G

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|-------------------------------|---------------------------------|--|--------------------------|------------------|
| ... | ... | ... | ... | ... |
| <i>COBS</i> 12.4.6R [deleted] | <i>Research recommendations</i> | Basis of substantiation of <i>research recommendations</i> | Date of recommendation | 5 years |
| ... | ... | ... | ... | ... |

...

18.10 UCITS qualifiers, AIFM qualifiers and service companies

18.10.1 R The *COBS* provisions in the table apply to a *UCITS qualifier* and a *service company*:

| COBS | Description |
|------|--|
| ... | |
| 12.4 | Investment Research recommendations: required disclosures |

Annex D

Amendments to the Market Conduct sourcebook (MAR)

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

1 ~~The Code of Market Conduct~~ Market Abuse

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] [deleted]~~

[Note: In addition to the sources referred to in MAR 1.6.6G, readers may find it useful to consider the *FSMA 2000 (Market Abuse) Regulations 2016*.]

- 1.1.1 G This chapter ~~(which contains the *Code of Market Conduct*)~~ applies is relevant to all *persons* seeking guidance on the *market abuse* regime.
- 1.1.1A G 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*. ~~[deleted]~~
- 1.1.2 G This chapter provides assistance in determining whether or not *behaviour* amounts to *market abuse*. It also forms part of the *UK's* implementation of the *Market Abuse Directive* (including its EU implementing legislation, that is *Directive 2003/124/EC*, *Directive 2003/125/EC*, *Regulation 2273/2003* and *Directive 2004/72/EC*) and the ~~*auction regulation*~~. guidance on the *Market Abuse 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))*~~ article 16 of the *Market Abuse Regulation* to report a transaction or order to the *FCA* as a suspicious one.
- 1.1.3 G The *FCA's* statement of policy about the imposition, duration and amount of penalties ~~and amount or duration of penalties~~ in cases of *market abuse* (required by [section 124] of the *Act*) is in *DEPP 6* and *6A*.

Using *MAR 1*

- 1.1.4 G (1) Assistance in the interpretation of *MAR 1* (and the remainder of the *Handbook*) is given in the Readers' Guide to the *Handbook* and in

GEN 2 (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six of the Readers' Guide to the *Handbook*).

- (2) ~~Provisions designated with "C" indicate *behaviour* which conclusively, for the purposes of the *Act*, does not amount to *market abuse* (see section 122(1) of the *Act*. [deleted]~~

1.1.5 G ~~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)(e) and section 122(2) of the *Act*). [deleted]~~

1.1.6 G ~~The *Code* This chapter does not exhaustively describe all types of *behaviour* behaviour that may or may not amount to indicate *market abuse*. In particular, the descriptions of *behaviour* 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* the *Market Abuse Regulation* as making up the relevant type of *market abuse*; and~~
- (2) ~~any relevant descriptions of *behaviour* behaviour specified by the *Market Abuse Regulation* which, in the opinion of the *FCA*, do not amount to *market abuse*; and~~
- (3) ~~any provisions specified in any Commission legislative text made pursuant to the *Market Abuse Regulation*, and any applicable guidelines made by *ESMA*.~~

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

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

potential avoidance of loss.

- 1.1.9 G References are made in this chapter to provisions in the *Market Abuse Regulation* and other *EU* legislation made pursuant to the *Market Abuse Regulation* to assist readers. The fact that other provisions of the *Market Abuse Regulation* and other *EU* legislation made pursuant to the *Market Abuse Regulation* have not been referred to does not mean that they would not also assist readers or that they have a different status.

1.2 Market Abuse: general

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

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

| | | |
|--|--|---|
| "For the purposes of this Act, [<i>market abuse</i>] is [<i>behaviour</i>] (whether by one person alone or by two or more persons jointly or in concert) which – | | |
| (a) | occurs in relation to: | |
| | (i) | [<i>qualifying investments</i>] admitted to trading on a [<i>prescribed market</i>], or |
| | (ii) | [<i>qualifying investments</i>] 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 [<i>related investments</i>] in relation to such [<i>qualifying investments</i>], and |
| (b) | falls within any one or more of the types of [<i>behaviour</i>] set out in subsections (2) to (8). | |

[deleted]

[article 2, article 14 and article 15 of the *Market Abuse Regulation*]

- 1.2.2A UK Table: section 118(1) of the Act as modified by the RAP Regulations

| | | |
|---|------------------------|--|
| For the purposes of this Act, [<i>market abuse</i>] is [<i>behaviour</i>] (whether by one person alone or by two or more persons jointly or in concert) which – | | |
| (a) | occurs in relation to: | |
| | (i) | [<i>qualifying investments</i>] which are offered for sale on a [<i>prescribed auction platform</i>], or |
| | (ii) | in the case of subsection (2) or (3), investments which are [<i>related investments</i>] in relation to such [<i>qualifying</i> |

| | |
|-----|---|
| | <i>investments</i>], and |
| (b) | falls within any one or more of the types of [<i>behaviour</i>] set out in subsections (2) to (8A). |

[deleted]

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

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

~~Prescribed markets and qualifying investments: "in relation to": factors to be taken into account~~ Factors that may be taken into account in relation to behaviour prior to either a request for admission to trading, the admission to the commencement of trading, or the offer for sale on a prescribed auction platform

1.2.5 ~~E In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken into account in determining whether or not ~~*behaviour*~~ 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,~~ contravenes prohibitions and obligations in the *Market Abuse Regulation* and are indications that it does:

(1) if it is in relation to ~~*qualifying investments*~~ *financial instruments*:

- (a) in respect of which a request for admission to trading on a ~~*prescribed market*~~ *regulated market or MTF* is subsequently made; and
- (b) if it continues to have an effect once an application has been made for the ~~*qualifying investment*~~ *financial instrument* to be admitted for trading, or it has been admitted to trading on a ~~*prescribed market*~~ *regulated market or MTF*, respectively; or

(2) if it is in relation to ~~*qualifying investments*~~ *financial instruments*:

- (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*~~ *financial instruments* are offered for sale on a *prescribed auction platform*.

1.2.6 ~~E In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken into account in determining whether or not refraining from ~~action~~ amounts to *behaviour* indicates behaviour which ~~satisfies section 118(1)(a) of the Act~~ falls under the scope of the *Market Abuse Regulation*, and are indications

that it does:

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

Insiders: factors to be taken into account

1.2.7 ~~UK~~ ~~Table: section 118B of the Act~~
EU

| | |
|---|---|
| "For the purposes of [<i>market abuse</i>] an [<i>insider</i>] is any person who has [<i>inside information</i>]" | |
| (a) | as a result of his membership of the administrative, management or supervisory bodies of an [<i>issuer</i>] of [<i>qualifying investments</i>]; |
| (b) | as a result of his holding in the capital of an [<i>issuer</i>] of [<i>qualifying investments</i>]; |
| (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 [<i>inside information</i>]." |

[deleted]

[article 8(4) of the *Market Abuse Regulation*]

1.2.7A ~~UK~~ ~~Table: section 118B of the Act as modified by the RAP Regulations~~

| | |
|---|---|
| "For the purposes of [<i>market abuse</i>] an [<i>insider</i>] is any person who has [<i>inside information</i>]: | |
| (a) | as a result of his membership of an administrative, management or supervisory body of an [<i>auction platform</i>] or its operator, an auctioneer or auction monitor; |
| (b) | as a result of his holding in the capital of an [<i>auction platform</i>] 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 <i>[inside information]</i> ." |

[deleted]

1.2.8 E ~~In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken
G 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* who possesses *inside information* ought to know that it is *inside information* for the purposes of the final indent of article 8(4) of the *Market Abuse Regulation*:~~

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

1.2.9 G ~~For the purposes of the other categories of *insider* specified by section 118B(a) to (d) being categorised as an *insider* in article 8(4) of the *Market Abuse Regulation*, the *person* concerned does not need to know that the information concerned is *inside information*.~~

Inside information: factors to be taken into account

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

| | |
|--|---|
| "... <i>[inside information]</i> is information of a precise nature which – | |
| (a) | is not generally available; ..." |

[deleted]

[article 7 of the *Market Abuse Regulation*]

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

1.2.12 E ~~In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken
G into account in determining whether or not information ~~is generally available~~ has been made public, and are indications that it ~~is~~ has (and therefore is 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; and
- (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*] [deleted]~~
- 1.2.13 ~~E~~ G (1) In relation to the factors in ~~MAR 1.2.12E~~ MAR 1.2.12G 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)~~ MAR 1.2.12G it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.
- 1.2.14 G For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be ~~acting on~~ using information which is ~~generally available~~ has been made public, since it is information which has been obtained by legitimate means through observation of a public event.
- 1.2.15 ~~UK~~ EU ~~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 ..."~~
- ~~[deleted]~~
- ~~[article 7(1)(d) of the *Market Abuse Regulation*]~~
- 1.2.15A UK **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 ...

[deleted]

1.2.16 ~~E~~ G ~~In the opinion of the FCA, a factor which indicates that~~ A factor that may be taken into account in determining whether there is a pending order or bid for a client in relation to article 7(1)(d) of the *Market Abuse Regulation* is, if a person is approached by another in relation to a transaction, and:

- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
- (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

Inside information: commodity derivatives

1.2.17 ~~G~~ G ~~The Act (and the *Market Abuse Directive*) recognises 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.~~ [deleted]

[Note: article 7(1)(b) of the *Market Abuse Regulation*]

1.2.18 ~~UK~~ EU ~~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."

[deleted]

[article 7(1)(b) of the *Market Abuse Regulation*]

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

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

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

[deleted]

The regular user

- 1.2.20 G ~~In section 118 of the Act, the *regular user* decides:~~
- ~~(1) [deleted]~~
 - ~~(2) whether *behaviour*:~~
 - ~~(a) [deleted]~~
 - ~~(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)). [deleted]~~
- 1.2.21 G ~~The *regular user* is a hypothetical reasonable *person* who regularly deals on the market and in the investments of the kind in question 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 1.2.15UK while retaining some subjective features of the markets for, or the auction of, the investments in question. [deleted]~~

~~Requiring or encouraging~~ Recommending or inducing

- 1.2.22 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 [<i>behaviour</i>], which if engaged in by A, would amount to [<i>market abuse</i>]; |
|--|

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

[deleted]

- 1.2.23 G The following are examples of ~~*behaviour*~~ behaviour that might fall within the scope of ~~section 123(1)(b):~~ article 14(b) of the *Market Abuse Regulation*:
- (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*~~ sell a financial instrument in respect of which the information is *inside information*;
 - (2) a *person* recommends or advises a friend to engage in ~~*behaviour*~~ behaviour which, if he himself engaged in it, would amount to *market abuse*.

1.3 ~~Market abuse (insider~~ **Insider dealing)**

- 1.3.1 UK ~~Table: section 118(2) of the Act~~
EU

| |
|--|
| "The first type of [<i>behaviour</i>] is where |
| an [<i>insider</i>] |
| { <i>deals</i> }, or attempts to [<i>deal</i>], |
| in a [<i>qualifying investment</i>] or [<i>related investment</i>] |
| on the basis of |
| [<i>inside information</i>] |
| relating to the investment in question." |

[deleted]

[article 8 of the *Market Abuse Regulation*]

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

- 1.3.2 E ~~The following *behaviours* are, in the opinion of the *FCA*, *market abuse*~~
G ~~(*insider dealing*):~~

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

- (1) ~~*dealing on the basis of inside information which is not trading information*; [deleted]~~
- (2) front running/pre-positioning - that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market or auction clearing price.
- (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *qualifying investment financial instrument*, ~~on the basis of~~ using *inside information* concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a *spread bet* on the target *company's share price*); and
- (4) in the context of a takeover, a *person* who acts for the *offeror* or potential *offeror dealing* for his own benefit in a *qualifying investment or related investments financial instrument* on the basis of using

information concerning the proposed bid which is *inside information*.

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

- 1.3.3 E ~~In the opinion of the 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. [deleted]~~

- 1.3.5 E ~~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*. [deleted]~~

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

- 1.3.6 C ~~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*] [deleted]~~

[Note: article 9(5) of the *Market Abuse Regulation*]

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

- 1.3.8 G ~~MAR 1.3.7C applies even if the person concerned in fact possesses *trading*~~

~~information which is inside information.~~ [deleted]

- 1.3.9 E ~~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.~~ [deleted]
- 1.3.10 ~~E~~ G ~~In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken into account in determining whether or not a ~~person's behaviour~~ behaviour is in pursuit of legitimate business, and are indications that it is:
- ...
- (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~~ trading venue obligations; or
- ...
- 1.3.11 ~~E~~ E ~~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.~~ [deleted]

[Note: article 9(3)(b) of the Market Abuse Regulation]

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

- 1.3.12 ~~C~~ C ~~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] [deleted]

[Note: article 9(2)(b) of the Market Abuse Regulation]

- 1.3.13 ~~G~~ G ~~MAR 1.3.12C 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.~~ [deleted]

[Note: article 9(3)(b) of the Market Abuse Regulation]

- 1.3.14 E ~~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.~~ [deleted]

- 1.3.15 ~~E~~ G ~~In the opinion of the FCA, the~~ The following factors are to may be taken into account in determining whether or not a *person's behaviour* behaviour is dutiful execution of in executing an order (including an order relating to a bid) on behalf of another is carried out legitimately in the normal course of exercise of that person's employment, profession or duties, and are indications that it is:
- (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* 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* 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 ~~G~~ G ~~Some steps which a person takes as a result of carrying out a client transaction may be within the scope of MAR 1.3.6C to MAR 1.3.11E rather than being part of dutiful execution. [deleted]~~

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

- 1.3.17 ~~C~~ G ~~*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* With reference to article 9(4) of the Market Abuse Regulation, examples of using information solely for the purpose of proceeding with a merger or public takeover may include:~~

...

- 1.3.18 ~~G~~ G ~~There are two categories~~ Categories of *inside information* relevant to ~~MAR 1.3.17C~~ MAR 1.3.17G:
- (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 ~~E~~ G ~~In the opinion of the FCA, the~~ The following factors are to factor may be taken into account in determining whether or not a *person's behaviour* ~~behaviour~~ is for the purpose of him proceeding with a merger with that ~~company or a public takeover, and are indications is an indication~~ 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. [deleted]~~

Examples of ~~market abuse~~ (insider dealing)

1.3.20 G The following ~~examples of market abuse (insider dealing)~~ descriptions are intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concern the definition of *inside information* relating to *financial instruments* other than *commodity derivatives* or emission allowances or auctioned products based thereon:

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

1.3.21 G The following ~~example of market abuse (insider dealing)~~ description is intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concerns the definition of *inside information* relating to commodity derivatives.

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

1.3.22 G The following ~~example of market abuse (insider dealing)~~ description is intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concerns the

definition of *inside information* relating to pending client orders.

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

- 1.3.23 G The following connected ~~examples of market abuse (insider dealing)~~ concerns descriptions are intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.
- (1) A *person* deals, on a ~~prescribed market trading venue~~, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
 - (2) A *person* deals, in a commodity futures contract traded on a ~~prescribed market trading venue~~, 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 Unlawful disclosure)~~

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

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

~~[deleted]~~

[article 10 of the Market Abuse Regulation]

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

- 1.4.2 ~~E~~ G The following ~~behaviours~~ behaviours are, ~~in the opinion of the FCA,~~ indications of ~~market abuse (improper disclosure)~~ unlawful 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~~ indicate market abuse (~~improper unlawful disclosure~~)

- 1.4.3 ~~E~~ G ~~Disclosure of inside information.~~ The following behaviour ~~will not amount to~~ market abuse (improper disclosure) indicates that a person is acting in the normal exercise of their employment, profession or duties, if it is made if a person makes a disclosure of inside information:
- (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 ~~E~~ G Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) ~~will~~ may not amount to ~~market abuse (improper disclosure)~~ unlawful disclosure.
- 1.4.4A ~~E~~ G Disclosure of *inside information* by a *broker* to a potential buyer regarding the fact that the seller of ~~qualifying investments~~ financial instruments 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~~ may not, of itself, amount to ~~market abuse (improper disclosure)~~ unlawful disclosure.

~~Factors to be taken into account in determining whether or not behaviour amounts~~

to market abuse (improper disclosure)

- 1.4.5 ~~E~~ G ~~In the opinion of the FCA, the~~ 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. [deleted]~~
- 1.4.5A ~~G~~ G ~~MAR 1.4.5E(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. [deleted]~~

Examples of market abuse (~~improper~~ unlawful disclosure)

- 1.4.6 G The following ~~are examples of market abuse (improper disclosure)~~. descriptions are intended to assist in understanding certain behaviours which may constitute unlawful disclosure under the Market Abuse Regulation:
- (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 1.4.4AC.~~
- 1.4.7 G The following is an example of encouraging another to engage in *market abuse (improper disclosure)*:
- ~~X, an analyst employed by an investment bank, telephones the finance director at B PLC and presses for details of the profit and loss account from the latest unpublished management accounts of B PLC. [deleted]~~

...

1.6 Market abuse (manipulating transactions)

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

| | |
|--|---|
| "The fourth [type of <i>behaviour</i>] ... 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 of one or more such investments at an abnormal or artificial level." |

[deleted]

[article 12(1)(b) of the *Market Abuse Regulation*]

1.6.1A UK **Table: section 118(5) of the Act as modified by the RAP Regulations**

| | |
|---|---|
| The fourth [type of <i>behaviour</i>] ...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. |

[deleted]

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

1.6.2 E 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]~~~~[deleted]~~~~[Note: Annex 1A of the *Market Abuse Regulation* and Commission-adopted delegated acts made pursuant to article 12(5) of the *Market Abuse Regulation*]~~

- 1.6.3 G ~~For the avoidance of doubt Entering into 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) does not of itself indicate behaviour described in Annex IA(c) of the *Market Abuse Regulation*.~~

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

- 1.6.4 E ~~The following behaviours are, in the opinion of the 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* 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* 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*]~~

[deleted]

[Note: Annex 1A of the *Market Abuse Regulation* and Commission-adopted delegated acts made pursuant to article 12(5) of the *Market Abuse Regulation*]

Factors to be taken into account: "legitimate reasons"

- 1.6.5 E ~~In the opinion of the *FCA* the~~ The following factors are to be taken into
G account when considering whether ~~*behaviour*~~ *behaviour* is for "legitimate reasons" in relation to article 12(1)(a) of the *Market Abuse Regulation*, 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 financial instrument*;
 - (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 E The following factors are to be taken into account when considering whether
G ~~*behaviour*~~ *behaviour* is for "legitimate reasons" in relation to article 12(1)(a)

of the *Market Abuse Regulation*, 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 trading venue* 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 G It is unlikely that the ~~behaviour~~ *behaviour* of ~~market or auction platform~~ *trading venue* 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~~ *manipulation*. Such ~~behaviour~~ *behaviour*, generally speaking, improves the liquidity and efficiency of ~~markets or auction platforms~~ *trading venues*.

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

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

1.6.9 E ~~In the opinion of the 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.~~

[deleted]

[Note: Annex 1A of the *Market Abuse Regulation*]

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

- 1.6.10 E ~~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*.~~

[deleted]

[Note: Commission-adopted delegated acts made pursuant to article 12(5) of the *Market Abuse Regulation*]

Factors to be taken into account: abusive squeezes

- 1.6.11 ~~E~~ G ~~In the opinion of the FCA, the~~ The following factors are to be taken into account when determining whether a *person* has engaged in ~~an abusive squeeze~~ behaviour referred to in Annex IA(a) or (b) of the *Market Abuse Regulation*, commonly known as 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~~ behaviour is less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question;
 - (2) the extent to which the *person's* activity causes, or risks causing, settlement default by other market users on a multilateral basis and not just a bilateral basis. The more widespread the risk of multilateral settlement default, the more likely that an abusive squeeze has been effected;
 - (3) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the *investment* or its equivalent outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that an abusive squeeze has been effected; and
 - (4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive.
- 1.6.12 G Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not of itself likely to be 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 likely to be abusive.
- 1.6.13 G The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of behaviour to be expected of them in that market. Market users can be expected to settle their obligations and not to put themselves in a position where, to do so, they have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so.

...

Examples of market abuse (manipulating transactions)

- 1.6.15 E The following are examples of behaviour that may amount to *market abuse (manipulating transactions)*:
- (1) a trader simultaneously *buys* and *sells* the same *qualifying investment* (that is, trades with himself) to give the appearance of a legitimate transfer of title or risk (or both) at a price outside the normal trading range for the *qualifying investment*. The price of the *qualifying investment* is relevant to the calculation of the settlement value of an option. He does this while holding a position in the *option*. His purpose is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level, making him a profit or avoiding a loss from the *option*;
 - (2) a trader *buys* a large volume of *commodity futures*, which are *qualifying investments*, (whose price will be relevant to the calculation of the settlement value of a *derivatives* position he holds) just before the close of trading. His purpose is to position the price of the *commodity futures* at a false, misleading, abnormal or artificial level so as to make a profit from his *derivatives* position;
 - (3) a trader holds a short position that will show a profit if a particular *qualifying investment*, which is currently a component of an index, falls out of that index. The question of whether the *qualifying investment* will fall out of the index depends on the closing price of the *qualifying investment*. He places a large *sell* order in this *qualifying investment* just before the close of trading. His purpose is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level so that the *qualifying investment* will drop out of the index so as to make a profit; and
 - (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to *buy* relatively illiquid *shares*, which are also components of his portfolio, to be executed at or just before the close. His purpose is to position the price of the *shares* at a false, misleading, abnormal or artificial level.

[deleted]

[Note: Commission-adopted delegated acts made pursuant to article 12(5) of the Market Abuse Regulation]

- 1.6.16 E G The following is an example of an abusive squeeze:

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

profit from his original position.

1.7 Market abuse (manipulating devices)

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

| |
|--|
| "The fifth [type of <i>behaviour</i>] ... consists of effecting transactions or orders to trade |
|--|

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

[deleted]

[article 12(1)(b) of the *Market Abuse Regulation*]

1.7.1A UK ~~Table: section 118(6) of the Act as modified by the RAP Regulations~~

| |
|--|
| The fifth [type of <i>behaviour</i>] ... consists of effecting transactions, bids or orders to trade which employ fictitious devices or any other form of deception or contrivance. |
|--|

[deleted]

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

1.7.2 E ~~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.

[deleted]

[Note: Commission-adopted Regulatory Technical Standards made pursuant to article 12(5) of the *Market Abuse Regulation*]

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

- 1.7.3 E ~~In the opinion of the *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]~~

[deleted]

[Note: Annex 1B of the *Market Abuse Regulation*]

1.8 ~~Market abuse (dissemination)~~ **Dissemination**

- 1.8.1 UK Table: section 118(7) of the Act
EU

| |
|--|
| "The sixth [type of <i>behaviour</i>] ... 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." |
|--|

[deleted]

[article 12(1)(c) of the *Market Abuse Regulation*]

1.8.2 UK ~~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." |

[deleted]

~~Descriptions of behaviour that amount to market abuse (dissemination)~~

1.8.3 E ~~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*.~~

[deleted]

~~[**Note:** article 12(1)(c) of the *Market Abuse Regulation*]~~

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

1.8.4 E ~~In the opinion of the *FCA*, if If a normal and reasonable *person* would know or should ought to 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 ought to have known that it was false or misleading.~~

G

1.8.5 E ~~In the opinion of the *FCA*, if 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.~~

G

~~Examples of market abuse (dissemination)~~

1.8.6 G ~~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.~~

[deleted]

[Note: article 12(1)(c) of the Market Abuse Regulation; Commission-adopted Regulatory Technical Standards made pursuant to article 12(5) of the Market Abuse Regulation]

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

1.9.1 ~~Table: section 118(8) of the Act~~

EU

| | |
|---|---|
| "The seventh [type of behaviour] is where the [behaviour] (not [amounting to market abuse (manipulating transactions), market abuse (manipulating devices), or market abuse (dissemination)]) | |
| (a) | is likely to give, a [regular user] of the market a false or misleading impression as to the supply of, demand for or price or value of, [qualifying investments] [market abuse (misleading behaviour)]; or |
| (b) | would be, or would be to likely to be, regarded by a [regular user] of the market as [behaviour] that would distort, or would be likely to distort, the market in such an investment [market abuse (distortion)] |
| and ... is likely to be regarded by a [regular user] of the market as a failure on the part of the person concerned to observe the standard of [behaviour] reasonably expected of a person in his position in relation to the market | |

[deleted]

[article 12(1)(c) of the Market Abuse Regulation]

1.9.1A ~~UK 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 [regular user] of the auction platform a false or misleading impression as to the supply of, demand for or price or value of, [qualifying investments] [market abuse (misleading |

| | |
|--|---|
| | <i>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 [<i>regular user</i>] of the auction platform as a failure on the part of the [<i>person</i>] concerned to observe the standard of [<i>behaviour</i>] reasonably expected of a [<i>person</i>] in his position in relation to the market." | |

[deleted]

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

1.9.2 E The following *behaviours* are, in the opinion of the *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.

[deleted]

...

Factors to be taken into account: false or misleading impressions

1.9.4 E 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.~~

[deleted]

~~Factors to be taken into account: standards of behaviour~~

1.9.5 E ~~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.~~

[deleted]

1.10 Statutory exceptions

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

1.10.1 G (1) ~~*Behaviour* which conforms with articles 3 to 6 of the *Buy-back and Stabilisation Regulation* (see *MAR 1 Annex 1*) will not amount to~~

~~market abuse.~~

- (2) ~~See MAR 2 in relation to stabilisation.~~
- (3) ~~Buy-back programmes which are not within the scope of the Buy-back and Stabilisation Regulation are not, in themselves, market abuse.~~

[deleted]

[Note: article 5(1) of the Market Abuse Regulation; article 5(4) of the Market Abuse Regulation; Commission adopted regulatory technical standards pursuant to article 5(6) of the Market Abuse Regulation]

FCA rules

- 1.10.2 G There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*. ~~Some rules contain a provision to the effect that behaviour conforming with that rule does not amount to market abuse:~~
- (1) ~~the control of information rule (SYSC 10.2.2R(1) (see SYSC 10.2.2R (4))); and [deleted]~~
- (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); [deleted]~~

Takeover Code

- 1.10.3 G There are no rules in the *Takeover Code*, which permit or require a *person* to behave in a way which amounts to *market abuse*.
- 1.10.4 ~~€~~
G 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~~ is unlikely to, of itself, amount to *market abuse*, if:
- (1) the rule is one of those specified in the table in *MAR 1.10.5*~~€~~G;
- (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 ~~€~~
G Table: Provisions of the *Takeover Code* conformity with which will ~~not be~~ unlikely to, of itself, amount to market abuse (This table belongs to ~~MAR 1.10.4~~~~€~~ *MAR 1.10.4*G):

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

1.10.6 € ~~*Behaviour*~~ G *Behaviour* conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offerors* and concert parties) ~~does not~~ will be unlikely to, 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.

1 Annex 1 Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes

Annex 1.1 *MAR* 1 Annex 1 is deleted in its entirety. The deleted text is not shown.

1.1 In place of the deleted text the following is inserted:

EU [deleted]

[article 5 of the *Market Abuse Regulation*; Commission adopted regulatory technical standards pursuant to article 5(6) of the *Market Abuse Regulation*]

1 Annex Accepted Market Practices

2

Annex 2 G *MAR* 1 Annex 2 is deleted in its entirety. The deleted text is not shown.

EU In place of the deleted text the following is inserted:

[deleted]

[article 13 of the *Market Abuse Regulation*, Commission adopted regulatory technical standards pursuant to article 13(7) of the *Market Abuse Regulation*]

2 Stabilisation

2.1 Application and Purpose

Application

2.1.1 R ~~This chapter applies to every *firm*.~~ [deleted]

[Note: article 5 of the *Market Abuse Regulation*]

2.1.2 G ~~This chapter is available to every *person* who wishes to show that he acted in conformity with:~~

(1) ~~the *Buy-back and Stabilisation Regulation*, in accordance with section 118A(5)(b) of the *Act*; or~~

(2) ~~*rules*, in accordance with section 118A(5)(a) of the *Act*; or~~

(3) ~~the *price stabilising rules*, for the purposes of paragraph 5(1) of Schedule 1 to the *Criminal Justice Act 1993 (Insider Dealing)*; or~~

(4) ~~the *price stabilising rules*, for the purposes of section 90(9)(b) (*Misleading impressions*) or section 91(4)(a) (*Misleading statements etc in relation to benchmarks*) of the *Financial Services Act 2012*.~~

[deleted]

2.1.3 R ~~This chapter:~~

(1) ~~so far as it provides a defence for any *person*, has the same territorial application as the provision which is alleged to have been contravened; and~~

- (2) in its application to a *firm* for purposes other than those falling within (1), applies to the *firm's* business carried on from an establishment in the *United Kingdom*. [deleted]

Purpose

- 2.1.4 G The purpose of this chapter is to describe the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse* under the *Buy-back and Stabilisation Regulation* (see *MAR 2.2* and *MAR 2.3*), and to specify by rules the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *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 2.1.2G(3)* and *MAR 2.1.2G(4)* (*MAR 2.3*—*MAR 2.5*). [deleted]
- 2.1.5 G *Stabilisation* transactions mainly have the effect of providing support for the price of an offering of *relevant securities* during a limited time period if they come under selling pressure, thus alleviating sales pressure generated by short term investors and maintaining an orderly market in the *relevant securities*. This is in the interest of those investors having subscribed or purchased those *relevant securities* in the context of a *significant distribution*, and of *issuers*. In this way, *stabilisation* can contribute to greater confidence of investors and *issuers* in the financial markets. **[Note: Recital 11 of the *Buy-back and Stabilisation Regulation*]** [deleted]
- 2.1.6 G *Stabilisation* activity may be carried out either on or off a *regulated market* and may be carried out by use of *financial instruments* other than those admitted or to be admitted to the *regulated market* which may influence the price of the instrument admitted or to be admitted to trading on a *regulated market*. **[Note: Recital 12 *Buy-back and Stabilisation Regulation*]** [deleted]

2.2 Stabilisation: general

Permitted stabilisation

- 2.2.1 R *Stabilisation* or *ancillary stabilisation* may be carried out by a *firm* in relation to a *significant distribution* of *securities*, if:
- (1) they are *relevant securities* that have been admitted to trading on a *regulated market* or a request for their admission to trading on such a market has been made, and the *stabilisation* is carried out in accordance with the *Buy-back and Stabilisation Regulation* (see *MAR 2.3*); or
 - (2) the *securities* are not within (1) and they:
 - (a) have been admitted to trading on a market, exchange or other institution included in *MAR 2 Annex I R*; or

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

[deleted]

[Note: article 5(4) of the *Market Abuse Regulation*; Commission-adopted Regulatory Technical Standards pursuant to article 5(6) of the *Market Abuse Regulation*]

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

Scope of stabilisation "safe harbours" for market abuse

- 2.2.3 R ~~For the purposes of section 118A(5)(a) of the Act, behaviour (whether by a firm or not) conforming with the MAR 2.2.1R(2) does not amount to market abuse. [deleted]~~
- 2.2.4 G ~~The effect of article 8 of the *Market Abuse Directive* and section 118A(5)(b) of the Act is that behaviour by any person which conforms with the stabilisation provisions in the *Buy-back and Stabilisation Regulation* (see MAR 2.3) will not amount to market abuse. [deleted]~~
- 2.2.5 G ~~However, the mere fact that stabilisation does not conform with the stabilisation provisions in the *Buy-back and Stabilisation Regulation* (see MAR 2.3) or with MAR 2.2.1R(2) will not of itself mean that the behaviour constitutes market abuse. [Note: Recital 2 *Buy-back and Stabilisation Regulation*] [deleted]~~

Block trades

- 2.2.6 G ~~In relation to stabilisation, block trades are not considered as a significant distribution of relevant securities as they are strictly private transactions. [Note: Recital 14 *Buy-back and Stabilisation Regulation*] [deleted]~~

Behaviour not related to stabilisation

- 2.2.7 G ~~On the other hand, the exemptions created by the *Buy-back and Stabilisation Regulation* only cover behaviour directly related to the purpose of stabilisation activities. Behaviour which is not directly related to the purpose of stabilisation activities is therefore considered in the same way as any other action covered by the *Market Abuse Directive* and may result in sanctions, if the competent authority establishes that the action in question constitutes market abuse. [Note: Recital 3 *Buy-back and Stabilisation Regulation*] [deleted]~~

- 2.2.8 G ~~In order to avoid confusion of market participants, *stabilisation* activity should be carried out by taking into account the market conditions and the offering price of the *relevant security* and transactions to liquidate positions established as a result of *stabilisation* activity should be undertaken to minimise market impact having due regard to prevailing market conditions. [Note: Recital 18 *Buy-back and Stabilisation Regulation*] [deleted]~~

Rights of action for damages

- 2.2.9 R ~~A contravention of the *rules* in *MAR 2* does not give rise to a right of action by a *private person* under section 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). [deleted]~~

2.3 **Stabilisation under the Buy-back and Stabilisation Regulation Commission-adopted Regulatory Technical Standards pursuant to article 5(6) of the Market Abuse Regulation**

Conditions for stabilisation: general

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

| |
|---|
| Article 7 |
| Conditions for stabilisation |
| In order to benefit from the exemption provided for in Article 8 of [the <i>Market Abuse Directive</i>], [stabilisation] of a [financial instrument] must be carried out in accordance with Articles 8, 9 and 10 of this Regulation [see <i>MAR 2.3.4E</i>, <i>MAR 2.3.5EU</i> and <i>MAR 2.3.6G</i>]. |

[deleted]

[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 5(6) of the *Market Abuse Regulation*]

- 2.3.2 G ~~Article 8 of the *Market Abuse Directive* is implemented in the *United Kingdom* in section 118A(5)(b) of the *Act*. [deleted]~~
- 2.3.3 R ~~For the purposes of article 2(8) of the *Buy-back and Stabilisation Regulation* the standards of transparency of the markets, exchanges and institutions referred to in *MAR 2.2.1R(2)* are considered by the *FCA* to be adequate. [deleted]~~

Time related conditions for stabilisation

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

| |
|-----------|
| Article 8 |
|-----------|

| Time related conditions for stabilisation | |
|---|--|
| 1. | [Stabilisation] shall be carried out only for a limited time period. |
| 2. | In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of an initial offer publicly announced, start on the date of commencement of trading of the [relevant securities] on the [regulated market] and end no later than 30 calendar days thereafter. |
| | Where the initial offer publicly announced takes place in a Member State that permits trading prior to the commencement of trading on a [regulated market], the time period referred to in paragraph 1 shall start on the date of [adequate public disclosure] of the final price of the [relevant securities] and end no later than 30 calendar days thereafter, provided that any such trading is carried out in compliance with the rules, if any, of the [regulated market] on which the [relevant securities] are to be admitted to trading, including any rules concerning public disclosure and trade reporting. |
| 3. | In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of a secondary offer, start on the date of [adequate public disclosure] of the final price of the [relevant securities] and end no later than 30 calendar days after the date of [allotment]. |
| 4. | In respect of bonds and other forms of securitised debt (which are not convertible or exchangeable into shares or into other securities equivalent to shares), the time period referred to in paragraph 1 shall start on the date of [adequate public disclosure] of the terms of the offer of the [relevant securities] (i.e. including the spread to the benchmark, if any, once it has been fixed) and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [allotment] of the [relevant securities]. |
| 5. | In respect of securitised debt convertible or exchangeable into shares or into other securities equivalent to shares, the time period referred to in paragraph 1 shall start on the date of [adequate public disclosure] of the final terms of the offer of the [relevant securities] and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [allotment] of the [relevant securities]. |

~~[deleted]~~

~~[article x] of the Commission-adopted Regulatory Technical Standards pursuant to article 5(6) Market Abuse Regulation]~~

Disclosure and reporting conditions for stabilisation

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

| | |
|---|--|
| Article 9 | |
| Disclosure and reporting conditions for stabilisation | |
| 1. | The following information shall be [<i>adequately publicly disclosed</i>] by issuers, [<i>offerors</i>], or entities undertaking the [<i>stabilisation</i>] acting, or not, on behalf of such persons, before the opening of the offer period of the [<i>relevant securities</i>]: |
| | (a) the fact that [<i>stabilisation</i>] 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 [<i>stabilisation</i>] transactions are aimed to support the market price of the [<i>relevant securities</i>]; |
| | (c) the beginning and end of the period during which [<i>stabilisation</i>] may occur; |
| | (d) the identity of the [<i>stabilisation</i>] manager, unless this is not known at the time of publication in which case it must be publicly disclosed before any [<i>stabilisation</i>] activity begins; |
| | (e) the existence and maximum size of any [<i>overallotment facility</i>] or [<i>greenshoe option</i>], the exercise period of the [<i>greenshoe option</i>] and any conditions for the use of the [<i>overallotment facility</i>] or exercise of the [<i>greenshoe option</i>]. |
| | The application of the provisions of this paragraph shall be suspended for offers under the scope of application of the measures implementing [<i>the Prospectus Directive</i>], from the date of application of these measures. |
| 2. | Without prejudice to Article 12(1)(c) of [<i>the Market Abuse Directive</i>], the details of all [<i>stabilisation</i>] transactions must be notified by issuers, [<i>offerors</i>], or entities undertaking the [<i>stabilisation</i>] 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 [<i>stabilisation</i>] period, the following information must be adequately disclosed to the public by issuers, [<i>offerors</i>], or entities undertaking the [<i>stabilisation</i>] acting, or not, on behalf of such persons: |
| | (a) whether or not [<i>stabilisation</i>] was undertaken; |

| | | |
|----|-----|--|
| | (b) | the date at which [<i>stabilisation</i>] started; |
| | (e) | the date at which [<i>stabilisation</i>] last occurred; |
| | (d) | the price range within which [<i>stabilisation</i>] was carried out, for each of the dates during which [<i>stabilisation</i>] transactions were carried out. |
| 4. | | Issuers, [<i>offerors</i>], or entities undertaking the [<i>stabilisation</i>], acting or not, on behalf of such persons, must record each [<i>stabilisation</i>] order or transaction with, as a minimum, the information specified in Article 20(1) of [the <i>ISD</i>] extended to <i>financial instruments</i> other than those admitted or going to be admitted to the <i>regulated market</i> . |
| 5. | | Where several [<i>investment firms</i>] or [<i>credit institutions</i>] undertake the [<i>stabilisation</i>] acting, or not, on behalf of the issuer or [<i>offeror</i>], one of those persons shall act as central point of inquiry for any request from the competent authority of the <i>regulated market</i> on which the [<i>relevant securities</i>] have been admitted to trading. |

[deleted]

[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 5(6) of the *Market Abuse Regulation*]

- 2.3.6 G The *FCA* accepts as ~~*adequate public disclosure*~~ “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 trading venue*.
- 2.3.7 G Market integrity requires the ~~*adequate public disclosure of stabilisation activity by issuers or by entities undertaking stabilisation, acting or not on behalf of these issuers. Methods used for adequate public disclosure of such information should be efficient and can take into account market practices accepted by competent authorities. [Note: Recital 16 Buy back and Stabilisation Regulation]*~~ [deleted]
- 2.3.8 G There should be adequate coordination in place between all *investment firms* and *credit institutions* undertaking *stabilisation*. During *stabilisation*, one *investment firm* or *credit institution* shall act as a central point of inquiry for any regulatory intervention by the competent authority in each Member State concerned. [Note: Recital 17 *Buy back and Stabilisation Regulation*] [deleted]
- 2.3.9 G 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 article 5(5) of the *Market Abuse Regulation*, persons may notify *stabilisation* transactions to the *FCA* through the email address *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 EU Table: Article 10 of the Buy-back and Stabilisation Regulation

| | |
|---------------------------|---|
| Article 10 | |
| Specific price conditions | |
| 1. | In the case of an offer of shares or other securities equivalent to shares, [<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. |

~~[deleted]~~

~~[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 5(6) of the *Market Abuse Regulation*]~~

Conditions for ancillary stabilisation

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

| | |
|---|---|
| Article 11 | |
| Conditions for ancillary stabilisation | |
| In order to benefit from the exemption provided for in Article 8 of [the <i>Market Abuse Directive</i>], [<i>ancillary stabilisation</i>] must be undertaken in accordance with Article 9 of this Regulation and with the following: | |
| (a) | [<i>relevant securities</i>] may be overallocated only during the subscription period and at the offer price; |
| (b) | a position resulting from the exercise of an [<i>overallotment facility</i>] by an [<i>investment firm</i>] or [<i>credit institution</i>] which is not covered by the [<i>greenshoe option</i>] may not exceed 5 % of the original offer; |
| (c) | the [<i>greenshoe option</i>] may be exercised by the beneficiaries of such an option only where [<i>relevant securities</i>] have been overallocated; |

| | |
|-----|---|
| (d) | the [<i>greenshoe option</i>] may not amount to more than 15% of the original offer; |
| (e) | the exercise period of the [<i>greenshoe option</i>] must be the same as the [<i>stabilisation</i>] period required under Article 8; |
| (f) | the exercise of the [<i>greenshoe option</i>] 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 [<i>relevant securities</i>] involved. |

[deleted]

[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 5(6) of the *Market Abuse Regulation*]

- 2.3.12 G *Overallotment 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*] [deleted]
- 2.3.13 G Particular attention should be paid to the exercise of an *overallotment 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*.] [deleted]

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

- 2.4.1 R To comply with *MAR 2.2.1R(2)* a *firm* must comply with the provisions in articles 8, 9, 10 and 11 of the *Buy-back and Stabilisation Regulation* (see *MAR 2.3*) subject to the modifications set out in the remainder of this section. [deleted]
- 2.4.2 R For the purposes of the application of article 2(6) of the *Buy-back and Stabilisation Regulation* to this section, references to "*relevant securities*" are to be taken as references to *securities* which are within *MAR 2.2.1R(2)*. [deleted]
- 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. [deleted]
- 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).~~

[deleted]

- 2.4.5 R ~~Article 9 of the Buy back and Stabilisation Regulation is subject to the following modifications:~~
- (1) ~~the references to "adequate public disclosure" are to be taken as including any public announcement which complies with MAR 2.4.4R;~~
 - (2) ~~article 9(2) does not apply;~~
 - (3) ~~article 9(3) does not apply; and~~
 - (4) ~~in article 9(4) the phrase "order or" does not apply. [deleted]~~
- 2.4.6 R ~~Article 10 of the Buy back and Stabilisation Regulation is modified so that the reference to "public disclosure" is to be taken as including any public announcement which complies with MAR 2.4.4R. [deleted]~~
- 2.4.7 R ~~Article 11 of the Buy back and Stabilisation Regulation is subject to the following modifications:~~
- (1) ~~the reference to "disclosure to the public" is to be taken as including any public announcement which complies with MAR 2.4.4R and~~
 - (2) ~~article 11(b) and (d) do not apply. [deleted]~~

2.5 The Price Stabilising Rules: overseas provisions

- 2.5.1 R (1) A person who in any place outside the *United Kingdom* acts or engages in conduct:
- (a) for the purposes of ~~stabilising~~ 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)~~ section 89(3)(a) and section 90 (9)(b) of the Financial Services Act 2012 as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.

...

- 2.5.2 R ~~A person who is treated under MAR 2.5.1R(1) as acting or engaging in conduct in conformity with the *price stabilising rules* is also to be treated to an equivalent extent as so acting or engaging for the purposes of:~~
- (1) ~~MAR 2.2.1R(2) and MAR 2.2.2G, 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.~~

[deleted]

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

| |
|--|
| Any <i>prescribed market</i> which is not a <i>regulated market</i> |
| Any <i>recognised overseas investment exchange</i> |
| American Stock Exchange (AMEX) |
| Australian Stock Exchange |
| Bolsa Mexicana de Valores |
| Canadian Venture Exchange |

| |
|--|
| Hong Kong Stock Exchange |
| Johannesburg Stock Exchange |
| Korea Stock Exchange |
| Midwest Stock Exchange |
| Montreal Stock Exchange |
| New York Stock Exchange (NYSE) |
| New Zealand Stock Exchange |
| Osaka Securities Exchange (OSE) |
| Pacific Stock Exchange |
| Phildelphia Stock Exchange |
| Singapore Exchange Securities Trading Limited |
| Tokyo Stock Exchange (TSE) |
| Toronto Stock Exchange |

[deleted]

...

8 Benchmarks

8.1 Application and purpose

...

Purpose

- 8.1.2 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*

[Note: article 2(2) of the *Market Abuse Regulation*; article 12 of the *Market Abuse Regulation*; article 15 of the *Market Abuse Regulation*, regarding the ongoing *market abuse* provisions applicable to *firms* carrying out the activities specified in *MAR 8.1.2G*.]

...

TP 1 Transitional Provisions

TP 1.1 *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~~) MAR 1
(known previously as the Code of Market Conduct)

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

2) Transitional Provisions for Price stabilising rules (Price Stabilising Rules)
MAR 2 (known previously as the Price Stabilising Rules)

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

...

...

Sch 1 Record keeping requirements

| Sch 1.1 | G | Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---------|---|---------------------|--------------------------|--|-------------------------------------|------------------|
| | | MAR 2.7R | Price stabilising action | Full details as noted in MAR 2.7.2R | On initiation of stabilising action | 3 years |
| | | ... | | | | |

...

Sch 5 Rights of action for damages

...

| Sch 5.2 | G | Chapter / Appendix | Section / Annex | Paragraph | For Private Person? | Removed | For other person? |
|---------|---|---|-----------------|-----------|---------------------|---------------------------|-------------------|
| | | MAR 1 (no rules) | | | | | |
| | | All rules in MAR 2 except MAR 2.3.3R and MAR 2.3.4EU | | | Yes | Yes MAR 2.1.9R | No |

| | | | | | |
|--|--|--|----|--|----|
| MAR 2.3.3R, MAR 2.3.4EU and MAR 2.3.5EU | | | No | | No |
|--|--|--|----|--|----|

Annex E

Amendments to the Supervision sourcebook (SUP)

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

9 Individual guidance

...

9.2 Making a request for individual guidance

...

Who to address a request to

- 9.2.2 G A *firm* and its professional advisers should address requests for individual *guidance* to the *firm's* usual supervisory contact at the *FCA*, with the exception of requests for *guidance* on ~~the Code of Market Conduct (MAR 1)~~ which should be addressed to the specialist team within the Enforcement and Markets Oversight Division. A *firm* may wish to discuss a request for *guidance* with the relevant contact before making a written request.

...

13A Qualifying for authorisation under the Act

...

13A G Application of the Handbook to Incoming EEA Firms

Annex 1

...

| (1) Module of Handbook | (2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom | (3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom |
|------------------------|---|--|
| ... | | |
| MAR | MAR 1 (Code of market conduct) Applies if the <i>firm</i> is seeking | MAR 1 (Code of market conduct) As column (2). |

| | | |
|------------|--|--|
| | <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i> (<i>MAR 1.1.1G</i>). <u>[deleted]</u> | <u>[deleted]</u> |
| | <i>MAR 2</i> (Price stabilising rules) Applies if the <i>firm</i> undertakes <i>stabilising action</i> and wishes to show that it has acted in conformity with <i>price stabilising rules</i> , or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (<i>MAR 2.1 Application</i>). <u>[deleted]</u> | <i>MAR 2</i> (Price stabilising rules) Only applies in so far as the <i>firm</i> undertakes <i>stabilising action</i> and wishes to rely on a defence that it has acted in conformity with <i>price stabilising rules</i> , or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (<i>MAR 2.1</i> and in particular <i>MAR 2.1.3R</i>). <u>[deleted]</u> |
| ... | | |
| <i>DTR</i> | <i>DTR</i> (Disclosure Rules <u>Guidance</u> and Transparency Rules) May apply if the <i>firm</i> is an <i>issuer</i> , any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i> , or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i> , other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments</i> to trading on a <i>regulated market</i> . | <i>DTR</i> (Disclosure Rules <u>Guidance</u> and Transparency Rules) As column (2). |
| ... | | |

...

15 Notifications to the FCA or PRA

...

15.2 Purpose

...

15.2.2 G This chapter sets out:

...

- (5) material (in SUP 15.10 (Notification of suspicious transactions or orders (market abuse))) ~~to implement~~ which makes reference to the provisions of the Market Abuse Directive for Regulation that detail requirements on the reporting of transactions or orders about which there is reasonable suspicion of market abuse.

...

15.10 Reporting suspicious transactions or orders (market abuse)

Application: where

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

Notification of suspicious transactions or orders: general

15.10.2 R ~~A firm which arranges or executes a transaction with or for a client and EU which has reasonable grounds to suspect that the transaction might constitute market abuse must notify the FCA without delay. [Note: Article 6(9) Market Abuse Directive] [deleted]~~

[article 16 of the Market Abuse Regulation; Commission-adopted Regulatory Technical Standards pursuant to article 16(5) of the Market Abuse Regulation]

Notification of suspicious transactions: investment firms and credit institutions

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

15.10.4 G (1) Notification of suspicious transactions or orders to the FCA requires sufficient indications (which may not be apparent until after the transaction has taken place) that the transaction or order might constitute market abuse. In particular a ~~firm~~ person subject to article 16 of the Market Abuse Regulation will need to be able to explain the basis for its suspicion when notifying the FCA ~~(see SUP 15.10)~~. Certain transactions or orders by themselves may seem completely devoid of anything suspicious, but might deliver such indications of possible market abuse, when seen in perspective with other transactions, certain behaviour or other information (though ~~firms~~

persons subject to article 16 of the *Market Abuse Regulation* are not expected to breach effective information barriers put in place to prevent and avoid conflicts of interest so as actively to seek to detect suspicious transactions). [~~Note: Recital 9 2004/72/EC~~]

- (2) Assistance in identifying the elements constituting *market abuse* may be derived from the *Code of Market Conduct (MAR I)*, and some example indications of *market abuse* are set out in *SUP 15 Ann 5 G*. A fuller set of example indications is published by the Committee of European Securities Regulators (*CESR*) can be found within the *Market Abuse Regulation*.

Timeframe for notification: ~~investment firms and credit institutions~~

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

[~~article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 16(5) of the *Market Abuse Regulation*~~]

Content of notification: ~~investment firms and credit institutions~~

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

[~~deleted~~]

[article [x] of the Commission-adopted Regulatory Technical Standards pursuant to article 16(5) of the *Market Abuse Regulation*]

Means of notification: ~~investment firms and credit institutions~~

15.10.7 ~~R~~ R ~~An investment firm or a credit institution~~ A person subject to article 16 of the *Market Abuse Regulation* making a notification to the *FCA* under this section may do so: using [details of the automated system to be confirmed]

- (1) ~~by mail to:~~
Market Conduct Team
25 The North Colonnade
Canary Wharf London E14 5HS; ~~or~~
- (2) ~~by electronic mail to market.abuse@fca.org.uk;~~
- (3) ~~by facsimile to the Market Conduct Team on 020 7066 4091 ; or~~
- (4) ~~by telephone to the market abuse helpline 020 7066 4900 . [Note: Article 10 2004/72/EC]~~

15.10.8 ~~G~~ G (1) ~~If a notification is made by telephone, the FCA may subsequently request confirmation of the notification in writing. [Note: Article 10 2004/72/EC]~~

(2) ~~When making a notification in writing it may be convenient to use the form for suspicious transaction reports provided on the FCA's website. This form follows the common standard approved by ESMA (formerly known as CESR). [deleted]~~

Liability and professional secrecy: ~~investment firms and credit institutions~~

15.10.9 ~~R~~ R (1) ~~An investment firm or a credit institution which notifies the FCA under this section must not inform any other person, in particular the persons on behalf of whom the transaction has been carried out or parties related to those persons, of this notification, except in accordance with an obligation imposed by or under statute.~~

(2) ~~Notwithstanding any other provision of the Handbook a notification in good faith under this section to the FCA does not constitute a breach of any restriction on disclosure of information imposed by the Handbook. [Note: Article 11 2004/72/EC]~~

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

~~[deleted]~~

[article [x] of the Commission-adopted Regulatory Technical Standards

pursuant to article 16(5) of the *Market Abuse Regulation*

...

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

- 1 *SUP 15 applies in full to an incoming EEA firm, or incoming Treaty firm, which has a top-up permission.*
- 2 [deleted]
- 2A [deleted]
- 3 For any other *incoming EEA firm or incoming Treaty firm*, SUP 15 applies as set out in the following table.

| Applicable sections | | Application |
|---------------------|---|--|
| ... | | |
| SUP 15.10 | Reporting suspicious transactions <u>or orders</u> (market abuse) | Applies in relation to activities carried on from an establishment maintained by the firm or its appointed representative in the United Kingdom. [Note: Article 7 2004/72/EC Applies in full subject to article 16 of the <u><i>Market Abuse Regulation</i></u> |
| ... | | |

...

15 Annex 5 Indications of Possible Suspicious Transactions or Orders

| | |
|-------------------------------------|--|
| 1. | The following examples of indications are intended to be a starting point for consideration of whether a transaction <u>or order</u> is suspicious. They are neither conclusive nor comprehensive. |
| Possible Signals of Insider Dealing | |
| 2. | A client opens an account and immediately gives an order to conduct a significant transaction or, in the case of a wholesale client, an unexpectedly large or unusual order, in a particular security - especially if the client is insistent that the order is carried out very |

| | |
|--|---|
| | urgently or must be conducted before a particular time specified by the client. |
| 3. | A transaction is significantly out of line with the client's previous investment behaviour (e.g. type of security; amount invested; size of order; time security held). |
| 4. | A client specifically requests immediate execution of an order regardless of the price at which the order would be executed (assuming more than a mere placing of "at market" order by the client). |
| 5. | There is unusual trading in the shares of a company before the announcement of price sensitive information relating to the company. |
| 6. | An employee's own account transaction is timed just before clients' transactions and related orders in the same financial instrument. |
| Possible signals of Market Manipulation | |
| <u>[Note: article [x] of the Commission-adopted delegated acts made pursuant to article 12(5) of the <i>Market Abuse Regulation</i>]</u> | |
| 7. | An order will, because of its size in relation to the market in that security, clearly have a significant impact on the supply of or demand for or the price or value of the security, especially an order of this kind to be executed near to a reference point during the trading day – e.g. near the close. |
| 8. | A transaction appears to be seeking to modify the valuation of a position while not decreasing/increasing the size of that position. |
| 9. | A transaction appears to be seeking to bypass the trading safeguards of the market (e.g. as regards volume limits; bid/offer spread parameters; etc). |

...

Annex F

Amendments to the Listing Rules sourcebook (LR)

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

1 Preliminary: All securities

Application

1.1.1 R ...

[**Note:** Other parts of the *Handbook* that may also be relevant to *issuers* or *sponsors* include *DTR* (the Disclosure ~~Rules~~ Guidance and Transparency Rules sourcebook), *PR* (the Prospectus Rules sourcebook), *COBS* (the Conduct of Business sourcebook), *DEPP* (Decision Procedure and Penalties Manual), Chapter 9 of *SUP* (the Supervision manual) and *GEN* (General Provisions).]

...

...

1.4 Miscellaneous

Appointment of sponsor

1.4.1 R (1) If it appears to the *FCA* that there is, or there may be, a breach of the *listing rules* or the *disclosure ~~rules~~ requirements* and *transparency rules* by an *issuer* with a *premium listing*, the *FCA* may in writing require the *issuer* to appoint a *sponsor* to advise the *issuer* on the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

(2) If required to do so under (1), an *issuer* must, as soon as practicable, appoint a *sponsor* to advise it on the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

...

...

Market abuse safe harbours

1.4.7 R ~~Pursuant to section 118A(5) of the Act, behaviour conforming with the *listing rules* specified in LR 1 Annex 1RR does not amount to market abuse under section 118(1) of the Act. [deleted]~~

...

Use of an RIS

...

- 1.4.12 R Where a *listing rule* requires an *issuer* who is not subject to *DTR* 6.3.1R to use the services of an *RIS*, the *issuer* must comply with the provisions of *DTR* 6.3, except in relation to information which is required to be disclosed under the *Transparency Directive*, ~~Article 6~~ articles 17 and 19 of the *Market Abuse Directive Regulation* or the *DTR*.

...

1 Annex 1R ~~Market abuse safe harbours~~ [deleted]

The *listing rules* referred to in *LR* 1.4.7R are:

- (1) ~~*LR* 1.3.3R (Misleading information not to be published);~~
- (2) ~~*LR* 1.3.4R (Notification when a *RIS* is not open for business);~~
- (3) ~~Paragraphs 20, 21 and 22 of the Annex to *LR* 9 (The Model Code)(Dealings by connected persons and investment managers);~~
- (4) ~~*LR* 9.6.6R (Notifications relating to capital);~~
- (5) ~~*LR* 9.6.7R, *LR* 9.6.8R, and *LR* 9.6.10G (Notifications of major interests in shares);~~
- (6) ~~*LR* 9.7.1R and *LR* 9.7.2R (Preliminary statement of annual results and dividends);~~
- (7) ~~*LR* 9.9.3R~~
- (8) ~~*LR* 12.2.1R(4) (Prohibition on purchase of own securities);~~
- (9) ~~*LR* 12.4.6R (Notification of purchases);~~
- (10) ~~*LR* 12.5.2R and *LR* 12.5.3R (Notifications of purchases, early redemptions and cancellations);~~
- (11) ~~*LR* 13.3.1R(1) and *LR* 13.3.1R(2) (Contents of all circulars);~~
- (12) ~~*LR* 14.3.19R and *LR* 14.3.21R (Notification of major interests in shares);~~
- (13) ~~*LR* 14.4.10R; and~~
- (14) ~~*LR* 17.3.4R (Annual accounts).~~

[deleted]

...

5 Suspending, cancelling and restoring listing and reverse takeovers: All securities

...

5.6 Reverse takeovers

...

Target not subject to a public disclosure regime

...

- 5.6.18 R Where the *FCA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of *LR 5.6.15G* the *issuer* must comply with *DTR 2.2.1R* the obligation referred to under article 17(1) of the *Market Abuse Regulation* on the basis that the *target* already forms part of the enlarged *group*.

...

6 Additional requirements for premium listing (commercial company)

6.1 Application

...

Systems and controls: clearance for PDMR dealings

- 6.1.29 R *A new applicant* must satisfy the *FCA* that it has effective systems and controls in place regarding the process for *persons discharging managerial responsibilities* obtaining clearance to *deal*, either directly or indirectly, in the *securities* of the *company*.
- 6.1.30 G In considering whether a *new applicant* has satisfied *LR 6.1.29R*, the *FCA* will consider whether the systems and controls address the aspects set out in *LR 9 Annex 2G*. For the avoidance of doubt, compliance with *LR 6.1.29R* does not mean that an *applicant* will have satisfied its obligations under article 19 of the *Market Abuse Regulation*.

7 Listing Principles and Premium Listing Principles

7.1 Application and purpose

Application

- 7.1.1 R (1) The Listing Principles in *LR 7.2.1R* apply to every *listed company* in respect of all its obligations arising from the *listing rules*, *disclosure rules requirements*, *transparency rules* and *corporate governance rules*.

- (2) In addition to the Listing Principles referred to in (1), the Premium Listing Principles in LR 7.2.1AR apply to every *listed company* with a *premium listing of equity shares* in respect of all its obligations arising from the *listing rules, disclosure ~~rules~~ requirements, transparency rules and corporate governance rules*.

Purpose

...

- 7.1.3 G The Listing Principles and, if applicable, the Premium Listing Principles are designed to assist *listed companies* in identifying their obligations and responsibilities under the *listing rules, disclosure ~~rules~~ requirements, transparency rules and corporate governance rules*. The Listing Principles and Premium Listing Principles should be interpreted together with relevant *rules and guidance* which underpin the Listing Principles and the Premium Listing Principles.

...

7.2 The Listing and Premium Listing Principles

...

Guidance on the Listing and Premium Listing Principles

- 7.2.2 G Listing Principle 1 is intended to ensure that *listed companies* have adequate procedures, systems and controls to enable them to comply with their obligations under the *listing rules, disclosure ~~rules~~ requirements, transparency rules and corporate governance rules*. In particular, the *FCA* considers that *listed companies* should place particular emphasis on ensuring that they have adequate procedures, systems and controls in relation to, where applicable:

...

- 7.2.3 G Timely and accurate disclosure of information to the market is a key obligation of *listed companies*. For the purposes of Listing Principle 1, a *listed company* should have adequate systems and controls to be able to:
- (1) ensure that it can properly identify information which requires disclosure under the *listing rules, disclosure ~~rules~~ requirements, transparency rules or corporate governance rules* in a timely manner; and

...

...

8 Sponsors: Premium listing

...

8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R A *company* with, or applying for, a *premium listing* of its *equity shares* must appoint a *sponsor* on each occasion that it:

...

- (5) is required to do so by the *FCA* because it appears to the *FCA* that there is, or there may be, a breach of the *listing rules*, the *disclosure ~~rules~~ requirements* or the *transparency rules* by the *listed company*; or

...

...

Other transactions where a company with a premium listing must obtain a sponsor's guidance

- 8.2.2 R If a *company* with a *premium listing* is proposing to enter into a transaction which due to its size or nature could amount to a *class 1 transaction* or a *reverse takeover* it must obtain the guidance of a *sponsor* to assess the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

- 8.2.3 R If a *company* with a *premium listing* is proposing to enter into a transaction which is, or may be, a *related party transaction* it must obtain the guidance of a *sponsor* in order to assess the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

...

8.3 Role of a sponsor: general

Responsibilities of a sponsor

- 8.3.1 R A *sponsor* must in relation to a *sponsor service*:

...

- (2) guide the *company* with or applying for a *premium listing* of its *equity shares* in understanding and meeting its responsibilities under the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

...

Principles for sponsors: duty regarding directors of listed companies

- 8.3.4 R Where, in relation to a *sponsor service*, a *sponsor* gives any guidance or advice to a *listed company* or *applicant* on the application or interpretation of the *listing rules* or *disclosure ~~rules~~ requirements* and *transparency rules*, the *sponsor* must take reasonable steps to satisfy itself that the *director* or *directors* of the *listed company* understand their responsibilities and obligations under the *listing rules* and *disclosure ~~rules~~ requirements* and *transparency rules*.

Principles for sponsors: relations with the FCA

...

- 8.3.5A R If, in connection with the provision of a *sponsor service*, a *sponsor* becomes aware that it, or a *company* with or applying for a *premium listing* of its *equity shares* is failing or has failed to comply with its obligations under the *listing rules*, the *disclosure ~~rules~~ requirements* or the *transparency rules*, the *sponsor* must promptly notify the *FCA*.

...

8.4 Role of a sponsor: transactions

Application for admission: new applicants

...

- 8.4.2 R A *sponsor* must not submit to the *FCA* an application on behalf of an *applicant*, in accordance with *LR 3*, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (3) the *directors* of the *applicant* have established procedures which enable the *applicant* to comply with the *listing rules* and the *disclosure ~~rules~~ requirements* and *transparency rules* on an ongoing basis;

...

...

Class 1 circulars, refinancing and purchase of own equity shares

...

- 8.4.12 R A *sponsor* must not submit to the *FCA*, on behalf of a *listed company*, a *circular* regarding a transaction set out in *LR 8.4.11R* for approval, unless the *sponsor* has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (2) the transaction will not have an adverse impact on the *listed company's* ability to comply with the *listing rules* or the *disclosure ~~rules~~ requirements* and *transparency rules*; and

...

...

Applying for transfer between listing categories

...

- 8.4.15 R A *sponsor* must not submit to the *FCA* on behalf of an *issuer* a final *circular* or announcement for approval or a Sponsor's Declaration for a Transfer of Listing, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (3) the *directors* of the *issuer* have established procedures which enable the *issuer* to comply with the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules* on an ongoing basis;

...

...

8.6 Criteria for approval as a sponsor

...

Competence of a sponsor

...

- 8.6.9B G In assessing whether a *sponsor* or a *person* applying for approval as a *sponsor* can demonstrate it is competent in the areas required under *LR 8.6.7R(2)*, the *FCA* may also take into account, where relevant, the guidance or advice on the *listing rules* or *disclosure ~~rules~~ requirements* and *transparency rules* the *sponsor* or *person* has given in circumstances other than in providing *sponsor services*.

...

Systems and controls: record management

...

- 8.6.16B G Records should:

...

- (2) include material communications which relate to the provision of *sponsor services*, including any advice or guidance given to a *company* with or applying for a *premium listing* in relation to their responsibilities under the *listing rules*, the *disclosure rules requirements* and the *transparency rules*.

...

9 Continuing obligations

...

9.2 Requirements with continuing application

...

Compliance with the disclosure ~~rules~~ requirements and transparency rules

- 9.2.5 G A *listed company*, whose *equity shares* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider its the obligations referred to under ~~DTR 2 (Disclosure and control of inside information by issuers)~~ the disclosure requirements.
- 9.2.6 R A *listed company* that is not already required to comply with the obligations referred to under ~~DTR 2 (Disclosure and control of inside information by issuers)~~ article 17 of the *Market Abuse Regulation* must comply with ~~DTR 2~~ those obligations as if it were an *issuer* for the purposes of the *disclosure rules requirements* and *transparency rules* subject to article 22 of the *Market Abuse Regulation*.

...

Compliance with the Model Code Systems and controls: clearance for PDMR dealings

- 9.2.7 R ~~No dealings in any securities may be effected by or on behalf of a *listed company* or any other member in its *group* at a time when, under the provisions of the *Model Code*, a *director* of the *company* would be prohibited from dealing in its *securities*, unless such dealings are entered into:~~
- (1) ~~in the ordinary course of business by a securities dealing business; or~~
 - (2) ~~on behalf of third parties by the *company* or any other member of its *group*.~~

[deleted]

- 9.2.8 R A *listed company* must ~~require every person discharging managerial responsibilities, including *directors*~~ to comply with the *Model Code* and to take all proper and reasonable steps to secure their compliance have

effective systems and controls in place regarding the process for persons discharging managerial responsibilities of the company obtaining clearance to deal, either directly or indirectly, in the securities of the company.

- 9.2.8A G ~~The Act provides that an individual who is not a director can still be a person discharging managerial responsibilities in relation to an issuer if they are a "senior executive" of such an issuer" and they meet the criteria set out in the Act. [deleted]~~
- 9.2.8B G In considering whether a listed company has satisfied LR 9.2.8R, the FCA will consider whether the systems and controls at least address the aspects set out in LR 9 Annex 2G. For the avoidance of doubt, compliance with LR 9.2.8R does not mean that a listed company will have satisfied its obligations under article 19 of the Market Abuse Regulation.
- 9.2.9 G ~~A listed company may impose more rigorous dealing obligations than those required by the Model Code. [deleted]~~
- 9.2.10 R ~~Where clearance is given to a person to deal in exceptional circumstances (pursuant to paragraph 9 of the Model Code) in a close period, the notification to a RIS required by DTR 3.1.4R must also include a statement of the exceptional circumstances. [deleted]~~

Contact details

- 9.2.11 R ~~A listed company must ensure that the FCA is provided with up to date contact details of at least one appropriate person nominated by it to act as the first point of contact with the FCA in relation to the company's compliance with the listing rules and the disclosure rules requirements and transparency rules.~~

...

9.6 Notifications

...

Notifications relating to capital

...

- 9.6.6 R ~~Where the securities are subject to an underwriting agreement a listed company may, at its discretion and subject to the obligations referred to under DTR 2 (Disclosure and control of inside information by issuers) article 17 of the Market Abuse Regulation, delay notifying a RIS as required by LR 9.6.4R(6) for up to two business days until the obligation by the underwriter to take or procure others to take securities is finally determined or lapses. In the case of an issue or offer of securities which is not underwritten, notification of the result must be made as soon as it is known.~~

...

9.8 Annual financial report

...

Additional information

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report :

- (1) a statement setting out all the interests (in respect of which transactions are notifiable to the company under ~~DTR 3.1.2R~~ article 19 of the *Market Abuse Regulation*) of each *person* who is a *director* of the *listed company* as at the end of the period under review including:

...

...

9.8.6A G (1) The effect of LR 9.8.6R(1) is that a *listed company* is required to set out a 'snapshot' of the total interests of a *director* and his or her *connected persons*, as at the end of the period under review (including certain information to update it as at a date not more than a month before the date of the notice of the annual general meeting). The interests that need to be set out are limited to those in respect of which transactions fall to be notified under the notification requirement for PDMRs in ~~DTR 3.1.2R~~ article 19 of the *Market Abuse Regulation*. *Persons* who are *directors* during, but not at the end of, the period under review need not be included.

...

...

9 Annex 2 Systems and controls: clearance for PDMR dealings

G LR 6.1.29R and LR 9.2.8R require a new applicant for premium listing and a premium listed company to have effective systems and controls in place regarding the process for persons discharging managerial responsibilities of the company obtaining clearance to deal, either directly or indirectly, in the securities of the company.

In considering whether a new applicant or premium listed company has satisfied this requirement, the FCA will take into account whether the systems and controls address the following aspects:

| | |
|-----------------|--|
| <u>1</u> | <u>When a person discharging managerial responsibilities must obtain clearance to deal in the securities of the company</u> |
|-----------------|--|

| | |
|----------|---|
| | <p><u>Given the possibility that a <i>person discharging managerial responsibilities</i> is likely to have, or could be perceived as having, access to <i>inside information</i> regarding the <i>company</i>, the <i>FCA</i> would expect a <i>company</i> to consider whether it is appropriate to put in place a requirement that advance clearance to <i>deal</i>, either directly or indirectly, in the <i>securities</i> of the <i>company</i> should always be requested.</u></p> |
| 2 | <u>Who is an appropriate person within the company to grant such requests</u> |
| | <p><u>In designing their systems and controls, the <i>FCA</i> would expect a <i>company</i> to give due consideration to appointing staff of sufficient seniority to grant clearance requests.</u></p> |
| | <p><u>The <i>FCA</i> would not consider it appropriate for a <i>person discharging managerial responsibilities</i> to grant themselves clearance to deal in the <i>securities</i> of the <i>company</i>.</u></p> |
| | <p><u>A <i>company</i> may wish to consider putting in place clearance procedures which distinguish between the level of seniority of the <i>person discharging managerial responsibilities</i> requesting clearance.</u></p> |
| | <p><u>An example of a clearance procedure which encompasses all these elements would be:</u></p> |
| (a) | <p><u>A <i>director</i> (other than the chairman or chief executive) or company secretary must not <i>deal</i>, either directly or indirectly, in any <i>securities</i> of the <i>company</i> without first notifying the chairman (or a director designated by the board for this purpose) and receiving clearance from him.</u></p> |
| (b) | <p><u>The chairman must not deal, either directly or indirectly, in any <i>securities</i> of the <i>company</i> without first notifying the chief executive and receiving clearance from him or, if the chief executive is not present, without first notifying the senior independent director, or a committee of the board or other officer of the <i>company</i> nominated for that purpose by the chief executive, and receiving clearance to deal from that director, committee or officer.</u></p> |
| (c) | <p><u>The chief executive must not <i>deal</i>, either directly or indirectly, in any <i>securities</i> of the <i>company</i> without first notifying the chairman and receiving clearance to deal from him or, if the chairman is not present, without first notifying the senior independent director, or a committee of the board or other officer of the <i>company</i> nominated for that purpose by the chairman, and receiving clearance to deal from that director, committee or officer.</u></p> |
| (d) | <p><u>If the role of chairman and chief executive are combined, that person must not <i>deal</i>, either directly or indirectly, in any <i>securities</i> of the <i>company</i> without first notifying the board and receiving clearance to</u></p> |

| | | |
|-----------------|-----|---|
| | | <u>deal from the board.</u> |
| | (e) | <u>A person discharging managerial responsibilities (who is not a director) must not deal, either directly or indirectly, in any securities of the company without first notifying the company secretary or a designated director and receiving clearance to deal from him.</u> |
| <u>3</u> | | <u>What is an appropriate timeframe for the company to respond to such requests</u> |
| | | <u>While the FCA acknowledges that exceptional circumstances may apply, and that provision can be made for these, the FCA would consider that a commitment to respond to clearance requests within 5 business days of the request would be an appropriate timeframe.</u> |
| <u>4</u> | | <u>What is an appropriate timeframe for a person discharging managerial responsibilities to deal once they have received clearance</u> |
| | | <u>The FCA would consider that, as circumstances within a company can change rapidly, once clearance has been obtained, it would be appropriate for a company to expect a person discharging managerial responsibilities to deal as soon as possible.</u> |
| | | <u>A company may wish to consider including a long stop date in their response, after which the clearance will no longer be valid. The FCA does not consider that a long stop date of more than 5 trading days would be appropriate.</u> |
| <u>5</u> | | <u>How a company will assess whether clearance to deal will be given</u> |
| | | <u>In determining whether it is appropriate to give clearance, the FCA would expect a company to consider whether the proposed dealing is to take place within the “closed period” set out in article 19(11) of the Market Abuse Regulation.</u> |
| | | <u>If this is the case, the FCA would expect a company to consider its obligations under the Market Abuse Regulation.</u> |
| | | <u>If this is not the case, the FCA would expect a company to give due consideration as to whether there are circumstances in which it would not be appropriate to give clearance. A company may wish to consider the following factors:</u> |
| | (a) | <u>whether it is appropriate to give clearance to a person discharging managerial responsibilities when inside information exists in relation to the company;</u> |
| | (b) | <u>where inside information does not exist, whether there are timeframes during the year in which it would not be appropriate to give clearance to deal, due to the perception of shareholders or the market that inside information may exist;</u> |

| | | |
|----------|---|---|
| | (c) | <u>whether it is appropriate to give clearance to <i>deal</i> where the request to deal is based on considerations of a short term nature. The <i>FCA</i> would consider that an investment with a maturity of one year or less is an investments of a short term nature;</u> |
| | (d) | <u>whether, due to the specific nature of the <i>dealing</i> taking place or the specific circumstances facing the <i>person discharging managerial responsibilities</i> it merits exceptional treatment.</u> |
| 6 | <u>How a company keeps records of the clearance process</u> | |
| | <u>The <i>FCA</i> would expect a <i>company</i> to keep a written record of all requests received and the associated responses.</u> | |

...

10 Significant transactions: Premium listing

...

10.8 Miscellaneous

Class 1 disposals by companies in severe financial difficulty

...

- 10.8.5 G The announcement should contain any further information that the *company* and its *sponsors* consider necessary. This should incorporate historical price sensitive information, which has already been published in relation to the disposal along with any further information required to be disclosed under ~~*DTR 2 (disclosure of inside information)*~~ articles 17 and 18 of the *Market Abuse Regulation*.

...

- 10.8.7 G In relation to the *listed company's* financial position, ~~*DTR 2 (disclosure of inside information)*~~ articles 17 and 18 of the *Market Abuse Regulation* continues to apply while the *company* is seeking a modification.

...

12 Dealing in own securities and treasury shares: Premium listing

12.1 Application

Application

...

- 12.1.2 R This chapter contains *rules* applicable to a *listed* company that:

...

- (4) ~~purchases or redeems its own securities during a prohibited period; or [deleted]~~

...

12.2 Prohibition on purchase of own securities

12.2.1 R ~~A listed company must not purchase or redeem (or make any early redemptions of) its own securities and must ensure that no purchases in its securities are effected on its behalf or by any member of its group during a prohibited period unless:~~

- (1) ~~prior to the commencement of the prohibited period the company has put in place a buy back programme in which the dates and quantities of securities to be traded during the relevant period are fixed and have been disclosed in a notification made in accordance with LR 12.4.4 R; or~~
- (2) ~~prior to the commencement of the prohibited period the company has put in place a buy back programme managed by an independent third party which makes its trading decisions in relation to the company's securities independently of, and uninfluenced by, the company; or~~
- (3) ~~the company is purchasing or redeeming securities other than shares or securities whose price or value would be likely to be significantly affected by the publication of the information giving rise to the prohibited period; or~~
- (4) ~~the company is redeeming securities (other than equity shares) which, at the time of issue, set out:~~
- (a) ~~the date of redemption;~~
- (b) ~~the number of securities to be redeemed or the formula used to determine that number; and~~
- (c) ~~the redemption price or the formula used to determine the price.]~~

~~[deleted]~~

...

12.4 Purchase of own equity shares

Purchases of less than 15%

12.4.1 R Unless a *tender offer* is made to all holders of the *class*, purchases by a *listed company* of less than 15% of any *class* of its *equity shares* (excluding *treasury shares*) pursuant to a general authority granted by shareholders, may only be made if the price to be paid is not more than the

higher of:

...

- (2) that stipulated by ~~Article 5(1) of the Buy-back and Stabilisation Regulation~~ [Note: This Article is reproduced at MAR 1 Ann 1] Commission-adopted Regulatory Technical Standards pursuant to article 5(6) of the Market Abuse Regulation.

...

12.6 Treasury shares

Prohibition on sales or transfers of treasury shares

- 12.6.1 R ~~Subject to LR 12.6.2R, sales for cash, or transfers for the purposes of, or pursuant to, an employees' share scheme, of treasury shares must not be made during a prohibited period. [deleted]~~

Exemptions

- 12.6.2 R ~~LR 12.6.1R does not apply to the following sales or transfers by a listed company of treasury shares:~~
- (1) ~~transfers of treasury shares in connection with the operation of an employees' share scheme where the transfer facilitates dealings that do not fall within the provisions of the Model Code; or~~
 - (2) ~~sales or transfers by the company of treasury shares (other than equity shares) of a class whose price or value would not be likely to be significantly affected by the publication of the information giving rise to the prohibited period.]~~

[deleted]

...

14 Standard listing (shares)

...

14.3 Continuing obligations

...

Contact details

- 14.3.8 R A company must ensure that the FCA is provided with up to date contact details of appropriate persons nominated by it to act as the first point of contact with the FCA in relation to the company's compliance with the listing rules and the disclosure ~~rules~~ requirements and transparency rules, as applicable.

...

Disclosure requirements and Transparency Rules

- 14.3.11 G A company whose shares are admitted to trading on a regulated market in the United Kingdom, should consider its obligations under the *disclosure rules requirements* and *transparency rules*.

...

15 Closed-Ended Investment Funds: Premium Listing

...

15.4 Continuing obligations

...

Systems and controls: clearance for PDMR dealings

- 15.4.31 R A closed-ended investment fund is not required to comply with LR 9.2.8R.

15.5 Transactions

~~Compliance with the Model Code~~

- 15.5.1 R (1) ~~A closed-ended investment fund must comply with the provisions of the Model Code.~~
- (2) ~~LR 9.2.7R to LR 9.2.10R do not apply to a closed-ended investment fund.~~
- (3) Paragraph (1) does not apply to:
- ~~dealings by persons discharging managerial responsibilities in the closed-ended investment fund;~~
 - ~~purchases by the closed-ended investment fund of its own securities; and~~
 - ~~sales of treasury shares for cash or transfers (except for sales and transfers by the closed-ended investment fund of treasury shares in the circumstances set out in LR 12.6.2R);~~
- ~~if the closed-ended investment fund satisfies the requirements of (4).~~
- (4) ~~The transactions described in (3) may be entered into during a~~

close period if:

~~the closed-ended investment fund is satisfied that all inside information which the directors and the entity may have in periods leading up to an announcement of results has previously been notified to a RIS; and~~

~~the closed-ended investment fund notifies a RIS that it is satisfied that all inside information has previously been notified.~~

[deleted]

...

17 Debt and specialist securities: Standard listing

...

17.3 Requirements with continuing application

...

Disclosure ~~Rules~~ requirements and Transparency Rules

17.3.8 G An *issuer*, whose *securities* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider ~~its~~ the obligations referred to under *DTR 2* (Disclosure and control of inside information by issuers) articles 17 and 18 of the *Market Abuse Regulation*.

17.3.9 R An *issuer* that is not already required to comply with the obligations referred to under *DTR 2* articles 17 and 18 of the *Market Abuse Regulation* must comply with those obligations *DTR 2* as if it were an *issuer* for the purposes of the disclosure rules articles 17 and 18 of the *Market Abuse Regulation* and the transparency rules, subject to article 22 of the *Market Abuse Regulation*.

...

18 Certificates representing certain securities: Standard listing

...

18.4 Continuing obligations

...

18.4.3 R An *overseas company* that is the *issuer* of the *equity shares* which the certificates represent must comply with:

...

- (3) the obligations referred to in ~~DTR 2 (Disclosure and control of inside information by issuers)~~, articles 17 and 18 of the *Market Abuse Regulation* as if it were an issuer for the purposes of those obligations and the ~~disclosure rules and transparency rules~~, subject to article 22 of the *Market Abuse Regulation*.

...

19 Securitised derivatives: Standard listing

...

19.4 Continuing obligations

...

Disclosure ~~rules~~ requirements and transparency rules

- 19.4.11 R An issuer must comply with the obligations referred to under ~~DTR 2.1 to DTR 2.7~~ articles 17 and 18 of the *Market Abuse Regulation* as if it were an issuer for the purposes of those obligations and the ~~disclosure rules and transparency rules~~, subject to article 22 of the *Market Abuse Regulation*.

...

20 Miscellaneous Securities: Standard listing

...

20.4 Continuing obligations

...

Disclosure ~~rules~~ requirements and transparency rules

- 20.4.5 R An issuer must comply with the obligations referred to under ~~DTR 2.1 to DTR 2.7~~ articles 17 and 18 of the *Market Abuse Regulation* as if it were an issuer for the purposes of those obligations and the ~~disclosure rules and transparency rules~~, subject to article 22 of the *Market Abuse Regulation*.

...

App 1 Relevant definitions

App 1.1 Relevant definitions

| | |
|--|--|
| ... | |
| <i>Buy-back and Stabilisation Regulation</i> | Commission Regulation (EC) of 22 December 2003 implementing the <i>Market Abuse Directive</i> as regards exemptions for buy back programmes and stabilisation of financial instruments (No |

| | | |
|--------------------------------------|---|---|
| | 2273/2003)- [deleted] | |
| ... | | |
| <i>close period</i> | as defined in paragraph 1(a) of the <i>Model Code</i> - [deleted] | |
| ... | | |
| <i>connected person</i> | ... | |
| | (5) | (in <i>DTR</i> and <i>LR</i> in relation to a <i>person discharging managerial responsibilities</i> within an <i>issuer</i>) has the same meaning as in section 96B(2) of the <i>Act</i> meaning given to “ <u>person closely associated</u> ” in article 3(1)(26) of the <i>Market Abuse Regulation</i> and the <i>FSMA 2000 (Market Abuse) Regulations 2016</i> . |
| ... | | |
| <i>dealing</i> | (1) | (other than in <i>MAR 1</i> (The Code of Market Conduct), for the purposes of <i>LR 6.1.29R</i> , <i>LR 9.2.8R</i> and <i>LR 9 Annex 2G</i>) (in accordance with paragraph 2 of Schedule 2 to the <i>Act</i> (<i>Regulated activities</i>) buying, selling, subscribing for or underwriting <i>investments</i> or offering or agreeing to do so, either as a <i>principal</i> or as an agent, including, in the case of an <i>investment</i> which is a <i>contract of insurance</i> , carrying out the contract.; |
| | (2) | for the purposes of <i>LR 6.1.29R</i> , <i>LR 9.2.8R</i> and <i>LR 9 Annex 2G</i> , conducting a <u>transaction on a <i>person</i>'s own account or for the account of another <i>person</i></u> . |
| ... | | |
| <i>disclosure guidance</i> | the guidance contained in <i>DTR 1 to 3</i> | |
| ... | | |
| <i>disclosure rules requirements</i> | (in accordance with sections 73A(1) and 73A(3) of the <i>Act</i>) rules relating to the disclosure of information in respect of <i>financial instruments</i> which have been admitted to trading on a <i>regulated market</i> or for which a request for <i>admission to trading</i> on such a market has been made articles 17, 18 and 19 of the <i>Market Abuse Regulation</i> . | |

| | |
|--------------------------|--|
| ... | |
| <i>DTR</i> | the Disclosure Rules <u>Guidance</u> and Transparency Rules sourcebook containing the <i>disclosure rules guidance, transparency rules, corporate governance rules</i> and the rules relating to <i>primary information providers</i> . |
| ... | |
| <i>insider list</i> | a list of persons with access to <i>inside information</i> as required by <i>DTR 2.8.1R</i> . [deleted] |
| ... | |
| <i>Model Code</i> | The Model Code of directors' dealings in securities set out in LR 9 Annex 1. [deleted] |
| ... | |
| <i>prohibited period</i> | (in LR) as defined by paragraph 1(e) of the Model Code. [deleted] |
| ... | |
| <i>security</i> | (1) (in LR, except in <i>LR 6.1.29R</i> , <i>LR 9.2.8R</i> and <i>LR 9 Annex 2G</i>) (in accordance with section 102A of the Act) anything which has been, or may be admitted to the <i>official list</i> . |
| | (2) (in <i>LR 6.1.29R</i> , <i>LR 9.2.8R</i> and <i>LR 9 Annex 2G</i>) <i>securities of the company</i> means <u>any publicly traded or quoted securities of the company or any member of its group or any securities that are convertible into such securities.</u> |
| ... | |
| <i>trading plan</i> | (in LR) a written plan between a restricted person and an independent third party which sets out a strategy for the acquisition and/or disposal of securities by a specified person and: (a) specifies the amount of securities to be dealt in and the price at which and the date on which the securities are to be dealt in; or (b) gives discretion to that independent third party to make trading decisions about the amount of securities to be dealt in and the price at which and |

| | |
|-----|--|
| | <p>the date on which the <i>securities</i> are to be dealt in; or</p> <p>(c) includes a written formula or algorithm, or computer program, for determining the amount of <i>securities</i> to be dealt in and the price at which and the date on which the <i>securities</i> are to be dealt in. [deleted]</p> |
| ... | |

...

App 2 Annual Financial Report for certain listed companies

App 2.1

...

App 2.1.2 9.8 Annual financial report

...

Additional information

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

- (1) a statement setting out all the interests (in respect of which transactions are notifiable to the company under ~~DTR 3.1.2R~~ article 19 of the *Market Abuse Regulation*) of each *person* who is a *director* of the *listed company* as at the end of the period under review including:

...

9.8.6 G (1) The effect of LR 9.8.6R(1) is that a *listed company* is required to set out a 'snapshot' of the total interests of a *director* and his or her *connected persons*, as at the end of the period under review (including certain information to update it as at a date not more than a month before the date of the notice of the annual general meeting). The interests that need to be set out are limited to those in respect of which transactions fall to be notified under the notification requirement for PDMRs in ~~DTR 3.1.2R~~ article 19 of the *Market Abuse Regulation*. *Persons* who are *directors* during, but not at the end of, the period under review need not be included.

...

...

Annex G

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

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

1 Introduction

1.1 Application and purpose (Disclosure ~~rules~~ guidance)

...

1.1.1 R ~~The disclosure rules~~ apply as follows:

- (1) ~~DTR 1 and DTR 2 apply to an issuer whose financial instruments are admitted to trading on a regulated market in the United Kingdom or for which a request for admission to trading on a regulated market in the United Kingdom has been made;~~
- (2) ~~DTR 3 applies to an issuer that is incorporated in the United Kingdom:~~
 - (a) ~~whose financial instruments are admitted to trading on a regulated market; or~~
 - (b) ~~for whose financial instruments a request for admission to trading on a regulated market in the United Kingdom has been made;~~
- (3) ~~the following apply to person discharging managerial responsibility, including directors, and connected persons:~~
 - (a) ~~DTR 1.1 and DTR 1.2;~~
 - (b) ~~DTR 1.3.1R—DTR 1.3.2G and DTR 1.3.8R;~~
 - (c) ~~DTR 1.4;~~
 - (d) ~~DTR 1.5.3G; and~~
 - (e) ~~DTR 3; and~~
- (4) ~~DTR 3 applies to a non-EEA state issuer with the United Kingdom as its Home Member State.~~

The disclosure requirements and the disclosure guidance apply to all persons to whom the FCA is obliged to apply the provisions of the Market Abuse Regulation relating to disclosure under article 22 of that regulation.

Purpose

1.1.2 G The purpose of ~~the disclosure rules~~ DTR 1, DTR 2 and DTR 3 is to ~~implement~~: provide guidance on aspects of the disclosure obligations applicable under the *Market Abuse Regulation*.

- (1) ~~Article 6 of the *Market Abuse Directive*;~~
- (2) ~~Articles 2 and 3 of Commission Directive 2003/124/EC; and~~
- (3) ~~Articles 5 and 6 of Commission Directive 2004/72/EC.~~

FCA performing functions as competent authority

1.1.3 G Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to *persons* to whom ~~the disclosure rules~~ the disclosure requirements and the disclosure guidance apply include *DEPP* (Decision Procedure and Penalties Manual) and Chapter 9 of *SUP* (the Supervision manual).

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

Note: A list of *regulated markets* can be found on the *FCA* website.

1.2 Modifying rules and consulting the FCA

Modifying or dispensing with rules

- 1.2.1 R
- (1) ~~The *FCA* may dispense with, or modify, *disclosure rules* in such cases and by reference to such circumstances as it considers appropriate (subject to the terms of directives and the *Act*).~~
 - (2) ~~A dispensation or modification may be either unconditional or subject to specified conditions.~~
 - (3) ~~If an *issuer, person discharging managerial responsibilities* or a *connected person* has applied for, or been granted, a dispensation or modification, it must notify the *FCA* immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.~~
 - (4) ~~The *FCA* may revoke or modify a dispensation or modification.~~
[deleted]

- 1.2.2 R (1) ~~An application to the FCA to dispense with or modify, a *disclosure rule* must be in writing.~~
- (2) ~~The application must:~~
- (a) ~~contain a clear explanation of why the dispensation or modification is requested;~~
 - (b) ~~include details of any special requirement, for example, the date by which the dispensation or modification is required;~~
 - (c) ~~contain all relevant information that should reasonably be brought to the FCA's attention;~~
 - (d) ~~contain any statement or information that is required by the *disclosure rule* to be included for a specific type of dispensation or modification; and~~
 - (e) ~~include copies of all documents relevant to the application.~~
~~[deleted]~~

- 1.2.3 G ~~An application to dispense with or modify a *disclosure rule* should ordinarily be made at least five *business days* before the proposed dispensation or modification is to take effect. [deleted]~~

Early consultation with FCA

- 1.2.4 G ~~An issuer, person discharging managerial responsibilities or connected person should consult with the FCA at the earliest possible stage if they:~~
- (1) ~~are in doubt about how the *disclosure rules requirements* apply in a particular situation; or~~
 - (2) ~~consider that it may be necessary for the FCA to dispense with or modify a rule within the *disclosure rules*. [deleted]~~

- 1.2.5 G ~~Where a *disclosure rule requirement* refers to consultation with the FCA, submissions should be made in writing other than in circumstances of exceptional urgency.~~

Address for correspondence

Note: The FCA's address for correspondence in relation to the *disclosure rules requirements* and the *disclosure guidance* is:

Primary Market Monitoring

Enforcement and Markets Oversight Division

The Financial Conduct Authority

Canary Wharf
London E14 5HS

1.3 Information gathering and publication

Information gathering

- 1.3.1 R ~~An issuer, person discharging managerial responsibilities or connected person must provide to the FCA as soon as possible following a request:~~
- (1) ~~any information that the FCA considers appropriate to protect investors or ensure the smooth operation of the market; and~~
 - (2) ~~any other information or explanation that the FCA may require to verify whether the disclosure rules are being and have been complied with. [deleted]~~
- 1.3.2 G ~~In gathering information under DTR 1.3.1R, the FCA may contact the issuer, person discharging managerial responsibilities, connected person or their adviser directly. Telephone calls to and from the FCA may be recorded for regulatory purposes. The FCA may also require the issuer, person discharging managerial responsibilities, connected person or their advisers to provide information in writing.~~

FCA may require the publication of information

- 1.3.3 R (1) ~~The FCA may, at any time, require an issuer to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market.~~
- (2) ~~If an issuer fails to comply with a requirement under paragraph (1) the FCA may itself publish the information (after giving the issuer an opportunity to make representations as to why it should not be published). [deleted]~~

Misleading information not to be published

- 1.3.4 R ~~An issuer must take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information. [deleted]~~
- 1.3.5 R ~~An issuer must not combine, in a manner likely to be misleading, a RIS announcement with the marketing of its activities. [Note: Article 2(1) 2003/124/EC] [deleted]~~

Notification when a RIS is not open for business

- 1.3.6 R If an issuer is required to notify information to a RIS at a time when a RIS

G is not open for business, it ~~must~~ may distribute the information as soon as possible to:

- (1) not less than two national newspapers in the *United Kingdom*;
- (2) two newswire services operating in the *United Kingdom*; and
- (3) a *RIS* for release as soon as it opens.

...

English language

1.3.8 R ~~A notification to a *RIS* that is required under the *disclosure rules* must be in English. [deleted]~~

[Note: article [x] Commission-adopted Regulatory Technical Standards pursuant to article 17(10) of the *Market Abuse Regulation*]

1.4 Suspension of trading

1.4.1 R ~~The *FCA* may require the suspension of trading of a *financial instrument* with effect from such time as it may determine if there are reasonable grounds to suspect non-compliance with the *disclosure rules*. [deleted]~~

[Note: article 23(2)(j) of the *Market Abuse Regulation*]

1.4.2 R ~~If trading of an *issuer's financial instruments* is suspended, the *issuer*, any *persons discharging managerial responsibilities* and any *connected person* must continue to comply with all applicable *disclosure rules*. [deleted]~~

1.4.3 R ~~If the *FCA* has required the suspension of trading of any *financial instruments*, it may impose such conditions on the procedure for lifting the suspension as it considers appropriate. [deleted]~~

1.4.4 G Examples of when the *FCA* may require the suspension of trading of a *financial instrument* include:

- (1) if an *issuer* fails to make a ~~*RIS*~~ an announcement as required by the ~~*disclosure rules*~~ *Market Abuse Regulation* within the applicable time-limits which the *FCA* considers could affect the interests of investors or affect the smooth operation of the market;
or
- (2) if there is or there may be a leak of *inside information* and the *issuer* is unwilling or unable to issue an appropriate ~~*RIS*~~ announcement required by article 17 of the *Market Abuse Regulation* within a reasonable period of time.

1.4.5 G The decision-making procedures to be followed by the *FCA* when it:

- (1) requires the suspension of trading of a *financial instrument*; or

- (2) refuses an application by an *issuer* to lift a suspension made under section 96C [123A of the Act];

are set out in *DEPP*.

1.5 Fees, ~~market abuse safe harbours~~ and sanctions

...

~~Market abuse safe harbours~~

- 1.5.2 R Pursuant to section 118A(5) of the *Act*, behaviour conforming with the *disclosure rules* specified below does not amount to market abuse under section 118(1) of the *Act*:

- (1) ~~DTR 1.3.4R (Misleading information not to be published);~~
 (2) ~~DTR 1.3.6R (Notification when a RIS is not open for business);~~
 (3) ~~DTR 2.2.1R (Requirement to disclose inside information); and~~
 (4) ~~DTR 2.5.1R (Delaying disclosure). [deleted]~~

Sanctions

- 1.5.3 G (1) If the *FCA* considers that an *issuer*, a *person discharging managerial responsibilities* or a *connected person* has breached any of the *disclosure rules requirements* it may, subject to the provisions of the *Act*, impose on that *person* a financial penalty or publish a statement censuring that *person*.

...

...

1A Introduction (Transparency rules)

...

1A.2 Modifying rules and consulting the FCA

...

- 1A.2.5 G Where a *transparency rule* refers to consultation with the *FCA*, submissions should be made in writing other than in circumstances of exceptional urgency.

Address for correspondence

Note: The *FCA's* address for correspondence in relation to the *disclosure transparency rules* is:

Primary Market Monitoring
 Enforcement and Markets Oversight Division
 The Financial Conduct Authority
 Canary Wharf
 London E14 5HS

...

2 Disclosure and control of inside information by issuers

2.1 Introduction and purpose

Introduction

- 2.1.1 G An *issuer* should be aware that matters that fall within the scope of this chapter may also fall within the scope of:
- (1) the market abuse regime set out in ~~section 118 of the Act~~ the *Market Abuse Regulation*;
 - (2) Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 relating to misleading statements and practices;
 - (3) Part V of the Criminal Justice Act 1993 relating to insider dealing; and
 - (4) the *Takeover Code*.
- 2.1.2 R ~~If an~~ An *issuer* that is involved in a matter which also falls within the scope of the *Takeover Code* ~~it must nevertheless comply with~~ should be mindful of its obligations under ~~this chapter~~ the *Market Abuse Regulation*.

Purpose

- 2.1.3 G The purpose of this chapter is to:
- (1) promote prompt and fair disclosure of relevant information to the market; and ~~[Note: Recital 24 *Market Abuse Directive*]~~
 - (2) ~~set out specific~~ give guidance on circumstances aspects relating to disclosure of such information, including the circumstances allowing delayed disclosure when an *issuer* can delay public disclosure of *inside information* and requirements to ensure that such information is kept confidential in order to protect investors and prevent insider dealing. ~~[Note: Recital 5 2003/124/EC]~~

2.2 Disclosure of inside information

Requirement to disclose inside information

- 2.2.1 ~~R~~ ~~EU~~ ~~An issuer must notify a *RIS* as soon as possible of any *inside information* which directly concerns the *issuer* unless *DTR 2.5.1R* applies. [Note: Article 6(1) *Market Abuse Directive*] [article 17(1) of the *Market Abuse Regulation*; Commission-adopted Regulatory Technical Standards under article 17(10) of the *Market Abuse Regulation*]~~
 [Note: see *DTR 6.3.2R*, regarding the disclosure of *inside information*]
- 2.2.2 R ~~An issuer will be deemed to have complied with *DTR 2.2.1R* where, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, the *issuer* notified a *RIS* as soon as was possible. [Note: Article 2(2) 2003/124/EC] [deleted]~~

Identifying inside information

...

- 2.2.4 G (1) ~~In determining the likely price significance of the information an *issuer* should assess whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions and would therefore be likely to have a significant effect on the price of the *issuer's financial instruments* (the reasonable investor test). [Note: Article 1(2) 2003/124/EC] [Note: article 7(4) of the *Market Abuse Regulation*]~~
- (2) In determining whether information would be likely to have a significant effect on the price of *financial instruments*, an *issuer* should be mindful that there is no figure (percentage change or otherwise) that can be set for any *issuer* when determining what constitutes a significant effect on the price of the *financial instruments* as this will vary from *issuer* to *issuer*.
- 2.2.5 G ~~The reasonable investor test requires an~~ An issuer may wish to take account of the following factors when considering whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions:
- (1) ~~to take into account that~~ the significance of the information in question will vary widely from *issuer* to *issuer*, depending on a variety of factors such as the *issuer's* size, recent developments and the market sentiment about the *issuer* and the sector in which it operates; and
- (2) ~~to assume the likelihood~~ that a reasonable investor will make investment decisions relating to the relevant *financial instrument* to maximise his economic self interest.

- 2.2.6 G It is not possible to prescribe how the reasonable investor test will apply in all possible situations. Any assessment ~~should~~ may need to take into consideration the anticipated impact of the information in light of the totality of the *issuer's* activities, the reliability of the source of the information and other market variables likely to affect the relevant *financial instrument* in the given circumstances. However, information which is likely to be considered relevant to a reasonable investor's decision includes information which affects:
- (1) the assets and liabilities of the *issuer*;
 - (2) the performance, or the expectation of the performance, of the *issuer's* business;
 - (3) the financial condition of the *issuer*;
 - (4) the course of the *issuer's* business;
 - (5) major new developments in the business of the *issuer*; or
 - (6) information previously disclosed to the market. [~~Note: Recital 1 2003/124/EC~~]
- 2.2.7 G An *issuer* and its advisers are best placed to make an initial assessment of whether particular information amounts to *inside information*. The decision as to whether a piece of information is *inside information* may be finely balanced and the *issuer* (with the help of its advisers) will need to exercise its judgement.
- [~~Note: DTR 2.7~~ provides additional guidance on dealing with market rumour.]
- 2.2.8 G The *directors* of the *issuer* should carefully and continuously monitor whether changes in the circumstances of the *issuer* are such that an announcement obligation has arisen under ~~this chapter~~ article 17 of the *Market Abuse Regulation*.

When to disclose inside information

- 2.2.9 G (1) ~~Subject to the limited ability to delay release of *inside information* to the public provided by DTR 2.5.1R, an *issuer* is required to notify, via a *RIS*, all *inside information* in its possession as soon as possible. [deleted]~~
- (2) If an *issuer* is faced with an unexpected and significant event, a short delay may be acceptable if it is necessary to clarify the situation. In such situations a holding announcement should be used where an *issuer* believes that there is a danger of *inside information* leaking before the facts and their impact can be confirmed. The holding announcement should:
- (a) detail as much of the subject matter as possible;

- (b) set out the reasons why a fuller announcement cannot be made; and
 - (c) include an undertaking to announce further details as soon as possible.
- (3) If an *issuer* is unable, or unwilling to make a holding announcement it may be appropriate for the trading of its *financial instruments* to be suspended until the *issuer* is in a position to make an announcement.
- (4) An *issuer* that is in any doubt as to the timing of announcements required ~~by this chapter~~ under the *Market Abuse Regulation* should consult the *FCA* at the earliest opportunity.

Communication with third parties

- 2.2.10 G The *FCA* is aware that many *issuers* provide unpublished information to third parties such as analysts, employees, credit rating agencies, finance providers and major shareholders, often in response to queries from such parties. The fact that information is unpublished does not in itself make it *inside information*. However, unpublished information which amounts to *inside information* is only permitted to be disclosed in accordance with ~~the disclosure rules and an issuer must ensure that at all times it acts in compliance with this chapter~~ the requirements of the *Market Abuse Regulation*.

2.3 Publication of information on internet site

- 2.3.1 R ~~*DTR 2.3.2R–DTR 2.3.5R* apply to an *issuer* that has an internet site.~~
[deleted]
- 2.3.2 R ~~*Inside information* announced via a *RIS* must be available on the *issuer's* internet site by the close of the *business day* following the day of the *RIS* announcement.~~ [deleted]
- 2.3.3 R ~~An *issuer* must ensure that *inside information* is notified to a *RIS* before, or simultaneously with, publication of such *inside information* on its internet site.~~ [deleted]
- 2.3.4 G ~~To ensure fast access and correct and timely assessment of the information by the public, an *issuer* should not publish *inside information* on its internet site as an alternative to its disclosure via a *RIS*.~~ [deleted]
- 2.3.5 R ~~An *issuer* must, for a period of one year following publication, post on its internet sites all *inside information* that it is required to disclose via a *RIS*.~~ [Note: Article 6(1) *Market Abuse Directive*] [deleted]
- [Note: article 17(1) of the *Market Abuse Regulation*, in relation to the period for which an *issuer* must maintain on its website *inside information*

which it is required to disclose publicly; article 17(9) of the *Market Abuse Regulation*, in relation to the maintenance of such information by *issuers with financial instruments admitted to trading on a SME Growth Market*.]

2.4 Equivalent information

- 2.4.1 R ~~Without prejudice to its obligations under *DTR 2.2.1R*, an *issuer* must take reasonable care to ensure that the disclosure of *inside information* to the public is synchronised as closely as possible in all jurisdictions in which it has:~~
- (1) ~~*financial instruments admitted to trading on a regulated market;*~~
 - (2) ~~*requested admission to trading of its financial instruments on a regulated market; or*~~
 - (3) ~~*financial instruments listed on any other overseas stock exchange.*~~
[**Note:** Article 2(4) 2003/124/EC] [deleted]
- 2.4.2 R ~~If the rules of another *regulated market* or *overseas* stock exchange require an *issuer* to disclose *inside information* at a time when a *RIS* is not open for business it should disclose the information in accordance with *DTR 1.3.6R* at the same time as it is released to the public in the other jurisdiction. [deleted]~~

2.5 Delaying disclosure of inside information

Delaying disclosure

- 2.5.1 R ~~An *issuer* may, under its own responsibility, delay the public disclosure of *EU inside information*, such as not to prejudice its legitimate interests provided that:~~
- (1) ~~such omission would not be likely to mislead the public;~~
 - (2) ~~any *person* receiving the information owes the *issuer* a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and~~
 - (3) ~~the *issuer* is able to ensure the confidentiality of that information.~~
[**Note:** Article 6(2) and (3) *Market Abuse Directive*]
- [deleted]
- [article 17(4) and (5) of the *Market Abuse Regulation*]

Legitimate interests and when delay will not mislead the public

...

- 2.5.3 R For the purposes of applying ~~DTR 2.5.1R~~, article 17 of the *Market Abuse Regulation*, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:
- G
- (1) negotiations in course, or related elements where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the *issuer* is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long term financial recovery of the *issuer*; or
 - (2) decisions taken or contracts made by the management body of an *issuer* which need the approval of another body of the *issuer* in order to become effective, where the organisation of such an *issuer* requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public. [~~Note: Article 3(1) 2003/124/EC~~]
- 2.5.4 G (1) ~~DTR 2.5.3R(1)~~ DTR 2.5.3G(1) does not ~~allow envisage that an issuer to~~ will:
- (a) delay public disclosure of the fact that it is in financial difficulty or of its worsening financial condition and is limited to the fact or substance of the negotiations to deal with such a situation. ~~An issuer cannot; or~~
 - (b) delay disclosure of *inside information* on the basis that its position in subsequent negotiations to deal with the situation will be jeopardised by the disclosure of its financial condition.
- (2) The legitimate interest described in ~~DTR 2.5.3R(2)~~ DTR 2.5.3G(2) refers to an *issuer* with a dual board structure (e.g. a management board and supervisory board if and to the extent that decisions of the management board require ratification by the supervisory board). An *issuer* with a unitary board structure would be unable to take advantage of ~~DTR 2.5.3R(2)~~ DTR 2.5.3G(2) and, therefore, ~~DTR 2.5.3R(2)~~ DTR 2.5.3G(2) should only be available to a very limited number of *issuers* in the *United Kingdom*.
- 2.5.5 G An *issuer* should not be obliged to disclose impending developments that could be jeopardised by premature disclosure. Whether or not an *issuer*

has a legitimate interest which would be prejudiced by the disclosure of certain *inside information* is an assessment which must be made by the *issuer* in the first instance. However, the *FCA* considers that, other than in relation to impending developments or matters described in ~~*DTR 2.5.3R*~~ *DTR 2.5.3G* or ~~*DTR 2.5.5AR*~~ *article 17(5) of the Market Abuse Regulation*, there are unlikely to be other circumstances where delay would be justified.

- 2.5.5A R ~~An issuer may have a legitimate interest to delay disclosing inside information concerning the provision of liquidity support by the Bank of England or by another central bank to it or to a member of the same group as the issuer. [deleted]~~

[**Note:** *article 17(5) of the Market Abuse Regulation*]

Selective disclosure

- 2.5.6 R ~~Whenever an issuer or a person acting on his behalf or for his account~~
EU ~~discloses any inside information to any third party in the normal exercise of his employment, profession or duties, the issuer must make complete and effective public disclosure of that information via a RIS, simultaneously in the case of an intentional disclosure and as soon as possible in the case of a non-intentional disclosure, unless *DTR 2.5.1R* applies. [**Note:** *Article 6(3) Market Abuse Directive*] [deleted]~~

[*article 17(8) of the Market Abuse Regulation*]

- 2.5.7 G (1) ~~When an issuer is permitted to delay public disclosure of inside information in accordance with *DTR 2.5.1R* it may selectively disclose that information to persons owing it a duty of confidentiality. [deleted]~~
- (2) ~~Such selective disclosure may be made to another person if it is in the normal course of the exercise of his employment, profession or duties. However, selective~~ Selective ~~disclosure cannot be made to any person simply because they owe the issuer a duty of confidentiality. For example, an issuer contemplating a major transaction which requires shareholder support or which could significantly impact its lending arrangements or credit-rating may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency as long as the recipients are bound by a duty of confidentiality. An issuer may, depending on the circumstances, be justified in disclosing inside information to certain categories of recipient in addition to those employees of the issuer who require the information to perform their functions. The categories of recipient may include, but are not limited to, the following:~~
- (a) the issuer's advisers and advisers of any other persons involved in the matter in question;

- (b) *persons* with whom the *issuer* is negotiating, or intends to negotiate, any commercial financial or investment transaction (including prospective underwriters or places of the *financial instruments* of the *issuer*);
 - (c) employee representatives or trade unions acting on their behalf;
 - (d) any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority;
 - (e) major shareholders of the *issuer*;
 - (f) the *issuer's* lenders; and
 - (g) credit-rating agencies.
- 2.5.8 G Selective disclosure to any or all of the *persons* referred to in *DTR 2.5.7G* may not be justified in every circumstance where an *issuer* delays disclosure in accordance with ~~*DTR 2.5.1R*~~ article 17(4) and (5) of the *Market Abuse Regulation*.
- 2.5.9 G An *issuer* should bear in mind that the wider the group of recipients of *inside information* the greater the likelihood of a leak which will trigger full public disclosure of the information ~~via a *RIS* under *DTR 2.6.2R*~~ article 17(8) of the *Market Abuse Regulation*.
- 2.6 Control of inside information**
- Denying access to inside information
- 2.6.1 R An *issuer* ~~must~~ should establish effective arrangements to deny access to
 G *inside information* to *persons* other than those who require it for the exercise of their functions within the *issuer*. [~~Note: Article 3(2) 2003/124/EC~~]
- Breach of confidentiality
- 2.6.2 R ~~An *issuer* must have in place measures which enable public disclosure to~~
 EU ~~be made via a *RIS* as soon as possible in case the *issuer* is not able to ensure the confidentiality of the relevant *inside information*.~~ [~~Note: Article 3(2) 2003/124/EC~~] [~~deleted~~]
[article 17(7) of the *Market Abuse Regulation*]
- 2.6.3 G If an *issuer* is relying on ~~*DTR 2.5.1R*~~ article 17(4) or 17(5) of the *Market Abuse Regulation* to delay the disclosure of *inside information* it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence. Such a holding announcement should

include the details set out in *DTR 2.2.9G(2)*.

- 2.6.4 G We recognise that an *issuer* may not be responsible for breach of ~~*DTR 2.5.1R*~~ article 17(4) or 17(5) of the *Market Abuse Regulation* if a recipient of *inside information* under ~~*DTR 2.5.1R*~~ article 17 of the *Market Abuse Regulation* breaches his duty of confidentiality.

2.7 Dealing with rumours

- 2.7.1 G Where there is press speculation or market rumour regarding an *issuer*, the *issuer* should assess whether a disclosure obligation arises under ~~*DTR 2.2.1R*~~ article 17(1) of the *Market Abuse Regulation*. To do this an *issuer* will need to carefully assess whether the speculation or rumour has given rise to a situation where the *issuer* has *inside information*.

- 2.7.2 G (1) ~~Where press speculation or a market rumour is largely accurate and the information underlying the rumour is *inside information* then it is likely that the *issuer* can no longer delay disclosure in accordance with *DTR 2.5.1R* as it is no longer able to ensure the confidentiality of the *inside information*.~~

- (2) ~~An *issuer* that finds itself in the circumstances described in paragraph (1) should disclose the *inside information* in accordance with *DTR 2.6.2R* as soon as possible.~~

[deleted]

[**Note:** article 17(7) of the *Market Abuse Regulation*]

- 2.7.3 G The knowledge that press speculation or market rumour is false ~~is not likely to~~ may not amount to *inside information*. ~~Even if~~ If it does amount to *inside information*, the *FCA* expects that ~~in most of those there may be cases where~~ an *issuer* would be able to delay disclosure ~~(often indefinitely)~~ in accordance with ~~*DTR 2.5.1R*~~ article 17(4) or 17(5) of the *Market Abuse Regulation*.

2.8 Insider lists

Requirement to draw up insider lists

- 2.8.1 R ~~An *issuer* must ensure that it and persons acting on its behalf or on its account draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to *inside information* relating directly or indirectly to the *issuer*, whether on a regular or occasional basis. [**Note:** Article 6(3) *Market Abuse Directive*]~~ [deleted]

[article 18(1) of the *Market Abuse Regulation*]

Providing insider lists to the FCA on request

- 2.8.2 R ~~If so requested, an *issuer* must provide to the *FCA* as soon as possible an~~
EU ~~*insider list* that has been drawn up in accordance with *DTR 2.8.1R*. [**Note:**~~
~~*Article 6(3) Market Abuse Directive*] [deleted]~~

[article 18(1)(c) of the *Market Abuse Regulation*]

Contents of insider lists

- 2.8.3 R ~~Every *insider list* must contain the following information:~~
EU

- (1) ~~the identity of each *person* having access to *inside information*;~~
- (2) ~~the reason why such *person* is on the *insider list*; and~~
- (3) ~~the date on which the *insider list* was created and updated. [**Note:**~~
~~*Article 5(2) 2004/72/EC*]~~

[deleted]

[article 18(3) of the *Market Abuse Regulation*; Commission-adopted
Implementing Technical Standards under article 18(9) of the *Market Abuse
Regulation*]

Maintenance of insider lists

- 2.8.4 R ~~An *insider list* must be promptly updated:~~
EU

- (1) ~~when there is a change in the reason why a *person* is already on
the list;~~
- (2) ~~when any *person* who is not already on the list is provided with
access to *inside information*; and~~
- (3) ~~to indicate the date on which a *person* already on the list no
longer has access to *inside information*. [**Note:** *Article 5(3)*
~~*2004/72/EC*]~~~~

[deleted]

[article 18(4) of the *Market Abuse Regulation*]

- 2.8.5 R ~~An *issuer* must ensure that every *insider list* prepared by it or by *persons*
EU ~~acting on its account or on its behalf is kept for at least five years from the
date on which it is drawn up or updated, whichever is the latest. [**Note:**~~
~~*Article 5(4) 2004/72/EC*] [deleted]~~~~

[article 18(5) of the *Market Abuse Regulation*]

- 2.8.6 G ~~An issuer and not its advisers or agents is ultimately responsible for the maintenance of *insider lists*. [deleted]~~
[Note: article 18(2) of the *Market Abuse Regulation*]
- 2.8.7 G ~~For the purposes of *DTR 2.8.1R* an issuer should maintain a list of:~~
- ~~(1) its own employees that have access to *inside information*;~~
 - ~~(2) its principal contacts at any other firm or *company* acting on its behalf or on its account with whom it has had direct contact and who also have access to *inside information* about it.~~
- ~~[deleted]~~
- [Note: article 18(1)(a) of the *Market Abuse Regulation*; article 18(2) of the *Market Abuse Regulation*]
- 2.8.8 G ~~For the purposes of *DTR 2.8.1R* it is not necessary for an issuer to maintain a list of all the individuals working for another firm or *company* acting on its behalf or its account where it has:~~
- ~~(1) recorded the name of the principal contact(s) at that firm or *company*;~~
 - ~~(2) made effective arrangements, which are likely to be based in contract, for that firm or *company* to maintain (as set out in *DTR 2.8.1R*, *DTR 2.8.3R* – *DTR 2.8.5R* and *DTR 2.8.10R*) its own list of *persons* both acting on behalf of the *issuer* and with access to *inside information on the issuer*; and~~
 - ~~(3) made effective arrangements for that firm or *company* to provide a copy of its list to the *issuer* as soon as possible upon request.~~
~~[deleted]~~

Acknowledgement of legal and regulatory duties

- 2.8.9 R ~~An issuer must take the necessary measures to ensure that its employees~~
EU ~~with access to *inside information* acknowledge the legal and regulatory duties entailed (including dealing restrictions in relation to the *issuer's financial instruments*) and are aware of the sanctions attaching to the misuse or improper circulation of such information. [Note: Article 5(5) 2004/72/EC and Article 3(2) 2003/124/EC] [deleted]~~
- [article 18(2) of the *Market Abuse Regulation*]
- 2.8.10 R ~~An issuer must ensure that any person that:~~
EU
- ~~(1) is acting on its behalf or on its account; and~~
 - ~~(2) has drawn up an *insider list* in accordance with *DTR 2.8.1R*;~~

~~has taken the necessary measures to ensure that every *person* whose name is on the *insider list* acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information. [Note: Article 5(5) 2004/72/EC] [deleted]~~

[article 18(2) of the *Market Abuse Regulation*]

3 Transactions by persons discharging managerial responsibilities and their connected persons

3.1

Purpose

- 3.1.1 G This chapter ~~sets out~~ contains guidance on certain of the notification obligations of *issuers*, *persons discharging managerial responsibilities* and their *connected persons* under article 19 of the *Market Abuse Regulation*, in respect of transactions conducted on their own account in *shares* of the *issuer*, or derivatives or any other *financial instrument* relating to those *shares*.

Notification of transactions by persons discharging managerial responsibilities

- 3.1.2 R ~~*Persons discharging managerial responsibilities and their connected*~~
EU ~~*persons*, must notify the *issuer* in writing of the occurrence of all transactions conducted on their own account in the *shares* of the *issuer*, or derivatives or any other *financial instruments* relating to those *shares* within four *business days* of the day on which the transaction occurred. [Note: Article 6(4) *Market Abuse Directive* and Article 6(1) 2004/72/EC] [deleted]~~

[article 19(1) of the *Market Abuse Regulation*]

- 3.1.2A G (1) ~~The *Act* provides that an individual who is not a *director* can still be a *person discharging managerial responsibilities* in relation to an issuer if they are a "senior executive of such an issuer" and they meet the criteria set out in the *Act*. [deleted]~~
- (2) An individual may be a "senior executive ~~of such an issuer~~", as referred to in article 3(1)(25)(b) of the *Market Abuse Regulation*, irrespective of the nature of any contractual arrangements between the individual and the *issuer* and notwithstanding the absence of a contractual arrangement between the individual and the *issuer*, provided the individual has regular access to inside information relating, directly or indirectly, to the *issuer* and has power to make managerial decisions affecting the future development and business prospects of the *issuer*.

- 3.1.2B G The threshold above which the obligations under article 19(1) of the

Market Abuse Regulation will apply to the transactions of a particular person discharging managerial responsibilities or connected person is the threshold set out under article 19(8) of the Market Abuse Regulation.

- 3.1.3 R EU ~~The notification required by DTR 3.1.2R must contain the following information:~~
- (1) ~~the name of the *person discharging managerial responsibilities* within the *issuer*, or, where applicable, the name of the *person connected* with such a *person*;~~
 - (2) ~~the reason for responsibility to notify;~~
 - (3) ~~the name of the relevant *issuer*;~~
 - (4) ~~a description of the *financial instrument*;~~
 - (5) ~~the nature of the transaction (e.g. acquisition or disposal);~~
 - (6) ~~the date and place of the transaction; and~~
 - (7) ~~the price and volume of the transaction. [Note: Article 6(3) 2004/72/EC]~~

[deleted]

[article 19(6) of the Market Abuse Regulation; Commission-adopted Implementing Technical Standards under article 19(15) of the Market Abuse Regulation]

Notification of transactions by issuers to a RIS

- 3.1.4 R (1) ~~An *issuer* must notify a *RIS* of any information notified to it in accordance with:~~
- (a) ~~DTR 3.1.2R (Notification of transactions by persons discharging managerial responsibilities);~~
 - (b) ~~[deleted]~~
 - (c) ~~section 793 of the Companies Act 2006 (Notice requiring information about interests in shares) to the extent that it relates to the interests of a *director* or, as far as the issuer is aware, any *connected person* ; and~~
 - (d) ~~paragraph 26 of the *Model Code*.~~
- (2) ~~The notification to a *RIS* described in paragraph (1) must be made as soon as possible, and in any event by no later than the end of the *business day* following the receipt of the information by the *issuer*. [deleted]~~

- 3.1.5 R ~~The notification required by DTR 3.1.4R must include the information required by DTR 3.1.3R together with the date on which the notification was made to the issuer. [deleted]~~
- 3.1.6 R ~~If an issuer makes the appropriate notification to the RIS under DTR 3.1.4R(1)(a), a further notification to an RIS is not required in the event of it receiving information regarding the same dealing in a notification under section 793 of the Companies Act 2006. [deleted]~~
- 3.1.7 G ~~An issuer may use the form entitled Notification of Transactions of Directors, Persons Discharging Managerial Responsibility or Connected Persons to make the notification required by DTR 3.1.4R. [deleted]~~
- 3.1.8 R ~~An issuer with financial instruments admitted to trading on a regulated market in the United Kingdom that does not fall within DTR 1.1.1R(2) or DTR 1.1.1R(4), must notify equivalent information to that required by DTR 3.1.4R and DTR 3.1.5R to a RIS as soon as possible after the issuer becomes aware of the information. [deleted]~~

**MARKET ABUSE REGULATION (CONSEQUENTIAL AMENDMENTS)
INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (The FCA’s power to give guidance); and
 - (4) paragraph 23 (Fees) of Schedule 1ZA (The Financial Conduct Authority);
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [date] 2016.

Amendments to the Handbook

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

| (1) | (2) |
|--|---------|
| Statements of Principle and Code of Practice for Approved Persons (APER) | Annex A |
| General Provisions (GEN) | Annex B |
| Fees manual (FEES) | Annex C |
| Recognised Investment Exchanges sourcebook (REC) | Annex D |
| Energy Market Participants Guide (EMPS) | Annex E |
| Oil Market Participants Guide (OMPS) | Annex F |
| Service Companies Guide (SERV) | Annex G |
| General guidance on Benchmark Submission and Administration (BENCH) | Annex H |

Amendments to material outside the Handbook

- F. The Financial Crime guide (FC) is amended in accordance with Annex I to this instrument.

Citation

- G. This instrument may be cited as the Market Abuse Regulation (Consequential Amendments) Instrument 2016.

By order of the Board
[*date*]

[*Editor's Note:* This instrument should be read in conjunction with the Market Abuse Regulation (Primary) Instrument 2016.]

Annex A**Amendments to the Statements of Principle and Code of Practice for Approved Persons
(APER)**

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

4 Code of Practice for Approved Persons: specific

...

4.3 Statement of Principle 3

...

- 4.3.3 G A factor to be taken into account in determining whether or not an *approved person's* conduct complies with this *Statement of Principle* is whether he, or his *firm*, has complied with the ~~*Code of Market Conduct (MAR 1)*~~ *Market Abuse Regulation* or relevant market codes and exchange rules.

Annex B

Amendments to the General Provisions (GEN)

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

...

2.2 Interpreting the Handbook

...

Evidential provisions

...

2.2.4 G ...

- (2) Other provisions in the *Handbook*, although also identified by the status letter "E" in the margin or heading, are actually not *rules* but provisions in codes and *GEN 2.2.3R* does not apply to them. These code provisions are those provisions in the *Code of Practice for Approved Persons (APER 3 and APER 4)* and the *Code of Market Conduct (MAR 1)* with the status letter "E".

...

TP 2 Transitional Provisions applying across the FCA and PRA Handbooks

...

Table 2: Transitional Provisions applying across the FCA and PRA Handbooks

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|---|-----|--|--|---|
| ... | | | | | |
| 17 | <i>Statements of Principle</i> , the Code of Practice for Approved Persons and Code of Market Conduct <u>MAR 1 (Market Abuse)</u> and directions and requirements and guidance and other provisions in the <i>FCA Handbook</i> and <i>PRA Handbook</i> (that is, provisions with the | P | The provisions in paragraphs 1 to 10 apply to every <i>person</i> to whom the provisions referred to in column (2) apply as if the <i>rules</i> in those paragraphs were part of those provisions. | From cutover | Cutover |

| | | | | | |
|--|---|--|--|--|--|
| | status letter "D" or "G" in the margin or heading) unless the context otherwise requires and subject to any more specific transitional provision relating to the matter | | | | |
|--|---|--|--|--|--|

...

Sch 4 Powers exercised

...

Sch 4.2 G Powers to make rules

| | |
|--|---|
| The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the rules in <i>GEN</i> : | |
| ... | |
| | Section 96A (Disclosure of information requirements) |
| | Section 96C (Suspension of trading) |
| ... | |
| | Section 118(8) (Market abuse) |
| ... | |

...

Sch 4.4 G Powers to make codes

| | |
|---|-----------------------------------|
| The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> to issue the parts of the codes in <i>GEN</i> : | |
| ... | |
| | Section 119 (The code) |
| ... | |

Annex C

Amendments to the Fees manual (FEES)

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

1 Fees Manual

...

1.1 Application and Purpose

...

Application

1.1.2 R This manual applies in the following way:

...

(2) FEES 1, 2 and 4 apply to:

...

(i) under the Disclosure ~~Rules~~ Guidance and Transparency Rules (*DTR*) every *issuer* of *shares*, depositary receipts and securitised derivatives;

...

...

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

Extension of Time

...

4.2.11 R Table of periodic fees payable to the *FCA*

| | | | |
|-------------|---------------|------------|--|
| 1 Fee payer | 2 Fee payable | 3 Due date | 4 Events occurring during the period leading to modified |
|-------------|---------------|------------|--|

| | | | |
|---|------------------------------------|---|--|
| | | | periodic fee |
| ... | | | |
| All non-listed issuers (in DTR) of shares, depositary receipts and securitised derivatives. | FEES 4 Annex 8, except for Table 3 | Within 30 days of the date of the invoice | Non-listed issuer (in DTR) becomes subject to <i>disclosure rules requirements</i> and <i>transparency rules</i> |

...

4 Annex 1A FCA Activity groups, tariff bases and valuation dates

R Part 1

This table shows how the *FCA* links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

| Activity group | Fee payer falls in the activity group if |
|----------------------------|--|
| ... | ... |
| B. Market operators | (1) <i>firms</i> that have been were prescribed as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996), and (2) <i>firms</i> that are prescribed as a market operator, as defined in article 4(1)(13) of <i>MiFID</i> . |
| ... | ... |

Annex D

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

2 Recognition requirements

...

2.6 General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading

...

Orderly markets

2.6.28 G In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to the extent to which the *UK RIE's* rules and procedures:

- (1) are consistent with the ~~*Code of Market Conduct (see MAR 1)*~~ *Market Abuse Regulation*;

...

...

2.12 Availability of relevant information and admission of financial instruments to trading (UK RIEs only)

...

Proper information

2.12.11 G In determining whether appropriate arrangements have been made to make *relevant information* available to *persons* engaged in *dealing in specified investments admitted to trading* on the *UK RIE*, the *FCA* may have regard to:

...

- (3) whether *relevant information* is or can be kept to restricted groups of *persons* in such a way as to facilitate or encourage *dealing* in contravention of the ~~*Code of Market Conduct (see MAR 1)*~~ *Market Abuse Regulation*.

...

2.13 Promotion and maintenance of standards

...

- 2.13.3 G In determining whether a *UK recognised body* is able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of *regulated activities*, the *FCA* may have regard to the extent to which the *UK recognised body* seeks to promote and encourage, through its rules, practices and procedures, conduct in *regulated activities* which is consistent with the ~~Code of Market Conduct (see MAR 1)~~ Market Abuse Regulation and with any other codes of conduct, rules or principles relating to behaviour in *regulated activities* which users of the *UK financial system* would normally expect to apply to the *regulated activity* and the conduct in question.

...

Annex E

Amendments to the Energy Market Participants Guide (EMPS)

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

1 Special guide for energy market participants

...

1.2 Parts of the Handbook applicable to energy market participants

...

1.2.3 G Applicability of parts of Handbook to energy market participants

This table belongs to *EMPS 1.2.1G*

| | Part of Handbook | Applicability to energy market participants |
|---------------------------|--|--|
| ... | | |
| Business standards | ... | |
| | Market Conduct sourcebook (<i>MAR</i>) | This applies. However <i>MAR 2</i> (Price stabilising rules <u>Stabilisation</u>) is likely to be of only marginal relevance to the business of an <i>energy market participant</i> . <i>MAR 5</i> (Multilateral Trading Facilities) applies to an <i>energy market participant</i> that operates an <i>ATS</i> . |
| | ... | |
| ... | | |

Annex F

Amendments to the Oil Market Participants Guide (OMPS)

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

1 Special guide for oil market participants

...

1.2 Parts of the Handbook applicable to oil market participants

...

1.2.2 G Parts of the Handbook applicable to oil market participants

This table belongs to *OMPS* 1.2.1G

| | Part of Handbook | Applicability to oil market participants |
|---------------------------|--|--|
| ... | | |
| Business standards | ... | |
| | Market Conduct sourcebook (<i>MAR</i>) | This applies; however <i>MAR</i> 2 (Price stabilising rules <u>Stabilisation</u>) is likely to be of only marginal relevance to the business of an <i>oil market participant</i> . <i>MAR</i> 5 (Multilateral Trading Facilities) applies to an <i>oil market participant</i> that operates an <i>ATS</i> . |
| | ... | |
| ... | | |

Annex G

Amendments to the Service Companies Guide (SERV)

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

1 Handbook requirements for service companies

...

1.2 Part of the Handbook applicable to service companies

...

1.2.2 G Parts of the Handbook applicable to service companies

This table belongs to *SERV* 1.2.1G

| | Part of Handbook | Applicability to service companies |
|---------------------------|--|--|
| ... | | |
| Business standards | ... | |
| | Market Conduct sourcebook (<i>MAR</i>) | <i>MAR</i> 1 (Code of market conduct <u>Market Abuse</u>), <i>MAR</i> 2 (Price stabilising rules <u>Stabilisation</u>) and <i>MAR</i> 4 (Endorsement of the Takeover Code) apply to <i>service companies</i> . <i>MAR</i> 5 (Multilateral Trading Facilities), <i>MAR</i> 6 (Systematic Internalisers) and <i>MAR</i> 7 (Disclosure of information on certain trades undertaken outside a regulated market or <i>MTF</i>) do not apply to <i>service companies</i> . |
| | ... | |
| ... | | |

Annex H

Amendments to the General guidance on Benchmark Submission and Administration (BENCH)

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

2 **Parts of the Handbook applicable to benchmark submission activity and benchmark administration activity**

...

- 2.1.2 G Parts of the Handbook applicable to the *regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark*.

...

| | Part of the Handbook | Applicability to the <i>regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark</i> |
|--------------------|---------------------------------|--|
| ... | | |
| Business Standards | Market Conduct Sourcebook (MAR) | MAR 1 (Code of Market Conduct) <u>(Market Abuse)</u> , MAR 2 (Stabilisation) and MAR 8 (Benchmarks) apply. |
| ... | | |

Annex I

Amendments to Financial Crime: a guide for firms (FC)

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

Annex 1:

Common terms

This annex provides a list of common and useful terms related to financial crime. It also includes references to some key legal provisions. It is for reference purposes and is not a list of ‘defined terms’ used in the Guide. This annex does not provide guidance on rules or amend corresponding references in the Handbook’s Glossary of definitions.

| Term | Meaning |
|---|--|
| ... | |
| Suspicious Transaction Report (STR) | When applied to money laundering reporting, the term “Suspicious Transaction Report” is used commonly outside of the UK in place of “Suspicious Activity Report”. Both terms have substantially the same meaning. In the UK, the term ‘Suspicious Transaction Report’ (STR) tends to be used in connection with market abuse reporting. |
| <u>Suspicious Transaction and Order Report (STOR)</u> | <u>Following implementation of the <i>Market Abuse Regulation</i>, in the EU the term “Suspicious Transaction and Order Report” (STOR) is used in connection with market abuse reporting.</u> |
| ... | |



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