

Market conduct

Chapter 1

Market Abuse

1.1 Application and interpretation

Application and purpose







- 1.1.1 **G** This chapter is relevant to all *persons* seeking guidance on the *market abuse* regime.
- 1.1.1A **G** [deleted]
- 1.1.2 **G** This chapter provides *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
 - (2) want to determine whether they are required by 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 in cases of *market abuse* (required by section 124 of the *Act*) is in **■ DEPP 6**.

Using MAR 1

- 1.1.4 **G** (1) Assistance in the interpretation of **■ MAR 1** (and the remainder of the *Handbook*) is given in the Readers' Guide to the *Handbook* and in **■ GEN 2** (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six of the Readers' Guide to the *Handbook*).

- (2) [deleted]
- 1.1.5 **G** [deleted]
- 1.1.6 **G** This chapter does not exhaustively describe all types of behaviour that may indicate *market abuse*. In particular, the descriptions of behaviour should be read in the light of:
- (1) the elements specified by the *Market Abuse Regulation* as making up the relevant type of *market abuse*; and
 - (2) any relevant descriptions of behaviour specified by the *Market Abuse Regulation* which 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** This chapter does not exhaustively describe all the factors to be taken into account in determining whether behaviour amounts to *market abuse*. 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 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**  Provisions in this section are relevant to more than one of the types of behaviour which may amount to *market abuse*.
- 1.2.2**  [deleted]
- 1.2.2-A**  [article 2, article 14 and article 15 of the *Market Abuse Regulation*]
- 1.2.2A**  [deleted]
- 1.2.3**  The *Market Abuse Regulation* does not require the *person* engaging in the behaviour in question to have intended to commit *market abuse*.
- 1.2.4**  [deleted]

Factors that may be taken into account in relation to behaviour prior to either a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a prescribed auction platform

1.2.5 **G** The following factors may be taken into account in determining whether or not behaviour prior to a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a *prescribed auction platform* contravenes prohibitions and obligations in the *Market Abuse Regulation* and are indications that it does:

if it is in relation to *financial instruments*:

in respect of which a request for admission to trading on a *regulated market* or *MTF* is subsequently made; and

if it continues to have an effect once an application has been made for the *financial instrument* to be admitted for trading, or it has been admitted to trading on a *regulated market* or *MTF*, respectively ; or

if it is in relation to *financial instruments* :

which are subsequently offered for sale on a *prescribed auction platform*; and

if it continues to have an effect once the *financial instruments* are offered for sale on a *prescribed auction platform*.

1.2.6 **G** The following factors may be taken into account in determining whether or not refraining from action indicates behaviour which falls under the scope of the *Market Abuse Regulation*, and are indications that it does:

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

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** [deleted]

1.2.7-A **EU** [article 8(4) of the *Market Abuse Regulation*]

1.2.7A **UK** [deleted]

1.2.8 **G** The following factors may be taken into account in determining whether or not a *person* 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 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
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1.2.10 UK [deleted]

1.2.10A EU [article 7 of the *Market Abuse Regulation*]

1.2.11 G [deleted]

- 1.2.12** **G** The following factors may be taken into account in determining whether or not information has been made public, and are indications that it 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.
 - (5) [deleted]
- 1.2.13** **G**
- (1) In relation to the factors in **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 1.2.12G (1)** 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 using information which 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** [deleted]
- 1.2.15A** **UK** [deleted]
- 1.2.15B** **EU** [article 7(1)(d) of the *Market Abuse Regulation*]
- 1.2.16** **G** In determining whether there is a pending order for a client in relation to article 7(1)(d) of the *Market Abuse Regulation*, a factor that may be taken into account 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** [deleted]
[Note: article 7(1)(b) of the *Market Abuse Regulation*]
- 1.2.18 **UK** [deleted]
- 1.2.18A **EU** [article 7(1)(b) of the *Market Abuse Regulation*]
- 1.2.19 **UK** [deleted]
- 1.2.19A **G** *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.
[Note: the guidelines are available at [https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives.](https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives)]
- 1.2.20 **G** [deleted]
- 1.2.21 **G** [deleted]

Recommending or inducing.....

1.2.22 **UK** [deleted]

1.2.23 **G** The following are examples of behaviour that might fall within the scope of 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 *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 which, if he himself engaged in it, would amount to *market abuse*.

1.3 Insider dealing

1.3.1 **UK** [deleted]

1.3.1A **EU** [article 8 of the *Market Abuse Regulation*]

Descriptions of behaviour that amount to insider dealing

1.3.2 **G** 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) [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 *financial instrument*, 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 *financial instrument* using information concerning the proposed bid.

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

- 1.3.3 **E** [deleted]
[Note: article 9 of the *Market Abuse Regulation*]
- 1.3.4 **E** [deleted]
- 1.3.5 **E** [deleted]
[Note: article 9(1)(a) of the *Market Abuse Regulation*]

Relevant factors: legitimate business of market makers

- 1.3.6 **C** [deleted]
[Note: article 9(5) of the *Market Abuse Regulation*]
- 1.3.7 **G** For market makers and *persons* that may lawfully deal in *financial instruments* 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*) may not in itself amount to *market abuse*.
- 1.3.8 **G** [deleted]
- 1.3.9 **E** [deleted]
- 1.3.10 **G** The following factors maybe taken into account in determining whether or not a *person's*behaviour is in pursuit of legitimate business, and are indications that it is:
- (1) the extent to which the relevant trading by the *person* is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the *person's* legitimate business; or
 - (2) whether, in the case of a transaction on the basis of *inside information* about a client's transaction which has been executed, the reason for it being *inside information* is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or *trading venue* obligations; or
 - (3) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or
 - (4) the extent to which the *person's*behaviour was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.

1.3.11 **E** [deleted]
[Note: article 9 of the *Market Abuse Regulation*]

Relevant factors: execution of client orders
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1.3.12 **C** [deleted]
[Note: article 9 of the *Market Abuse Regulation*]

1.3.13 **G** [deleted]

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

1.3.14 **E** [deleted]

1.3.15 **G** The following factors may be taken into account in determining whether or not a *person's* behaviour 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 was with a view to facilitating or ensuring the effective carrying out of the order; or
- (4) the extent to which the *person's* behaviour was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.

1.3.16 **G** [deleted]

Descriptions of behaviour that do not indicate insider dealing and relevant factors: takeover and merger activity

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

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

- 1.3.18** **G** Categories of *inside information* relevant to ■ MAR 1.3.17 G:
- (1) information that an *offeror* or potential *offeror* is going to make, or is considering making, an offer for the target; and
 - (2) information that an *offeror* or potential *offeror* may obtain through due diligence.
- 1.3.19** **G** The following factor may be taken into account in determining whether or not a *person's* behaviour is for the purpose of him proceeding with a merger with the target *company* or a public takeover of the target *company*, and is an indication that it is:
- (1) whether the transactions concerned are in the target *company's* shares.
 - (2) [deleted]
- Examples of insider dealing**
- 1.3.20** **G** The following 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 *emissions 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 takeover 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 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 reasonably expected to be disclosed in accordance with market practice or custom on the LME. 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 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 could constitute *insider dealing*.

1.3.23 **G** The following connected 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 *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 *trading venue*, based on the same information, provided that the information is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the *EU* or national level, market rules, contract, practice or custom, on the relevant commodity futures market.

1.3.24 **G** ESMA has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[**Note:** the guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>.]

1.4 Unlawful disclosure

1.4.1 **UK** [deleted]

1.4.1A **EU** [article 10 of the *Market Abuse Regulation*]

Descriptions of behaviour that indicate unlawful disclosure

1.4.2 **G** The following behaviours are indications of *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 indicate unlawful disclosure

1.4.3 **G** The following behaviour indicates that a *person* is acting in the normal exercise of their employment, profession or duties, 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 **G** Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) may not amount to *unlawful disclosure* .
- 1.4.4A **G** Disclosure of *inside information* by a *broker* to a potential buyer regarding the fact that the seller of *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:
- 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;
- may not, of itself, amount to *unlawful disclosure* .
- Factors to be taken into account in determining whether or not behaviour amounts to unlawful disclosure**.....
- 1.4.5 **G** 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 *trading venue* or 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.
 - (3) [deleted]
- 1.4.5A **G** [deleted]

Examples of unlawful disclosure

1.4.6

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The following 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* .

1.4.7

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[deleted]

1.6 Manipulating transactions

1.6.1 **UK** [deleted]

1.6.1-A **EU** [article 12(1)(b) of the *Market Abuse Regulation*]

1.6.1A **UK** [deleted]

Giving false or misleading impressions

1.6.2 **E** [deleted]

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

1.6.3 **G** Entering into a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, does not of itself indicate behaviour described in Annex IA(c) of the *Market Abuse Regulation*.

1.6.4 **E** [deleted]

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

Factors to be taken into account: legitimate reasons

1.6.5 **G** The following factors are to be taken into account when considering whether 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 *financial instrument* ;
- (2) if the *person* has another, illegitimate, reason behind the transactions, bid or order to trade; and
- (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.

1.6.6 **G** The following factors are to be taken into account when considering whether 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 *trading venue* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

1.6.7 G It is unlikely that the behaviour of *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 manipulation. Such behaviour, generally speaking, improves the liquidity and efficiency of *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 [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 G The following factors are to be taken into account in determining whether or not a *person's* behaviour amounts to manipulating transactions as described in article 12(1)(a)(ii) of the *Market Abuse Regulation*:

- (1) the extent to which the *person* had a direct or indirect interest in the price or value of the *financial instrument* ;
- (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 *financial instrument* ;

Factors to be taken into account: abusive squeezes

1.6.11 **G** The following factors are to be taken into account when determining whether a *person* has engaged in 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 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.

1.6.14 **E** [deleted]

Examples of manipulating transactions

1.6.15 **G** The following are examples of behaviour that may amount to manipulating transactions as described in article 12(1)(a)(ii) of the *Market Abuse Regulation*:

- (1) [deleted]
- (2) [deleted]
- (3) a trader holds a short position that will show a profit if a particular *financial instrument* , which is currently a component of an index, falls out of that index. The question of whether the *financial instrument* will fall out of the index depends on the closing price of the *financial instrument* . He places a large *sell* order in this *financial instrument* just before the close of trading. His purpose is to position the price of the *financial instrument* at a false, misleading, abnormal or artificial level so that the *financial instrument* will drop out of the index so as to make a profit; and
- (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to *buy* relatively illiquid *shares*, which are also components of his portfolio, to be executed at or just before the close. His purpose is to position the price of the *shares* at a false, misleading, abnormal or artificial level.

1.6.16 **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 Manipulating devices

1.7.1 **UK** [deleted]

1.7.1-A **EU** [article 12(1)(b) of the *Market Abuse Regulation*]

1.7.1A **UK** [deleted]

Descriptions of behaviour that amount to manipulating devices
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1.7.2 **E** [deleted]

[Note: Article 12(2)(d) *Market Abuse Regulation*]

**Factors to be taken into account in determining whether or not
behaviour amounts to manipulating devices**
.....

1.7.3 **E** [deleted]

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

1.8 Dissemination

1.8.1 **UK** [deleted]

1.8.1A **EU** [article 12(1)(c) of the *Market Abuse Regulation*]

1.8.2 **UK** [deleted]

Descriptions of behaviour that amount to dissemination

1.8.3 **E** [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 dissemination

1.8.4 **G** If a normal and reasonable *person* would know or 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 ought to have known that it was false or misleading.

1.8.5 **G** 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.

Example of dissemination

1.8.6 **E** The following is an example of behaviour which may amount to a contravention of article 12(1)(c) of the *Market Abuse Regulation*:

- (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 *financial instruments* and the *person* knows that the information is false or misleading.

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



1.9 Misleading behaviour & distortion

1.9.1 UK [deleted]

1.9.1-A EU [article 12(1)(c) of the *Market Abuse Regulation*]

1.9.1A UK [deleted]

1.9.2 E [deleted]

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

1.9.2B R [deleted]

Short selling in relation to financial sector companies

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

1.9.2D E (1) [deleted]
(2) [deleted]
(a) [deleted]
(b) [deleted]
(2A) [deleted]
(3) [deleted]

(4) [deleted]

(5) [deleted]

1.9.2E **G** [deleted]

1.9.3 **C** [deleted]

1.9.4 **E** [deleted]

1.9.5 **E** [deleted]

1.10 Statutory exceptions

Behaviour that does not amount to market abuse

- 1.10.1 **G** (1) *Behaviour* which conforms with article 5 of the *Market Abuse Regulation* or with a directly applicable *EU* regulation made under article 5 of the *Market Abuse Regulation* will not amount to *market abuse*.
- (2) [deleted]
- (3) [deleted]

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*.
- (1) [deleted]
- (2) [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, is unlikely to, of itself, amount to *market abuse*, if:
- (1) the rule is one of those specified in the table in ■ MAR 1.10.5G ;
 - (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 be unlikely to, of itself, amount to market abuse (This table belongs to ■ MAR 1.10.4G):

| <i>Takeover Code</i> provisions: | |
|--|---|
| Disclosure of information which is not generally available | 1(a) 2.1 , 2.7, 2.11, 8 20.1 21.3, 21.4 28.1 30.1, 30.5 |
| Standards of care | 2.8 first sentence and note 4 19.1, 19.7 20.6 second sentence 23.1 plus notes 28.1 |
| Timing of announcements, documentation and dealings | 2.2, 2.6 5.4 6.2(b) 7.1 11.1 note 6 only 17.1 21.2 note 4 only 24.1(a) 25.1(a) 31.6(d), 31.9 33 (in so far as it refers to 31.6(d) and 31.9 only) |
| Content of announcements | 2.4 (a) and (b) 19.3 |

1.10.6

G

Behaviour conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offerors* and concert parties) 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.

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

| | | |
|--------|----|---|
| 1.1.1 | G | [deleted] |
| 1.1.2 | G | [deleted] |
| 1.1.3 | EU | [deleted] |
| 1.1.4 | EU | [deleted] |
| 1.1.5 | EU | [deleted] |
| 1.1.6 | G | [deleted] |
| 1.1.7 | G | [deleted] |
| 1.1.8 | G | The <i>FCA</i> accepts as " <i>adequate public disclosure</i> ": (1) disclosure through a <i>regulatory information service</i> or otherwise in accordance with <i>Part 6 rules</i> ; or (2) the equivalent disclosure mechanism required to be used in relation to the relevant <i>trading venue</i> . |
| 1.1.9 | EU | [deleted] |
| 1.1.10 | EU | [deleted] |
| 1.1.11 | G | [deleted] |
| 1.1.12 | EU | [deleted] |
| 1.1.13 | G | [deleted] |

1.1.14 G [deleted]

Accepted Market Practices

[article 13 of the *Market Abuse Regulation*.]

