

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 7 – Offences Relating to Financial Services

Section 89: misleading statements

546. *Section 89* creates a criminal offence relating to the making of a statement which the person making it knows to be false or misleading in a material respect or is reckless as to whether it is false or misleading, or the dishonest concealment of any material fact. A person commits an offence if the person makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether they will induce, another person to engage in, or refrain from engaging in, market activity in relation to a relevant agreement or relevant investment (defined under *section 93*). This largely restates the effect of section 397(2) of FSMA.

Section 90: misleading impressions

547. *Section 90* creates a criminal offence relating to doing any act or engaging in a course of conduct which creates a false or misleading impression as to the market in or price or value of any relevant investment (defined under section 93) where the person doing the act or engaging in the conduct intends to create the impression. If the person intends to induce another person to deal or refrain from dealing in the investment, the person commits an offence. Alternatively, if the person knows or is reckless as to whether the impression is false or misleading and intends by creating the impression that a gain may be made or a loss avoided, the person commits an offence. This provision replicates and extends the effect of section 397(3) of FSMA.

Section 91: misleading statements etc in relation to benchmarks

548. *Section 91* creates a new offence relating to the making of a false or misleading statement, or the creation of a false or misleading impression, in connection with the setting of a relevant benchmark (defined under section 93). The person making the statement or creating the impression must know or be reckless as to whether the statement or impression is false or misleading. It is immaterial for this offence what the motive of the person is (for example, there is no requirement that the person be acting with the intention of inducing a person to engage in market activity or with the intention of making a gain or avoiding a loss).

Section 92: penalties

549. *Section 92* provides for the penalties on a conviction for an offence under Part 7.

Section 93: interpretation of Part 7

550. *Section 93* provides that “relevant agreement”, “relevant benchmark” and “relevant investment” (which determine the scope of the offences under Part 7) are to be specified in an order made by the Treasury.

Section 94: affirmative procedure for certain orders

551. *Section 94* provides that the first order to be made under section 93 and any subsequent order which extends the scope of an offence under Part 7 is to be subject to the draft affirmative procedure. Other orders under section 93 are subject to the negative procedure.

Section 95: consequential repeal

552. *Section 95* repeals section 397 of FSMA.