



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART VIII

PENALTIES FOR MARKET ABUSE

The code

119 The code.

- (1) The [^{F1}FCA] must prepare and issue a code containing such provisions as the [^{F1}FCA] considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.
- (2) The code may among other things specify—
 - (a) descriptions of behaviour that, in the opinion of the [^{F1}FCA], amount to market abuse;
 - (b) descriptions of behaviour that, in the opinion of the [^{F1}FCA], do not amount to market abuse;
 - (c) factors that, in the opinion of the [^{F1}FCA], are to be taken into account in determining whether or not behaviour amounts to market abuse.
 - [^{F2}(d) descriptions of behaviour that are accepted market practices in relation to one or more specified markets;
 - (e) descriptions of behaviour that are not accepted market practices in relation to one or more specified markets.]
- [^{F3}(2A) In determining, for the purposes of subsections (2)(d) and (2)(e) or otherwise, what are and what are not accepted market practices, the [^{F1}FCA] must have regard to the factors and procedures laid down in Articles 2 and 3 respectively of Commission Directive [2004/72/ EC](#) of 29 April 2004 implementing Directive [2003/6/ EC](#) of the European Parliament and of the Council.]
- (3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.

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- (4) The [F¹FCA] may at any time alter or replace the code.
- (5) If the code is altered or replaced, the altered or replacement code must be issued by the [F¹FCA].
- (6) A code issued under this section must be published by the [F¹FCA] in the way appearing to the [F¹FCA] to be best calculated to bring it to the attention of the public.
- (7) The [F¹FCA] must, without delay, give the Treasury a copy of any code published under this section.
- (8) The [F¹FCA] may charge a reasonable fee for providing a person with a copy of the code.

Textual Amendments

- F1** Word in s. 119 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), Sch. 9 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2** S. 119(2)(d)(e) inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 5, **Sch. 2 para. 2(2)**
- F3** S. 119(2A) inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 5, **Sch. 2 para. 2(3)**

120 Provisions included in the [F⁴FCA's] code by reference to the City Code.

- (1) The [F⁴FCA] may include in a code issued by it under section 119 (“the [F⁴FCA's] code”) provision to the effect that in its opinion behaviour conforming with the City Code—
 - (a) does not amount to market abuse;
 - (b) does not amount to market abuse in specified circumstances; or
 - (c) does not amount to market abuse if engaged in by a specified description of person.
- (2) But the Treasury’s approval is required before any such provision may be included in the [F⁴FCA's] code.
- (3) If the [F⁴FCA's] code includes provision of a kind authorised by subsection (1), the [F⁴FCA] must keep itself informed of the way in which the Panel on Takeovers and Mergers interprets and administers the relevant provisions of the City Code.
- (4) “City Code” means the City Code on Takeovers and Mergers issued by the Panel as it has effect at the time when the behaviour occurs.
- (5) “Specified” means specified in the [F⁴FCA's] code.

Textual Amendments

- F4** Word in s. 120 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), Sch. 9 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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121 Codes: procedure.

- (1) Before issuing a code under section 119, the [F⁵FCA] must publish a draft of the proposed code in the way appearing to the [F⁵FCA] to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by—
 - (a) a cost benefit analysis; and
 - (b) notice that representations about the proposal may be made to the [F⁵FCA] within a specified time.
- (3) Before issuing the proposed code, the [F⁵FCA] must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the [F⁵FCA] issues the proposed code it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2)(b); and
 - (b) its response to them.
- (5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the [F⁵FCA], significant—
 - (a) the [F⁵FCA] must (in addition to complying with subsection (4)) publish details of the difference; and
 - (b) those details must be accompanied by a cost benefit analysis.
- (6) Subsections (1) to (5) do not apply if the [F⁵FCA] considers that there is an urgent need to publish the code.
- (7) Neither subsection (2)(a) nor subsection (5)(b) applies if the [F⁵FCA] considers—
 - (a) that, making the appropriate comparison, there will be no increase in costs; or
 - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (8) The [F⁵FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (9) This section also applies to a proposal to alter or replace a code.
- [F⁶(10) Cost benefit analysis” means—
 - (a) an analysis of the costs together with an analysis of the benefits that will arise—
 - (i) if the proposed code is issued, or
 - (ii) if subsection (5)(b) applies, from the code that has been issued, and
 - (b) subject to subsection (10A), an estimate of those costs and of those benefits.
- (10A) If, in the opinion of the FCA—
 - (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.]
- (11) “The appropriate comparison” means—

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- (a) in relation to subsection (2)(a), a comparison between the overall position if the code is issued and the overall position if it is not issued;
- (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the code and the overall position before it was issued.

Textual Amendments

- F5** Word in ss. 121-130A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 9\(1\)\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F6** S. 121(10)(10A) substituted for s. 121(10) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 9\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

122 Effect of the code.

- (1) If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the [^{F5}FCA's] opinion, does not amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.
- (2) Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

Textual Amendments

- F5** Word in ss. 121-130A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 9\(1\)\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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