



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART VIII

#### PENALTIES FOR MARKET ABUSE

##### *Market abuse*

#### **118 Market abuse**

- (1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert)—
- (a) which occurs in relation to qualifying investments traded on a market to which this section applies;
  - (b) which satisfies any one or more of the conditions set out in subsection (2); and
  - (c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.
- (2) The conditions are that—
- (a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;
  - (b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;
  - (c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.
- (3) The Treasury may by order prescribe (whether by name or by description)—

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- (a) the markets to which this section applies; and
  - (b) the investments which are qualifying investments in relation to those markets.
- (4) The order may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.
- (5) Behaviour is to be disregarded for the purposes of subsection (1) unless it occurs—
- (a) in the United Kingdom; or
  - (b) in relation to qualifying investments traded on a market to which this section applies which is situated in the United Kingdom or which is accessible electronically in the United Kingdom.
- (6) For the purposes of this section, the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which—
- (a) occurs in relation to anything which is the subject matter, or whose price or value is expressed by reference to the price or value, of those qualifying investments; or
  - (b) occurs in relation to investments (whether qualifying or not) whose subject matter is those qualifying investments.
- (7) 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 this section as being generally available to them.
- (8) Behaviour does not amount to market abuse if it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse.
- (9) Any reference in this Act to a person engaged in market abuse is a reference to a person engaged in market abuse whether alone or with one or more other persons.
- (10) In this section—
- “behaviour” includes action or inaction;
  - “investment” is to be read with section 22 and Schedule 2;
  - “regular user”, in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question.

### *The code*

## **119 The code**

- (1) The Authority must prepare and issue a code containing such provisions as the Authority 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 Authority, amount to market abuse;
  - (b) descriptions of behaviour that, in the opinion of the Authority, do not amount to market abuse;
  - (c) factors that, in the opinion of the Authority, are to be taken into account in determining whether or not behaviour amounts to market abuse.

- (3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.
- (4) The Authority 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 Authority.
- (6) A code issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (7) The Authority must, without delay, give the Treasury a copy of any code published under this section.
- (8) The Authority may charge a reasonable fee for providing a person with a copy of the code.

## **120 Provisions included in the Authority’s code by reference to the City Code**

- (1) The Authority may include in a code issued by it under section 119 (“the Authority’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 Authority’s code.
- (3) If the Authority’s code includes provision of a kind authorised by subsection (1), the Authority 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 Authority’s code.

## **121 Codes: procedure**

- (1) Before issuing a code under section 119, the Authority must publish a draft of the proposed code in the way appearing to the Authority 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 Authority within a specified time.
- (3) Before issuing the proposed code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the Authority issues the proposed code it must publish an account, in general terms, of—

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- (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 Authority, significant—
- (a) the Authority 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 Authority considers that there is an urgent need to publish the code.
- (7) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority 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 Authority 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.
- (10) “Cost benefit analysis” means an estimate of the costs together with an analysis of the benefits that will arise—
- (a) if the proposed code is issued; or
  - (b) if subsection (5)(b) applies, from the code that has been issued.
- (11) “The appropriate comparison” means—
- (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.

## **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 Authority’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.

### *Power to impose penalties*

## **123 Power to impose penalties in cases of market abuse**

- (1) If the Authority is satisfied that a person (“A”)—
  - (a) is or has engaged in market abuse, or
  - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,

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

- (2) But the Authority may not impose a penalty on a person if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—
  - (a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (3) If the Authority is entitled to impose a penalty on a person under this section it may, instead of imposing a penalty on him, publish a statement to the effect that he has engaged in market abuse.

#### *Statement of policy*

### **124 Statement of policy**

- (1) The Authority must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 123; and
  - (b) the amount of penalties under that section.
- (2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in question and, if it did, how serious that effect was;
  - (b) the extent to which that behaviour was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) A statement issued under this section must include an indication of the circumstances in which the Authority is to be expected to regard a person as—
  - (a) having a reasonable belief that his behaviour did not amount to market abuse; or
  - (b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.
- (4) The Authority may at any time alter or replace a statement issued under this section.
- (5) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.
- (6) In exercising, or deciding whether to exercise, its power under section 123 in the case of any particular behaviour, the Authority must have regard to any statement published under this section and in force at the time when the behaviour concerned occurred.
- (7) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (8) The Authority may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (9) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

## **125 Statement of policy: procedure**

- (1) Before issuing a statement of policy under section 124, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

### *Procedure*

## **126 Warning notices**

- (1) If the Authority proposes to take action against a person under section 123, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

## **127 Decision notices and right to refer to Tribunal**

- (1) If the Authority decides to take action against a person under section 123, it must give him a decision notice.
- (2) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (3) A decision notice about the publication of a statement must set out the terms of the statement.
- (4) If the Authority decides to take action against a person under section 123, that person may refer the matter to the Tribunal.

### *Miscellaneous*

#### **128 Suspension of investigations**

- (1) If the Authority considers it desirable or expedient because of the exercise or possible exercise of a power relating to market abuse, it may direct a recognised investment exchange or recognised clearing house—
  - (a) to terminate, suspend or limit the scope of any inquiry which the exchange or clearing house is conducting under its rules; or
  - (b) not to conduct an inquiry which the exchange or clearing house proposes to conduct under its rules.
- (2) A direction under this section—
  - (a) must be given to the exchange or clearing house concerned by notice in writing; and
  - (b) is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.
- (3) The Authority’s powers relating to market abuse are its powers—
  - (a) to impose penalties under section 123; or
  - (b) to appoint a person to conduct an investigation under section 168 in a case falling within subsection (2)(d) of that section.

#### **129 Power of court to impose penalty in cases of market abuse**

- (1) The Authority may on an application to the court under section 381 or 383 request the court to consider whether the circumstances are such that a penalty should be imposed on the person to whom the application relates.
- (2) The court may, if it considers it appropriate, make an order requiring the person concerned to pay to the Authority a penalty of such amount as it considers appropriate.

#### **130 Guidance**

- (1) The Treasury may from time to time issue written guidance for the purpose of helping relevant authorities to determine the action to be taken in cases where behaviour occurs which is behaviour—
  - (a) with respect to which the power in section 123 appears to be exercisable; and
  - (b) which appears to involve the commission of an offence under section 397 of this Act or Part V of the Criminal Justice Act 1993 (insider dealing).
- (2) The Treasury must obtain the consent of the Attorney General and the Secretary of State before issuing any guidance under this section.
- (3) In this section “relevant authorities”—
  - (a) in relation to England and Wales, means the Secretary of State, the Authority, the Director of the Serious Fraud Office and the Director of Public Prosecutions;
  - (b) in relation to Northern Ireland, means the Secretary of State, the Authority, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland.
- (4) Subsections (1) to (3) do not apply to Scotland.

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- (5) In relation to Scotland, the Lord Advocate may from time to time, after consultation with the Treasury, issue written guidance for the purpose of helping the Authority to determine the action to be taken in cases where behaviour mentioned in subsection (1) occurs.

**131 Effect on transactions**

The imposition of a penalty under this Part does not make any transaction void or unenforceable.