



Financial Services Act 2012

2012 CHAPTER 21

PART 7

OFFENCES RELATING TO FINANCIAL SERVICES

89 Misleading statements

- (1) Subsection (2) applies to a person (“P”) who—
 - (a) makes a statement which P knows to be false or misleading in a material respect,
 - (b) makes a statement which is false or misleading in a material respect, being reckless as to whether it is, or
 - (c) dishonestly conceals any material facts whether in connection with a statement made by P or otherwise.
- (2) P commits an offence if P makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether making it or concealing them may induce, another person (whether or not the person to whom the statement is made)—
 - (a) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement, or
 - (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.
- (3) In proceedings for an offence under subsection (2) brought against a person to whom that subsection applies as a result of paragraph (a) of subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with—
 - (a) price stabilising rules,
 - (b) control of information rules, or
 - (c) the relevant provisions of [Commission Regulation \(EC\) No 2273/2003](#) of 22 December 2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (4) Subsections (1) and (2) do not apply unless—

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- (a) the statement is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement to be made or the facts to be concealed,
- (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom, or
- (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

90 Misleading impressions

- (1) A person (“P”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments commits an offence if—
 - (a) P intends to create the impression, and
 - (b) the case falls within subsection (2) or (3) (or both).
- (2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.
- (3) The case falls within this subsection if—
 - (a) P knows that the impression is false or misleading or is reckless as to whether it is, and
 - (b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.
- (4) Those results are—
 - (a) the making of a gain for P or another, or
 - (b) the causing of loss to another person or the exposing of another person to the risk of loss.
- (5) References in subsection (4) to gain or loss are to be read in accordance with subsections (6) to (8).
- (6) “Gain” and “loss”—
 - (a) extend only to gain or loss in money or other property of any kind;
 - (b) include such gain or loss whether temporary or permanent.
- (7) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (8) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.
- (9) In proceedings brought against any person (“D”) for an offence under subsection (1) it is a defence for D to show—
 - (a) to the extent that the offence results from subsection (2), that D reasonably believed that D’s conduct would not create an impression that was false or misleading as to the matters mentioned in subsection (1),
 - (b) that D acted or engaged in the conduct—
 - (i) for the purpose of stabilising the price of investments, and

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- (ii) in conformity with price stabilising rules,
 - (c) that D acted or engaged in the conduct in conformity with control of information rules, or
 - (d) that D acted or engaged in the conduct in conformity with the relevant provisions of [Commission Regulation \(EC\) No 2273/2003](#) of 22 December 2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (10) This section does not apply unless—
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
 - (b) the false or misleading impression is created there.

91 Misleading statements etc in relation to benchmarks

- (1) A person (“A”) who makes to another person (“B”) a false or misleading statement commits an offence if—
- (a) A makes the statement in the course of arrangements for the setting of a relevant benchmark,
 - (b) A intends that the statement should be used by B for the purpose of the setting of a relevant benchmark, and
 - (c) A knows that the statement is false or misleading or is reckless as to whether it is.
- (2) A person (“C”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the price or value of any investment or as to the interest rate appropriate to any transaction commits an offence if—
- (a) C intends to create the impression,
 - (b) the impression may affect the setting of a relevant benchmark,
 - (c) C knows that the impression is false or misleading or is reckless as to whether it is, and
 - (d) C knows that the impression may affect the setting of a relevant benchmark.
- (3) In proceedings for an offence under subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with—
- (a) price stabilising rules,
 - (b) control of information rules, or
 - (c) the relevant provisions of [Commission Regulation \(EC\) No 2273/2003](#) of 22 December 2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (4) In proceedings brought against any person (“D”) for an offence under subsection (2) it is a defence for D to show—
- (a) that D acted or engaged in the conduct—
 - (i) for the purpose of stabilising the price of investments, and
 - (ii) in conformity with price stabilising rules,
 - (b) that D acted or engaged in the conduct in conformity with control of information rules, or

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- (c) that D acted or engaged in the conduct in conformity with the relevant provisions of [Commission Regulation \(EC\) No 2273/2003](#) of 22 December 2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (5) Subsection (1) does not apply unless the statement is made in or from the United Kingdom or to a person in the United Kingdom.
- (6) Subsection (2) does not apply unless—
 - (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
 - (b) the false or misleading impression is created there.

92 Penalties

- (1) A person guilty of an offence under this Part is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.
- (2) For the purpose of subsection (1)(a) “the applicable maximum term” is—
 - (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
 - (b) in Scotland, 12 months;
 - (c) in Northern Ireland, 6 months.

93 Interpretation of Part 7

- (1) This section has effect for the interpretation of this Part.
- (2) “Investment” includes any asset, right or interest.
- (3) “Relevant agreement” means an agreement—
 - (a) the entering into or performance of which by either party constitutes an activity of a kind specified in an order made by the Treasury, and
 - (b) which relates to a relevant investment.
- (4) “Relevant benchmark” means a benchmark of a kind specified in an order made by the Treasury.
- (5) “Relevant investment” means an investment of a kind specified in an order made by the Treasury.
- (6) Schedule 2 to FSMA 2000 (except paragraphs 25 and 26) applies for the purposes of subsections (3) and (5) with references to section 22 of that Act being read as references to each of those subsections.
- (7) Nothing in Schedule 2 to FSMA 2000, as applied by subsection (6), limits the power conferred by subsection (3) or (5).

(8) “Price stabilising rules” and “control of information rules” have the same meaning as in FSMA 2000.

(9) In this section “benchmark” has the meaning given in section 22(6) of FSMA 2000.

94 Affirmative procedure for certain orders

(1) This section applies to the first order made under section 93.

(2) This section also applies to any subsequent order made under that section which contains a statement by the Treasury that the effect of the proposed order would include one or more of the following—

- (a) that an activity which is not specified for the purposes of subsection (3)(a) of that section would become one so specified,
- (b) that an investment which is not a relevant investment would become a relevant investment;
- (c) that a benchmark which is not a relevant benchmark would become a relevant benchmark.

(3) A statutory instrument containing (alone or with other provisions) an order to which this section applies may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

95 Consequential repeal

Section 397 of FSMA 2000 (which relates to misleading statements and practices and is superseded by the provisions of this Part) is repealed.