



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART VIII

#### PENALTIES FOR MARKET ABUSE

##### *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 <sup>M1</sup>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.

#### **Marginal Citations**

**M1** 1988 c. 36.

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## 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 <sup>M2</sup>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.
- (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.

### Marginal Citations

M2 1993 c. 36.

VALID FROM 01/07/2005

### <sup>F1</sup> Interpretation and supplementary provision

- <sup>F1</sup>130A
- (1) The Treasury may by order specify (whether by name or description)—
    - (a) the markets which are prescribed markets for the purposes of specified provisions of this Part, and
    - (b) the investments that are qualifying investments in relation to the prescribed markets.
  - (2) An order may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

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(3) In this Part—

“accepted market practices” means practices that are reasonably expected in the financial market or markets in question and are accepted by the Authority or, in the case of a market situated in another EEA State, the competent authority of that EEA State within the meaning of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),

“behaviour” includes action or inaction,

“dealing”, in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it,

“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,

“related investment”, in relation to a qualifying investment, means an investment whose price or value depends on the price or value of the qualifying investment.

(4) Any reference in this Act to a person engaged in market abuse is to a person engaged in market abuse either alone or with one or more other persons.]]

**Textual Amendments**

**F1** S. 130A 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. 3**

**131 Effect on transactions.**

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

VALID FROM 01/07/2005

**[<sup>F2</sup>131A] Protected Disclosures**

- [<sup>F2</sup>131A]**
- (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).
  - (2) The first condition is that the information or other matter—
    - (a) causes the person making the disclosure ( the discloser) to know or suspect, or
    - (b) gives him reasonable grounds for knowing or suspecting, that another person has engaged in market abuse.
  - (3) The second condition is that the information or other matter disclosed came to the discloser in the course of his trade, profession, business or employment.

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- (4) The third condition is that the disclosure is made to the Authority or to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.
- (5) A disclosure to a nominated officer is a disclosure which is made to a person nominated by the discloser's employer to receive disclosures under this section, and is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.
- (6) For the purposes of this section, references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward) and references to employment must be construed accordingly.]]

#### Textual Amendments

- F2** S. 131A 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. 4**

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