

SCHEDULE 2

Regulation 5

AMENDMENTS TO PART 8 OF THE 2000 ACT

1. For section 118 (market abuse), substitute—

**“Market abuse**

**118.**—(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) which—

- (a) occurs in relation to—
  - (i) qualifying investments admitted to trading on a prescribed market,
  - (ii) qualifying investments in respect of which a request for admission to trading on such a market has been made, or
  - (iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and
- (b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).

(2) The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.

(3) The second is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.

(4) The third is where the behaviour (not falling within subsection (2) or (3))—

- (a) 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 be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in qualifying investments should be effected, and
- (b) is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

(5) The fourth is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which—

- (a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or
- (b) secure the price of one or more such investments at an abnormal or artificial level.

(6) The fifth is where the behaviour consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

(7) The sixth is where the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

(8) The seventh is where the behaviour (not falling within subsection (5), (6) or (7))—

- (a) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, or

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- (b) would be, or would be likely to be, regarded by a regular user of the market as behaviour that would distort, or would be likely to distort, the market in such an investment,

and the behaviour is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

(9) Subsections (4) and (8) and the definition of “regular user” in section 130A(3) cease to have effect on 30 June 2008 and subsection (1)(b) is then to be read as no longer referring to those subsections.

### **Supplementary provision about certain behaviour**

**118A.**—(1) Behaviour is to be taken into account for the purposes of this Part only if it occurs—

- (a) in the United Kingdom, or
- (b) in relation to —
  - (i) qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom,
  - (ii) qualifying investments for which a request for admission to trading on such a prescribed market has been made, or
  - (iii) in the case of section 118(2) and (3), investments which are related investments in relation to such qualifying investments.

(2) For the purposes of subsection (1), as it applies in relation to section 118(4) and (8), a prescribed market accessible electronically in the United Kingdom is to be treated as operating in the United Kingdom.

(3) For the purposes of section 118(4) and (8), the behaviour that is to be regarded as occurring in relation to qualifying investments includes behaviour which—

- (a) occurs in relation to anything that is the subject matter, or whose price or value is expressed by reference to the price or value of the qualifying investments, or
- (b) occurs in relation to investments (whether or not they are qualifying investments) whose subject matter is the qualifying investments.

(4) For the purposes of section 118(7), the dissemination of information by a person acting in the capacity of a journalist is to be assessed taking into account the codes governing his profession unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information.

(5) Behaviour does not amount to market abuse for the purposes of this Act if—

- (a) it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse,
- (b) it conforms 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, or
- (c) it is done by a person acting on behalf of a public authority in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.

(6) Subsections (2) and (3) cease to have effect on 30 June 2008.

## **Insiders**

**118B** For the purposes of this Part an insider is any person who has inside information—

- (a) as a result of his membership of an administrative, management or supervisory body of an issuer of qualifying investments,
- (b) as a result of his holding in the capital of an issuer of qualifying investments,
- (c) as a result of having access to the information through the exercise of his employment, profession or duties,
- (d) as a result of his criminal activities, or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.

## **Inside information**

**118C.**—(1) This section defines “inside information” for the purposes of this Part.

(2) In relation to qualifying investments, or related investments, which are not commodity derivatives, inside information is information of a precise nature which—

- (a) is not generally available,
- (b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and
- (c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

(3) In relation to qualifying investments or related investments which are commodity derivatives, inside information is information of a precise nature which—

- (a) is not generally available,
- (b) relates, directly or indirectly, to one or more such derivatives, and
- (c) users of markets on which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets.

(4) In relation to a person charged with the execution of orders concerning any qualifying investments or related investments, inside information includes information conveyed by a client and related to the client’s pending orders which—

- (a) is of a precise nature,
- (b) is not generally available,
- (c) relates, directly or indirectly, to one or more issuers of qualifying investments or to one or more qualifying investments, and
- (d) would, if generally available, be likely to have a significant effect on the price of those qualifying investments or the price of related investments.

(5) Information is precise if it—

- (a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and
- (b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.

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(6) Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

(7) For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any accepted market practices, which is —

- (a) routinely made available to the users of those markets, or
- (b) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market.

(8) 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 Part, as being generally available to them.”.

2.—(1) Section 119 (the code) is amended as follows.

(2) In subsection (2), after paragraph (c), insert—

- “(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.”.

(3) After subsection (2), insert—

“(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 Authority 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. After section 130 (guidance), insert—

#### “**Interpretation and supplementary provision**

**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.

(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.”.

4. After section 131 insert—

**“Protected Disclosures**

**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.

(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.”.