
EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive [2003/6/EC\(1\)](#) of the European Parliament and of the Council introduces a common EC legal regime on insider dealing and market manipulation. Implementation of this Directive is being effected in part by Regulations made by HM Treasury (the [Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 - S.I. 2005/ 381](#)) and in part by the Financial Services Authority using its powers to make rules under the Financial Services and Markets Act 2000 (c. 8). To the extent not so dealt with by those measures, it is implemented by these Regulations giving effect to Article 6.5 and to its implementing measure, Commission Directive [2003/125/EC\(2\)](#).

Regulation 2 includes a definition of investment recommendations to which the Regulations apply, namely recommendations as to the buying, selling, subscribing for or underwriting of “financial instruments” (shares, transferable securities etc traded on markets within the European Economic Area).

Regulation 3 deals with to whom and under what conditions the Regulations are to apply. Paragraphs (1) and (2) apply the Regulations to persons who produce or disseminate investment recommendations and whose profession or business is in the media (ie in radio, television, newspapers etc). Paragraphs (3) and (4) reflect the fact that a dual statutory and self-regulatory regime exists in the United Kingdom and that there are a complex variety of media, news and information services. By virtue of paragraph (3), the Regulations will not apply to persons if they are authorised and regulated by the Financial Services Authority in respect of the production or dissemination of investment recommendations. Media organisations, although they may be authorised, may not be regulated in respect of the production or dissemination of investment recommendations in the course of their media activities and so their exclusion from the Regulations will depend upon whether they meet the self-regulatory requirements of paragraph (4). For this purpose they must be covered by one of the self-regulatory codes (the codes of practice, standards or guidelines issued by the Press Complaints Commission, the Office of Communications and the British Broadcasting Corporation) or by an appropriate system or procedure with respect to the presentation of investment recommendations and conflicts of interest. They must also make reference to the relevant code, system or procedure in the publication, programme etc in which the recommendation appears.

Part 2 (regulations 4 to 7) contains provisions relating to the disclosure of the identity of the producers of investment recommendations and their fair presentation, and the disclosure of financial interests and conflicts of interest. The requirements may be adapted in certain respects for non-written recommendations (ie those broadcast on television or radio or on a web-site) so as to avoid disproportionate requirements.

Part 3 (regulations 8 to 11) contains similar provisions as to disclosure required of persons disseminating investment recommendations that have been produced by a third party, in particular in cases where the recommendation has been altered or been summarised.

In Part 4, regulation 12 defines the territorial scope of the Regulations and regulation 13 provides that an action in damages may, in certain circumstances, be brought for contravention of the Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Capital Markets and Governance Team, HM Treasury, 1 Horse Guards

(1) OJNo. L 96, 12.04.2003, p.16.

(2) OJ No. L 339, 24.12.2003, p.73.

Status: *This is the original version (as it was originally made).*

Road, London SW1A 2HQ. A Transposition Note showing how the main provisions of the Market Abuse Directive will be transposed into UK law is available from the same address. Both documents are also available on HM Treasury's website (www.hm-treasury.gov.uk).