

Code of Market Conduct (CMC)

*In this attachment underlining indicates new text and striking through indicates deleted text.



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1 INTRODUCTION

Purpose

- (1) The purpose of the Code of Market Conduct ("CMC") is to supplement the Market Abuse provisions in Parts 8 and 9 of the Financial Services and Markets Regulations 2015 ("FSMR").

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Structure

- (4) The Chapters in the CMC generally set out for each type of Market Abuse:
- (a) the text of the prohibition in FSMR and relevant definitions;
 - (b) the Regulator's interpretation of elements of the prohibition in FSMR (including factors it may take into account in determining whether or not there has been a Contravention of section 98 of FSMR);
 - (c) general or specific examples of conduct that in the Regulator's view may contravene the prohibition; and
 - (d) where relevant, defences in the FSMR.

Where the CMC sets out the text of a prohibition, a definition or a defence, it sometimes does so in abbreviated form to assist the reader. For the precise terms, readers should refer to the FSMR itself.

Terminology

- (5) Defined terms are identified throughout the CMC by the capitalisation of a word or term and are defined in the Glossary ("GLO"). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.
- (6) Unless the context otherwise requires, where the CMC refers to:
- (a) Parts 8 and 9, the reference is to Parts 8 and 9 of the FSMR;
 - (b) a section, the reference is to a section in the FSMR;
 - (c) a prohibition, the reference is to a section in Parts 8 and 9 of the FSMR that prohibits specified conduct in Market Abuse;
 - (d) Market Abuse, the reference is to conduct which contravenes a provision in section 98 and falls into the scope of behaviours outlined in Parts 8 and 9 of the FSMR; and
 - (e) Trading Information, the reference is to information referred to in paragraph 5-2(9) of the CMC.

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Application to conduct within the ADGM

- (12) The Market Abuse ~~prohibition~~ at section 93(1) are 98 is expressed to apply to Behaviour in the ADGM, or in relation to Financial Instruments admitted to trading on a Prescribed Market situated or operating in the ADGM.

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Other provisions that apply to Prospectuses and Authorised Persons

- (17) If a misleading or deceptive statement or a material omission occurs in a Prospectus, then separate and specific prohibitions and defences are likely to apply. These are set out in sections 66, 67 and 68 of the FMSR.

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2 MARKET MANIPULATION

2-1 Introduction

- (1) Section 92(4) of the FMSR provides that market manipulation amounts to:

Behaviour [consisting] 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 Financial Instruments, Accepted Virtual Assets or Accepted Spot Commodities; or*
- (b) *secure the price of one or more such instruments at an abnormal or artificial level.*

- (2) The following provisions of this Chapter set out the Regulator's views on conduct that contravenes paragraphs (a) and (b) of section 92(4).

2-2 Market Manipulation

- (1) This provision sets out examples of conduct that, in the Regulator's view, may contravene ~~section 98 and fall into the scope of sections 92(4)(a) and (b) and. They are factors that the Regulator may take into account in when considering whether conduct contravenes those Articles~~ section 98.

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- (4) The following are some more specific examples of conduct that, in the Regulator's view, may ~~contravene fall into the scope of~~ sections 92(4)(a) or (b):

- (a) A, a trader, accumulates a large position in Commodity Derivatives (whose price will be relevant to the calculation of the settlement value of

another Derivative position he holds) just before the close of trading. A's purpose is to position the price of the Commodity Derivatives at an artificial level so as to make a profit from his Derivative position;

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General factors

- (5) In considering whether conduct may contravene section 98 and fall under the scope of sections 92(4)(a) or (b), the Regulator may take into account factors such as:
 - (a) the experience and knowledge of the users of the market in question;
 - (b) the structure of the market, including its reporting, notification and transparency requirements;
 - (c) the level of liquidity in the market;
 - (d) the legal and regulatory requirements of the market concerned;
 - (e) the identity and position of the person responsible for the conduct which has been observed; or
 - (f) the extent and nature of the visibility or disclosure of the person's activity.
- (6) The following factors may, in the Regulator's view, indicate that conduct contravenes section 98 and falls under the scope of sections 92(4)(a) or (b):
 - (a) if the transaction was executed in a particular way to create a false or misleading impression;
 - (b) if the order or transaction does not appear to have a legitimate economic rationale;
 - (c) if the person has another, illegitimate, reason for undertaking the transaction, bid or order to trade; or
 - (d) if the motivating purpose for the transaction is to induce others to trade in, bid for or to position or move the price of, a Financial Instrument.
- (7) The following factors are, in the Regulator's view, likely to indicate that conduct does not contravene sections 92(4)(a) or (b) section 98:
 - (a) if the conduct is pursuant to a prior legal or regulatory obligation owed to a third party; or
 - (b) if the transaction was carried out in a particular way to comply with the rules of the relevant Exchange about how such transactions are to be executed.

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(13) The following are specific examples of an abusive squeeze that, in the Regulator's view, may contravenefall into the scope of section 92(4)(b):

(a) during the course of a trading day on a Commodity Derivative Exchange, a trader rapidly builds up a position of more than 90% of the physical inventory underlying a crude oil contract. The trader fails to Offer to lend the crude oil back to other market participants at a reasonable commercial rate. The trader then unwinds his position in the Exchange's final settlement window at rapidly increasing prices, thereby cornering/squeezing the crude oil market. His conduct causes an abnormal movement in the price of crude oil contracts for forward month delivery; and

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(14) In considering whether a person has engaged in an abusive squeezethat contravenes, and under the scope of section 92(4)(b), the Regulator may take into account factors such as:

(a) the extent to which a person is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, conduct is less likely to amount to an abusive squeeze if a person is willing to lend the Financial Instrument, an Accepted Virtual Asset or an Accepted Spot Commodity or the underlying Financial Instrument, an Accepted Virtual Asset or an Accepted Spot Commodity or commodity in question;

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2-3 Defences

(1) A number of defences to section 92(4) are set out in within section 92(4) itself.

Market Practice

(2) If a person establishes that they carried out the conduct or practice for legitimate reasons and in conformance with an Accepted Market Practice (see section 92(4)).

Price Stabilisation

(3) Section 93(3)(b) provides that:

Behaviour does not amount to Market Abuse for the purposes of these Regulations if ... it conforms with the Price Stabilising Rules...

(4) The effect of section 93(3)(b) is that if a Person establishes that they carried out Price Stabilisation in accordance with MKT 6.2, this conduct will not contravene section 92(4). MKT 6.2 sets out the relevant Rules relating to carrying on Price Stabilisation that must be complied with.

Buy-back Programmes

- (5) The effect of section 93(3)(a) is that if a Person establishes that they carried out a Buy-back Programme in accordance with MKT 6.2, this conduct will not contravene section 92(8). MKT 6.2 sets out the relevant Rules relating to carrying on a Buy-back Programme that must be complied with.

3 DISSEMINATION OF FALSE OR MISLEADING INFORMATION

Section 92(6) of the FSMR

- (1) Section 92(6) of the FSMR provides that Behaviour will amount to Market Abuse where it:

"...consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a Financial Instrument, an Accepted Virtual Asset or an Accepted Spot Commodity by a person who knew or could reasonably be expected to have known that the information was false or misleading".

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Examples of dissemination of false or misleading information

- (8) The following are examples of conduct that, in the Regulator's view, may contravene section 98 and fall under the scope of section 92(6):
- (a) spreading false or misleading rumours where the person making the dissemination knew or ought to have known that such rumours were false or misleading;
 - (b) spreading false or misleading information through the media – for example, a person posts information on an internet forum or via social media which contains false or misleading statements about the Takeover of a Company when the person knows that the information is not true;
 - (c) disclosure of false or misleading information by an Issuer – an Issuer discloses information to the market under its continuous disclosure obligations which gives a false or misleading impression about the true impact of a matter on its Financial Instruments (when it knew or could reasonably be expected to know that the information was false or misleading);
 - (d) reckless submission of false or misleading information regarding a Financial Instrument by a person responsible for such submission through a Regulatory Announcement Service; and
 - (e) ~~undertaking a course of conduct in order to give a false or misleading impression about a Financial Instrument, an Accepted Virtual Asset or an Accepted Spot Commodity.~~

4 USE OF FICTITIOUS DEVICES AND OTHER FORMS OF DECEPTION

Section 92(5) of the FSMR

- (1) Section 92(5) of the FSMR provides that Market Abuse constitutes Behaviour which:

"...consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance."

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Examples of fictitious devices etc

- (3) The following are examples of conduct that, in the Regulator's view, may contravene section 98 and fall under the scope of section 92(5):

- (a) voicing misleading opinions through the media - a person with access to the media (such as a newspaper columnist) enters into a transaction to buy a Financial Instrument and then voices an opinion in the media about the Financial Instrument (or its Issuer) which results or is likely to result in the moving of the price of the Financial Instrument in a direction favourable to the position held by the person. The person does not disclose his conflict of interest when voicing the opinion;

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5-2 What is "Inside Information"?

Definition

- (1) "Inside Information" is defined in section 95(2) as meaning information of a Precise nature which, in relation to Financial Instruments, Related Instruments, Accepted Virtual Assets or Accepted Spot Commodities which are not Commodity Derivatives:

- (a) is not generally available;

...

- (10) A person who executes a Client order does not ~~contravene~~ fall into the scope of section 92(2) (Insider Dealing) provided he complies with certain conditions (see paragraphs 5-7(8) and 5-7(9) of the CMC).

Carrying out of own trading intention

- (11) A person will form an intention to deal in a Financial Instrument, an Accepted Virtual Asset or an Accepted Spot Commodity before doing so. His carrying out of his own intention will not of itself ~~contravene~~ fall into the scope of section 92(2) (Insider Dealing).

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5-4 Dealing "On The Basis Of" Inside Information

Factors to be taken into account "on the basis of"

- (1) To contravene section 98 and fall into the scope of section 92(2), it is necessary that the Insider deals or attempts to deal "on the basis" of Inside Information. In the Regulator's view, if the Inside Information is the reason for, or a material influence on, the decision to deal or attempt to deal then this indicates that the dealing or attempt to deal is "on the basis" of the Inside Information.

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5-6 Examples Of Insider Dealing

- (1) The following are general examples of conduct that, in the Regulator's view, may constitute "Insider Dealing" type of Market Abuse, as set out in section 92(2):

- (a) a person who deals on the basis of Inside Information which does not amount to Trading Information;

...

- (2) The following are some more specific examples of conduct that, in the Regulator's view, may contravene fall into the scope of section 92(2) (Insider Dealing):

- (a) A is the CEO of a Company (an Authorised Person) that is about to release its semi-annual financial report. The report will disclose an outstanding claim that will have a significant impact on the Company's financial results. A passes this information on to family members who instruct their broker to sell their Shares in the Company. The family members conduct would have contravenedfallen into the scope of sections 92(2) (Insider Dealing) and A's conduct would have contravenedfallen into the scope of section 92(3) (providing Inside Information) (see Chapter 6 of the CMC);

- (b) B, an Employee of an oil and gas Company (an Authorised Person) becomes aware through his employment that the Company is about to enter into a new joint venture agreement with another Company that will potentially be very lucrative for the Company. Before the new joint venture is disclosed to the market, B buys Shares in his employer Company based on his expectation that the price of the Shares will rise significantly once the new joint venture is announced;

- (c) C, an Employee of a firm that is providing advisory services to a Company D (an Authorised Person), becomes aware of negotiations for a Takeover of D that is likely to be announced to the market imminently. C buys Shares in D based on his expectation that the Takeover will soon be announced;

- (d) D, a dealer on the trading desk of an Authorised Person dealing in Derivatives, accepts a large order from a Client to acquire a long position

in Futures. Before executing the order, D trades for the firm and on his personal account by taking a long position in those Futures, based on his expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his Client's order. Both trades would ~~contravene~~ have fallen into the scope of section 92(2) (Insider Dealing); and

- (e) Investment bank E has been in discussions with an Issuer about a potential issue of new Financial Instruments by the Issuer. In order to gauge potential investor interest and the terms of the issue, E raises the issue with a potential investor, F, to see if F would be prepared to commit to purchasing some of the Financial Instruments. F uses this Inside Information to deal in other Related Instruments.

Examples of Insider Dealing – Commodity Derivatives

- (3) The following are some more specific examples of conduct in relation to Commodity Derivatives markets or related spot markets that in the Regulator's view may contravene section 98 and fall into the scope of section 92(2) (Insider Dealing):
 - (a) a person who deals on the basis of Inside Information which does not amount to Trading Information, including information:
 - (i) required to be published by a trading venue in accordance with MIR Rule 3.3.12 about the aggregate positions held by different categories of Persons for the different Commodity Derivatives traded on their venue;
- ...

5-7 Defences

- (1) Some general examples of conduct that may be considered by the Regulator as a defence to Market Abuse include:
 - (a) the person is participating in a liquidity scheme which is operated by a Recognised Investment Exchange;
- ...

Market making

- (2) Dealing undertaken by a person solely in the course of the legitimate performance of his functions as a market maker on his own account will not ~~contravene~~ fall into the scope of section 92(2) (Insider Dealing).
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Execution of Client orders

- (8) The execution of an unsolicited Client order in Financial Instruments, Accepted Virtual Assets or Accepted Spot Commodities or Related Instruments while in possession of Inside Information if the person executing the order has not:
- (a) ~~contravened~~ fallen into the scope of section 92(3) i.e. disclosed Inside Information to the Client or procured the Client to deal in the Financial Instruments, Accepted Virtual Assets or Accepted Spot Commodities or Related Instruments for which the person executing the order has Inside Information (see Chapter 6 of the CMC); or
 - (b) otherwise advised or encouraged the Client in relation to the transaction.
- ...

- (14) A person may also be regarded as not contravening the Market Abuse provisions by dealing in Financial Instruments, Accepted Virtual Assets or Accepted Spot Commodities if:
 - (a) it had in operation at that time an effective information barrier which could reasonably be expected to ensure that the Inside Information was not communicated to the person or persons who made the decision to deal and that no advice with respect to the transaction or agreement was given to that person or any of those persons by an Insider; and
 - (b) the information was not communicated and no such advice was given.

For example, if Inside Information is held behind an effective information barrier, from the individuals who make the decision to deal, the dealing by the person may not ~~contravene~~ fall into the scope of section 92(2).

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6-2 Disclosure Of Inside Information

- (1) Section 92(3) of the FSMR provides that Market Abuse will constitute instances where:
- "...an Insider discloses Inside Information to another person otherwise than in the proper course of the exercise of his employment, profession or duties."*
- ...

Dealing not required

- (5) A person may ~~contravene~~ fall into the scope of section 92(3) by disclosing Inside Information to another person even though the recipient does not deal on the basis of that information. That is, it is sufficient that the Inside Information is disclosed to another person, other than in accordance with the Insider's employment, office, profession or duties, without the need to show that any harm was caused.

Examples of improper disclosure of Inside Information

- (6) The following are general examples of Behaviours that, in the Regulator's view, may amount to improper disclosure:
- (a) disclosure of Inside Information by the Director of an Issuer to another in a social context; and
 - (b) selective briefing of analysts by Directors of Issuers or others who are persons discharging managerial responsibilities.
- (7) The following are specific examples of conduct that, in the Regulator's view, may contravene fall into the scope of section 92(3):
- (a) A, a Director of a Company (an Authorised Person) has lunch with a friend, B, who has no connection with the Company or its advisers. A tells B that his Company has received a Takeover Offer that is at a premium to the current share price at which it is trading;
- ...

7 INDUCING ANOTHER PERSON TO DEAL

Section 102(2) of the FSMR

- (1) Section 102(2) of the FSMR provides that a person ("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 Designated Investment."*
- (2) Section 102(2) sets out a number of tests relating to knowledge of the person concerned. It requires that the person making or publishing a statement referred to in sections 102(1)(a) and (b) either knows or is reckless as to whether that statement is false or misleading in a material respect. In addition, the relevant person may contravene fall into the scope of section 102(2) above where they dishonestly conceal any material facts either in connection with a statement made by that person or otherwise (see section 102(1)(c)).

Examples of inducing another person to deal

- (3) The following are specific examples of conduct that, in the Regulator's view, may contravene fall into the scope of section 102(2):

- (a) a person involved in a boiler room operation cold calls investors and as part of his high pressure sales techniques makes exaggerated claims about the prospects of Shares in a Company. The Shares are in fact of little value, are relatively illiquid and are being sold at an inflated price;
- (b) a person, A, circulates marketing information about a Financial Instrument, an Accepted Virtual Asset or an Accepted Spot Commodity to a small group of potential investors; the marketing information includes exaggerated claims about the potential future performance of the investment when A knows or ought to know that there is no reasonable basis for making the claims;
- (c) a person, B, Offers to sell Shares he owns in a Company to a number of other private investors. B discloses a range of positive information about the Company's prospects but fails to disclose other information about financial difficulties the Company has recently experienced; and
- (d) C, a financial adviser who is managing Financial Instruments or Accepted Virtual Assets for a Client, records false or misleading information about the value of investments in the Client's portfolio. His purpose is to ensure that portfolio account statements sent to the Client show the value of the portfolio to be higher than its actual value, in order to induce the Client to provide funds to purchase further Financial Instruments or Accepted Virtual Assets.

The Regulator notes that some of the above examples may also contravene fall into the scope of other sections such as section 102 (misleading statements).

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