

Extract from the UK Financial Services and Markets Act 2000 (Sections 117 to 124)

- (a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State; PART VII
- (b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;
- (c) in any other case, notice given in accordance with the applicable law.
- (8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Modifications

117. The Treasury may by regulations—

- (a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;
- (b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

Power to modify this Part.

**PART VIII
PENALTIES FOR MARKET ABUSE**

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)— Market abuse.
- (a) which occurs in relation to qualifying investments traded on a market to which this section applies;
- (b) which satisfies any one or more of the conditions set out in subsection (2); and
- (c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.
- (2) The conditions are that—
- (a) the behaviour 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 or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;
- (b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;
- (c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.

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(3) The Treasury may by order prescribe (whether by name or by description)—

- (a) the markets to which this section applies; and
- (b) the investments which are qualifying investments in relation to those markets.

(4) The order may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

(5) Behaviour is to be disregarded for the purposes of subsection (1) unless it occurs—

- (a) in the United Kingdom; or
- (b) in relation to qualifying investments traded on a market to which this section applies which is situated in the United Kingdom or which is accessible electronically in the United Kingdom.

(6) For the purposes of this section, the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which—

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

(7) 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 section as being generally available to them.

(8) Behaviour does not amount to market abuse if it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse.

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

(10) In this section—

- "behaviour" includes action or inaction;
- "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.

The code

The code.

119.—(1) The Authority must prepare and issue a code containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

(2) The code may among other things specify—

- (a) descriptions of behaviour that, in the opinion of the Authority, amount to market abuse;
- (b) descriptions of behaviour that, in the opinion of the Authority, do not amount to market abuse;

(c) factors that, in the opinion of the Authority, are to be taken into account in determining whether or not behaviour amounts to market abuse.

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(3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.

(4) The Authority may at any time alter or replace the code.

(5) If the code is altered or replaced, the altered or replacement code must be issued by the Authority.

(6) A code issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(7) The Authority must, without delay, give the Treasury a copy of any code published under this section.

(8) The Authority may charge a reasonable fee for providing a person with a copy of the code.

120.—(1) The Authority may include in a code issued by it under section 119 ("the Authority's code") provision to the effect that in its opinion behaviour conforming with the City Code—

Provisions included in the Authority's code by reference to the City Code.

(a) does not amount to market abuse;

(b) does not amount to market abuse in specified circumstances; or

(c) does not amount to market abuse if engaged in by a specified description of person.

(2) But the Treasury's approval is required before any such provision may be included in the Authority's code.

(3) If the Authority's code includes provision of a kind authorised by subsection (1), the Authority must keep itself informed of the way in which the Panel on Takeovers and Mergers interprets and administers the relevant provisions of the City Code.

(4) "City Code" means the City Code on Takeovers and Mergers issued by the Panel as it has effect at the time when the behaviour occurs.

(5) "Specified" means specified in the Authority's code.

121.—(1) Before issuing a code under section 119, the Authority must publish a draft of the proposed code in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

Codes: procedure.

(2) The draft must be accompanied by—

(a) a cost benefit analysis; and

(b) notice that representations about the proposal may be made to the Authority within a specified time.

(3) Before issuing the proposed code, the Authority must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the Authority issues the proposed code it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2)(b); and

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(b) its response to them.

(5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant—

(a) the Authority must (in addition to complying with subsection (4)) publish details of the difference; and

(b) those details must be accompanied by a cost benefit analysis.

(6) Subsections (1) to (5) do not apply if the Authority considers that there is an urgent need to publish the code.

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if the Authority considers—

(a) that, making the appropriate comparison, there will be no increase in costs; or

(b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(9) This section also applies to a proposal to alter or replace a code.

(10) "Cost benefit analysis" means an estimate of the costs together with an analysis of the benefits that will arise—

(a) if the proposed code is issued; or

(b) if subsection (5)(b) applies, from the code that has been issued.

(11) "The appropriate comparison" means—

(a) in relation to subsection (2)(a), a comparison between the overall position if the code is issued and the overall position if it is not issued;

(b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the code and the overall position before it was issued.

Effect of the code. **122.**—(1) If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the Authority's opinion, does not amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.

(2) Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

Power to impose penalties

Power to impose penalties in cases of market abuse. **123.**—(1) If the Authority is satisfied that a person ("A")—

(a) is or has engaged in market abuse, or

(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,

it may impose on him a penalty of such amount as it considers appropriate.

(2) But the Authority may not impose a penalty on a person if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

- (a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or
- (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.

(3) If the Authority is entitled to impose a penalty on a person under this section it may, instead of imposing a penalty on him, publish a statement to the effect that he has engaged in market abuse.

Statement of policy

124.—(1) The Authority must prepare and issue a statement of its policy with respect to—

- (a) the imposition of penalties under section 123; and
- (b) the amount of penalties under that section.

(2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—

- (a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in question and, if it did, how serious that effect was;
- (b) the extent to which that behaviour was deliberate or reckless; and
- (c) whether the person on whom the penalty is to be imposed is an individual.

(3) A statement issued under this section must include an indication of the circumstances in which the Authority is to be expected to regard a person as—

- (a) having a reasonable belief that his behaviour did not amount to market abuse; or
- (b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.

(4) The Authority may at any time alter or replace a statement issued under this section.

(5) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.

(6) In exercising, or deciding whether to exercise, its power under section 123 in the case of any particular behaviour, the Authority must have regard to any statement published under this section and in force at the time when the behaviour concerned occurred.

(7) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a statement published under this section.

(9) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

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Statement of policy.