

2005 No. 381

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Market Abuse)
Regulations 2005**

Made - - - - - *23rd February 2005*

Laid before Parliament *24th February 2005*

Coming into force in accordance with regulation 1

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to insider dealing and market manipulation;

In exercise of the powers conferred upon them by section 2(2) of that Act, the Treasury hereby make the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005.

(2) Except as provided for in paragraph (3), these Regulations shall come into force on 1st July 2005.

(3) The following provisions shall come into force on 17th March 2005—

- (a) regulations 2, 3 and 8,
- (b) paragraphs 2, 3, 6 and 11 of Schedule 1.

Interpretation

2. In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000(c);

“the 2001 Order” means the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001(d).

(a) S.I. 2004/2642.

(b) 1972 c.68; by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c.8.

(d) S.I. 2001/996.

Amendment of Schedule 1 to the Criminal Justice Act 1993

3. In Schedule 1 to the Criminal Justice Act 1993(a), at the end of paragraph 5(1) insert—
“or 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”.

Amendment of Part 6 of the 2000 Act

4. Schedule 1 (which contains amendments to Part 6 of the 2000 Act (official listing)) has effect.

Amendment of Part 8 of the 2000 Act

5. Schedule 2 (which contains amendments to Part 8 of the 2000 Act (market abuse)) has effect.

Amendment of section 150 of the 2000 Act

6. In subsection (4)(a) of section 150 (actions for damages) of the 2000 Act, for “listing rules” substitute “Part 6 rules”.

Amendment of section 395 of the 2000 Act

7. In section 395(13) of the 2000 Act after paragraph (b) insert—
“(ba) 96C;”.

Amendment of section 397 of the 2000 Act

- 8.—(1) Section 397 (misleading statements and practices) of the 2000 Act is amended as follows.

(2) In subsection (4), for “price stabilising rules or control of information rules” substitute “—

- (a) price stabilising rules;
- (b) control of information rules; or
- (c) 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.”.

(3) In subsection (5), the word “or” after paragraph (b) is repealed and after paragraph (c) insert—

“; or

- (a) that he acted or engaged in the conduct in conformity 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.”.

Revocation of the Traded Securities (Disclosure) Regulations 1994

9. The Traded Securities (Disclosure) Regulations 1994(b) are revoked.

(a) 1993 c.36.

(b) S.I. 1994/188, as amended by S.I. 2001/3649.

Amendment of the 2001 Order

10.—(1) In the 2001 Order, the following definition is inserted before the definition of a “UK recognised investment exchange” in article 3 —

““regulated market” has the meaning given in Article 1(13) of the investment services directive;”.

(2) In the 2001 Order, for articles 4, 4A and 5 substitute—

“Prescribed Markets

4.—(1) There are prescribed, as markets to which subsections (2), (3), (5), (6) and (7) of section 118 apply—

- (a) all markets which are established under the rules of a UK recognised investment exchange,
- (b) the market known as OFEX,
- (c) all other markets which are regulated markets.

(2) There are prescribed, as markets to which subsections (4) and (8) of section 118 apply—

- (a) all markets which are established under the rules of a UK recognised investment exchange;
- (b) the market known as OFEX.

Qualifying Investments

5. There are prescribed, as qualifying investments in relation to the markets prescribed by article 4, all financial instruments within the meaning given in Article 1(3) of Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)(a).”.

Amendment of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

11. In the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(b), paragraph 5 is repealed.

23rd February 2005

Nick Ainger
Jim Murphy
Two of the Lords Commissioners
of Her Majesty’s Treasury

(a) O.J. L 96, 12.4.2003, p.16; applied to the EEA by Joint Committee Decision 38/2004 of 23 April 2004 (not yet published in the Official Journal of the European Communities).

(b) S.I. 2001/995.

AMENDMENTS TO PART 6 OF THE 2000 ACT

1.—(1) Subsection (1) of section 73 (general duty of the competent authority) is amended as follows.

(2) For paragraph (c), substitute—

“ (c) the desirability of facilitating innovation in respect of listed securities and in respect of financial instruments which have otherwise been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made;”.

(3) For paragraph (f), substitute—

“ (f) the desirability of facilitating competition in relation to listed securities and in relation to financial instruments which have otherwise been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made.”.

2. After section 73 insert—

“73A Part 6 Rules

(1) The competent authority may make rules (“Part 6 rules”) for the purposes of this Part.

(2) Provisions of Part 6 rules expressed to relate to the official list are referred to in this Part as “listing rules”.

(3) Provisions of Part 6 rules expressed to relate to disclosure of information in respect of financial instruments which have been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made, are referred to in this Part as “disclosure rules”.

3. In section 74 (the official list), subsection (4) is repealed.

4. For subsections (1) and (2) of section 91 (penalties for breach of listing rules), substitute—

“(1) If the competent authority considers that—

(a) in relation to a listed security, an issuer or applicant for listing; or

(b) in relation to a financial instrument—

(i) an issuer who has requested or approved the admission of the instrument to trading on a regulated market,

(ii) a person discharging managerial responsibilities within such an issuer, or

(iii) a person connected to such a person discharging managerial responsibilities, has contravened any provision of the Part 6 rules, it may impose on him a penalty of such amount as it considers appropriate.

(2) If, in the case of a contravention by an applicant or an issuer referred to in subsection (1)(a) or (1)(b)(i), the competent authority considers that a person who was at the material time a director of that applicant or issuer was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.”.

5. In subsection (9) of section 95 (competition scrutiny), in paragraph (a) for “listing rules” substitute “Part 6 rules”.

6. After section 96 (obligations of issuers of listed securities), insert—

“96A Disclosure of information requirements

(1) Disclosure rules must include provision specifying the disclosure of information requirements to be complied with by—

- (a) issuers who have requested or approved admission of their financial instruments to trading on a regulated market in the United Kingdom;
- (b) persons acting on behalf of or for the account of such issuers;
- (c) persons discharging managerial responsibilities within an issuer—
 - (i) who is registered in the United Kingdom and who has requested or approved admission of its shares to trading on a regulated market; or
 - (ii) who is not registered in the United Kingdom or any other EEA State but who has requested or approved admission of its shares to trading on a regulated market and who is required to file annual information in relation to the shares in the United Kingdom in accordance with Article 10 of the prospectus directive;
- (d) persons connected to such persons discharging managerial responsibilities.

(2) The rules must in particular—

- (a) require an issuer to publish specified inside information;
- (b) require an issuer to publish any significant change concerning information it has already published in accordance with paragraph (a);
- (c) allow an issuer to delay the publication of inside information in specified circumstances;
- (d) require an issuer (or a person acting on his behalf or for his account) who discloses inside information to a third party to publish that information without delay in specified circumstances;
- (e) require an issuer (or person acting on his behalf or for his account) to draw up a list of those persons working for him who have access to inside information relating directly or indirectly to that issuer; and
- (f) require persons discharging managerial responsibilities within an issuer falling within subsection (1)(c)(i) or (ii), and persons connected to such persons discharging managerial responsibilities, to disclose transactions conducted on their own account in shares of the issuer, or derivatives or any other financial instrument relating to those shares.

(3) Disclosure rules may make provision with respect to the action that may be taken by the competent authority in respect of non-compliance.

96B Persons discharging managerial responsibilities and connected persons

(1) For the purposes of this Part, a “person discharging managerial responsibilities within an issuer” means—

- (a) a director of an issuer falling within section 96A(1)(c)(i) or (ii); or
- (b) a senior executive of such an issuer who—
 - (i) has regular access to inside information relating, directly or indirectly, to the issuer, and
 - (ii) has power to make managerial decisions affecting the future development and business prospects of the issuer.

(2) A person “connected” with a person discharging managerial responsibilities within an issuer means—

- (a) a “connected person” within the meaning in section 346 of the Companies Act 1985^(a) (reading that section as if any reference to a director of a company were a reference to a person discharging managerial responsibilities within an issuer);
- (b) a relative of a person discharging managerial responsibilities within an issuer, who, on the date of the transaction in question, has shared the same household as that person for at least 12 months;
- (c) a body corporate in which—
 - (i) a person discharging managerial responsibilities within an issuer, or
 - (ii) any person connected with him by virtue of subsection (a) or (b),
 is a director or a senior executive who has the power to make management decisions affecting the future development and business prospects of that body corporate.

96C Suspension of trading

- (1) The competent authority may, in accordance with disclosure rules, suspend trading in a financial instrument.
- (2) If the competent authority does so, the issuer of that financial instrument may refer the matter to the Tribunal.
- (3) The provisions relating to suspension of listing of securities in section 78 apply to the suspension of trading in a financial instrument and the references to listing and securities are to be read as references to trading and financial instruments respectively for the purposes of this section.”.

7. In subsection (1) of section 97 (appointment by competent authority of persons to carry out investigations)—

- (a) in paragraph (a) for “listing rules” substitute “Part 6 rules”;
- (b) for paragraph (b) substitute—
 - “(b) a person who was at the material time a director of—
 - (i) an issuer of listed securities,
 - (ii) an issuer who has requested or approved the admission of a financial instrument to trading on a regulated market, or
 - (iii) an applicant for the admission of securities to the official list,
 has been knowingly concerned in a breach of Part 6 rules by that issuer or applicant for listing.”;
- (c) paragraph (c) is repealed.

8. After subsection (1) of section 99 (fees), insert—

“(1A) Disclosure rules may require the payment of fees to the competent authority in respect of the continued admission of financial instruments to trading on a regulated market.”.

9. At the end of subsection (2) of section 100 (penalties), insert—

“, and issuers who have requested or approved the admission of financial instruments to trading on a regulated market.”.

10. In section 101 (listing rules: general provisions)—

- (a) in subsections (1) to (4), for “listing rules” each time it appears substitute “Part 6 rules”;
- (b) in subsection (5), for “any listing rule” substitute “any Part 6 rule”.

(a) 1985 c.6.

11. In subsection (1) of section 103 (interpretation of Part 6)—

(a) the following definitions are inserted at the appropriate places—

““disclosure rules” has the meaning given in section 73A;

“financial instrument” has the meaning given in Article 1(3) of Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse);

“inside information” has the meaning given in section 118C;

“Part 6 rules” has the meaning given in section 73A;

“the prospectus directive” means Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading;

“regulated market” has the meaning given in Article 1(13) of the investment services directive;”;

(b) for the definition of “issuer” substitute—

““issuer”, in relation to anything which is or may be admitted to the official list, has such meaning as may be prescribed by the Treasury, and in any other case means a person who issues financial instruments;”;

(c) for the definition of “listing rules” substitute—

““listing rules” has the meaning given in section 73A;”.

12. In paragraph 2(a) of Schedule 7 (the Authority as competent authority for Part 6), for listing rules substitute “Part 6 rules”.

AMENDMENTS TO PART 8 OF THE 2000 ACT

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

“118 Market abuse

(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
- (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.

118A Supplementary provision about certain behaviour

(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.

118B Insiders

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.

118C Inside information

- (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.
- (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—

“130A Interpretation and supplementary provision

(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—

“131A Protected Disclosures

(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.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in part, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation^(a) (“the Market Abuse Directive”) and the following measures which were made under Article 17 of the Market Abuse Directive:

- 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^(b);
- Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6 of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation^(c); and
- Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6 of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers’ transactions and the notification of suspicious transactions^(d).

Implementation of the Market Abuse Directive is also being effected by the Financial Services Authority (FSA) using its powers under the Financial Services and Markets Act 2000(c.8)(“the Act”) and by the Investment Recommendation (Media) Regulations 2005 (S.I. 2005/382), which give effect to Article 6.5 of the Market Abuse Directive and to Commission Directive 2003/125/EC of 22 December 2003^(e) to the extent that these are not dealt with by FSA rules.

Regulations 3 and 8 amend existing references to behaviour which is in conformity with ‘price stabilising rules’ in the Act and in the Criminal Justice Act 1993 (c.36) so that this extends to behaviour which is in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003.

Regulations 6 and 7 make miscellaneous consequential amendments to the Act.

Regulation 9 revokes the Traded Securities (Disclosure) Regulations 1994 (S.I. 1994/188) and regulation 11 repeals paragraph 5 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I. 2001/995) as these provisions are superseded by the amendments made to Part 6 of the Act.

Regulation 10 amends the Prescribed Markets and Qualifying Investments Order (S.I. 2001/996) so as extend the scope of markets to which certain provisions of Part 8 of the Act apply to include ‘regulated markets’ within the meaning in Article 1.13 of Council Directive 1993/22/EC of 10 May 1993 in investment services in the securities field^(f), and amends the scope of the qualifying instruments covered by Part 8 to include all ‘financial instruments’ within the meaning in Article 1.3 of the Market Abuse Directive.

Regulation 4 and Schedule 1 amend Part 6 of the Act. Part 6 already enabled the FSA to make rules in relation to the continuing obligations of issuers whose securities are admitted to the

(a) OJ No L96, 12.4.2003, p.16.
(b) OJ No L336, 23.12.2003, p.33.
(c) OJ No L339, 24.12.2003, p.30.
(d) OJ No L162, 30.4.2004, p.70.
(e) OJ No L339, 24.12.2003, p73
(f) OJ No L141, 11.6.1993, p.27

official list. Rules made under Part 6 (which are to be known as ‘Part 6 rules’ in accordance with section 73A(1)) may now relate not only to securities admitted to the official list but to any financial instrument admitted to trading on a regulated market.

Paragraph 6 of Schedule 1 inserts sections 96A, 96B and 96C into Part 6 of the Act. Section 96A requires the FSA to ensure that certain inside information is disclosed and that lists of those with access to inside information are drawn up. It also requires the FSA to ensure that persons discharging managerial responsibilities within an issuer and persons connected to them disclose certain details of their transactions in shares of that issuer.

Section 96B defines “persons discharging managerial responsibilities” and “connected persons” for the purposes of Part 6 of the Act. Section 96C enables the FSA to suspend trading in a financial instrument in accordance with the disclosure rules in the same manner as it may already suspend trading in listed securities under section 78 of the Act.

Paragraphs 3, 4, 5, 7, 8, 9, 10 and 11 of Schedule 1 make miscellaneous consequential amendments to Part 6 of the Act.

Regulation 5 and Schedule 2 amend Part 8 of the Act. Paragraph 1 of Schedule 2 replaces the definition of market abuse in section 118 of the Act and makes a number of consequential amendments to bring it into line with the Market Abuse Directive. Section 118(4) and (8) retains the definitions of market abuse which are broader than those in Articles 1 to 5 of Directive 2003/6/EC and already in section 118 of the Act. Section 118(9) provide that these provisions are due to cease on 30 June 2008; section 118A(6) does the same for the related provisions in section 118A.

Paragraph 1 of Schedule 2 also inserts sections 118B and 118C, which define who are “insiders” and what constitutes “inside information” for the purposes of Part 8 of the Act.

Section 119 of the Act requires the FSA to publish a code containing guidance on whether or not behaviour amounts to market abuse. Paragraph 2 of Schedule 2 amends section 119(2) so that the code may specify descriptions of behaviour that are or are not accepted market practices in relation to specified markets for the purposes of Part 8 of the Act. It also inserts section 119(2A) which provides that the FSA, in determining what are and what are not accepted market practices, must have regard to the procedures laid down in Articles 2 and 3 of Commission Directive 2004/72/EC.

Paragraph 3 of Schedule 2 inserts section 130A into Part 8 of the Act. Section 130A(1) and (2) effectively amends and replaces the existing section 118(3) and (4) of the Act; section 130A(3) effectively amends and replaces the definitions in the existing section 118(10) of the Act.

Paragraph 4 of Schedule 2 inserts section 131A into Part 8 of the Act. This provision gives effect to Article 11.3 of Commission Directive 2004/72/EC, which requires Member States to ensure that persons notifying competent authorities of cases of suspected market abuse are not liable for any breach of disclosure of information.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business may be obtained from the Capital Markets and Governance Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. A transposition note showing how the main provisions of this 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). Copies of both of these documents have been placed in the libraries of both Houses of Parliament.