

Transposition Note for Directive 2003/6/EC – The Market Abuse Directive (MAD)

The note and table below set out the main elements of the UK's implementation of the EU's Market Abuse Directive (Directive 2003/6/EC). The directive was passed under the "Lamfalussy" process for financial services legislation in the EU. Under this process, the Market Abuse Directive is a framework directive designed to provide a high-level approach and set the scope within which more detailed measures, including secondary EC legislation, should be drawn. The relevant secondary legislation: (Directives 2003/124/EC, 2003/125/EC & 2004/72/EC and Regulation 2273/2003) provide the greater detail and were adopted by the Commission after receiving the opinion of the Committee of European Securities Regulators.

The directive aims to create a European civil framework for the description, detection and punishment of market abuse. It prohibits insider dealing and market manipulation. The directive also has preventative measures aimed at making market abuse less likely to occur. These include a requirement that companies disclose new information affecting their prospects to the market in a timely and even-handed fashion, and that those making investment recommendations to investors disclose any interests they have in the shares or other financial instruments they are recommending.

The directive is being implemented through two sets of regulations and changes to the Financial Services Authority's (FSA) Handbook of rules and guidance. The first set of regulations are the Financial Services and Markets Act (FSMA) 2000 (Market Abuse) Regulations 2005 ("the market abuse regulations"). Schedule 1 of the regulations changes Part 6 of FSMA to give the FSA the power to make rules to cover some of the preventative measures in the directive. Schedule 2 of the regulations changes Part 8 of FSMA to revise the UK's definitions of market abuse. The market abuse regulations also amend the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, which sets the scope of the markets and investments covered by the market abuse prohibitions in Part 8 of FSMA. The second set of regulations, the Investment Recommendation (Media) Regulations 2005 ("the media regulations"), cover those producing investment recommendations or disseminating investment recommendations produced by others who are not subject FSA rules.

Once the regulations are in force, the FSA will make changes to provisions in its Handbook. These will include changes to the Code of Market Conduct, the Listing Rules, the Conduct of Business Sourcebook, and the Supervision Manual.

Because the EU secondary legislation relates to provisions in the framework directive, it is covered in the table below under the articles of the framework directive to which it relates, rather than as separate pieces of legislation.

Transposition Note for the Market Abuse Directive

Articles	Objectives	Implementation	Responsibility
<p>1.1 and 5 (includes article 1 of 2003/124/EC and article 4 of 2004/72/EC)</p>	<p>To define and prohibit “insider dealing” ie profiting from privileged access to information regarding companies which has not been made public. This includes trading or inducing others to trade on the basis of inside information, or the unauthorised disclosure of this information</p>	<p>The implementation of the definition and prohibition of insider dealing is contained in amendments to Part 8 of FSMA, in schedule 2 of the market abuse regulations. The description of the offence is in the new sections 118 (2) & (3), the definition of inside information is in section 118C and the list of the categories of person with access to inside information is in section 118B.</p> <p>There are significant similarities between the provisions in the directive and existing UK provisions (trading or inducing others to trade on the basis of inside information, or the unauthorised disclosure of this information is already prohibited in the UK), but there are two important differences:</p> <ul style="list-style-type: none"> • The existing provisions prohibit a wider range of behaviours (all inappropriate behaviour in relation to inside information and not just trading or inducing others to trade on inside information and unauthorised disclosure of inside information) • The existing provisions have a wider definition of inside information (they include information which is relevant to investment decisions and not just information which would have a significant effect on prices). <p>The existing provisions have been retained in section 118 (4).</p>	<p>HM Treasury and Financial Services Authority</p>

		<p>This provision is intended to capture the wider set of behaviour covered by the existing regime which does not fall into the definitions drawn from the directive. This provision will lapse three years after it comes into force, unless the Government proposes new legislation. It is intended that before the end of the three years the effects of this provision should be reviewed.</p> <p>The FSA's Code of Market Conduct will provide guidance on what is covered by the inside dealing offences in Part 8 of FSMA.</p>	
<p>1.2, 5 (includes articles 4 & 5 of 2003/124/EC and 2& 3 of 2004/72/EC)</p>	<p>To define and prohibit market manipulation ie profiting from behaviour which artificially distorts the price of financial instruments or involves creating a misleading impression about a financial instrument.</p>	<p>The implementation of the definition and prohibition are contained in amendments to Part 8 of FSMA in schedule 2 to the market abuse regulations. The directive's definitions are transposed in Part 8 of FSMA in the new sections 118 (5) to (7). The directive's definitions of market manipulation are similar to existing definitions: they encompass creating a misleading impression in relation to financial instruments or distorting the market for a financial instrument.</p> <p>However, the directive's offences are narrower than the current ones as they relate to specific behaviour (transactions or orders to trade and the dissemination of information) as opposed to covering any behaviour which might create a misleading impression or distort a market.</p> <p>The existing provisions have been retained in section 118 (8). This provision is intended to capture the wider set of behaviour covered by the existing regime which does not fall into the definitions drawn from the directive. This provision will lapse three years after it comes into force, unless the Government</p>	<p>HM Treasury and Financial Services Authority</p>

		<p>proposes new legislation. It is intended that before the end of the three years the effects of this provision should be reviewed.</p> <p>The FSA's Code of Market Conduct will provide guidance on the behaviours that fall within the definition of market abuse and the signals they will look at in assessing whether behaviour is manipulative.</p>	
6.1 to 6.4 (includes 2 to 3 of 2003/124/EC and 5 to 6 of 2004/72/EC)	<p>To ensure there is prompt and fair disclosure of information to the public concerning new developments relevant to the prospects of companies who issue shares and bonds</p> <p>To ensure inside information is properly controlled by requiring lists to be kept of those with access to it</p> <p>To ensure investors have information about the trading in the shares of companies by the senior management (and those closely</p>	<p>The FSA already has the power under Part 6 of FSMA to make rules concerning the ongoing obligations of companies whose securities are admitted to the official list. Its rules made under these powers are known as the Listing Rules.</p> <p>Schedule 1 of the market abuse regulations amends Part 6 of FSMA to widen the FSA's rule-making powers so that they apply, in line with the directive, to companies whose securities are admitted to trading on EU regulated markets based in the UK as well as those admitted to the official list. The new section 96A of Part 6 sets the basic scope of the FSA's new rule-making powers.</p> <p>In line with its revised rule making powers, the FSA will revise the Listing Rules which set out the continuing obligations of companies.</p>	HM Treasury and Financial Services Authority

	associated with the senior management) of those companies.		
6.5 (Includes Directive 2003/125/EC)	To ensure that investment recommendations are fairly presented and relevant interests and conflicts of interest are disclosed.	<p>Most people making investment recommendations are subject to regulation by the FSA (advising on investments is an activity requiring authorisation by the FSA). The Conduct of Business section of the FSA's Handbook will be revised to apply rules based on Directive 2000/125/EC to those authorised by the FSA who are producing investment recommendations or disseminating recommendations produced by a third party..</p> <p>Investment recommendations made or disseminated by the media are outside the scope of the FSA's regulation (if they are contained in publications whose main purpose is not to give investment advice). These will be covered by the Investment Recommendation (Media) Regulations 2005.</p> <p>The media regulations exempt from their scope, in regulation 3 (3), those already covered by FSA regulation. Their substantive provisions are taken from directive 2003/125/EC (excluding the provisions which apply only to banks, brokers and independent analysts). Consistent with recital 22 of directive 2003/6/EC, the UK is allowing media organisations producing and disseminating investment recommendations to be covered by self regulation. Regulation 3 (4) of the media regulations provides for an exemption from the regulations for those covered by the main self-regulatory codes governing the media and for firm-specific codes as long as adherence to these Codes is disclosed.</p>	HM Treasury and Financial Services Authority

<p>6.9 (Articles 7 to 11 of Directive 72/EC/2004)</p>	<p>To ensure that possible incidences of market abuse are reported to regulators by banks and brokers</p>	<p>The people to whom this obligation applies are covered by FSA regulation. This obligation is therefore being implemented through a change to the FSA's Supervision manual.</p> <p>Article 11 of Directive 2004/72/EC requires that those notifying suspicious transactions reports are exempt from liability providing they act in good faith. This requires a substantive legal provision which has been enacted in the amendments to Part 8 of FSMA in schedule 2 to the regulations in the new section 131A.</p>	<p>HM Treasury and Financial Services Authority</p>
<p>7</p>	<p>To ensure monetary, exchange rate and public debt management policies are not impeded by the directive</p>	<p>The exemption has been included in the amendments to Part 8 of FSMA in schedule 2 of the market abuse regulations in the new 118A(5)(c).</p>	<p>HM Treasury and Financial Services Authority</p>
<p>8 (Regulation 2273/2003)</p>	<p>To ensure that legitimate buy-back and stabilisation activities do not lead to market abuse charges by providing a 'safe harbour' for such activities</p>	<p>As an EU regulation, the safe harbour automatically applies in the UK. This is acknowledged in Part 8 of FSMA in the new s118A(5)(b)</p> <p>The FSA's Code of Market Conduct is also being altered to take account of the regulation</p>	<p>HM Treasury and Financial Services Authority</p>
<p>9 and 1.3</p>	<p>Sets the scope of the directive in terms of the financial instruments to which it applies</p>	<p>The current UK regime applies to investments, as defined for the purposes of s22 of FSMA, traded on certain prescribed markets. Under the directive it is required that the regime applies to all instruments admitted to trading on regulated markets.</p> <p>Regulation 10 of the market abuse regulations amends Statutory</p>	<p>HM Treasury and Financial Services Authority</p>

		<p>Instrument 2001/996 to make the necessary change by referring to the directive's definition of a financial instrument. This statutory instrument sets the scope of the instruments and markets covered by the UK's market abuse regime in Part 8 of FSMA.</p> <p>The directive requires that market abuse prohibitions apply to instruments admitted to trading on regulated markets. In the UK several of the markets covered by the existing regime are not regulated markets (a term which is defined in the Investment Services Directive 1993/22/EEC). These include the London Stock Exchange's AIM market, Ofex, the London Metal Exchange and the International Petroleum Exchange. Under regulation 10 of the market abuse regulations which amends SI 2001/996, these markets will continue to be covered by the market abuse regime. The operators of all these markets want their markets to continue to be covered.</p>	
10	Sets the geographical scope of the directive	<p>The current UK regime applies to behaviour whether in the UK or abroad in respect of financial instruments traded on prescribed markets based in the UK. Under the directive the scope of the regime has to be expanded to include behaviour that happens in the UK in respect of financial instruments admitted to trading on regulated markets based in other EEA countries.</p> <p>The extension of scope required under the directive is being achieved through amendments to Part 8 of FSMA in schedule 2 of the market abuse regulations through section 118A(1), changes to Statutory Instrument 2001/996 in regulation 10 of the market abuse regulations.</p>	HM Treasury and Financial Services Authority

11	To have the directive enforced by a single regulatory body	This does not require a change to existing arrangements in the UK. The FSA is already the single regulatory agency charged with enforcing the UK's civil market abuse regime.	HM Treasury and Financial Services Authority
12	To ensure that regulators can enforce the directive effectively	This does not require a change to existing arrangements in the UK. The FSA already has wide-ranging enforcement powers in Parts 11 and 25 of FSMA.	HM Treasury and Financial Services Authority
13	To stop sensitive information in relation to market abuse leaking from regulators	This does not require a change to existing arrangements in the UK. Part 23 of FSMA already includes such restrictions.	HM Treasury and Financial Services Authority
14	To ensure appropriate sanctions against market abuse	This does not require a change to existing UK arrangements. The FSA already has the power to levy unlimited fines on those who engage in market abuse or break its rules.	HM Treasury and Financial Services Authority
15	To allow appeals against decisions from regulators in market abuse cases	This does not require a change to existing arrangements in the UK. Under Part 9 of FSMA, decisions of the FSA may be referred to the Financial Services and Markets Tribunal	HM Treasury and Financial Services Authority
16	To ensure that there is effective co-operation between regulators	This does not require a change to existing UK arrangements. Under Part 11 of FSMA, the FSA already has the powers to provide assistance to overseas regulators.	HM Treasury and Financial Services Authority
18	To ensure the directive was implemented by 12	Because of the complications of fitting the directive with the existing market abuse regime, the UK will be implementing the	HM Treasury and Financial Services

	October 2004	directive late. Only one Member State implemented on time.	Authority
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