

## ***Market Abuse***

### ***The “crime” of being something in the City***

#### ***Michael Ashe QC and Lynne Counsell***

The “crime of being something in the City” was a description given by the Financial Editor of the Sunday Times in 1973<sup>1</sup> to insider dealing in the shares of companies. In the early part of that decade debate in this country had commenced about the advantages gained by those who used confidential price-sensitive information to assist their share trading<sup>2</sup> and the punishment and regulation of the practice. Eventually insider dealing was criminalised.<sup>3</sup> The Financial Services and Markets Act 2000 will, when the relevant provisions are brought into force, mark a further and quite significant development in the regulation of market conduct in creating civil penalties for market abuse.<sup>4</sup> They will not be restricted to those authorised in the financial services industry (as is most of the regulation in the Act) but apply generally as do the current criminal offences. Also the prohibited behaviour is not restricted to the share markets but applies more broadly. Essentially what is being done is to provide regulatory sanctions for behaviour akin to insider dealing and market manipulation, though somewhat wider in scope. A draft Code has been issued by the Financial Services Authority which gives guidance on whether or not behaviour amounts to market abuse.<sup>5</sup>

#### ***The Legal Regulation of Market Behaviour***

In the past, the criminal law that has been the principal method of providing legal sanction for market misbehaviour. At common law it became established that there was a concept of a free and open public market. Accordingly the spreading of false rumours to

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<sup>1</sup> 4<sup>th</sup> February 1973

<sup>2</sup> Justice Report on Insider Trading 1971; Kaye 36 MLR 185; Ashe [1972] NLJ 216

<sup>3</sup> Originally enacted in Part V Companies Act 1980, subsequently in the Company Securities(Insider Dealing) Act 1985 and in a redesigned guise is now in Part V Criminal Justice Act 1993.

<sup>4</sup> Part VIII Financial Services and Markets Act 2000.

<sup>5</sup> Under section 119 *ibid* the FSA will be obliged to issue such a Code. The current draft was published on 25<sup>th</sup> July 2000.

raise the price of stock was held to be a crime.<sup>6</sup> It was regarded as a fraud against the public to give a vendible commodity a fictitious price by means of false rumours. The common law also recognised that there was no distinction to be drawn between false rumours and false and fictitious acts.<sup>7</sup>

However, the raising or lowering of prices was not per se a crime if that were the effect of a genuine transaction.<sup>8</sup> Moreover, there was no remedy in civil law where one party to a contract had knowledge of extrinsic circumstances which might influence price and failed to disclose them.<sup>9</sup>

The criminal offences in relation to the market are now statutory.<sup>10</sup> In their formulation in the Financial Services and Markets Act 2000, yet to come into force, the offences are as follows. So far as misleading statements are concerned the legislation deals with three situations. First where a person makes a statement, promise or forecast which he knows to be misleading false or deceptive in a material particular. Secondly where a person dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise and thirdly where a person recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.<sup>11</sup> A criminal offence will be committed if the person makes the statement, promise or forecast or conceals the facts for the purpose of inducing another person to enter into or offer to enter into or to refrain from entering or offering into an investment agreement or to exercise or refrain from exercising any rights conferred by an investment.<sup>12</sup>

As regards misleading practices any course of conduct which creates a false or misleading impression as to the market in, or the price or value of an investment, causes an offence to be committed by the perpetrator if this is done for the purpose of creating

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<sup>6</sup> R. v. de Berenger (1814) 3 Maule & S. 67

<sup>7</sup> Scott v. Brown, Doering, McNab & Co. [1892] 2 QB 724 at 730 per Lopes LJ. This was a civil case.

<sup>8</sup> R. v. de Berenger per Lord Ellenborough a (1814) 3 Maule & S. at 73-74

<sup>9</sup> see generally Bell v. Lever Brothers Ltd [1932] AC 161; also the early US case of Laidlaw v. Organ 15 US (2 Wheat.) 178).

<sup>10</sup> Section 47, Financial Services Act 1986.

<sup>11</sup> Section 397(1) Financial Services and Markets Act 2000.

<sup>12</sup> Section 397(2) *ibid.*

the impression and of thereby inducing another to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by those investments.<sup>13</sup>

When legislation was enacted to discourage insider dealing in shares, the criminal law was again the chosen weapon of restraint. This was in stark contrast to the approach in the United States of America where criminal sanctions are available for insider dealing but where the armoury of enforcement powers is very much greater and where reliance is placed on civil penalties to a greater extent than the criminal law.<sup>14</sup> Only the most egregious cases are left to the criminal law. Only fairly recently the UK Government had rejected the use of civil penalties for insider dealing<sup>15</sup> after a report by the House of Commons Select Committee on Trade and Industry had recommended their use.<sup>16</sup>

It is therefore, an interesting development to see that market abuse is a wholly civil matter and the criminal law is not involved. This approach is intended to be a more effective means of enforcement of standards in the market, leaving the criminal law for the more serious conduct for which it is intended. The development of the concept of market abuse is a welcome development of the disciplinary powers of the self-regulating organisations and their tribunals under the old regime for the regulation of the financial services industry. The fact that the 2000 Act requires the FSA to publish a code to supplement the statutory provisions is also to be welcomed as clearly guidance and clarity for the users of the markets is an important aspect of the maintenance of standards.<sup>17</sup>

The basic philosophy of the new approach was summarised in a Treasury Consultation Paper on the Financial Services and Markets Bill in 1998.<sup>18</sup> In that document it was stated that “the function of financial markets is to enable investments to be directed, in appropriate amounts, to the different destinations where it can most effectively be

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<sup>13</sup> Section 397(3) *ibid.*

<sup>14</sup> Most notably under the Insider Trading Sanctions Act of 1984 and the Insider Trading and Securities Fraud Enforcement Act of 1988 which extended civil enforcement powers substantially.

<sup>15</sup> Company Investigations Cm 1149 p. 18.

<sup>16</sup> Third Report Company Investigations HC 36.

<sup>17</sup> Section 119 Financial Services and Markets Act 2000.

<sup>18</sup> Part One: Overview of Financial Regulatory Reform, Chapter 15 Market Abuse and financial fraud.

employed. In order for this to occur, the markets must operate, and must be seen to operate, in an open, transparent and fair manner.”<sup>19</sup> It was argued that market abuse in its various forms distorts the efficient operation of the markets and the policy was to establish proper safeguards in an endeavour to prevent such abuse from occurring. Essentially, this is a part of the maintenance of confidence in the financial system which is one of the regulatory objectives of the 2000 Act.<sup>20</sup> The object of a new civil regime for market abuse is to complement the existing criminal regime. Accordingly when the provisions come into effect the Financial Services Authority will have the power to impose civil fines, require people to disgorge profits or make restitution. In addition it will be given the power of criminal prosecution.

The development of this civil enforcement regime has not been without some controversy. For the purposes of Articles 6 and 7 of the Convention on Human Rights the classification in domestic of a penalty as civil is not conclusive.<sup>21</sup> Article 6 is concerned generally with the right to a fair trial and with regard to “criminal offences” gives certain minimum rights. The fact that the nature of the conduct with which market abuse overlaps with the criminal law in many instances, the fact that it applies to everyone and the potential severity of the penalties indicates that in Convention terms this is a “criminal” matter. Accordingly the Government accepted at an early stage that criminal justice safeguards had to be built in.<sup>22</sup> Accordingly, there is, for example, an exclusion of compelled evidence<sup>23</sup> and a form of legal aid is to be provided.<sup>24</sup>

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<sup>19</sup> Para 15.1 *ibid.*

<sup>20</sup> Section 3(10) Financial Services and Markets Act 2000.

<sup>21</sup> E.g. tax surcharges in France which were administrative were classed as criminal for Convention purposes: see *Benedoun v. France* (1994) 18 EHRR 54.

<sup>22</sup> Memorandum from HM Treasury 14<sup>th</sup> May 1999 published in the Second Report of the Joint Committee on Financial Services and Markets 27<sup>th</sup> May 1999 (HL Paper 66, HC 465).

<sup>23</sup> Section 174(2) Financial Services and Markets Act 2000.

<sup>24</sup> Section 134 *ibid.*

## ***What is Market Abuse?***

Market abuse may take a variety of forms. The statutory provisions are drafted in very wide terms indeed with no requirement for the establishment of the defendant's intent.<sup>25</sup> It would, for example include misuse of information, the manipulation of prices or the giving of misleading impressions as to the demand for an investment. In other words the activities currently covered by the criminal law. Market abuse may occur in relation to investments on prescribed markets.<sup>26</sup> The intention is to cover the stock markets and the commodities markets.

The statutory framework provides a very broad definition of the behaviour, in relation to a qualifying investment traded on a prescribed market, which may constitute market abuse.<sup>27</sup> The two principal aspects of the definition focus respectively on a variant of insider dealing and false or misleading impressions in the market. The third concerns what market users would regard as distortion. The framework covers all users of the market and not only those authorised for the purposes of the 2000 Act.

There is imposed an objective standard for the behaviour amounting to market abuse because it has "to be regarded by a regular user of that market who would be aware of the behaviour as a failure on the part of the person or persons concerned to observe the standards of behaviour reasonably expected of a person in his or their position in relation to the market." A regular user is a reasonable person who regularly deals on the particular market in investments of the kind in question.<sup>28</sup>

This "regular user" test is intended to provide a kind of "benchmark" against which acceptable standards of behaviour may be measured. Clearly practices vary across markets and the test will have to be applied to the market in question and to the investment concerned. "The standard of behaviour which is reasonably to be expected of persons using a market will be one which takes into account the need for the market as a

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<sup>25</sup> HM Treasury takes the view that the provisions meet the requirements for certainty required by Article 7 of the Convention on Human Rights: see Memorandum of 14<sup>th</sup> May 1999 published in the Second Joint Committee Report HL Paper 66, HC 465; see fn 51 post

<sup>26</sup> Section 118 *ibid*. The Treasury may prescribe the markets: section 118(3)

<sup>27</sup> Section 118(1) and (2) *ibid*.

<sup>28</sup> Section 118(10) *ibid*

whole to operate fairly and efficiently. The regular user will expect those using and deriving benefit from their participation in a market to have regard to the wider interests of the market, recognising that it is in their own interests for the market to function properly.”<sup>29</sup> It might be commented that the “man on the Clapham omnibus” much beloved of tort lawyers has come a long way! The test however, as a measure of a standard, is one that is familiar in other areas. It is behaviour falling below that standard which is the target of regulatory penalties and of other remedies.

### ***Misuse of Information***

Misuse of information is “behaviour...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”.<sup>30</sup> It thus has four elements. First the behaviour must be based on information. Secondly, that information must not be generally available. Thirdly, it must be relevant information for the decision about the terms of a transaction and fourthly, the information must relate to matters which a regular user would reasonably expect to be disclosed. Of course there may be different disclosure requirements in different markets.

Inside information for the purposes of the criminal law prohibition on insider dealing in corporate securities also has a fourfold test.<sup>31</sup> First the information must relate to particular securities or to a particular issuer or issuers and not to securities or issuers generally. Secondly the information must be specific or precise. Thirdly it must not have been made public and fourthly if it were made public it would be likely to have significant effect on the price or value of any securities.

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<sup>29</sup> para. 1.3.5 Draft Code of Market Conduct (July 2000).

<sup>30</sup> Section 118(2)(a) Financial Services and Markets Act 2000. This is quite close to the concept of omission to state a material fact which is the cornerstone of the US legislation in Rule 10b-5 made under the Securities Exchange Act of 1934; “there must be substantial likelihood that the disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of information made available”: *TSC Industries Inc v. Northway* 426 US at p. 449.

<sup>31</sup> Section 56(1) Criminal Justice Act 1993

Although the tests differ in expression the underlying basis for each is the materiality of the inside information. In the criminal offence this is expressed in relation to price impact. In the insider abuse provision it is expressed in terms of the decisions an investor would make vis a vis the terms of a transaction. This will invariably boil down to the same thing: the market impact of the information.

The prerequisite for the criminal offence is that the defendant must have had the information as an insider or the direct or indirect source of the information is an insider.<sup>32</sup> There is no such requirement for misuse of information so there will be no need to prove source.<sup>33</sup>

The draft Code of Market Conduct endeavours to give guidance on the behaviour with regard to misuse of information that will offend.<sup>34</sup> In a helpful paragraph<sup>35</sup> it is stressed that people are free to use information obtained by them through diligent research, analysis or observation. The fact that some people in the market will not be able to obtain such information through lack of resources, expertise or competence does not mean that information cannot be used. The object is to prevent the use of hard information which is not generally available.

### ***False or Misleading Impressions***

The second form of market abuse referred to in the legislation is “behaviour [which] 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.”<sup>36</sup> This provision is aimed at both artificial transactions and the dissemination of information to create a false or misleading impression. This broadly mirrors the substance of the criminal offences.<sup>37</sup>

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<sup>32</sup> Section 52(1), 57 Criminal Justice Act 1993

<sup>33</sup> Thus possibly enabling financial journalist who front run with their own tips to be liable to penalty. For different reasons there is already a liability in the USA: see *US v. Winans* 484 US 19 (1988).

<sup>34</sup> MAR 1.5

<sup>35</sup> MAR 1.5.9

<sup>36</sup> Section 118(2)(b) Financial Services and Markets Act 2000.

<sup>37</sup> See text to fn 10,11 and 12.

The draft Code of Market Conduct provides<sup>38</sup> that a person will commit market abuse in relation to artificial transactions where he knows (or could reasonably be expected to know) the principal effect of the transaction and in relation to dissemination of information where he knows or could reasonably be expected to know that the information is false or misleading.<sup>39</sup> The behaviour must be likely to give a regular user a false or misleading impression.<sup>40</sup> Likelihood must be real and not fanciful even if that likelihood is less than 50%. It is perhaps unfortunate that likelihood might descend below the 50% threshold; a balance of probabilities might have been more appropriate.

### ***Distortion***

The third category of behaviour within the market abuse regime is “behaviour which would or would be likely to, distort the market in investments of the kind in question.”<sup>41</sup> This appears to be aimed at abusive squeezes and price positioning. An abusive squeeze occurs where a person holding a position on a market who has significant influence over supply or delivery uses that position to distort prices for the settlement or release of obligations to him.<sup>42</sup> Price positioning occurs where a transaction is entered into with the purpose of positioning the price at a distorted level.<sup>43</sup> This would include ramping the price to a distorted level and then reversing the transaction to get a profit or avoid a loss. A person may not engage in behaviour which impedes the operation of market forces and interferes with the interplay of supply and demand and thereby has a distorting effect.<sup>44</sup>

The draft Code stresses that the purpose of all of this is to prevent improper conduct impeding market forces which would distort the market to the detriment of market users including investors. It may well be difficult to define when a market is distorted, though the position of the FSA is that a price is likely to be distorted when price movements

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<sup>38</sup> MAR 1.6.7(2); 1.6.12(1).

<sup>39</sup> Recklessness may also be an ingredient of the misleading statements offence in section 47(1) Financial Services Act 1986; section 397(1) Financial Services and Markets Act 2000. The effect of *R. v. Caldwell* [1982] AC 341 is usefully discussed in Gale, Gale and Scanlan, *Fraud and the plc* (Butterworths 1999) at p. 32 et seq.

<sup>40</sup> MAR 1.6.4

<sup>41</sup> Section 118(2)(c) *ibid.*

<sup>42</sup> MAR 1.7.8

<sup>43</sup> MAR 1.7.11-14.

<sup>44</sup> MAR 1.7.3.

deviate from the expected norms in usual market conditions.<sup>45</sup> As with other behaviour amounting to market abuse, the regular user test is used so that the issue will be whether the regular user would or would be likely to regard the behaviour as such which would or would be likely to distort the market.<sup>46</sup> As with false and misleading impression there must be a real and not fanciful likelihood that the behaviour will have that effect even if it is less than 50%. It is again unfortunate that this test is not on a balance of probabilities more particularly as the Code does not require a specific intent for or recklessness in the behaviour giving rise to the distortion.

### ***The Code***

As we have mentioned the FSA is obliged to issue a Code of Market Conduct. This must contain such provisions as the FSA “considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse”<sup>47</sup> The Code or any revision of it must be issued in draft so that representations made about proposals may be considered by the FSA.<sup>48</sup> This is quite an important procedure as the Code may specify descriptions of behaviour that in the opinion of the FSA either do or do not amount to market abuse and factors which are to be taken into account in determining whether behaviour amounts to market abuse.<sup>49</sup> The Code may be relied on so far as it indicates whether or not behaviour should be taken to amount to market abuse.<sup>50</sup> In other words the Code has evidential weight.

The task set by the legislature is not an easy one. The market abuse provisions are widely cast in the statute and apply across a broad range of markets. Indeed they are so broad as to give rise to concern that they are not sufficiently defined in law so that an individual

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<sup>45</sup> Commentary on the draft Code of Market Conduct para. 6.72.

<sup>46</sup> MAR 1.7.4

<sup>47</sup> Section 119(1) Financial Services and Markets Act 2000.

<sup>48</sup> Section 121 *ibid.*

<sup>49</sup> Section 119(2) *ibid.*

<sup>50</sup> Section 122(2) *ibid.* Where in the Code the FSA is of the opinion that behaviour does not amount to market abuse then a person behaviour in that way will not be taken to amount to market abuse for the purposes of the Act: section 122(1) *ibid.*

may foresee the legal consequences of his actions.<sup>51</sup> The giving of guidance is not a straightforward matter. The situation may be contrasted with that of the old exchange control regime where, in relation to currency transactions, a clear and comprehensive set of “permissions” were given in published form by the Bank of England for a wide variety of transactions. Accordingly the banking system was made clearly aware of the transactions for which specific consent of the Bank of England was required.

Such a detailed approach has not proved possible in relation to market abuse, where the statutory provisions are more general. Accordingly the Code is concerned with descriptions of the three tests of market abuse and the relevant behaviour. Most of these descriptions are necessarily general but the object is to bring as much clarity as possible. This is particularly achieved where there are descriptions of behaviour which, in the opinion of the FSA, do not amount to market abuse. Here a person can be certain that if his behaviour conforms to the description then it cannot amount to market abuse. There are also so called “safe harbour” provisions whereby in certain defined circumstances compliance with, for example, the rules of a regulated investment exchange will avoid behaviour being regarded as market abuse. In other cases compliance with exchange rules will be relevant to the decision whether or not market abuse has occurred. Crucially the FSA has stated that it will endeavour to respond promptly to “reasonable requests” for further guidance on the interpretation of the Code.<sup>52</sup>

### **Sanctions**

The FSA is given, by the 2000 legislation very broad powers of investigation in order to be able to enforce the requirements of the legislation generally.<sup>53</sup> These investigative powers also apply to market abuse.

Two distinct regimes for the enforcement of the market abuse provisions will exist. The first is through the ordinary courts and the second through, what may be termed,

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<sup>51</sup> and thus contrary to Article 7 of the Convention on Human Rights: *Kokkinakis v. Greece* (1993) 17 EHRR 397. The CctHR has recognised widely drawn laws: see *Muller v. Switzerland* (1988) 13 EHRR 212 and *SW v. UK* (1995) 21 EHRR 363; see fn 25 ante.

<sup>52</sup> para. 1.12 of Executive Summary to the Draft Code on Market Conduct (July 2000).

<sup>53</sup> Part XI Financial Services and Markets Act 2000.

administrative procedures of the FSA with a right of reference to the Financial Services and Markets Tribunal. So far as the courts are concerned there is a power to grant injunctions and restitution orders sought by the FSA. Additionally, the FSA may request the court to consider imposing a penalty on the defendant.<sup>54</sup>

The court may restrain market abuse where, on the application of the FSA it is satisfied either that there is a reasonable likelihood that a person will engage in market abuse or that the activity has already been engaged in and there is a reasonable likelihood that the market abuse will continue or be repeated.<sup>55</sup> Where a person is or has engaged in market abuse and there are steps which could be taken to remedy or mitigate the abuse then, on the application of the FSA, the court may order such steps to be taken.<sup>56</sup> The court also has power to grant an order to the FSA freezing a person's assets where it is satisfied that a person may or may have been engaged in market abuse.<sup>57</sup>

The court also has power, in certain circumstances, on the application of the FSA, to make a restitution order against a person who has engaged in or encouraged in another behaviour amounting to market abuse. The object of this is to enable the FSA to pay compensation to any person who has lost as a result of the behaviour where profits have accrued. Effectively this provides a means of disgorgement as well as compensation and the court is given power to require accounts to determine profit or loss.<sup>58</sup>

The scope of such orders falls within two categories. First, an order may be made against a person who has engaged in market abuse where either profits have accrued to him as a result or where one or more persons have suffered loss or been otherwise adversely affected as a result.<sup>59</sup> Secondly an order may be made against a person who, by taking or refraining from taking any action has required or another person to engage in behaviour which, had he done it himself, would amount to market abuse where one or other of the same results has occurred.<sup>60</sup> It is open to a defendant to show that he believed on

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<sup>54</sup> Section 129 Financial Services and Markets Act 2000.

<sup>55</sup> Section 381(1) *ibid.*

<sup>56</sup> Section 381(2), (6) *ibid.*

<sup>57</sup> Section 381(3) *ibid.*

<sup>58</sup> Section 381(4), (6), (7) *ibid.*

<sup>59</sup> Section 383(1)(a), (2) *ibid.*

<sup>60</sup> Section 383(1)(b), (2) *ibid.*

reasonable grounds that his behaviour did not fall within either category or that he took all reasonable precautions and exercised all due diligence to avoid behaving in such a way.<sup>61</sup>

If an order is made by the court against a defendant to make payment this must be in favour of the FSA.<sup>62</sup> However, the FSA is required to pay out the sum to any person to whom the profits that have accrued to the defendant are attributable or who has suffered loss or has been adversely affected by the market abuse.<sup>63</sup>

Where the FSA is satisfied that an authorised person should make restitution then it does not have to apply to the court but may require that person to make payment to the aggrieved by administrative measures.<sup>64</sup> If the FSA propose to take this route then it must first issue a warning notice to the authorised person.<sup>65</sup> This is to give the opportunity to the authorised person to make representations on matters which mirror the statutory defences in court proceedings for a restitution order. If the FSA decide not to proceed it must issue a notice of discontinuance;<sup>66</sup> if it decides to proceed it must issue a decision notice fully particularising the matter.<sup>67</sup> Once in receipt of a decision notice, the authorised person has the right to refer the matter to the Financial Services and Markets Tribunal within twenty eight days of the date of the notice<sup>68</sup> It is then for the Tribunal to determine what if any action the FSA should take.<sup>69</sup>

The FSA is also given power to impose penalties for market abuse.<sup>70</sup> This may be exercised both in respect of authorised persons and others. The procedure is substantially similar to the procedure for FSA restitution action. Accordingly there is a warning notice, if necessary a decision notice and then the right for the person to refer the matter

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<sup>61</sup> Section 383(3) *ibid.*

<sup>62</sup> Section 383(4) *ibid.*

<sup>63</sup> Section 383(5),(10) *ibid.*

<sup>64</sup> Section 384 *ibid.*

<sup>65</sup> Sections 384(4). 385(1) *ibid.* The warning notice must contain particulars and reasons: see sections 385(2), 387 *ibid.*; and may not be published: see section 391(1) *ibid.*

<sup>66</sup> Section 389 *ibid.*

<sup>67</sup> Section 388 *ibid.*

<sup>68</sup> Section 386(3), also sections 132-137 and Sch.13 *ibid.* An appeal on a point of law, with permission, lies thereafter to the Court of Appeal: section 137.

<sup>69</sup> Section 133(4), (5), (10) and (11) *ibid.*

<sup>70</sup> Section 123 *ibid.*

to the Financial Services and Markets Tribunal.<sup>71</sup> There are two matters which are distinct to the penalty process however. First is the fact that the FSA may not adduce in evidence statements made by the defendant under compulsion in the investigatory process.<sup>72</sup> Secondly there is provision for a form of “legal aid” for proceedings before the Tribunal in respect of penalties.<sup>73</sup>

Where a financial penalty is not imposed on a person whose behaviour has constituted market abuse the FSA may, instead of imposing such a penalty, publish a statement to the effect that he has engaged in market abuse.<sup>74</sup> A statutory obligation has been placed on the FSA to issue a statement of its policy on the imposition of penalties and their quantum. For this purpose there will be an Enforcement Manual, which is currently in draft.

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<sup>71</sup> Section 127(4) *ibid.* An appeal on a point of law, with permission, lies thereafter to the Court of Appeal: section 137 *ibid.*

<sup>72</sup> Section 174(2) *ibid.*

<sup>73</sup> Section 134-136 *ibid.*

<sup>74</sup> Section 123(3) *ibid.*