

Chapter 2

Price Stabilising Rules



2.1 Application

APPLICATION: WHO?

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- (1) This chapter applies to every *firm*.
- (2) For the purposes of section 118(8) of the *Act*, *behaviour* (whether by a *firm* or not) conforming with the *price stabilising rules* does not amount to *market abuse*.

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- (1) This chapter is available to any *person*, whether that *person* is a *firm* or not, who wishes to show:
 - (a) that he acted in conformity with the *price stabilising rules* for the purposes of paragraph 5(1) of Schedule 1 to the Criminal Justice Act 1993 (Insider dealing); or
 - (b) that he acted or engaged in conduct in conformity with the *price stabilising rules* for the purposes of section 397(4) or (5)(b) of the *Act* (Misleading statements and practices); or
 - (c) that his *behaviour* conforms with *rules* in accordance with section 118(8) of the *Act* (Market abuse).
- (2) Any *person* concerned with an *offer for cash* of *securities* might wish to rely on this chapter; there are no legal restrictions on the appointment of *stabilising managers* to whom this chapter may apply. However, the main focus of the chapter is on lead managers when they are contemplating or carrying out an *offer for cash* of *securities*. Agents appointed by lead managers, on the basis contemplated by this chapter, may also find the chapter especially relevant.

APPLICATION: WHAT?

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This chapter applies to an *offer for cash*, that is, an *offer* of *securities*:

- (1) where the *securities* are *investments* falling within paragraphs 76, 77, 78, 79 or 80 of the *Regulated Activities Order*;
- (2) where the *offer for cash* is to be, is, or has been, made at a specified price payable in sterling or another currency;
- (3) where those *securities*:

- (a) have been *admitted to trading* (or are the subject of an application for *admission to trading*) on an exchange or other institution included in ■ MAR 2.1.5R; or
- (b) are, or may be, traded under the rules of the International Securities Markets Association;
- (4) where the total cost of the *securities* subject to the *offer* at the *offer price* is at least £15,000,000 (or its equivalent in another currency); and
- (5) where the *offer* is public in character and is to be, is, or has been subject of a public announcement.

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The effect of ■ MAR 2.1.3R is to include both initial public offers and public offers of additional *securities* to rank alongside *securities* already in issue. An offer is likely to be regarded as public in character where it is made in a prospectus. Other offers that may be regarded as public are offers to a section of the public, placements that are not essentially private and distributions. But the use of the word "offer" and the fact that there has to be a *public announcement* of the *offer* shows that a sale, for example by means of a block trade, of *securities* already in issue is not included.

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Table Exchanges (see MAR 2.1.3R(3))

Application: *securities admitted to trading* or to be *admitted to trading* on the following exchanges are within the scope of the *price stabilising rules* (see MAR 2.1.3R(3)).

A recognised investment exchange

A recognised overseas investment exchange

A regulated market

Other specific exchanges as listed in MAR 2 Ann 1R

APPLICATION: WHERE?

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This chapter:

- (1) so far as it provides a defence for any *person*, has the same territorial application as the provision which is alleged to have been contravened; and
- (2) in its application to a *firm* for purposes other than those falling within (1), applies to the *firm's* business carried on from an establishment in the *United Kingdom*.

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There are specific provisions in ■ MAR 2.8 about action for stabilising purposes in conformity with provisions made by certain overseas authorities. Accordingly action by *persons* not present in the *United Kingdom*, but where the action may have an effect in the *United Kingdom*, may have to be assessed in terms of the general provisions in this chapter, or the specific provisions in ■ MAR 2.8.

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The defences to legal or regulatory procedures referred to in ■ MAR 2.1.6R(1) and listed at ■ MAR 2.1.2G(1) are conferred by *rules* made under section 144 of the *Act* (price stabilising rules); this means that ■ MAR 2.6 (Management of stabilisation) and ■ MAR 2.7 (Recording of action taken), which are made under section 138 of the *Act*, and apply only to *authorised persons*, are not relevant for the purposes of such a defence.

RIGHTS OF ACTION FOR DAMAGES

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A contravention of the *rules* in ■ MAR 2 does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

2.2 Purpose

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The purpose of this chapter is to provide *rules* permitting, but also regulating, price support for *offers* of equities and bonds, including new issues such as initial public offers and *offers* of *securities* of the type and class already traded in the market. It prescribes the circumstances in which the *stabilising manager* and others acting for him are permitted to support the prices of the *relevant securities* offered for a limited period after the *offer*. This is to maintain an orderly initial market in the *securities* offered, and potentially therefore to facilitate new *offers* and reduce the costs to enterprises involved in the making of new *offers* of their *securities*. The *stabilising manager* and his agents are allowed to exert upward pressure on the price in the cash market, by all means permitted by the *price stabilising rules*, including by the purchase of *relevant securities* previously sold short. Under the *rules* in this chapter, there can be only one *stabilising manager* in respect of any particular *offer*.

GENERAL EFFECT OF THE RULES

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The general effect of this chapter is to enable the *stabilising manager* of an *offer* of *securities* to enter into the market personally, or through specially appointed agents, to buy or agree to buy *securities* in order to support (though not to suppress) the market price of the *relevant securities* being *offered*. He will, however, be free to do this only if:

- (1) the *stabilising period* is still running;
- (2) he has taken the necessary preliminary steps envisaged by ■ MAR 2.3 and, if applicable, ■ MAR 2.7 (relating to warning the market of the possibility of *stabilising action*, and records of action taken);
- (3) the price is not already false at the start of the *stabilising period* under ■ MAR 2.3.8R; and
- (4) the limits set by ■ MAR 2.5 as to the maximum price at which *stabilising action* may be taken are not exceeded.

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During the *stabilising period* the *stabilising manager* may do any or all of the following:

- (1) purchase, or agree to purchase, any of the *relevant securities* (or *associated securities*) with a view to supporting the market price of the *relevant securities*; and
- (2) offer or attempt to do anything in (1) with a view to supporting the market price of the *relevant securities*.

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But the *stabilising manager* will not be able to rely on the *price stabilising rules* if, at the time of the relevant act or omission, he knew or should reasonably have known that:

- (1) the market had not been properly informed in accordance with ■ MAR 2.3.2R(1) and (2); or
- (2) proper records are obliged to be but have not been or are not being kept in accordance with ■ MAR 2.3.2R(3); or
- (3) the price of any *associated securities* or of the *relevant securities* was already false at the time when the *offer price* was determined in the circumstances described at ■ MAR 2.3.8R.

2.3 Preparation before and restrictions upon stabilising action

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Before *stabilising action* is taken, the *stabilising manager* is required (under ■ MAR 2.3.2R) to take, or check that others have taken, proper steps to inform the market (and, so far as relevant, the issuer) that *stabilising action* may be taken and (under ■ MAR 2.3.8R) to verify that the price of any *relevant securities* or *associated securities* is not already false. He must also:

- (1) be satisfied (under ■ MAR 2.3.2R) that proper systems have been set up (where required) for the central recording of any *stabilising action*; and
- (2) (under ■ MAR 2.3.9R) not stabilise shares and certificates associated to bonds, loans, debentures, etc, if one is to be convertible into the other but the terms of conversion have not yet been announced.

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The *stabilising manager* may not take any *stabilising action* in any *relevant securities* or *associated securities* in accordance with this chapter unless he has taken all reasonable steps to satisfy himself that:

- (1) from the beginning of the *introductory period* (or where relevant the period mentioned in ■ MAR 2.3.53(3)(b)) adequate disclosure is made, in relevant communications issued by or on behalf of the issuer or the *stabilising manager*, of the fact that *stabilising action* may take place in relation to the *offer*;
- (2) any requirement of the relevant exchange (see ■ MAR 2.5.6R note (2)) or other institution on which the *relevant securities* or *associated securities* are or will be traded (see ■ MAR 2.1.3R(3)) to inform it that *stabilising action* in those *securities* may take place during the *stabilising period* has been complied with;
- (3) the *stabilising manager* has established the register required by ■ MAR 2.7.2R(1) (if that paragraph is binding upon him) for recording each *stabilising action* effected by him in the *relevant securities* or *associated securities* and the matters required to be recorded by ■ MAR 2.7.2R(2) in relation to it; and
- (4) where the *offer* relates to an issue of *relevant securities* the issuer has been informed of the existence of the FSA informational guidance (■ MAR 2Ann2G), either in relation to the *offer* in question or to a previous one.

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- (1) A *stabilising manager* who is required to comply with ■ MAR 2.3.2R(1) should ensure that the communications there referred to, if they fall within items 1 to 5 of ■ MAR 2.3.4E, contain the words suggested in, or otherwise fairly comply with, any relevant note to that table.
- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ MAR 2.3.2R(1).

2.3.4  01.12.01/001

Table Communication referring to the offer (see ■ MAR 2.3.2R(1))

Item	Communication	Relevant Notes (See MAR 2.3.5E)
1	Any screen-based statement	1, 2, 3, 5 and 6
2	Press announcement (or other <i>public announcement</i>)	2, 3, 5 and 6
3	Invitation telex (or similar)	2, 5 and 6
4	Preliminary offering circular (or draft prospectus)	4, 5 and 6
5	Final offering circular (or prospectus)	4, 5 and 6

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Table Notes to ■ MAR 2.3.4E

(1) Item 1 extends to any statement made by the *stabilising manager* or issuer on screen facilities (whether provided by the *stabilising manager* or not) conveying prices for a purchase or sale of *securities*.

(2) For items 1, 2 and 3, adequate disclosure is given if the communication contains some indication of the fact that the *offer* may be stabilised in accordance with the *price stabilising rules*. The term "stabilisation / FSA" is sufficient for this purpose. During the *introductory period* a reference to the future prospectus or to the prospectus can be used instead if preferred.

(3) Items 1 and 2 apply from the beginning of the shorter of two periods, that is:

(a) the *introductory period*; or

(b) the period beginning 45 days before the day proposed for the issue of the *relevant securities* and ending with the start of the *stabilising period*.

(4) For Items 4 and 5 adequate disclosure is given if the communication contains wording substantially similar to the following:

"In connection with this [issue] [*offer*], [name of *stabilising manager*] [or any *person* acting for him] may over-allot or effect transactions with a view to supporting the market price of [description of *relevant securities* and any *associated securities*] at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there may be no obligation on [name of *stabilising manager*] [or any agent of his] to do this. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period."

(5) Where any communication referred to in items 1 to 5 is not to be issued to or directed at *persons* in the *United Kingdom*, the notice required by those items may be adapted or omitted.

(6) Where any communication referred to in items 1 to 5 is to be issued to or directed at *persons* in the *United Kingdom* and *persons* elsewhere, the notice required by those items may be adapted or omitted so as not to require the *stabilising manager* or any agent of his to commit any breach of any legal rule or requirement in respect of any communication issued to or directed at *persons* outside the *United Kingdom*.

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The requirement in ■ MAR 2.3.2R(1) to make adequate disclosure in communications does not apply to any communication which is not mentioned in table ■ MAR 2.3.4E.

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An FSA consumer factsheet has been prepared which explains to potential investors the significance of the fact that stabilisation may take place in the *relevant securities* offered. The factsheet is available on the FSA's website and may in addition be obtained from the FSA by post, free of charge. The *stabilising manager* acting for the issuer should consider drawing attention to the availability of this factsheet in prospectuses which are aimed at *private customers*.

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- (1) The *stabilising manager* may not take *stabilising action* in any case where:
 - (a) there are in existence *associated securities*;
 - (b) at the time when the *offer price* of the *relevant securities* was determined, the market price of the *associated securities* was falsely higher than the true market price; and
 - (c) the *stabilising manager* knew or ought reasonably to have known that the falsity in the market price was attributable in whole or in part to any act or course of conduct on the part of any *person* which was in breach of section 397(2) or (3) of the *Act*.
- (2) The *stabilising manager* may not take *stabilising action* in any case where:
 - (a) at the time when the *offer price* of the *relevant securities* was determined, the market price of the *relevant securities* or of rights to them, whether in informal trading or otherwise, was falsely higher than the price which would otherwise have prevailed; and
 - (b) the *stabilising manager* knew or ought reasonably to have known that the falsity in the market price was attributable in whole or in part to any act or course of conduct on the part of any *person* which was in breach of section 397(2) or (3) of the *Act*.

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The *stabilising manager* may not take *stabilising action* in any case where:

- (1) the *relevant securities* fall within article 77 (instruments creating or acknowledging indebtedness), 78 (Government and public securities) or 79 (instruments giving entitlements to investments) of the *Regulated Activities Order*;
- (2) there are, in relation to those *relevant securities*, *associated securities* falling within article 76 (shares, etc) or 80 (certificates representing certain securities) of the *Regulated Activities Order*, into which those *relevant securities* can be converted or to the purchase of which those *relevant securities* give rights; and
- (3) the terms of the conversion, purchase or subscription have not yet been publicly announced.

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The general purpose of ■ MAR 2.3.9R is to place a restriction on stabilising bonds convertible into equities, and warrants for equities, in cases where the terms of the conversion or right to purchase have not yet been settled. Prime examples would be a convertible loan stock of a public limited company, but ■ MAR 2.3.9R also covers

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similar cases such as government debt instruments which are convertible into shares, for example a privatisation in the *United Kingdom* or overseas.

The *stabilising manager* may not take *stabilising action* in any case where:

- (1) he or an *associate* of his has, in connection with the *offer*, an *option* or other right to purchase *relevant securities* from the issuer; and
- (2) that *option* or right may be exercised or relied on after the start of the *introductory period* and during or after the remainder of the *stabilising period*;

unless the existence and principal terms of the *option* or right have been disclosed in the relevant prospectus or offering document or in a *public announcement*.

2.4 Ancillary permitted stabilising action

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■ MAR 2.4.2R and ■ MAR 2.4.3R enable the *stabilising manager* to over-allot or go short of *securities*, so as to facilitate his subsequent purchase of them by *stabilising action*; and he may buy or sell on the market in order to close out or liquidate positions established by *stabilising action* or by going short.

PERMITTED ANCILLARY ACTION

2.4.2

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The *stabilising manager* may, subject to ■ MAR 2.4.3R:

- (1) with a view to supporting the price of the *relevant securities* by action under ■ MAR 2.2.3R:
 - (a) make allotments of a greater number of the *relevant securities* than will be offered; or
 - (b) sell or agree to sell *relevant securities* or *associated securities* so as to establish a short position in them; or
 - (c) achieve a result equivalent to that in (b) by use of *derivatives*; or
- (2) buy or subscribe for or agree to buy or subscribe for *relevant securities* or *associated securities* in order to close out or liquidate any position established under (1); or
- (3) sell or agree to sell *relevant securities* or *associated securities* in order to close out or liquidate any position that has been established by *stabilising action*; or
- (4) achieve a result equivalent to that in (3) by use of *derivatives*; or
- (5) offer or attempt to do anything permitted by (1)(b) or (c), (2), (3) or (4).

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■ MAR 2.4.2R applies only if the *stabilising manager* has reasonable grounds for believing, and does believe, that the requirements in ■ MAR 2.3 have been complied with.

PRICE LIMITS

- 2.4.4 **R** *Ancillary action* under ■ MAR 2.4.2R(2) may be taken without regard to the limits on pricing in ■ MAR 2.5.
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- 2.4.5 **G** Long or short positions can be established either in the cash market or by the use of *derivatives*. The extent to which *derivatives* may be used in *stabilising action* or in *ancillary action* is strictly limited. ■ MAR 2 contemplates the use of *derivatives* only on the “selling” side, that is as permitted *ancillary action*, under ■ MAR 2.4.2R(1)(c) and (4). This is because of the need for market transparency in any purchase transactions and because of the requirements which are applicable to *firms* in ■ MAR 2.7.2R for a single record of *stabilising action* taken.
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- 2.4.6 **G** ■ MAR 2.4.2R(2) extends to the purchase from the issuer during the *stabilising period*, or shortly after, by exercise of an *option* or other right, of further *securities* not previously allotted.
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2.5 Pricing

LIMIT ON PRICING: GENERAL

- 2.5.1** G
01.12.01/001 The principal purpose of this section is to put an upper limit on the price at which certain *securities* may be stabilised.
- 2.5.2** G
01.05.03/002 The price limits are broadly similar whether the *stabilising action* is concerned with *relevant securities* or *associated securities* (including call *options*). However, the price limits do not extend to debt securities in the form of bonds, etc, or *investments* similar to *debt securities* such as convertibles or exchangeables. Pricing for them is subject instead to the requirement in ■ MAR 2.2.3R that the *stabilising action* is taken to support the market price.
- 2.5.3** G
01.12.01/001 The initial *stabilising price* (Price X) cannot exceed the *offer price* (or starting price) (Price Y), and subsequent *stabilising action* must equally be at or below the level of Price X. If there are no sales and purchases which are independent of the *stabilising manager* on both sides on the relevant exchange above Price X, the *stabilising manager* can operate at a price or at prices below Price X, moving up or down in that area as he wishes. But if an independent buyer and seller do a deal on the relevant exchange, at a price (Price Z) between Price X and Price Y, then the *stabilising manager* has a new maximum price (Price Z) instead of Price X.

MAXIMUM PRICES

- 2.5.4** R
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- (1) No bid may be made or transaction effected in the case of action described in ■ MAR 2.2.3R at a price higher than any relevant price indicated in accordance with ■ MAR 2.5.5R (including any relevant note in ■ MAR 2.5.6R).
 - (2) The prohibition in (1) does not apply to the purchase of, the agreement to purchase, or an offer or attempt to purchase or to agree to purchase, *investments* that fall within:
 - (a) article 77 or 78 of the *Regulated Activities Order* (bonds, etc); or
 - (b) article 77 or 78 and also fall within articles 79 (instruments giving entitlements to investments), 80 (certificates representing certain securities) or 83 (options); or

(c) article 79 or 80 that confer rights in respect of *investments* falling within article 77 or 78.

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Table Limits on pricing (see ■ MAR 2.5.4R(1))

Time of Action	Column A	Column B	Column C
	<i>Relevant securities (including associated securities which are in all respects uniform with them)</i>	<i>Associated securities (other than associated call options) excluding those in column A</i>	<i>Associated call options</i>
(1) Initial stabilising action	The offer price	The market bid price of the associated securities at the beginning of the stabilising period	The market price of an option at the beginning of the stabilising period
(2) Later, but where there has been a deal at a price above the stabilising price on the relevant exchange	The offer price, or the price at which that deal was done, whichever is the lower	The market bid price in B(1), or the price at which that deal in the associated securities was done, whichever is the lower	The market price in C(1), or the price at which that deal in an option was done, whichever is the lower
(3) Later, but where there has been no deal in (2)	The offer price, or the initial stabilising price, whichever is the lower	The market bid price in B(1), or the initial stabilising price for the associated securities, whichever is the lower	The market price in C(1), or the initial stabilising price of the option, whichever is the lower

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Table Pricing notes (see ■ MAR 2.5.5R)

- (1) **Deals done.** For the purposes of *MAR 2.5.5R(2)*, a deal done by or on the instructions of the *stabilising manager* does not count.
- (2) **Relevant Exchange.** For the purposes of *MAR 2.3.2R(2)*, *MAR 2.5.5R(2)* and *MAR 2.5.6R* the relevant exchange means the investment exchange which the *stabilising manager* reasonably believes to be the principal investment exchange on which those *securities*, or as the case may be *options*, are dealt in at the time of the transaction.
- (3) (Deleted).
- (4) References in column B of *MAR 2.5.5R* to *associated securities* do not include call *options*.
- (5) **Currency fluctuations.** Where the price of any *relevant securities* or associated securities on the relevant exchange is in a currency other than the currency of the price of the *securities* to be stabilised, stabilising bids may be made or transactions effected at a price that reflects any change in the relevant rate of exchange; but this does not permit *stabilising action*, in column A of *MAR 2.5.5R*, at a price above the equivalent, in the other currency, of the *offer price* in the currency on the relevant exchange.
- (6) **New securities:** Where there is no market bid price for any *associated securities* (including *associated call options*) at the beginning of the *stabilising period* because those *securities* or *options* are not in existence or capable of being traded at that time, *MAR 2.5.5R* shall be read as if references to the market bid price of the *associated securities* or *options* at the beginning of the *stabilising period* were a reference to the first market bid price of the *associated securities* or *options* during the *stabilising period* of which the *stabilising manager* is, or reasonably should be, aware.

2.6 Management of stabilisation

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The purpose of this section and of section 2.7 is to provide an orderly structure for the management of *stabilising action* even where it is to be carried out on a devolved basis, whether in the *United Kingdom* or elsewhere. The central management has to be in the hands of one *stabilising manager*. If authorised in the *United Kingdom*, the *stabilising manager* has to set up, operate and be legally responsible for a single stabilisation register ■ MAR 2.7.2R) which must be kept in the *United Kingdom* or be capable of being inspected by the relevant regulators. These sections accordingly build on the base requirement for *authorised persons* at ■ MAR 2.3.2R(3).

2.6.2

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- (1) This section, and section ■ MAR 2.7, apply only where the *stabilising manager* is a *firm* or is employed by a *firm*.
- (2) Where the *stabilising manager* is employed by a *firm*, this section and ■ MAR 2.7 shall have effect as if the obligations imposed on the *stabilising manager* were imposed on the *firm*.

2.6.3

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No bid may be made or transaction effected in the course of stabilising action unless the stabilising manager:

- (1) has established the relevant register in compliance with ■ MAR 2.7.2R; and
- (2) is in compliance with the registration requirements in ■ MAR 2.7.2R in respect of all earlier transactions effected in the course of *stabilising action* in connection with the *offer* in question.

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No bid may be made or transaction effected in the course of *stabilising action* except by:

- (1) the *stabilising manager* himself; or
- (2) a *person* appointed by the *stabilising manager* to act as his agent on terms which:
 - (a) make the agent responsible to the *stabilising manager*; and
 - (b) make the *stabilising manager* as responsible to others for the acts or omissions of the agent as if they had been done or omitted by the *stabilising manager*.

2.6.5

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- (1) The *stabilising manager* may not during the *stabilising period* enter into a transaction as principal in *relevant securities* or *associated securities* with any agent of his appointed under ■ MAR 2.6.4R.
- (2) Paragraph (1) does not apply if, at the time of the transaction, neither the *stabilising manager* nor the agent knew or could reasonably have been expected to know the identity of his counterparty.
- (3) Paragraph (1) does not apply where:
 - (a) the transaction between the *stabilising manager* and his agent is undertaken solely for the purpose of re-allocating the economic risk of positions that were taken by the *stabilising manager* and his agent in the course of *stabilising action* and is priced accordingly; and
 - (b) the *relevant securities* are, and the transactions are in, *investments* that:
 - (i) fall within article 77 or 78 of the *Regulated Activities Order* (bonds, etc), or article 79 (instruments, etc) or 80 (certificates, etc) which confer rights only in respect of *investments* falling within article 77 or 78 ; and
 - (ii) are not exchangeable for or convertible into, and do not give rights to acquire, dispose or subscribe for, *investments* falling within article 76 of the *Regulated Activities Order* (shares, etc), or articles 79 or 80 which confer rights in respect of *investments* falling within article 76.

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■ MAR 2.6.5R prohibits transactions between a *stabilising manager* and his agent unless it is not reasonable to expect both the principal and agent to know the identity of their counterparty or where ■ MAR 2.6.5R(3) applies. ■ MAR 2.6.5R(3) is designed to permit a transaction between a *stabilising manager* and his agent that takes place in the debt markets, typically at the end of the *business day* or *stabilising period*, that "squares up" positions taken in the course of *stabilising action*. The reference to price in ■ MAR 2.6.5R(3)(a) reflects the need to be mindful that although the transaction may in practice, for example, be effected at a price that is the average of the constituent transactions, so not the prevailing market price, the purpose behind the transaction is to re-allocate economic risk established in the course of *stabilising action* and is not to mislead the market. ■ MAR 2.6.5R(3)(b) has been drafted to ensure that the prohibition in ■ MAR 2.6.5R(1) remains applicable to the issue of and transactions in any *investment* that provides a right to acquire or subscribe for, or may eventually be converted or exchanged into, a *share*.

2.7 Recording of action taken

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For the application of this section see ■ MAR 2.6.2R.

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2.7.2

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- (1) The *stabilising manager* must establish and keep a register in respect of each *offer of securities* covered by this chapter.
- (2) He must ensure that it contains, either in real time or updated overnight (from *business day* to *business day*):
 - (a) the names of all agents appointed under ■ MAR 2.6.4R, and details of the terms of the appointment of each;
 - (b) the general parameters (including the initial *stabilising price*) laid down by the *stabilising manager* for his agents and the date and time of their communication, variation or revocation;
 - (c) each transaction effected in the course of *stabilising action* including:
 - (i) the type of *security*;
 - (ii) the unit price;
 - (iii) the size;
 - (iv) the date and time; and
 - (v) details of the counterparty;
 - (d) details of the allotment of *relevant securities* (allottee and amount allotted); and
 - (e) details (so far as known to the *stabilising manager*) of any deal which “counts” as a deal at a price above the then *stabilising price* for the purposes of ■ MAR 2.5.5R(2) (pricing after independent deals).
- (3) The register must be kept in the *United Kingdom*, or else be capable of being brought to, or reconstituted in, the *United Kingdom* within 48 hours of a request for access from anyone entitled to inspect it.

2.7.3

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- (4) If the *register* is not kept in English, it must be capable of being converted into English within the 48 hour period mentioned in (3).
- (1) During the three months from the end of the *stabilising period*, the *stabilising manager* must permit the issuer of the *securities*, on any *business day*, to inspect that part of the register which is kept under ■ MAR 2.7.2R(2)(c) (i) to (iv).
- (2) The obligation in (1) arises only if the *offer* related to an issue of *relevant securities*.

2.7.4

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The register must be retained for a period of at least three years from the date of the end of the *stabilising period*.

2.8 Overseas Stabilisation

2.8.1

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Under sections 144(3) and (6) of the *Act*, the *FSA* may make *rules* which confer a “safe harbour” in respect of one type of market manipulation (section 397(3)) on *persons* who act in conformity with specified provisions of foreign laws. Under that power, the *FSA* “specifies” certain legislative provisions having effect in the United States of America and in Japan. It should be noted that conformity with these provisions may assist in proceedings under section 397(3) but not in proceedings under section 397(2) nor in proceedings under Part V of the Criminal Justice Act 1993 (insider dealing). This is because of the wording of section 144(3).

2.8.2

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(1) A person who, in any place outside the *United Kingdom*, acts or engages in conduct:

- (a) for the purposes of stabilising the price of *investments*; and
- (b) in conformity with the provisions specified in (2) or, as the case may be, in (3); and
- (c) in relation to an offer which is governed by the law of a country (or a state or territory in a country) so specified;

is to be treated for the purposes of section 397(5) of the *Act* (misleading statements and practices) as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.

(2) In relation to the United States of America, the specified provisions are:

Regulation M made by the *Securities and Exchange Commission* (17 CFR 242, # 100-105).

(3) In relation to Japan, the specified provisions are:

- (a) The Securities and Exchange Law of Japan, (Law No 25, April 13 1948), Article 159, paragraphs 3 and 4;
- (b) Cabinet Orders for the Enforcement of the Securities and Exchange Law of Japan (Cabinet Order 321, September 30, 1965), Articles 20 to 26;

- (c) Ministerial Ordinance concerning the Registration of Stabilisation Trading (Ordinance of the Ministry of Finance No 43, June 14, 1971);
 - (d) Ministerial Ordinance concerning rules and otherwise governing the soundness of securities companies (Ordinance of the Ministry of Finance, No 60, November 5, 1965), Article 2.
- (4) A *person* who is treated under (1) as acting or engaging in conduct in conformity with the *price stabilising rules* is also to be treated to an equivalent extent as so acting or engaging for the purposes of ■ MAR 2.1.1R(2) above, and of Part XIV (Disciplinary measures) and Part XXV (Injunctions and Restitution) of the *Act*.
- (5) The provisions in (2) and (3) are specified as they have effect from time to time, so long as this paragraph has effect.

2.8.3



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- (1) The effect of ■ MAR 2.8.2R(4) is to confer a defence in the following classes of cases:
- (a) proceedings under Part VIII of the *Act* in cases of *market abuse*;
 - (b) disciplinary proceedings under Part XIV of the *Act* in cases of a breach of other *price stabilising rules*;
 - (c) proceedings under Part XXV of the *Act* (Injunctions and Restitution) in relation to *market abuse* or a breach of other *price stabilising rules*.
- (2) The *FSA* and, if necessary, the *Financial Services and Markets Tribunal* and the court will need, in such cases, to consider whether, and if so how, the overseas stabilising rule has been complied with or broken in relation to conduct of the kind which otherwise would be proscribed under section 397(3) of the *Act*.

2.8.4



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The provisions in this section are separate and distinct from other provisions in these *rules* which may be relevant to overseas stabilisation whether by *persons* who are authorised in the *United Kingdom* or by other *persons*. In particular, ■ MAR 2.6.4R enables overseas agents appointed by a *UK* authorised *stabilising manager* to obtain the benefit of the *price stabilising rules*.