

Changes to the regulation of market conduct in the DIFC – the DFSA issues its Code of Market Conduct

The Dubai Financial Services Authority (DFSA) published its Code of Market Conduct (the Code of Conduct) which applies from 1 January 2015. This briefing summarises the key provisions of the Code of Conduct and gives a comparative perspective on the position in the EU and the UK.

Introduction

The Code of Conduct takes the form of a standalone module of the DFSA Sourcebook. The guidance which it contains is indicative and non-binding and is intended to:

- help determine whether conduct constitutes market abuse under the DFSA's regime
- assist those who fall within its scope with the monitoring, prevention and reporting of market abuse
- clarify whether certain practices amount to market abuse in the view of the DFSA.

Scope of the Code of Conduct

This Code of Conduct applies to any person (including both individuals and legal entities) in respect of conduct which either occurs in the Dubai International Financial Centre (DIFC) or affects the DIFC markets or users of such markets. Its application is therefore extra-territorial in that it may apply to persons or conduct which takes place outside of the DIFC. Examples of where conduct which might take place outside of the DIFC, but which would fall within the scope

of the Code of Conduct include: (i) where a person places a trade which creates an artificial price in respect of an investment traded on a DIFC exchange; or (ii) where a person discloses inside information in respect of an investment traded on a DIFC exchange to another person.

Content of the Code of Conduct

The Code of Conduct is divided into chapters which refer to various classes of behaviour and set out the DFSA's interpretation of the regime through the discussion of various practical examples of conduct and whether they would constitute market abuse.

The chapters of the Code of Conduct relate to:

- market manipulation and fraud
- dissemination of false or misleading information
- use of fictitious devices and other forms of deception
- false or misleading conduct or distortion
- insider dealing
- providing inside information
- inducing another person to deal

- misuse of information
- enforcement powers.

There are both general and specific factors which the DFSA will take into account in assessing whether a particular pattern of behaviour would constitute market abuse.

Examples of the general factors include:

- the experience and knowledge of the users of the market in question
- the structure of the market, including its reporting, notification and transparency requirements
- the identity and position of the person responsible for the conduct which has been observed.

The specific behaviours addressed include: "wash trades", "painting the tape", "momentum ignition", "quote stuffing", and "abusive squeezes".

Sanctions for breach

Under the regulatory regime of the DFSA, the sanctions for market abuse offences are civil, rather than criminal in nature (and include fines, public censure and withdrawal of authorisation). That being said, there

are provisions of the UAE Criminal Law (which applies in the DIFC) which could arguably be relevant to certain behaviours. Enforcement of the criminal provisions will lie with the local police and, ultimately, with the Dubai Courts and not with any of the centre bodies in the DIFC. However, there is as yet no supplementary criminal market abuse regime analogous to that in place in the UK (and which will be in place across Europe once the provisions of the Market Abuse Directive are transposed into the national laws of European Union member states, which is expected to occur by mid 2016).

Comparative Viewpoint

In the UK, the FCA's Code of Market Conduct is an established feature of the regulatory toolkit. The FCA is obliged by the Financial Services and Markets Act 2000 to maintain the FCA's Code of Market Conduct to give appropriate guidance to those determining whether or not particular behaviour amounts to market abuse. In a similar way to the Code of Conduct now produced by the DFSA, it describes behaviours which, in the opinion of the FCA, do and do not amount to market abuse and factors

which are, in its opinion, to be taken into account when determining whether behaviour amounts to market abuse.

Its provisions are not determinative, but the FCA Code's quasi-legislative status means that they carry substantial weight when the FCA (and the FSA before it) is considering taking action, and in cases where it decides to do so. It has served as an aid to interpretation and construction in the most high profile market abuse enforcement cases, most recently the action against Ian Hannam for improper disclosure of inside information, which led to the imposition of a financial penalty of £450,000.

The future status of the Code is currently somewhat uncertain pending the finalisation of guidance accompanying and implementing the Market Abuse Regulation in EU member states. Depending upon the final form and content of those documents, some of the Code's provisions may be downgraded from their current "safe harbour" and "evidential" status to persuasive but non-binding "guidance". Notwithstanding any changes as the shape of European guidance

becomes clearer, the FCA Code is expected to remain a key part of the FCA's Handbook and a key source of reference for market participants in the UK.

Clifford Chance comment

We welcome this clarification of the scope of the market abuse regime by the DFSA and the issuance of the Code in the form of guidance rather than binding rules. This seems to be a sensible approach given the nature of the DIFC and the relatively limited volume of trading on the DIFC's exchanges. The Code of Conduct sets out helpful guidance for firms on the scope of their obligations in relation to market abuse. Firms should ensure that their compliance policies, procedures, systems and controls reflect the DFSA's expectations in relation to market conduct as set out in the Code of Conduct, particularly if they are drawn from group compliance frameworks based on the EU regime.

Key contacts



Tim Plews
Partner

T: +966 11481 9770
E: tim.plews
@cliffordchance.com



James Abbott
Partner

T: +971 4 362 0608
E: james.abbott
@cliffordchance.com



Philip Jolowicz
Counsel

T: +971 4 362 0742
E: philip.jolowicz
@cliffordchance.com



Christopher Young
Associate

T: +971 4 362 0616
E: christopher.young
@cliffordchance.com



Ricky Ghosh
Associate

T: +971 4 362 0706
E: ricky.ghosh
@cliffordchance.com



Carlos Conceicao
Partner

T: +44 20 7006 8281
E: carlos.conceicao
@cliffordchance.com



Chris Stott
Senior Associate PSL

T: +44 20 7006 4231
E: chris.stott
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Building 6, Level 2, The Gate Precinct, Dubai International Financial Centre, P.O. Box 9380, Dubai, United Arab Emirates

© Clifford Chance 2015

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571. Registered office: 10 Upper Bank Street, London, E14 5JJ. We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications. Licensed by the DFSA.

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.