



[Please discard this page]

[Please discard this page]

Descriptions of behaviour that does not amount to market abuse (distortion)

- 1.9.3 **C** Behaviour that complies with the requirements imposed on long position holders in the *metal market aberrations regime* will not amount to *market abuse (distortion)*.

Factors to be taken into account: false or misleading impressions

- 1.9.4 **A** In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* is likely to give a *regular user* a false or misleading impression as to the supply of or the demand for or as to the price or value of one or more *qualifying investments* or *related investments*:

- (1) the experience and knowledge of the users of the market in question;
- (2) the structure of the market, including its reporting, notification and transparency requirements;
- (3) the legal and regulatory requirements of the market concerned;
- (4) the identity and position of the *person* responsible for the *behaviour* which has been observed (if known); and
- (5) the extent and nature of the visibility or disclosure of the *person's* activity.

Factors to be taken into account: standards of behaviour

- 1.9.5 **A** In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* that creates a false or misleading impression as to, or distorts the market for, a *qualifying investment*, has also failed to meet the standard expected by a *regular user*:

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently;
or
- (3) the characteristics of the market in question, including the users and applicable rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position, such as under **■ DTR 5** ;
- (4) the position of the *person* in question and the standards reasonably to be expected of him in light of his experience, skill and knowledge;
- (5) if the transaction complied with the rules of the relevant *prescribed markets* about how transactions are to be executed in a proper

way (for example, rules on reporting and executing cross-transactions); and

- (6) if an *organisation* has created a false or misleading impression, whether the individuals responsible could only know they were likely to create a false or misleading impression if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements.