



# **Code of Market Conduct**

## **(CMC)**

## 1 INTRODUCTION

### Purpose

1. The purpose of the Code of Market Conduct is to provide Guidance on the Market Abuse provisions in Part 6 of the Markets Law.
2. The Code is intended to:
  - (a) help persons to determine whether or not conduct is Market Abuse;
  - (b) assist persons such as Authorised Persons who may be subject to obligations to monitor for, prevent or report Market Abuse to comply with their obligations; and
  - (c) clarify that certain market practices do not, in the DFSA's view, ordinarily amount to Market Abuse.
3. The Code is relevant to any person to whom Part 6 of the Markets Law applies. Part 6 applies to persons generally, that is:
  - (a) whether an individual, Body Corporate or body unincorporated; and
  - (b) whether regulated by the DFSA (such as an Authorised Person) or unregulated.

### Status

4. The information in the Code is made and issued as Guidance on the provisions in Part 6 of the Markets Law and as such is indicative and non-binding. This Guidance is issued by the DFSA Board of Directors under Article 20(2)(c) of the Regulatory Law.
5. In the Code, the DFSA sometimes sets out its views on the interpretation of provisions in Part 6 of the Markets Law. These views are not intended to be exhaustive or definitive and interpretation of the Markets Law is ultimately a matter for the Court. If you have any doubt about your obligations under a provision, you should seek appropriate legal advice.

### Structure

6. The chapters in the Code generally set out for each type of Market Abuse:
  - (a) the text of the prohibition and relevant definitions;
  - (b) the DFSA's interpretation of elements of the prohibition (including factors it may take into account in determining whether or not there has been a contravention);

- (c) general or specific examples of conduct that in the DFSA's view may contravene the prohibition; and
- (d) where relevant, defences in the Markets Law.

Where the Code sets out the text of a prohibition, definition or defence, it sometimes does so in abbreviated form to assist the reader. For the precise terms, readers should refer to the Markets Law itself.

### **Terminology**

- 7. Defined terms are identified throughout the Code by the capitalisation of the initial letter of a word or each word of a phrase and are defined in the Glossary module (GLO) of the DFSA Rulebook. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.
- 8. Unless the context otherwise requires, where the Code refers to:
  - (a) the Law, the reference is to the Markets Law;
  - (b) Part 6, the reference is to Part 6 of the Markets Law;
  - (c) an Article, the reference is to an Article in the Markets Law;
  - (d) a prohibition, the reference is to an Article in Chapter 1 of Part 6 of the Markets Law that prohibits specified conduct;
  - (e) Market Abuse, the reference is to conduct which contravenes a provision in Chapter 1 of Part 6 of the Markets Law; and
  - (f) Trading Information, the reference is to information referred to in CMC section 6-2 paragraph 7.

### **Code not exhaustive**

- 9. The Code does not try to exhaustively describe or list:
  - (a) all examples of Market Abuse, setting out only a few of the many possible examples; or
  - (b) all factors that the DFSA may take into account in deciding whether or not conduct amounts to Market Abuse.

### **Conduct may contravene different Articles**

- 10. Market Abuse prohibitions overlap in some circumstances so that conduct by a person may potentially contravene more than one Article. For example:

- (a) if a person engages in conduct that contravenes Article 54(a) (creating a false or misleading impression as to the supply or demand or price of an Investment) that conduct may also contravene Article 54(b) (creating an artificial price for an Investment), and vice versa; and
  - (b) if a person disseminates information about an Investment that is false or misleading this could, depending on the circumstances, contravene both Article 55 (false or misleading statements) and Article 60 (inducing persons to deal).
11. A number of prohibitions are expressed to have residual scope (i.e. to apply to specified conduct only if it does not fall under other prohibitions). For example:
- (a) Article 57 (false or misleading conduct and distortion) applies to conduct that does not fall under Articles 54, 55 or 56; and
  - (b) Article 61 (misuse of information) applies to conduct that does not fall under Articles 58, 59 or 60.

#### **Application to Investments and related investments**

12. The Market Abuse provisions apply to certain activities or conduct related to Investments. An "Investment" is defined in GEN App 2.1 to mean:
- (a) a Security such as a Share, a Debenture, a Warrant, a Certificate, a Unit or a Structured Product;
  - (b) a Derivative such as an Option or Future (including a Commodity Derivative);
  - (c) a right or interest in a Security or Derivative; and
  - (d) any instrument declared by the DFSA to be a Security or Derivative under GEN App 2.1.
13. For the purposes of Article 58 (insider dealing) an Investment is defined not to include a Commodity Derivative.
14. Articles 58 (insider dealing) and 59(2) (procuring another person to deal) also apply to a "related investment", which is defined in Article 63(6) as meaning:

*"... in relation to an Investment (the "First Investment"), a "related investment" means another Investment whose price or value depends, in whole or in part, on the price or value of the First Investment".*

For example, if an Insider has Inside Information relating to an Issuer, A, of an Investment, then a "related investment" could include a Derivative relating to the Investments of A or another Investment in a member of A's group, if the price or value

of that other Investment depends, in whole or in part, on the price or value of Investments of A.

15. The Market Abuse provisions apply to Investments whether or not the Investments are admitted to an Official List of Securities or admitted to trading on a market in the DIFC. As a result the Market Abuse provisions have a potentially broad application to Investments in the DIFC or affecting DIFC markets.

#### **Application to conduct outside the DIFC**

16. The Market Abuse prohibitions are expressed to apply whether the relevant conduct occurs in the DIFC or elsewhere. However, Article 62 provides that if the conduct occurs outside the DIFC, the prohibitions do not apply unless the conduct affects the DIFC markets or users of the DIFC markets.
17. The following are examples of conduct which occurs outside the DIFC that, in the DFSA's view may, depending on other factors such as the state of knowledge of the person concerned, fall within the scope of the Market Abuse provisions:
  - (a) a person outside the DIFC places an order to trade that creates, or is likely to create, an artificial price for an Investment traded on an Exchange in the DIFC;
  - (b) a person engages in conduct outside the DIFC that manipulates the price of a benchmark or Investment and affects the price of a Derivative admitted to trading in the DIFC that is referenced to that benchmark or Investment;
  - (c) a person who has Inside Information relating to an Issuer that has Investments traded on an Exchange in the DIFC discloses that information outside the DIFC to another person (other than in the necessary course of business of the person making the disclosure); and
  - (d) a person outside the DIFC contacts potential investors in the DIFC and makes statements that are misleading, false or deceptive in order to induce those investors to buy an Investment.

#### **Intention to commit Market Abuse**

18. The Market Abuse prohibitions generally do not require that the person engaging in the relevant conduct intended to commit Market Abuse. However, a number of Articles require that the person knew or reasonably ought to have known of a certain matter e.g. that conduct would have a certain effect or that information is false or misleading (see, for example, Article 54 (fraud and market manipulation), Article 55 (false or misleading statements) and Article 60 (inducing persons to deal)).

**Systems and controls to prevent market abuse**

19. An Authorised Person is required under GEN Rule 5.3.20 to establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute market abuse, whether in the DIFC or elsewhere. If an Authorised Firm or Recognised Member suspects on reasonable grounds that an order from a Client, or a transaction it arranges or executes with or for a Client, may constitute Market Abuse under the Markets Law, it must notify the DFSA immediately of that fact (see GEN Rule 11.10.12A and REC Rule 3.4.5).

**Other provisions that apply to Prospectuses and Reporting Entities**

20. If a misleading or deceptive statement or a material omission occurs in a Prospectus, then separate and specific prohibitions and defences are likely to apply. These are set out in Articles 20 to 25 of the Markets Law and in Articles 56 to 58 of the Collective Investment Law.
21. If a Reporting Entity fails to make a timely disclosure of information to the market then Article 41 of the Markets Law is likely to apply. However, if a Reporting Entity discloses information to the market which is false or misleading (and knows or could reasonably be expected to know that it is false or misleading) then the Market Abuse provisions may apply.

## 2 MARKET MANIPULATION AND FRAUD

### 2-1 INTRODUCTION

1. Article 54 of the Law provides that:

*A person shall not, in the DIFC or elsewhere, by any means, directly or indirectly.....*

*engage or participate in any act, practice or course of conduct relating to Investments....*

*that the person knows or reasonably ought to know:*

- (a) results in or contributes to, or may result in or contribute to, a false or misleading impression as to the supply of, demand for or price of one or more Investments;*
  - (b) creates or is likely to create an artificial price for one or more Investments; or*
  - (c) perpetrates a fraud on any person.*
2. Article 54 includes a specific requirement relating to knowledge. It requires that the person who engages or participates in the act, practice or course of conduct either knew (a subjective test) or reasonably ought to have known (an objective test) that the act, practice or course of conduct would have the effect described in paragraph (a), (b) or (c) of that Article.
  3. In assessing whether a person reasonably ought to have known that an act, practice or course of conduct would have the effect described in Article 54 (a), (b) or (c) (i.e. the objective test), the DFSA will consider if a reasonable person in that position would have or should have known it would have such an effect.
  4. The following sections of this chapter set out the DFSA's views on conduct that contravenes paragraph (a), (b) and (c) respectively of Article 54.

### 2-2 MARKET MANIPULATION

1. This section sets out examples of conduct that, in the DFSA's view, may contravene Articles 54(a) and (b) and factors that the DFSA may take into account in considering whether conduct contravenes those Articles.

#### **Examples of market manipulation**

2. The following are general examples of conduct that, in the DFSA's view, may result in or contribute to a false or misleading impression under Article 54(a):

- (a) wash trades – that is, a sale or purchase of an Investment where there is no change in beneficial interest or market risk, or where the transfer of beneficial interest or market risk is only between parties acting in collusion, resulting in a false appearance of trading activity;
- (b) painting the tape – that is, entering into a transaction or series of transactions in relation to an Investment which are shown on a public display to give the impression of activity or price movement in the Investment;
- (c) layering – that is, submitting multiple orders in relation to an Investment away from one side of the order book with the intention of executing a trade on the other side of the order book, where once that trade has taken place, the initial manipulative orders will be removed;
- (d) momentum ignition – that is, entering orders or a series of orders in relation to an Investment that are intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price; and
- (e) quote stuffing – that is, entering large numbers of orders and/or cancellations/updates to orders in relation to an Investment to create uncertainty for other market participants, slow down their trading processes and camouflage the person's own strategy.

While some of the above examples are more commonly associated with algorithmic trading, such as high frequency trading, in the DFSA's view, the conduct could amount to Market Abuse whether it occurs using automated systems or manually.

3. The following are general examples of conduct that, in the DFSA's view, may create or may be likely to create an artificial price for an Investment under Article 54(b):
  - (a) marking the open/marking the close – that is, buying or selling an Investment near the reference time of the trading session (e.g. at opening or closing time) or at the end of a particular period (e.g. at the end of the quarter or a financial year) in order to increase, decrease or maintain the reference price (e.g. opening price or closing price) at a specific level;
  - (b) transactions where both buy and sell orders for an Investment are entered at, or nearly at, the same time, with the same price and quantity by the same party, or by parties acting in collusion, in order to position the price of the Investment at a particular level;
  - (c) transactions or orders to trade by a person, or persons acting in collusion, that secure a dominant position over the supply of or demand for an Investment or the underlying Investment or commodity and which have the effect of fixing, directly or

indirectly, purchase or sale prices or creating other unfair trading conditions;

- (d) an abusive squeeze – that is, when a person:
- (i) who has a significant influence over the supply of, or demand for, or delivery mechanisms for an Investment or the underlying product of a Derivative; and
  - (ii) has a position (directly or indirectly) in an Investment under which quantities of the Investment, or product in question are deliverable;

engages in behaviour with the purpose of positioning at a distorted level the price at which others have to deliver, take delivery or defer delivery to satisfy their obligations in relation to an Investment;

- (e) colluding in the after-market of an initial public offer - that is, parties, who have been allocated Investments in a primary offering, collude to purchase further tranches of those Investments when trading begins, in order to force the price of the Investment to an artificial level and generate interest from other investors, and then sell the Investments;
- (f) creating a floor (or ceiling) in the price pattern - that is, transactions or orders to trade carried out in such a way as to create obstacles to the price of an Investment falling below or rising above a certain level; for example, to avoid negative consequences for an Issuer, such as the downgrading of the Issuer's credit rating or to ensure that a Derivative settlement price is above a certain strike price; and
- (g) entering into transactions or placing orders in relation to an Investment on one exchange in order to influence improperly the price of a related investment on that exchange or the price of the same Investment or a related investment on another exchange.

4. The following are some more specific examples of conduct that, in the DFSA's view, may contravene Article 54(a) or (b):

- (a) A, a trader, accumulates a large position in Commodity Derivatives (whose price will be relevant to the calculation of the settlement value of another Derivative position he holds) just before the close of trading. A's purpose is to position the price of the Commodity Derivatives at an artificial level so as to make a profit from his Derivative position;
- (b) B, a trader, holds a short position that will show a profit if a particular Investment, which is currently a component of an index, falls out of that index. Whether the Investment will fall out of the index depends on the closing price of the Investment on a particular day. B places a large sell order in this Investment just before the close of trading on that day. His purpose is to position the price of the Investment at an artificial level so that the Investment will drop out of the index resulting in his

making a profit;

- (c) a fund manager, whose quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower, places a large order to buy relatively illiquid shares, which are also components of his portfolio. The order is to be executed at or just before the close of the last trading day of the quarter. His purpose is to position the price of those shares at an artificial level; and
- (d) an entity, A, purchases a large number of shares of an Issuer on its initial public listing. In the period between that listing and the end of A's financial year, the price of the Issuer's shares declines significantly. Near the close of market on the date of A's financial year end, a broker acting for A enters several bids to buy shares in the Issuer. The bid prices are well above those at which the shares had been trading and have the effect of significantly increasing the closing price of the shares. The purpose of A making the bids is to increase the price of the shares, marking up the book value of A's proprietary holdings in the Issuer, thus boosting its own financial position at year end.

### General factors

- 5. In considering whether conduct may contravene Article 54(a) or (b), the DFSA may take into account factors such as:
  - (a) the experience and knowledge of the users of the market in question;
  - (b) the structure of the market, including its reporting, notification and transparency requirements;
  - (c) the level of liquidity on the market;
  - (d) the legal and regulatory requirements of the market concerned;
  - (e) the identity and position of the person responsible for the conduct which has been observed; or
  - (f) the extent and nature of the visibility or disclosure of the person's activity.
- 6. The following factors may, in the DFSA's view, indicate that conduct contravenes Article 54(a) or (b):
  - (a) if the transaction was executed in a particular way to create a false or misleading impression;
  - (b) if the order or transaction does not appear to have a legitimate economic rationale;

- (c) if the person has another, illegitimate, reason for undertaking the transaction, bid or order to trade; or
  - (d) if the motivating purpose for the transaction is to induce others to trade in, bid for or to position or move the price of, an Investment.
7. The following factors are, in the DFSA's view, likely to indicate that conduct does not contravene Article 54(a) or (b):
- (a) if the conduct is pursuant to a prior legal or regulatory obligation owed to a third party; or
  - (b) if the transaction was carried out in a particular way to comply with the rules of the relevant Exchange about how such transactions are to be executed.

#### **Factors relating to giving a false or misleading impression**

8. In considering whether conduct may result in, or contribute to, a false or misleading impression as to the supply of, demand for, or price of an Investment, the DFSA may take into account factors such as:
- (a) the extent to which orders to trade given, or transactions undertaken, represent a significant proportion of the daily volume of transactions in the relevant Investment on the market concerned, in particular when these activities lead to a significant change in the price of the Investment;
  - (b) the extent to which orders to trade given, or transactions undertaken, by persons with a significant buying or selling position in an Investment lead to significant changes in the price of the Investment;
  - (c) whether transactions undertaken lead to no change in beneficial ownership of an Investment;
  - (d) the extent to which orders to trade given, or transactions undertaken, include position reversals in a short period;
  - (e) the extent to which orders to trade given, or transactions undertaken, are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
  - (f) the extent to which orders to trade given change the representation of the best bid or offer prices in an Investment on a market, or more generally the representation of the order book available to market participants, and are removed before they are executed; or
  - (g) the extent to which orders to trade are given, or transactions are undertaken, at or

around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

### Factors relating to creating an artificial price

9. In considering whether or not conduct creates, or is likely to create, an artificial price under Article 54(b), the DFSA is likely to take into account factors such as:
  - (a) the extent to which the person had a direct or indirect interest in the price or value of the Investment;
  - (b) the extent to which price, rate or option volatility movements, and the volatility of these factors for the Investment in question, are outside their normal intra-day, daily, weekly or monthly range; or
  - (c) whether a person has successively and consistently increased or decreased his bid, offer or the price he has paid for an Investment.

### Maximising profit and trading outside normal range

10. It is unlikely that the conduct of market participants in dealing at times and in sizes most beneficial to them (whether for the purpose of long term investment objectives, risk management or short term speculation) and seeking the maximum profit from their dealings will of itself amount to creating an artificial price.
11. The fact that prices in the market are trading outside their normal range does not necessarily indicate that someone has engaged in conduct for the purpose of positioning prices at an artificial level. High or low prices relative to a trading range can be the result of the proper interplay of supply and demand.

### Abusive squeezes

12. Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this does not of itself indicate that there has been Market Abuse. Having the power significantly to influence the supply of, or demand for, or delivery mechanisms for an Investment (e.g. through ownership, borrowing or reserving the Investment in question) does not of itself amount to Market Abuse.
13. The following are specific examples of an abusive squeeze that, in the DFSA's view, may contravene Article 54(b):
  - (a) during the course of a trading day on a Commodity Derivative Exchange, a trader rapidly builds up a position of more than 90% of the physical inventory underlying

a crude oil contract. The trader fails to offer to lend the crude oil back to other market participants at a reasonable commercial rate. The trader then unwinds his position in the Exchange's final settlement window<sup>1</sup> at rapidly increasing prices, thereby cornering/squeezing the crude oil market. His conduct causes an abnormal movement in the price of crude oil contracts for forward month delivery; and

- (b) a trader with a long position in bond futures, buys or borrows a large amount of the bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which persons with short positions have to deliver to satisfy their obligations at a materially higher level, making him a profit on his position.
14. In considering whether a person has engaged in an abusive squeeze that contravenes Article 54(b), the DFSA may take into account factors such as:
- (a) the extent to which a person is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, conduct is less likely to amount to an abusive squeeze if a person is willing to lend the Investment or the underlying Investment or commodity in question;
- (b) the extent to which the person's activity causes, or risks causing, settlement default by other market participants. The more widespread the risk of settlement default, the more likely that an abusive squeeze has occurred;
- (c) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the Investment or underlying Investment or commodity outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that an abusive squeeze has occurred; and
- (d) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which lending or borrowing rates are unusually expensive or inexpensive.

### 2-3 PERPETRATING A FRAUD ON A PERSON

1. Article 54(c) prohibits an act, practice or course of conduct relating to Investments that the person knows, or reasonably ought to know perpetrates a fraud on any person.
2. The Markets Law does not define "fraud" and so it is necessary to give that term its

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<sup>1</sup> The period which occurs during the last trading day of the month for the relevant contract when the Exchange calculates the final settlement price.

ordinarily understood meaning in the context. In the DFSA's view, a person perpetrates a fraud on another person if the first person engages in conduct that is dishonest or deceptive and is intended to result in a financial gain or benefit or to avoid a loss (whether to the first person or to another person).

### Examples of fraud

3. The following are examples of conduct that, in the DFSA's view, may contravene Article 54(c):
  - (a) a Reporting Entity publishes accounts that have been deliberately falsified by excluding or including transactions. The purpose of publishing the accounts with the false transactions is to give a more positive impression to investors of the financial position of the Reporting Entity;
  - (b) a person operates a Ponzi scheme i.e. a scheme where Investments are offered to investors with a high rate of return and little risk but the Investment does not generate returns from actual profits earned but instead is only able to pay returns to investors by using new investors' funds to pay the earlier investors;
  - (c) a company makes an offer of Investments to a small number of high net worth investors. Information provided to the investors indicates that the funds will be used for a specified purpose related to the business of the company. The officers of the company, however, use the funds raised for their own personal purposes (unrelated to any business of the company);
  - (d) a person is a contributor of information to the administrator of a price benchmark (that is used as a reference for the pricing of Investments). The person reports non-existent transactions, omits to report transactions or reports transactions selectively to the benchmark administrator in order to manipulate the price of the benchmark and profit from that benchmark price; and
  - (e) a company is seeking to raise funds on a Crowdfunding Platform, through the offer of Shares to investors. The company creates false financial statements to give potential investors the impression that it has significant assets and income, to help it to obtain funding.

**2-4 DEFENCES**

1. A number of defences to Article 54 are set out in Chapter 2 of Part 6 of the Law.

**Price Stabilisation**

2. Article 64(1)(a) provides that:

*A person shall not be found to have contravened Article 54 if the person establishes that the conduct or practice the person engaged in was carried out in the performance of....permitted price stabilisation....in accordance with the Rules.*

3. The effect of Article 64(1)(a) is that if a person establishes that they carried out a Price Stabilisation in accordance with DFSA Rules, this conduct will not contravene Article 54. The Price Stabilisation module (PRS) sets out the relevant Rules relating to carrying on a Price Stabilisation that must be complied with.

**Purchase of the person's own shares**

4. Article 64(1)(b) provides that:

*A person shall not be found to have contravened Article 54 if the person establishes that the conduct or practice the person engaged in was carried out in the performance of....a purchase of the person's own shares....in accordance with the Rules.*

5. The effect of Article 64(1)(b) is that if a person establishes that they carried out the purchase of their own shares in accordance with DFSA Rules, this conduct will not contravene Article 54. The Markets Rules (MKT) sets out relevant Rules relating to a Listed Entity purchasing its own shares (e.g. MKT Rules 9.7.4 and 9.7.6) that must be complied with.

### 3 DISSEMINATION OF FALSE OR MISLEADING INFORMATION

#### Article 55 of the Markets Law

1. Article 55 of the Law provides that:

*A person shall not, in the DIFC or elsewhere....*

*disseminate information by any means...*

*which gives, or is likely to give, a false or misleading impression as to one or more Investments...*

*when such person knows or could reasonably be expected to know that the information is false or misleading.*

#### Means of dissemination

2. The dissemination of information under Article 55 could, in the DFSA's view, be by a variety of means, including, for example:
  - (a) through a Regulatory Announcement Service;
  - (b) through media such as the radio, a newspaper or television;
  - (c) through the internet, including any form of social media;
  - (d) through any market information service such as a trading terminal; or
  - (e) by conveying information verbally to another person.

#### No transaction required

3. It should be noted that this type of Market Abuse does not require any transaction to be entered into in connection with the dissemination of information.

#### Knowledge that the information is false or misleading

4. Article 55 requires that the person who disseminates the information either knows or could reasonably be expected to know that the information is false or misleading. That is, it sets out either a subjective or objective test relating to knowledge that must be met.
5. In assessing whether a person could reasonably be expected to know that the information is false or misleading (i.e. the objective test), the DFSA will consider if a

reasonable person in that position would know or should have known in all the circumstances that the information was false or misleading.

6. If a person disseminates information about an Investment that is false or misleading and the person is reckless as to whether the information is true or false (e.g. if the person gave no thought as to whether it is true or false), the DFSA will consider that the person could reasonably be expected to know that the information is false or misleading.
7. The DFSA would ordinarily consider that a person did not know and could not reasonably be expected to have known that the information is false or misleading if:
  - (a) an organisation has in place effective Chinese Walls to prevent the exchange of information between different areas within the organisation;
  - (b) an individual in the organisation did not have access to other information that was being held behind the Chinese Wall; and
  - (c) the individual disseminates information that is false or misleading due to his not being aware of that other information (i.e. which makes his information false or misleading) as it is held behind the Chinese Wall.

#### **Examples of dissemination of false or misleading information**

8. The following are examples of conduct that, in the DFSA's view, may contravene Article 55:
  - (a) spreading false or misleading information through the media – for example, a person posts information on an internet forum or via social media which contains false or misleading statements about the takeover of a company when the person knows that the information is not true;
  - (b) disclosure of false or misleading information by an Issuer – an Issuer discloses information to the market under its continuous disclosure obligations which gives a false or misleading impression about the true impact of a matter on its Investments (when it knew or could reasonably be expected to know that the information was false or misleading); and
  - (c) an investor on a Crowdfunding Platform has invested in Shares of a company using the platform. After holding the Shares for a period of time he decides to sell the Shares as he doubts whether the company will be successful. However, there is no market for the Shares and so he is unable to exit the investment. He therefore posts misleading information on the platform forum suggesting that the company is about to make a significant breakthrough (which will make its Shares valuable).

## 4 USE OF FICTITIOUS DEVICES AND OTHER FORMS OF DECEPTION

### Article 56 of the Markets Law

1. Article 56 of the Law provides that:

*A person shall not, in the DIFC or elsewhere, engage in any activity or conduct in relation to Investments...*

*which consists of effecting transactions or orders to trade....*

*which employ fictitious devices or any other form of deception or contrivance.*

2. Under Article 56 it is necessary for there to be a transaction or order to trade. The transaction or order to trade must either itself or in conjunction with other factors create an effect that is fictitious, deceptive or a contrivance. The Markets Law does not define what is meant by a “fictitious device” or “any other form of deception or contrivance”. In the DFSA’s view, these terms have a potentially broad meaning. This Article would, for example, in the DFSA’s view, cover situations where the transaction or order to trade when viewed in the context of other related conduct (such as dissemination of information) has an overall effect that is fictitious or deceptive.

### Examples of fictitious devices etc

3. The following are examples of conduct that, in the DFSA’s view, may contravene Article 56:
- (a) voicing misleading opinions through the media - a person with access to the media (such as a newspaper columnist) enters into a transaction to buy an Investment and then voices an opinion in the media about the Investment (or its Issuer) which results or is likely to result in the moving of the price of the Investment in a direction favourable to the position held by the person. The person does not disclose his conflict of interest when voicing the opinion;
  - (b) concealing ownership - a person enters into a transaction or series of transactions that are designed to conceal the ownership of an Investment, by holding the Investment in the name of a colluding party, with the result that disclosures are misleading in respect of the true identity or value of the underlying holding.
  - (c) trash and cash schemes – for example, a trader takes a short position in Investments in a company and then begins spreading false rumours that the company is facing funding difficulties and is in serious financial difficulty in order to drive down the price of the Investment; and
  - (d) pump and dump schemes - this is the opposite of ‘trash and cash’: for example, a

person takes a long position in an Investment and then disseminates misleading positive information about the Investment with a view to increasing its price. As a result of his conduct the person is able to sell his Investments at an inflated price.

The DFSA notes that some of the above examples may also breach other Articles such as Article 55 (false or misleading statements) or Article 60 (inducing persons to deal).

## 5 FALSE OR MISLEADING CONDUCT AND DISTORTION

### Article 57 of the Markets Law

1. Article 57 of the Law provides that:

*A person shall not, in the DIFC or elsewhere, engage in any activity or conduct in relation to Investments.....*

*which does not fall under Articles 54, 55 or 56...*

*that:*

- a) *gives a false or misleading impression as to the supply of, or demand for, or to the price of one or more Investments; or*
- b) *would distort, or would be likely to distort, the market for one or more Investments...*

*and is likely to be regarded by market participants as a failure on the part of the person concerned to observe the standards of behaviour reasonably expected of a person in his position in relation to the market.*

2. The conduct referred to in Article 57 overlaps to a large extent with the conduct referred to in Article 54 relating to creating false or misleading impressions or an artificial price for an Investment. It should be noted however that Article 57 has 'residual scope' i.e. it only applies to conduct that does not fall within Article 54 (fraud and market manipulation), Article 55 (false or misleading statements) or Article 56 (use of fictitious devices and other forms of deception).

### Failure to observe standards expected by market participants

3. Article 57 requires that the activity or conduct in question is likely to be regarded by market participants as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.
4. This requirement imports an objective test into the assessment of whether the provision is contravened. In the DFSA's view, for the purposes of the test, the market participant is a hypothetical reasonable person who regularly deals in the Investments of the kind in question.
5. In determining if there has been a failure to meet the standards expected by market participants, the DFSA is likely to take into account factors such as:

- (a) the characteristics of the market in question, including the users and relevant rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position);
- (b) the position of the person in question and the standards reasonably to be expected of him in light of his experience, skill and knowledge; and
- (c) if the conduct involved a transaction, whether it was executed in a way that complied with the rules of the relevant market about how such transactions are to be executed (including, for example, rules on reporting).

**Examples of false or misleading conduct or distortion**

6. The following are specific examples of conduct that, in the DFSA's view, may contravene Article 57:
- (a) the movement of physical commodity stocks without any proper commercial purpose, which gives a misleading impression as to the supply of, or demand for, or price or value of, a commodity or the deliverable into a Commodity Derivative; and
  - (b) the movement of an empty cargo ship, which gives a misleading impression as to the supply of, or the demand for, or the price or value of a commodity or the deliverable into a Commodity Derivative.

## 6 INSIDER DEALING

### 6-1 ARTICLE 58 OF THE MARKETS LAW

1. Article 58(1) of the law provides that:

*A person who is an insider shall not, in the DIFC or elsewhere.....*

*directly or indirectly, deal, or attempt to deal.....*

*in an Investment, or in a related investment.....*

*on the basis of.....*

*inside information.*

#### **“Investment” does not include Commodity Derivatives**

2. For the purposes of Article 58, an “Investment” is defined as not including a Commodity Derivative (see Article 58(2)).

### 6-2 WHAT IS “INSIDE INFORMATION”?

#### **Definition**

1. “Inside Information” is defined in Article 63(1)(a) as meaning information of a precise nature which:
  - (a) is not generally available:
  - (b) relates, directly or indirectly, to one or more Reporting Entities or the issuer of the Investments concerned or to one or more of the Investments; and
  - (c) would, if generally available, be likely to have a significant effect on the price of the Investments or on the price of related investments.

#### **When is information “precise”?**

2. To be “Inside Information”, information must be of a precise nature. Article 63(2) states that information is “precise” if it:
  - (a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and

- (b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of Investments or related investments.

**When is information “generally available”?**

3. Information is only “Inside Information” under the definition in Article 63(1)(a) if it is not generally available. The Markets Law does not define what is meant by “generally available”, although Article 63(5) states that information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded as being “generally available” to them.
4. The following factors are, in the DFSA’s view, likely to indicate that information is “generally available” (and therefore is not Inside Information):
- (a) if the information has been the subject of a disclosure to the market in accordance with the rules of the relevant market or a requirement in a law;
  - (b) if the information is contained in records which are open to inspection by the public;
  - (c) if the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;
  - (d) if the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; or
  - (e) if the information can be obtained by analysing or developing other information which is generally available.

For example, if a passenger in a vehicle passing a burning factory calls his broker and tells him to sell shares in the company that owns the factory, the passenger will be acting on information which is generally available, since it is information which has been obtained by legitimate means through observation of a public event.

5. It is not relevant, in the DFSA’s view, in relation to information referred to in paragraph 4 that:
- (a) the information is only generally available outside the DIFC; or
  - (b) the observation, research or analysis is only achievable by a person with above average financial resources, expertise or competence.

**When will information have a “significant effect on price”?**

6. Information is only “Inside Information” under the definition in Article 63(1)(a) if it would be likely to have a significant effect on the price of the Investment or a related investment. Information would be likely to have a “significant effect on price” if and only if it is information of the kind which a reasonable investor would be likely to use as part of the basis of his investment decisions (see Article 63(3)). In the DFSA’s view, if information is of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions, then the “significant effect on price” test will be satisfied.

**Trading Information**

7. Article 63(4) provides that information about a person’s pending orders in relation to an Investment or related investment is also Inside Information. The DFSA considers that information of the following kinds (referred to in this Code as “Trading Information”) relating to pending orders may be Inside Information:
- (a) that Investments of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;
  - (b) that Investments of a particular kind have not been or are not to be acquired or disposed of;
  - (c) the quantity of Investments acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;
  - (d) the price (or range of prices) at which Investments have been or are to be acquired or disposed of or the price (or range of prices) at which Investments whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of; or
  - (e) the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.
8. A person who executes a client order does not contravene Article 58 (insider dealing) provided he complies with certain conditions (see CMC section 6-7 paragraphs 8 and 9).

**Carrying out of own trading intention**

9. A person will form an intention to deal in an Investment before doing so. His carrying out of his own intention will not of itself contravene Article 58 (insider dealing).

### 6-3 DEFINITION OF “INSIDER”

1. The term “Insider” is defined in Article 63(1)(b) as meaning:

*“...a person who has Inside Information:*

- (i) as a result of his membership of the board of Directors, or the Governing Body of the relevant Reporting Entity;*
  - (ii) as a result of his holding in the capital of the relevant Reporting Entity;*
  - (iii) as a result of having access to the information through the exercise of his employment, profession or duties;*
  - (iv) as a result of his criminal activities; or*
  - (v) which he has obtained by other means and which he knows, or could reasonably be expected to know, is Inside Information.”*
2. If a person has Inside Information in any of the circumstances set out in Article 63(1)(b)(i) to (iv) then, in the DFSA’s view, it is not necessary to show that the person knew that the information concerned was Inside Information. However, if the person has information in the circumstances set out in Article 63(1)(b)(v), then that subparagraph requires that the person knew, or could reasonably be expected to know, that the information is Inside Information. For that purpose, a person could reasonably be expected to know, if a reasonable person in his position who has Inside Information would have known it is Inside Information.

### 6-4 DEALING “ON THE BASIS OF” INSIDE INFORMATION

#### **Factors to be taken into account “on the basis of”**

1. To contravene Article 58, it is necessary that the Insider deals or attempts to deal “on the basis” of Inside Information. In the DFSA’s view, if the Inside Information is the reason for, or a material influence on, the decision to deal or attempt to deal then this indicates that the dealing or attempt to deal is “on the basis” of the Inside Information.
2. The following factors are, in the DFSA’s view, likely to indicate that the dealing is not “on the basis of” Inside Information:
  - (a) if the decision to deal or attempt to deal was made before the person possessed the relevant Inside Information;

- (b) if the person concerned is dealing to satisfy a legal or regulatory obligation which came into being before he possessed the relevant Inside Information; or
- (c) if a person is an organisation, if none of the individuals in possession of the Inside Information:
  - (i) had any involvement in the decision to deal; or
  - (ii) behaved in such a way as to influence, directly or indirectly, the decision to engage in the dealing; or
  - (iii) had any contact with those who were involved in the decision to engage in the dealing whereby the information could have been transmitted.

## 6-5 ATTEMPTING TO DEAL AND DEALING IN RELATED INVESTMENTS

### Attempting to deal

1. Article 58 provides that an Insider shall not directly or indirectly “deal or attempt to deal in an Investment, or in a Related Investment” on the basis of Inside Information.
2. In the DFSA’s view, an “attempt to deal” covers circumstances where an Insider takes steps to enter into a transaction but the transaction is not executed. For example, if an Insider places an order with a broker or instructs another person (such as his investment adviser) to place an order with a broker, even though the order is not subsequently executed.

### Related investments

3. Article 58 prohibits an Insider from dealing or attempting to deal in relation to either the Investment (i.e. to which the Inside Information relates) or a related investment. The definition of a “related investment” is set out at CMC chapter 1 paragraph 14.

For example, if an Insider has Inside Information relating to an Issuer, A, of an Investment, then a “related investment” could include a Derivative relating to Investments of A or an Investment of another member of A’s Group, if the price or value of that other Investment depends, in whole or in part, on the price or value of Investments of A.

## 6-6 EXAMPLES OF INSIDER DEALING

1. The following are general examples of conduct that, in the DFSA’s view, may

contravene Article 58 (insider dealing):

- (a) an officer or employee of an Issuer becomes aware of Inside Information relating to the Issuer, the officer or employee then deals in Investments of the Issuer on the basis of that information;
  - (b) front running - that is, a transaction for a person's own benefit, on the basis of and ahead of an order which he or another person is to carry out with or for another person (where the information concerning the order is Inside Information), which takes advantage of the anticipated impact of the order on the market;
  - (c) using Inside Information obtained as a result of a market sounding (i.e. a discussion with a potential investor to gauge his interest in a potential offering of an Investment or the price of the potential offering) to deal in an Investment;
  - (d) in the context of a takeover, an offeror or potential offeror entering into a transaction in an Investment, or in a related investment, on the basis of Inside Information concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target company's shares (for example, a Derivative related to the target company's share price); or
  - (e) in the context of a takeover, a person who acts as an adviser to the offeror or potential offeror dealing for his own benefit in an Investment or in a related investment on the basis of information concerning the bid which is Inside Information.
2. The following are some more specific examples of conduct that, in the DFSA's view, may contravene Article 58 (insider dealing):
- (a) A is the CEO of a company (a Reporting Entity) that is about to release its semi-annual financial report. The report will disclose an outstanding claim that will have a significant impact on the company's financial results. A passes this information on to family members who instruct their broker to sell their shares in the company. The family members would have contravened Article 58 (insider dealing) and A would have contravened Article 59(1) (providing inside information) (see CMC chapter 7);
  - (b) B, an employee of an oil and gas company (a Reporting Entity) becomes aware through his employment, that the company is about to enter into a new joint venture agreement with another company that will potentially be very lucrative for the company. Before the new joint venture is disclosed to the market, B buys shares in his employer company based on his expectation that the price of the shares will rise significantly once the new joint venture is announced;
  - (c) C, an employee of a firm that is providing advisory services to a company, D, (a Reporting Entity) becomes aware of negotiations for a takeover of D that is likely to be announced to the market imminently. C buys shares in D based on his expectation that the takeover will soon be announced;

- (d) D, a dealer on the trading desk of an Authorised Firm dealing in Derivatives accepts a large order from a Client to acquire a long position in futures. Before executing the order, D trades for the firm and on his personal account by taking a long position in those futures, based on his expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his Client's order. Both trades would contravene Article 58 (insider dealing); and
- (e) investment bank E has been in discussions with an Issuer about a potential issue of new Investments by the Issuer. In order to gauge potential investor interest and the terms of the issue, E raises the issue with a potential investor, F, to see if F would be prepared to commit to purchasing some of the Investments. F uses this Inside Information to deal in other related investments.

## 6-7 DEFENCES

1. Article 64(2) provides that a person does not contravene Article 58 (insider dealing) if:
  - (a) the person establishes that he reasonably believed that the Inside Information had been disclosed to the market in accordance with the Markets Law or the Rules;
  - (b) the dealing occurred in the legitimate performance of an underwriting agreement for the Investments or related investments in question;
  - (c) the dealing occurred in the legitimate performance of his functions as a liquidator or receiver;
  - (d) the dealing is undertaken solely in the course of the legitimate performance of his functions as a market maker;
  - (e) the person executes an unsolicited client order in Investments or related investments while in possession of Inside Information without contravening Article 59 (providing inside information) or otherwise advising or encouraging the client in relation to the transaction;
  - (f) the dealing is undertaken legitimately and solely in the context of that person's public takeover bid for the purpose of gaining control of that Reporting Entity or proposing a merger with that Reporting Entity; or
  - (g) the sole purpose of the Reporting Entity acquiring its own shares was to satisfy a legitimate reduction of share capital or to redeem shares in accordance with the Rules.

Further Guidance setting out the DFSA's views on some, but not all, of these defences is set out below.

**Market making**

2. Dealing undertaken by a person solely in the course of the legitimate performance of his functions as a market maker will not contravene Article 58 (insider dealing) (see Article 64(2)(d)).
3. In the DFSA's view, the following factors are likely to indicate that a person's dealing in an Investment is in the course of the legitimate performance of his functions as a market maker:
  - (a) if the person holds himself out as willing and able to enter into transactions for the sale and purchase of Investments of that description at prices determined by him generally and continuously rather than in respect of a particular transaction;
  - (b) if the dealing is in the course of the provision of the services referred to in (a) or is in order to hedge a risk arising from such a dealing; and
  - (c) if Inside Information held by the person or persons who make the decision to deal is limited to Trading Information.
4. In the DFSA's view, if the person acted in contravention of a regulatory requirement or a requirement of the relevant market, that is a factor that indicates that the person's dealing is not in the legitimate performance of his functions as a market maker.

**Underwriting**

5. Dealing by a person that occurs in the legitimate performance of an underwriting agreement for the Investments or related investments in question will not contravene Article 58 (insider dealing) (see Article 64(2)(b)).
6. In the DFSA's view, an underwriting agreement is an agreement under which a party agrees to buy, before issue, a specific quantity of Investments in an issue of Investments on a given date at a given price, if no other party has purchased or acquired them.
7. In the DFSA's view, if the person acted in contravention of a relevant regulatory requirement or a requirement of the relevant market, that is a factor that indicates that, the person's dealing is not in the legitimate performance of his functions under an underwriting agreement.

**Execution of client orders**

8. The execution of an unsolicited client order in Investments or related investments while in possession of Inside Information will not contravene Article 58 (insider

dealing) if the person executing the order has not:

- (a) contravened Article 59 i.e. disclosed Inside Information to the client or procured the client to deal in the Investments or related investments for which the person executing the order has Inside Information (see CMC chapter 7); or
  - (b) otherwise advised or encouraged the client in relation to the transaction.
9. In the DFSA's view, the following factors are likely to indicate that the person's dealing is the execution of an unsolicited client order in accordance with Article 64(2)(e):
- (a) if the dealing is initiated by the client;
  - (b) if the person's behaviour was with a view to facilitating or ensuring the effective carrying out of the order; and
  - (c) if the person has complied with any applicable conduct of business obligations relating to the execution of the order for the client.

### **Takeovers and mergers**

10. Dealing by a person does not contravene Article 58 (insider dealing) if the dealing is undertaken legitimately and solely in the context of that person's public takeover bid for the purpose of gaining control of the Reporting Entity or a proposed merger with the Reporting Entity (see Article 64(2)(f)).
11. There are two categories of Inside Information potentially relevant to a takeover or merger:
- (a) information that an offeror or potential offeror is going to make, or is considering making, an offer for the target; and
  - (b) information that an offeror or potential offeror may obtain through due diligence.
12. In determining whether or not the dealing is undertaken legitimately and solely in the context of a takeover bid or merger, the DFSA is likely to take into account factors such as:
- (a) whether the transactions concerned are in the target company's shares;
  - (b) whether the transactions concerned are for the sole purpose of gaining control or effecting the merger; and
  - (c) whether the person has complied with applicable regulatory requirements relating to the takeover or merger.

**Chinese walls**

13. Article 65 provides that a person does not contravene Article 58 (insider dealing) by dealing in Investments or related investments if:
- (a) it had in operation at that time an effective information barrier which could reasonably be expected to ensure that the Inside Information was not communicated to the person or persons who made the decision to deal and that no advice with respect to the transaction or agreement was given to that person or any of those persons by an Insider; and
  - (b) the information was not communicated and no such advice was given.

For example, if Inside Information is held behind an effective information barrier, from the individuals who make the decision to deal, the dealing by the person does not contravene Article 58.

14. In the DFSA's view, to rely on this defence, the person must not only have in place information barriers which could reasonably be expected to prevent the communication of the Inside Information, but must also be able to show that the information was not in fact communicated to the person who made the decision to deal.

## 7 PROVIDING INSIDE INFORMATION

### 7-1 ARTICLE 59 OF THE MARKETS LAW

1. Article 59 prohibits two further types of conduct by an Insider relating to Inside Information, i.e:
  - (a) disclosure of Inside Information to another person (other than in the necessary course of business); and
  - (b) procuring another person to deal in Investments or related investments in which the Insider has Inside Information.
2. The relevant definitions of:
  - (a) "Inside Information" and "Insider" are set out at CMC sections 6-2 and 6-3; and
  - (b) "Investment" and "related investment" are set out at CMC chapter 1 paragraphs 12 to 14.

### 7-2 DISCLOSURE OF INSIDE INFORMATION

3. Article 59(1) of the Law provides that:

*An insider shall not...*

*other than in the necessary course of business.....*

*disclose inside information to another person.*

#### **Disclosure "in the necessary course of business"**

4. Article 59(1) does not prohibit the disclosure of Inside Information by an Insider to another person if the disclosure is made "in the necessary course of business".
5. The DFSA would ordinarily consider the following disclosures of Inside Information made for regulatory purposes to be in the necessary course of business:
  - (a) disclosure of Inside Information which is required or permitted under the Markets Law;
  - (b) disclosure of Inside Information to the DFSA for the purpose of fulfilling a legal or regulatory obligation or otherwise to assist the DFSA to perform its functions; or
  - (c) disclosure of Inside Information to another regulatory authority for the purpose of fulfilling a legal or regulatory obligation or otherwise for the purpose of assisting that regulatory authority to perform its functions.

6. In other cases, the DFSA is likely to take into account the following factors in determining whether or not the disclosure was made in the necessary course of business:
- (a) whether the disclosure is permitted by DFSA Rules, the rules of the relevant market or regulatory requirements relating to a takeover;
  - (b) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the person to whom the disclosure is made and is:
    - (i) reasonable and is to enable a person to perform the proper functions of his employment, profession or duties;
    - (ii) reasonable and is (for example, to a professional adviser) to facilitate, or seek advice about, a transaction or takeover bid;
    - (iii) reasonable and is for the purpose of facilitating any commercial, financial or investment transaction (including prospective underwriters or placees of Investments);
    - (iv) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to a takeover offer; or
    - (v) in fulfilment of a legal obligation; or
  - (c) whether:
    - (i) the information disclosed is Trading Information;
    - (ii) the disclosure is by a person, A, only to the extent necessary, and solely in order, to offer to dispose of the Investment to, or acquire the Investment from, the person receiving the information; and
    - (iii) it is reasonable for A to make the disclosure to enable him to perform the proper functions of his employment, profession or duties.

### **Dealing not required**

7. A person may contravene Article 59(1) by disclosing Inside Information to another person even though the recipient does not deal on the basis of that information. That is, it is sufficient that the Inside Information is disclosed to another person, other than in the necessary course of business, without the need to show that any harm was caused.

### **Examples of improper disclosure of Inside Information**

8. The following are specific examples of conduct that, in the DFSA's view, may contravene Article 59(1);

- (a) A, a director of a company (a Reporting Entity) has lunch with a friend, B, who has no connection with the company or its advisers. A tells B that his company has received a takeover offer that is at a premium to the current share price at which it is trading;
- (b) B is the CEO of a company (a Reporting Entity) that is about to release its annual financial report. The report will disclose an outstanding claim that will have a significant impact on the company's financial results. B passes the information on to family members (who have no role in the company);
- (c) an officer or employee of an Issuer selectively briefs analysts about developments relating to the Issuer that have not yet been disclosed to the market; and
- (d) the chairman of a Reporting Entity announces his resignation to a journalist before this information has been disclosed to the market as a whole.

### 7-3 PROCURING ANOTHER PERSON TO DEAL

1. Article 59(2) of the Law provides that:

*An insider.....*

*shall not procure another person to deal in the Investments or related investments.....*

*in which the insider has inside information.*

#### **Meaning of "procure"**

2. Article 59(3) of the Law provides that the term "procure" includes where a person induces or encourages another person by direct or indirect means.

#### **Examples of procuring another person to deal**

3. The following are specific examples of conduct that, in the DFSA's view, may contravene Article 59(2):
  - (a) a Director of a Reporting Entity, while in possession of Inside Information, instructs an employee of that Reporting Entity to buy or sell an Investment or a related Investment to which the Inside Information relates; and
  - (b) a person, A, recommends or advises a friend, B, to buy or sell an Investment in respect of which A is an Insider and has Inside Information.

**7-4 DEFENCES**

4. Article 64(3) provides that a person shall not be found to have contravened Article 59 (providing inside information) if:
  - (a) the person establishes that the information was disclosed by him in accordance with any requirement of the law or a court order; or
  - (b) the person establishes that he reasonably believed that the Inside Information had been disclosed to the market in accordance with this Law or the Rules.

## 8 INDUCING ANOTHER PERSON TO DEAL

### Article 60 of the Markets Law

1. Article 60 of the Law provides that:

*A person shall not, in the DIFC or elsewhere, induce another person to deal in Investments:*

- (a) *by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive;*
  - (b) *by a concealment of material facts; or*
  - (c) *by recording or storing information that the person knows to be false or misleading in a material respect or may be materially misleading.*
2. Article 60 sets out a number of tests relating to knowledge of the person concerned. It requires that the person making or publishing a statement, promise or forecast referred to in Article 60(a), knows, or is reckless as to whether, the statement is misleading, false or deceptive. It also requires that the person recording or storing information referred to in Article 60(c) knows the information is false or misleading in a material respect or that it may be materially misleading.

### Examples of inducing another person to deal

3. The following are specific examples of conduct that, in the DFSA's view, may contravene Article 60:
- (a) a person involved in a boiler room operation cold calls investors and as part of his high pressure sales techniques makes exaggerated claims about the prospects of shares in a company. The shares are in fact of little value, are relatively illiquid and are being sold at an inflated price;
  - (b) a person, A, circulates marketing information about an Investment to a small group of potential investors; the marketing information includes exaggerated claims about the potential future performance of the investment when A knows or ought to know that there is no reasonable basis for making the claims;
  - (c) a person, B, offers to sell shares he owns in a Company to a number of other private investors. B discloses a range of positive information about the Company's prospects but fails to disclose other information about financial difficulties the company has recently experienced;
  - (d) C, a financial adviser who is managing Investments for a client, records false or misleading information about the value of investments in the client's portfolio. His purpose is to ensure that portfolio account statements sent to the client show the value of the portfolio to be higher than its actual value, in order to induce the client to provide funds to purchase further Investments.

The DFSA notes that some of the above examples may also contravene other Articles such as Article 55 (false or misleading statements).

## 9 MISUSE OF INFORMATION

### Article 61 of the Markets Law

1. Article 61 of the Markets Law provides that:

*A person shall not, in the DIFC or elsewhere....*

*engage in any activity or conduct in relation to Investments, which does not fall under Articles 58, 59 or 60.....*

*by using information which is not generally available to market participants...*

*which, if available to a market participant, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in Investments should be effected....and*

*is likely to be regarded by market participants as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.*

2. Article 61 applies to certain conduct that does not fall under Articles 58, 59 or 60. In particular, it is likely to cover misuse of information:
  - (a) relating to Investments to which those Articles do not apply e.g. Commodity Derivatives; or
  - (b) where the information is relevant and not generally available but nonetheless is not "Inside Information" (for example, because it is not yet sufficiently precise in nature).

### Information to which Article 61 applies

3. The prohibition applies to information which is not generally available to market participants but which if it was available to a market participant would be likely to be regarded by him as relevant when deciding the terms on which transactions in Investments should be effected.

### When is information "generally available"?

4. The factors set out in CMC section 6-2, paragraphs 3 to 5, relating to whether or not information is generally available for the purposes of the definition of Inside Information will also be relevant for the purposes of Article 61 when considering whether or not information is generally available to market participants.

### When is information "relevant"?

5. In determining whether information, if available to a market participant, would be likely to be regarded by the market participant as relevant when deciding the terms on which

transactions in an Investment should be effected, the DFSA is likely to take into account factors such as:

- (a) the extent to which the information is reliable, including how near the person providing the information is, or appears to be, to the original source of that information and the reliability of that source;
  - (b) if the information differs from information which is generally available and can therefore be said to be new or fresh information;
  - (c) if there is no other material information which is already generally available to inform participants on the market; and
  - (d) in the case of information relating to possible future developments which are not currently required to be disclosed but which, if they occur, will lead to a disclosure being made to the market, whether the information provides grounds to conclude that the possible future developments will, in fact, occur.
6. The following are examples of information that, in the DFSA's view, could be relevant information under Article 61:
- (a) information about possible future developments relating to a Reporting Entity, which is confidential but not yet sufficiently precise to be Inside Information;
  - (b) information relating to a government or central monetary authority or fiscal authority which is to be the subject of an official announcement;
  - (c) information that an issuer is to be added to an index or removed from the index or that the weighting of the issuer will change on the index; and
  - (d) information about an unscheduled closure of a commodity processing facility due to maintenance issues.

#### **Failure to meet standards of behaviour expected by market participants**

7. Article 61 requires that the activity or conduct in question is likely to be regarded by market participants as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.
8. This requirement imports an objective test into the assessment of whether the provision is contravened. In the DFSA's view, for the purposes of the test, the market participant is a hypothetical reasonable person who regularly deals in Investments of the kind in question.
9. In determining whether there has been a failure to meet the standards expected by market participants, the DFSA is likely to take into account factors such as:
  - (a) the characteristics of the market in question, including the users and applicable rules and codes of conduct;
  - (b) if the relevant information is of a kind that has to be disclosed to the market in

accordance with any legal or regulatory requirement, such as under the Markets Law, the rules of the relevant market or takeover rules;

- (c) if the relevant information is routinely the subject of a public announcement although not subject to any formal disclosure requirement, such as:
  - (i) information which is to be the subject of official announcement by governments, central monetary or fiscal authorities or a regulatory body (financial or otherwise, including exchanges);
  - (ii) changes to published credit ratings of issuers of Investments; or
  - (iii) changes to the constituents of a securities index; or
- (d) if conduct is based on information relating to possible future developments, if it is reasonable to believe that the information in question will subsequently become of a type within (b) or (c).

#### Examples of misuse of information

10. The following are specific examples of conduct that, in the DFSA's view, may contravene Article 61:
- (a) A, who is a director of a company (a Reporting Entity), has lunch with a friend, B. A tells B about a possible takeover of the company that may emerge. B uses that information to purchase shares in the company, based on the possibility that the takeover may proceed; and
  - (b) A, an employee of a company (a Reporting Entity), is aware of contractual negotiations between the company and a customer. Business with that customer has generated a significant percentage of the company's turnover in the last five financial years. A knows that the customer has threatened to take its business elsewhere, and that the negotiations, while ongoing, are not proceeding well. A sells shares in the company based on the possibility that the customer will take his business elsewhere.

In the above examples, the DFSA notes that the information may not yet be sufficiently precise to be Inside Information (see the test in CMC section 6-2, paragraph 2). However, in the DFSA's view, if it is not Inside Information, then it would be information to which Article 61 applies.

11. The following is another example of conduct that, in the DFSA's view, may contravene Article 61:

A, an oil trader who is also a participant on a Commodity Derivatives Exchange, becomes aware of a discontinuity at a storage facility of his employer. This information is not public. A reverses his positions contrary to the normal hedging practice with the aim of profiting from any resulting market disruption caused by the problem.

## 10 SPECIFIC MARKET PRACTICES

1. In this section, the DFSA sets out some Guidance about the application of the Market Abuse provisions to some specific market practices.

### Stock lending and collateral

2. A stock lending or borrowing transaction or a repo or reverse repo transaction, or a transaction involving the provision of collateral, will, in the DFSA's view, not usually of itself constitute Market Abuse.

### Short selling

3. Short Selling is ordinarily a legitimate market practice that, in the DFSA's view, will not usually of itself constitute Market Abuse. In certain circumstances however, Short Selling when combined with other additional factors may amount to Market Abuse, for example:
  - (a) if a person takes a short position in the shares of a company and then spreads false rumours about the company in order to drive down the share price;
  - (b) if an Insider enters into a Short Sale of an Investment on the basis of Inside Information; or
  - (c) if a person enters into a Short Sale of an Investment without any reasonable possibility of being able to settle the short position.
4. A person engaging in Short Selling will also need to comply with the requirements of the relevant Exchange relating to Short Selling - see AMI section 6-7.

### Price stabilisation

5. Price Stabilisation does not constitute Market Abuse if it is carried out in accordance with the Price Stabilisation Module – see CMC section 2-4, paragraphs 2 and 3.

### Purchase of own shares

6. The purchase by a company of its own shares does not constitute Market Abuse if it is carried out in accordance with certain conditions – see CMC section 2-4, paragraphs 4 and 5 and CMC section 6-7, paragraph 1(g).

### Market making and underwriting

7. The legitimate performance of market making and underwriting functions will not usually constitute Market Abuse – see CMC section 6-7, paragraphs 2 to 7.

### Execution of client orders

8. The execution of an unsolicited client order will not constitute Market Abuse if certain

conditions are satisfied – see CMC section 6-7, paragraphs 8 and 9.

**11 ENFORCEMENT POWERS**

1. If the DFSA considers that a person has engaged in Market Abuse it may impose a range of different sanctions under Article 90 of the Regulatory Law, such as:
  - (a) fining the person such amount as it considers appropriate;
  - (b) censuring the person;
  - (c) directing the person to effect restitution or to compensate any person;
  - (d) requiring the person to cease or desist from the activity; or
  - (e) directing the person to do an act or thing to remedy the contravention.
2. The DFSA may also take other types of action under the Regulatory Law against a person whom it considers has engaged in Market Abuse such as:
  - (a) taking action in respect of a Licence held by the person;
  - (b) restricting the person from performing any functions connected with Financial Services in or from the DIFC; or
  - (c) applying to the Court for an order against the person.
3. If the DFSA proposes to take enforcement action against a person, it is required to comply with the applicable decision-making procedures in Schedule 3 to the Regulatory Law. If the DFSA decides to take enforcement action against the person, the person may refer the matter to the FMT for review.
4. Further information about the DFSA's enforcement powers and decision-making procedures can be found in chapters 5, 6 and 7 of the Regulatory Policy and Process (RPP) Sourcebook.