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Financial Services Act 2012 c. 21

s. 90 Misleading impressions

Law In Force

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Subjects

Banking and finance; Criminal law; Financial regulation

Keywords

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90 Misleading impressions

(1) A person (“P”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments commits an offence if—

- (a) P intends to create the impression, and
- (b) the case falls within subsection (2) or (3) (or both).

(2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.

(3) The case falls within this subsection if—

- (a) P knows that the impression is false or misleading or is reckless as to whether it is, and
- (b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.

(4) Those results are—

- (a) the making of a gain for P or another, or
- (b) the causing of loss to another person or the exposing of another person to the risk of loss.

(5) References in subsection (4) to gain or loss are to be read in accordance with subsections (6) to (8).

(6) “Gain” and “loss”—

- (a) extend only to gain or loss in money or other property of any kind;
- (b) include such gain or loss whether temporary or permanent.

(7) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.

(8) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

(9) In proceedings brought against any person (“D”) for an offence under subsection (1) it is a defence for D to show—

(a) to the extent that the offence results from subsection (2), that D reasonably believed that D's conduct would not create an impression that was false or misleading as to the matters mentioned in subsection (1),

(b) that D acted or engaged in the conduct—

(i) for the purpose of stabilising the price of investments, and

(ii) in conformity with price stabilising rules,

(c) that D acted or engaged in the conduct in conformity with control of information rules, or

[

(d) that D acted or engaged in the conduct in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.

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(10) This section does not apply unless—

(a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or

(b) the false or misleading impression is created there.

[

(11) See [section 137Q\(3\)](#) of [FSMA 2000](#) regarding the power of the FCA to make rules for the purposes of subsection (9)(d).

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Notes

¹ Substituted by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016/680 [Pt 3\(1\) reg.15\(3\)\(a\)](#) (July 3, 2016)

² Added by Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016/680 [Pt 3\(1\) reg.15\(3\)\(b\)](#) (July 3, 2016)