MARKET CONDUCT SOURCEBOOK (TRANSACTIONS BETWEEN STABILISING MANAGER AND AGENT) INSTRUMENT 2002

Powers Exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000 (the "Act"):

(1) section 138 (General rule-making power);

(2) section 156 (General supplementary powers); and

(3) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

C. This instrument comes into force on 1 January 2003.

Amendments to MAR

D. MAR is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as Market Conduct Sourcebook (Transactions Between Stabilising Manager and Agent) Instrument 2002.

By order of the Board
21 November 2002

Annex

Amendments to MAR

After MAR 2.6.5R(2), insert the following new paragraphs:

2.6.5R (3) Paragraph (1) does not apply where:

(a) the transaction between the *stabilising manager* and his agent is undertaken solely for the purpose of re-allocating the economic risk of positions that were taken by the *stabilising manager* and his agent in the course of *stabilising action* and is priced accordingly; and

(b) the *relevant securities* are, and the transactions are in, *investments* that:

(i) fall within article 77 or 78 of the *Regulated Activities Order* (bonds, etc), or article 79 (instruments, etc) or 80 (certificates, etc) which confer rights only in respect of *investments* falling within article 77 or 78 ; and

(ii) are not exchangeable for or convertible into, and do not give rights to acquire, dispose or subscribe for, *investments* falling within article 76 of the *Regulated Activities Order* (shares, etc), or articles 79 or 80 which confer rights in respect of *investments* falling within article 76.

2.6.6G *MAR* 2.6.5R prohibits transactions between a *stabilising manager* and his agent unless it is not reasonable to expect both the principal and agent to know the identity of their counterparty or where *MAR* 2.6.5R(3) applies. *MAR* 2.6.5R(3) is designed to permit a transaction between a *stabilising manager* and his agent that takes place in the debt markets, typically at the end of the *business day* or *stabilising period*, that "squares up" positions taken in the course of *stabilising action*. The reference to price in *MAR* 2.6.5R(3)(a) reflects the need to be mindful that although the transaction may in practice, for example, be effected at a price that is the average of the constituent transactions, so not the prevailing market price, the purpose behind the transaction is to re-allocate economic risk established in the course of *stabilising action* and is not to mislead the market. *MAR* 2.6.5R(3)(b) has been drafted to ensure that the prohibition in *MAR* 2.6.5R(1) remains applicable to the issue of and transactions in any *investment* that provides a right to acquire or subscribe for, or may eventually be converted or exchanged into, a *share*.