

**THE FRC'S GUIDING PRINCIPLES ON INDEPENDENCE,
CONFIDENTIALITY AND CONFLICTS OF INTEREST**

All staff must discharge their responsibilities in the public interest and with integrity, objectivity and independence.

The FRC has as a fundamental principle that it must act, and be seen to act, in the public interest observing the principles of integrity, objectivity and independence across all areas for which it has responsibility. The manner in which this is achieved will depend on the circumstances of the particular operating body, but all staff members should adhere to principles (1) to (3) below.

- 1) Staff members must not become involved in any matter in relation to which their judgement may be affected by a conflict of interest, nor must they accept undue hospitality or gifts of more than a token nature.**

Guidance

This issue of what constitutes a relevant conflict of interest in a particular case will not always be clear-cut. Staff should therefore have regard to any detailed guidance issued to them and, where in any doubt, consult with the senior official of their operating body.

The acceptance of gifts of more than a token nature or undue hospitality from persons or bodies whom the FRC regulates may be inconsistent with avoiding conflicts of interest. Special care must be exercised before accepting gifts or hospitality and in cases of difficulty staff members should consult with the senior official or chair of their operating body or the FRC Chief Executive.

The FRC Company Secretary maintains a register of gifts and hospitality. Where hospitality estimated to have cost more the £100 per person or a gift estimated to have cost more the £25 is either accepted or refused this must be reported to the FRC Company Secretary for inclusion in the register.

- 2) **Staff members may not derive, or seek to derive, any personal benefit, or enable any other person to do so, as a result of unpublished information obtained through their role at the FRC.**

Guidance

Staff members should comply with the statutory provisions against insider dealing under the Criminal Justice Act 1993 and the Financial Services and Markets Act 2000. A note on these provisions is attached (Annex A).

- 3) **Staff members must keep confidential all unpublished information they acquire through their role at the FRC unless the disclosure of that information has been properly authorised.**

Guidance

There is a presumption that all unpublished information acquired by staff members is to be kept confidential. It is for each operating body to determine, in the light of the FRC's intention to be a transparent regulator, what information is to be published (e.g. on the FRC website) and what information should be kept confidential. There will be circumstances, however, in which it is appropriate to disclose unpublished information either internally within the FRC or externally (e.g. to other regulators). A general authority to disclose such information to specified individuals or organisations or a specific authority to do so in an individual case would override the presumption against disclosure.

Staff members are not permitted to communicate with the media on any matter relating to the FRC unless authorised to do so in advance by the FRC Chief Executive or the senior official of their operating body.

Note: The term "Staff Member" is intended to apply to all staff members and executives whether or not their job title includes the word "Director". The term Staff Member does not include Board members (unless they are also full time executives) or Panel Members.

NOTE ON STATUTORY PROVISIONS RELATING TO:

Insider Dealing

1. The insider dealing provisions contained in Part V of the Criminal Justice Act 1993 (the “CJA”) and the market abuse regime discussed below are complex, and if you would like further details or are in any doubt whether a particular transaction would be affected, you should consult the FRC Company Secretary.
2. The CJA applies to all securities traded on a regulated market and to warrants and derivatives (including index options and futures) relating to these securities even if these warrants and derivatives are only “over the counter” or otherwise not publicly traded.
3. In broad terms, and subject to the exemptions provided by the CJA, the CJA makes it a criminal offence, with a maximum penalty of seven years imprisonment and an unlimited fine, for an individual who has inside information to deal (or encourage another person to deal) in price-affected securities (including warrants or derivatives relating to such securities) on a regulated market or with or through a professional intermediary or by acting himself as a professional intermediary.
4. Information is considered inside information if it:
 - (a) Relates to particular securities or to a particular issuer or issuers, and not to securities or issuers generally;
 - (b) Is specific or precise;
 - (c) Has not been made public; and
 - (d) If it were made public, would be likely to have a significant effect on the price of any securities
5. The CJA also makes it an offence for a person who has inside information to disclose that information to another person otherwise than in the proper performance of his employment or profession.
6. Securities are “price-affected” if the inside information, if made public, would be likely to have a significant effect on the price of the securities. This applies to all companies’ securities affected by the information, whether directly or indirectly (for example, competitors of a company about to bring out a new product).
7. Dealing includes purchases, sales, subscriptions and all other methods of acquiring or disposing of securities or rights or interests in securities. Spread betting and other transactions where the amount to be paid or

delivered on settlement reflects the price movement of an underlying security are also included.

8. The CJA applies whether you deal on your own account or in any other way. It also covers information, which you obtain directly or indirectly from an insider whether or not in the course of your employment (for example, by social contacts). An insider is a person with information if:
 - (a) The information is, and that person knows that it is, inside information; and
 - (b) That person has (and knows that he has) the information from an inside source (such as a director, employee or shareholder).
9. If you cannot deal, normally you are also prohibited from: (i) procuring or encouraging another person to deal in the price-affected securities (whether or not the other person knows they are price-affected); and (ii) passing the inside information to another person other than in the proper performance of your employment.
10. The offence of insider dealing is subject to a number of defences. A defence may exist where:
 - (a) The individual does not expect the dealing to result in a profit attributable to the price sensitive nature of the information;
 - (b) The individual believes that the information has been widely enough disclosed so that no parties to the dealing are prejudiced by not having it;
 - (c) The individual can show that he would have acted in the same way even if he had not had the information.
11. A transaction, which involves insider dealing, may also constitute an offence for other reasons. In particular, under section 397(1) of the Financial Services and Markets Act (“FSMA”) a person commits an offence where he:
 - (a) Makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular; or
 - (b) Dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or
 - (c) Recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.
12. Further, a transaction, which involved insider dealing, is likely to amount to market abuse under Part VIII of FSMA.

Market Abuse

13. Market abuse covers a wide variety of different activities and is defined as behaviour (whether by one person or by two or more persons jointly or in concert):
 - (a) Which occurs in relation to qualifying investments traded on a market to which section 118 FSMA applies;
 - (b) Which falls within 2 below; and
 - (c) Which a regular user of that market who is aware of the behaviour is likely to regard as a failure to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market” (the “regular user test”).

14. The behaviours referred to above are:
 - (d) Misuse of information – the behaviour is based on information which is not generally available to those using the market but which a regular user of the market would (or would be likely to) regard as relevant when deciding the terms on which transactions in the relevant investments should be effected;
 - (e) False or misleading impression – the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the relevant kind; or
 - (f) Distorting behaviour – a regular user of the market would (or would be likely to) regard the behaviour as behaviour, which would, or would be likely to, distort the market in investments of the relevant kind.

15. A person (A) who requires or encourages another to engage in behaviour, which, if engaged in by A, would amount to market abuse, can be disciplined or subject to enforcement action by the FSA in much the same way as a person who commits market abuse. A person can require or encourage by action or inaction.

16. The Financial Services Authority (FSA) has issued the Code of Market Conduct (COMC), which forms part of the FSA Rules and contains “such provisions as the FSA considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse”. The COMC applies to all persons (including individuals and companies) whether or not they are working in a regulated business. To the extent that the COMC contains descriptions of behaviour, which, in the FSA’s opinion, does not amount to market abuse, that behaviour is regarded conclusively as not amounting to market abuse (i.e. as establishing “safe harbours”).

17. You should bear in mind that the regime is primarily “effects-based” and that there is no express state of mind requirement, although the regular user test provides a partly objective assessment of the person’s behaviour. Precisely what behaviour is to be regarded as market abuse will depend on the particular circumstances.
18. The description of misuse of information in FSMA essentially creates a civil offence of insider dealing alongside the criminal offence created by the CJA.
19. Where a person has committed market abuse or has encouraged market abuse, the FSA has a number of powers which it may exercise:
 - (g) It has the power to impose an unlimited financial penalty or issue a public censure.
 - (h) It may seek a court order preventing a person from carrying out or repeating the market abuse, including taking remedial steps and/or freezing assets.
 - (i) It may seek a court order requiring compensation payments to be made to those suffering loss as a result of the market abuse.
 - (j) It may itself require restitutionary payments to be made to those suffering loss as a result of the market abuse.
20. However, it should be noted that the FSA’s disciplinary powers, and certain of its enforcement powers, are not available if the person in question:
 - (k) Believed on reasonable grounds that his behaviour did not amount to market abuse or encouraging market abuse; or
 - (l) Took all reasonable precautions and exercised all due diligence to avoid committing market abuse or encouraging market abuse.
21. The implementation of the EU Market Abuse Directive in the UK will involve changes to the current market abuse regime. This guidance will be updated to take account of these changes prior to them taking effect (the expected implementation date is 4 April 2005).

Whistle blowing/speaking up

22. For guidance on our whistle blowing/speaking up policy you should consult the HR handbook.