



THE DANISH FINANCIAL SUPERVISORY AUTHORITY EXPRESSES CONCERN OVER SMALL TRADES

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The Danish Financial Supervisory Authority (“**DFSA**”) is experiencing an increasing number of investors carrying out multiple small trades in shares. The concern is that such trades could potentially constitute market manipulation as regulated in (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (“**MAR**”). On 25 May 2023, the DFSA issued a short memo on how to avoid market manipulation in such transactions¹.

In short, market manipulation includes conduct that creates or is likely to create false or misleading signals to the market about the supply of, demand for, or price of a financial instrument, in particular by entering orders to initiate or exacerbate a trend². Market manipulation also comprise the entering of transactions, placing an order to trade or any other behaviour which (i) gives likely, or is likely to give, false or misleading signals as to the supply for, or

¹ Danish Financial Supervisory Authority, Memo on How to Avoid Market Manipulation over Small Trades dated 25 May 2023.

² MAR art. 12(2)(c)(iii).

price of a financial instrument (...) or (ii) secures, or is likely to secure, the price of one or several financial instruments (...) at an abnormal or artificial level³.

The DFSA has observed an increase in the number of cases where an investor carries out multiple small buy orders, often in amounts of less than DKK 100. The effect is to increase the price of the financial instrument, i.e., the financial instrument is continuously traded at prices higher than the last trading price and eventually reach a price which may not reflect the true value of the financial instrument in rational trading. The DFSA assesses that such purchases in certain cases are both irrational and may constitute market manipulation.

The purchases are irrational as investors for each executed order usually pay commission, which quickly adds up in multiple small transactions.

The decisive factor of whether a given transaction constitutes market manipulation is whether or not the transaction is made with the purpose of impacting the price or if the transaction also had a legitimate business reason behind it. Consequently, if a transaction is made with the sole purpose of impacting the price of a financial instrument, such transaction would likely constitute market manipulation if the person carrying out the transaction knew or ought to know that the transaction or series of transactions creates false or misleading signals about the price or secures the price at an abnormal or artificial level.

The DFSA advises that investors do not enter into many small transactions but do not clarify what constitutes “many” or “small”. Moreover, the DFSA advises the use of limit orders.

In conclusion, the newly released memo does not per se add to the understanding of the term “market manipulation” but it does show that the DFSA continuously monitors the financial markets. Investors should therefore stay updated on recent regulatory and market practice developments and continue to assess whether their trading patterns are legitimate. This is especially true for investors utilising high frequency trading algorithms to execute orders. Such investors should continuously assess whether their algorithms adequately mitigate behaviour which could constitute market manipulation.

Link to the DFSA’s memo can be found [here](#) (in Danish).

³ MAR art. 12(1)(a)(i-ii).

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us.



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