

2023 No. 582

INSIDER DEALING

**The Insider Dealing (Securities and Regulated Markets) Order
2023**

Made - - - - *25th May 2023*

Coming into force - - *15th June 2023*

The Treasury, in exercise of the powers conferred by sections 54(1) and (2), 60(1), 62(1)(b), and 64(3) of the Criminal Justice Act 1993(a), make the following Order.

In accordance with section 64(2) of the Criminal Justice Act 1993 a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Insider Dealing (Securities and Regulated Markets) Order 2023 and comes into force 21 days after the day on which this Order is made.

(2) This Order extends to the United Kingdom.

Interpretation

2. In this Order—

“the 1993 Act” means the Criminal Justice Act 1993;

“EU multilateral trading facility” has the meaning given in Article 3(7B) of the market abuse regulation;

“EU organised trading facility” has the meaning given in Article 3(8B) of the market abuse regulation;

“EU regulated market” has the meaning given in Article 3(6B) of the market abuse regulation;

“Gibraltar organised trading facility” has the meaning given in Article 3(8C) of the market abuse regulation;

“Gibraltar multilateral trading facility” has the meaning given in Article 3(7C) of the market abuse regulation;

“Gibraltar regulated market” has the meaning given in Article 3(6C) of the market abuse regulation;

“the market abuse regulation” means Regulation (EU) No 596/2014 of the European Parliament and Council of 16 April 2014 on market abuse(b);

(a) 1993 c. 36.

(b) EUR 596/2014 amended by S.I. 2019/310.

“UK multilateral trading facility” has the meaning given in Article 3(7A) of the market abuse regulation;

“UK organised trading facility” has the meaning given in Article 3(8A) of the market abuse regulation;

“UK regulated market” has the meaning given in Article 3(6A) of the market abuse regulation.

Condition for the purposes of section 54(1)(b) of the 1993 Act

3. It is a condition for the purposes of section 54(1)(b) of the 1993 Act that a security which falls within any paragraph of Schedule 2 to that Act is also—

- (a) a security admitted to trading on any market established under the rules of the investment exchange known as NASDAQ or for which a request for its admission to trading on NASDAQ has been made,
- (b) a security admitted to trading on any market established under the rules of the investment exchange known as SIX Swiss Exchange or for which a request for its admission to trading on SIX Swiss Exchange has been made,
- (c) a security admitted to trading on any market established under the rules of the investment exchange known as the New York Stock Exchange (NYSE) or for which a request for its admission to trading on NYSE has been made,
- (d) a security admitted to trading on a UK, EU or Gibraltar regulated market or for which a request for its admission to trading on a UK, EU or Gibraltar regulated market has been made,
- (e) a security traded on a UK, EU or Gibraltar multilateral trading facility, or admitted to trading on a UK, EU or Gibraltar multilateral trading facility, or for which a request for its admission to trading on a UK, EU or Gibraltar multilateral trading facility has been made,
- (f) a security traded on a UK, EU or Gibraltar organised trading facility, or
- (g) a security not falling within paragraphs (a) to (f) the price or value of which depends on, or has an effect on, the price or value of a security falling within those paragraphs.

Regulated markets for the purposes of Part 5 of the 1993 Act

4.—(1) Any market that meets the criteria in paragraph (2) is a regulated market for the purposes of section 60(1) of the 1993 Act.

(2) The criteria are that the market is—

- (a) a UK, EU or Gibraltar regulated market,
- (b) a UK, EU or Gibraltar multilateral trading facility,
- (c) a UK, EU or Gibraltar organised trading facility,
- (d) any market established under the rules of the investment exchange known as NASDAQ,
- (e) any market established under the rules of the investment exchange known as SIX Swiss Exchange, or
- (f) any market established under the rules of the investment exchange known as the New York Stock Exchange.

Regulated markets regulated in the United Kingdom for the purposes of Part 5 of the 1993 Act

5. A regulated market which is a recognised investment exchange under section 285(1)(a) of the Financial Services and Markets Act 2000(a) but not an overseas investment exchange within the

(a) 2000 c. 8.

meaning of section 313(1) of that Act is regulated in the United Kingdom for the purposes of section 62(1)(b) of the 1993 Act.

Amendment of Schedule 2 to the 1993 Act

6. In Schedule 2 to the 1993 Act (securities) for paragraphs 1 to 7 (and their headings) substitute—

“PART 1 Securities

- 1.** Transferable securities.
- 2.** Money-market instruments.
- 3.** Units in collective investment undertakings.
- 4.** Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.
- 5.** Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event).
- 6.** Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided they are traded on a UK regulated market, a UK MTF or a UK OTF, except for wholesale energy products traded on a UK OTF that must be physically settled.
- 7.** Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in paragraph 6 and not being for commercial purposes or wholesale energy products traded on an EU OTF that must be physically settled, which have the characteristics of other derivative financial instruments.
- 8.** Derivative instruments for the transfer of credit risk.
- 9.** Financial contracts for differences.
- 10.** Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a UK regulated market, a UK OTF, or a UK MTF.
- 11.** Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme)(**a**) or allowances created under article 18 of the Greenhouse Gas Emissions Trading Scheme Order 2020(**b**).

(a) OJ No. L 275, 15.10.2022, p. 32.

(b) S.I. 1265/2020.

PART 2

Interpretation

12. Part 2 of Schedule 2 to the RAO (“the RAO Schedule”) (financial instruments and investment services and activities) applies for the purposes of Part 1 of this Schedule as it applies for the purposes of Part 1 of the RAO Schedule but as if references in Part 2 of the RAO Schedule to paragraphs in Part 1 of the RAO Schedule were references to the equivalent paragraphs in Part 1 of this Schedule.

13. Terms used in this Schedule and in the RAO have the same meaning in this Schedule as in the RAO.

14. References in paragraphs 12 and 13 to the RAO are to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)(a) as it had effect on 17th April 2023.”

Revocation of the Insider Dealing (Securities and Regulated Markets) Order 1994

7. The following Orders are revoked—

- (a) the Insider Dealing (Securities and Regulated Markets) Order 1994(b);
- (b) the Insider Dealing (Securities and Regulated Markets) (Amendment) Order 1996(c);
- (c) the Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2000(d); and
- (d) the Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2002(e).

*Steve Double
Andrew Stephenson*

25th May 2023

Two of the Lords Commissioners of His Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order supplements Part 5 of the Criminal Justice Act 1993 (c. 36) (“the 1993 Act”), which establishes the offence of insider dealing (“the offence”). The offence applies to anyone who has inside information on securities or issuers of securities as an insider and then does one of three things. The first is to deal in securities whose price would be affected by the public release of the information on either a regulated market or via a professional intermediary. The second is to encourage such dealing. The third is to disclose the information outside the proper performance of their employment, office or profession.

Article 3 of the Order imposes a condition that Part 5 (and the offence) will only apply to securities either traded on specified trading venues or the price or value of which is linked to such securities. This means the offence will only apply to those who have inside information relating to such securities. Moreover, where the offence is committed by dealing, or encouraging dealing, in securities, the securities involved must satisfy the same condition. Article 4 defines a regulated market for the purposes of Part 5, so where the offence is committed via dealing, or encouraging dealing, in securities on a regulated market the offence will only apply if the market is listed in Article 4. Article 5 describes which markets are to be treated as regulated in the United Kingdom which is relevant to the territorial scope of the offence.

(a) S.I. 2001/544.
(b) S.I. 1994/187.
(c) S.I. 1996/1561.
(d) S.I. 2000/1923.
(e) S.I. 2002/1874.

Article 6 amends Schedule 2 to the 1993 Act, which lists various instruments that are a ‘security’ for the purposes of Part 5. The current list is replaced by the list of financial instruments found in Part 1 of Schedule 2 to the Financial Services and Markets 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) to be read in conjunction with Part 2 of Schedule 2 to that Order.

Article 7 of the Order revokes the Insider Dealing (Securities and Regulated Markets) Order 1994 (S.I. 1994/187) and amending instruments (S.I. 1996/1561, S.I. 2000/1923, and S.I. 2002/1874).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

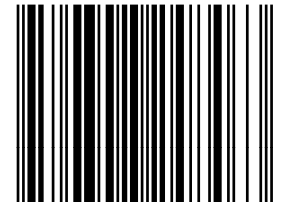
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