

Changes to the UK criminal insider dealing regime enter into force

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On 15 June 2023, The Insider Dealing (Securities and Regulated Markets) Order 2023 enters into force. It amends the Criminal Justice Act 1993, which sets out the UK's criminal insider dealing regime, to align the types of securities and markets that are subject to the criminal insider dealing offences with the scope of securities and markets covered by the civil regime in the UK version of the Market Abuse Regulation.

The Criminal Justice Act 1993 (CJA 1993) creates criminal offences in relation to (i) dealing in price-affected securities while in possession of inside information; (ii) encouraging another person to deal in price-affected securities while in possession of inside information; and (iii) disclosing inside information other than in the proper performance of employment, office, or profession. Securities are "price-affected", and information in relation to securities is "price-sensitive", where the information, if made public, would be likely to have a significant effect on the price of securities. Conviction for any of the offences described above carries a maximum term of 10 years imprisonment.

Prior to The Insider Dealing (Securities and Regulated Markets) Order 2023 (the Order) entering into force, the criminal insider dealing offence applied to shares, debt securities, warrants, depositary receipts, options, futures and contracts for differences acquired or disposed of on a "regulated market" or through a professional intermediary. For these purposes, the term "regulated market" was defined as a market specified in The Insider Dealing (Securities and Regulated Markets) Order 1994 (as amended) (the 1994 Order). The list of regulated markets in the 1994 Order has not been updated since 2002. As a result, a number of the regulated markets specified in the 1994 Order no longer exist and the 1994 Order fails to capture many new trading venues that have been established since 2002.

The Order expands the types of instruments that are subject to the criminal insider dealing regime by replacing the list of securities in Schedule 2 of the CJA 1993 with a new list containing those instruments found in Part 1 of Schedule 2 to The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). The RAO list reproduces the financial instruments set out in the Annex to the recast Markets in Financial Instruments Directive. As the result of this change, the CJA 1993 now applies to transferrable securities, money-market instruments, units in collective investment schemes, various types of financial and commodity derivatives and emission allowances.

In terms of the markets to which the CJA insider dealing offences apply, the Order replaces the previous list of named markets with general definitions of UK, EU and Gibraltar regulated markets, multilateral trading facilities and organised trading facilities. The Order covers securities admitted to trading and securities for which a request for admission to trading has been made on any of these markets. This mirrors the scope of UK version of the Market Abuse Regulation (UK MAR).

In addition, the Order provides that an instrument falling within the new list at Part 1 of Schedule 2 of the CJA 1993, but which is not admitted to trading on any of the specified market types, will be in scope of the inside dealing offences if its price or value depends or has an effect on, the price or value of an instrument admitted to trading on a specified market. The inclusion of these instruments aligns the CJA 1993 with Article 2(1)(d) of UK MAR and represents a significant expansion of the scope of instruments caught by the criminal insider dealing offence.

The list of “regulated markets” in the CJA 1993 before the Order entered into force included any market established under the rules of NASDAQ and SIX Swiss Exchange. The Order retains these markets and also adds the New York Stock Exchange. The scope of markets covered by the criminal insider dealing regime is therefore wider than that under UK MAR.

Firms should consider how these changes to the CJA 1993 will impact their businesses and, where necessary, ensure that relevant internal policies, procedures and staff training are updated accordingly. Although the scope of instruments and trading venues in the CJA 1993 are now more closely aligned to UK MAR, important differences remain which firms and their staff need to be mindful of when engaging in trading activities and when in possession of inside information.

Quick reference table: scope of insider dealing regimes

Market on which securities are traded	UK Market Abuse Regulation	EU Market Abuse Regulation	UK Criminal Justice Act 1993 (Criminal Insider Dealing Offence)
London Stock Exchange			
AIM			
Euronext			
NYSE			
The Nasdaq Stock Market LLC	(Note that Nasdaq operates regulated markets in various EU jurisdictions which are in scope of the UK Market Abuse Regulation)	(Note that Nasdaq operates regulated markets in various EU jurisdictions which are in scope of the EU Market Abuse Regulation)	

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Mark Chalmers

+44 20 7418 1324

mark.chalmers@davispolk.com

Dan Hirschovits

+44 20 7418 1023

dan.hirschovits@davispolk.com

Will Pearce

+44 20 7418 1448

will.pearce@davispolk.com

Simon Witty

+44 20 7418 1015

simon.witty@davispolk.com

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