

INSIDER DEALING ORDINANCE**Repealed by Ord. 2005-44 as from 4.8.2005****Principal Ordinance**

Ord. No. 1998-41	<i>Commencement</i>	3.12.1998
	<i>Assent</i>	

Amending enactments	Relevant current provisions	
LN. 1999/033	Sch.4	1.4.1999
Ord. 1999-15	s.12(7) and (8)	15.7.1999

English sources

None

1998-41
Repealed

Insider Dealing

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AN ORDINANCE TO TRANSPOSE INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 89/592/EEC CO-ORDINATING REGULATIONS ON INSIDER DEALING AND THEREBY TO PROHIBIT INSIDER DEALING IN SECURITIES AND TO PROVIDE FOR INVESTIGATIONS INTO ALLEGED INSIDER DEALING AND FOR ASSISTANCE TO OVERSEAS AUTHORITIES FOR THE PURPOSES OF THAT DIRECTIVE.

Title and commencement.

1. This Ordinance may be cited as the Insider Dealing Ordinance, 1998 and shall come into effect on such day as the Government may by notice in the Gazette appoint and different days may be so appointed for different purposes.

PART I. **PRELIMINARY.**

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“competent authority” means any person appointed by the Minister for the purposes of this Ordinance and a person so appointed shall be regarded as competent where he has sufficient training and experience or knowledge and the qualities to enable him to carry out his functions under this Ordinance;

“the Directive” means Council Directive 89/592/EEC of 13 November 1989 co-ordinating regulations on insider dealing;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“EEA authority” means the authority or authorities designated by an EEA State in accordance with Article 8.1 of the Directive;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

an “issuer”, in relation to any securities, means any company, public sector body or individual by which or by whom the securities have been or are to be issued;

“company” means any body (whether or not incorporated and wherever incorporated or constituted) which is not a public sector body;

“the Minister” means the Minister with responsibility for Trade and Industry;

“public sector body” means—

- (a) the Government of Gibraltar or of any other country or territory;
- (b) a local authority;
- (c) any international organisation the members of which include an EEA State;
- (d) the Bank of England;
- (e) the central bank of any sovereign state;

“regulated market” means any market however operated which is specified in Parts I and II of Schedule 4;

“regulations” means regulations made under section 21(1).

Meaning of “insiders”, etc.

3.(1) For the purposes of this Ordinance, a person has information as an insider if and only if—

- (a) it is, and he knows that it is, inside information; and
- (b) he has it, and knows that he has it, from an inside source.

(2) For the purposes of subsection (1), a person has information from an inside source if and only if—

- (a) he has it through—
 - (i) being a director, employee or shareholder of an issuer of securities; or
 - (ii) having access to the information by virtue of his employment, office or profession; or
- (b) the direct or indirect source of his information is a person within paragraph (a).

(3) For the purposes of this section “inside information” means information which—

- (a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities 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.

(4) For the purposes of this Ordinance, securities are “price affected securities” in relation to insider information, and inside information is “price-sensitive information” in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price of the securities.

(5) For the purposes of this section “price” includes value.

(6) For the purposes of this section, “made public”, in relation to information, shall be construed in accordance with the provisions of subsections (7) and (8), which provisions are not exhaustive as to the meaning of that expression.

(7) Information is made public if—

- (a) it is published in accordance with the rules of a regulated market for the purpose of informing investors and their professional advisers;
- (b) it is contained in records which by virtue of any law are open to inspection by the public;
- (c) it can be readily acquired by those likely to deal in any securities—
 - (i) to which the information relates; or
 - (ii) of an issuer to which the information relates; or
- (d) it is derived from information which has been made public.

(8) Information may be treated as made public even though—

- (a) it can be acquired only by persons exercising diligence or expertise;
- (b) it is communicated to a section of the public and not to the public at large;
- (c) it can be acquired only by observation;
- (d) it is communicated only on payment of a fee; or
- (e) it is published only outside Gibraltar.

(9) For the purposes of this Ordinance, information shall be treated as relating to an issuer of securities which is a company not only where it is about the company but also where it may affect the company's business prospects.

Meaning of “securities” and “dealing in securities”.

4.(1) The provisions of this Ordinance apply to any security specified in Schedule 1 and which satisfies any conditions specified in Schedule 2 as applying to it for the purposes of this section and any reference in this Ordinance (other than in Schedule 1) to a security is a reference to a security to which this Ordinance applies.

- (2) For the purposes of this Ordinance, a person deals in securities if—
 - (a) he acquires or disposes of the securities (whether as principal or agent); or
 - (b) he procures, directly or indirectly, an acquisition or disposal of the securities by any other person.
- (3) For the purposes of subsection (2),—
 - (a) “acquire” in relation to a security, includes—
 - (i) agreeing to acquire the security; and
 - (ii) entering into a contract which creates the security;
 - (b) “dispose”, in relation to a security, includes—
 - (i) agreeing to dispose of the security; and
 - (ii) bringing to an end a contract which created the security; and

- (c) a person procures an acquisition or disposal of a security if the security is acquired or disposed of by a person who is—
 - (i) his agent;
 - (ii) his nominee; or
 - (iii) a person who is acting at his direction,in relation to the acquisition or disposal.

(4) Subsection (3)(c) is not exhaustive as to the circumstances in which one person may be regarded as procuring an acquisition or disposal of securities by another.

(5) The Minister may by order amend Schedule 1.

Meaning of “professional intermediary”.

5.(1) For the purposes of this Ordinance, a “professional intermediary” is a person—

- (a) who carries on a business consisting of an activity mentioned in subsection (2) and who holds himself out to the public or any section of the public (including a section of the public constituted by persons such as himself) as willing to engage in any such business; or
- (b) who is employed by a person falling within paragraph (a) to carry out any such activity.

(2) The activities referred to in subsection (1) are—

- (a) acquiring or disposing of securities (whether as principal or agent); or
- (b) acting as an intermediary between persons taking part in any dealing in securities.

(3) A person is not to be treated as carrying on a business consisting of an activity mentioned in subsection (2)—

- (a) if the activity in question is merely incidental to some other activity not falling within subsection (2); or
- (b) merely because he occasionally conducts one of those activities.

(4) For the purposes of section 6, a person dealing in securities relies on a professional intermediary if and only if a person who is acting as a professional intermediary carries out an activity mentioned in subsection (2) in relation to that dealing.

PART II.
INSIDER DEALING.

The offence of insider dealing.

6.(1) Subject to sections 7, 8 and 9(1), an individual who has information as an insider is guilty of insider dealing if,—

- (a) in the circumstances mentioned in subsection (2), he deals in securities that are price-affected securities in relation to the information;
- (b) he encourages another person to deal in securities that are (whether or not that other knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in subsection (2); or
- (c) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(2) The circumstances referred to in subsection (1) are that the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.

Defences.

7.(1) An individual is not guilty of insider dealing by virtue of dealing in securities if he shows—

- (a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities;
- (b) that at the time he believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or

- (c) that he would have done what he did even if he had not had the information.
- (2) An individual is not guilty of insider dealing by virtue of encouraging another person to deal in securities if he shows—
- (a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities;
 - (b) that at the time he believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
 - (c) that he would have done what he did even if he had not had the information.
- (3) An individual is not guilty of insider dealing by virtue of a disclosure of information if he shows—
- (a) that he did not at the time expect any person, because of the disclosure, to deal in securities in the circumstances mentioned in section 6(2); or
 - (b) that, although he had such an expectation at the time, he did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to the securities.
- (4) In this section references to a profit include references to the avoidance of a loss.
- (5) Schedule 3 (special defences) shall have effect.
- (6) The Minister may by order amend Schedule 3.

Territorial scope of offence of insider dealing.

- 8.(1) An individual is not guilty of an offence falling within section 6(1)(a) unless—
- (a) he was within Gibraltar at the time when he is alleged to have done any act constituting or forming part of the alleged dealing; and

- (i) the regulated market on which the dealing is alleged to have occurred is one which is specified in Part I of Schedule 4; or
 - (ii) the professional intermediary was within Gibraltar at the time when he is alleged to have done anything by means of which the offence is alleged to have been committed.
- (2) An individual is not guilty of an offence falling within paragraph (b) or (c) of section 6(1) unless—
- (a) he was in Gibraltar at the time when he is alleged to have encouraged the dealing or disclosed the information; or
 - (b) the alleged recipient of the information or encouragement was in Gibraltar at the time when he is alleged to have received the information or encouragement.
- (3) The Minister may by order amend Schedule 4.

Limits on section 6.

- 9.(1) Section 6 does not apply to anything done by an individual acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.
- (2) No contract shall be void or unenforceable by reason only of section 6.

Penalties and prosecution.

10. An individual guilty of insider dealing shall be liable—
- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both; or
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding seven years or to both.

Obligation to disclose information.

- 11.(1) The relevant statutory provisions shall have effect in relation to a company or undertaking the transferable securities of which, whatever their nature, are admitted to trading on a regulated market.
- (2) In this section—

- (a) expressions “securities” and “regulated market” shall have the same respective meanings as in the relevant statutory provisions;
- (b) the expressions “admitted to trading”, “company” and “undertaking” shall have the same respective meanings as in the Directive; and
- (c) the expression “the relevant statutory provisions” shall mean such provisions for the time being in force in the United Kingdom which give effect to Schedule C.5 of the Annex to Council Directive 79/279/EEC co-ordinating the conditions for admission of securities to official stock exchange listing.

PART III. INVESTIGATIONS.

Investigations into alleged insider dealing.

12.(1) If it appears to the competent authority that there are circumstances suggesting that an offence under Part II may have been committed the authority shall take such steps as it considers are permitted by this Ordinance and as the authority considers necessary to carry out such investigations as are required to establish whether or not any such offence has been committed and where the authority is of the opinion that an offence has been committed to report the results of its investigations to the Minister and to the Attorney General.

(2) The powers referred to in subsection (1) include the power to seek the assistance of—

- (a) any statutory authority in Gibraltar having regulatory responsibilities in respect of persons carrying on in Gibraltar an investment business which in whole or in part consists of dealing in securities or acting as a professional intermediary;
- (b) an EEA authority,

and any reference in this section to a person having an obligation to assist the competent authority or to provide information to that authority shall apply to a statutory authority falling within paragraph (a).

(3) Any person who is or may be able to give information concerning an offence under Part II shall be required—

- (a) to produce to the competent authority any documents in his possession or under his control which appear to be relevant to the investigation;
- (b) to produce to the competent authority at a specified time and place any specified documents which appear to the competent authority to relate to any matter relevant to the enquiries; and
- (c) otherwise to give to the competent authority all assistance in connection with the investigation which that person is reasonably able to give.

(4) In this section “document” includes information recorded in any form, and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.

(5) Where documents are produced the competent authority may take copies or extracts from them.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section may only be used in evidence against him if—

- (a) that person has himself introduced the statement in evidence;
or
- (b) the prosecution of that person relates to—
 - (i) a failure or refusal by that person to produce documents or give assistance in accordance with subsection (3);
 - (ii) an omission by that person to disclose material which should have been disclosed; or
 - (iii) an untruthful statement by that person.

(7) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Supreme Court.

(8) A person shall not under this section be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (b) the making of the requirement was authorised by the Minister.

(9) Where a person claims a lien on a document, its production under this section shall be without prejudice to his lien.

(10) No person shall be bound to comply with a requirement imposed by a person exercising powers granted under this section unless that person has, if required, produced evidence of his authority.

(11) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the Order.

(12) The Minister may make regulations to provide for the application for the purposes of investigations under this section of—

- (a) provisions of the Companies Ordinance in respect of investigations under that Ordinance;
- (b) the Evidence Ordinance.

Penalty for failure to comply with requirement under section 12.

13.(1) A person who without reasonable excuse fails or refuses to comply with a requirement imposed on him under section 12, or omits to disclose material which should have been disclosed, commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.

(2) A person who in purported compliance with any such requirement furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular, commits an offence and is liable—

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both.

Restrictions on disclosure of information.

14.(1) This section applies to information relating to the business or other affairs of a person which—

- (a) is supplied by an EEA authority; or
- (b) is received for the purposes of, or on the discharge of functions under, the Ordinance.

(2) Except as permitted by section 15, such information shall not be disclosed for any purpose—

- (a) by the primary recipient; or
- (b) by any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(3) The “primary recipient” means, as the case may be—

- (a) the competent authority;
- (b) any officer, servant or agent of the competent authority.

(4) Information shall not be treated as information to which this section applies if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

(5) A person who contravenes this section commits an offence and is liable—

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both.

Exceptions from restrictions on disclosure.

15.(1) Subject to subsection (2), information to which section 14 applies may be disclosed—

- (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings;

- (b) to the Government, if the disclosure is made in the interests of investors or in the public interest;
- (c) if the information is or has been available to the public from other sources; or
- (e) in pursuance of any Community obligation.

(2) Where information is supplied to the primary recipient (as defined in section 14(3)) by an EEA authority, that information may not, without the consent of the supplying EEA authority, be disclosed to any person except for the purposes of the exercise by the primary recipient of his functions under this Ordinance or any relevant proceedings relating thereto.

(3) The relevant proceedings referred to in subsections (1)(a) and (2) are—

- (a) any criminal proceedings;
- (b) civil proceedings arising under or by virtue of the Financial Services Ordinance; and
- (c) disciplinary proceedings relating to—
 - (i) the exercise by a solicitor or barrister, auditor, accountant, valuer or actuary of his professional duties; or
 - (ii) the discharge by a public servant or a servant of the competent authority or of a statutory authority referred to in section 12(2)(a) of his duties.

PART IV.

POWERS EXERCISABLE TO ASSIST EEA AUTHORITIES.

Power to assist an EEA authority.

16.(1) The powers conferred by section 12 are exercisable by the competent authority for the purpose of assisting an EEA authority which in exercise of the provisions of Article 10 of the Directive has requested assistance in connection with enquiries being carried out by that EEA authority or on its behalf for the purposes specified in subsection (2).

(2) The purposes referred to in subsection (1) are the investigation or prosecution of an alleged breach of obligations under the Directive arising in the State of the EEA authority as a result of the transposition in that State of the Directive and where the obligations arise in a State with which an

agreement has been concluded by virtue of Article 11 of the Directive, those obligations.

(3) The competent authority need not exercise the powers conferred by section 12 for the purposes of assisting an EEA authority if it is satisfied that the assistance requested by the EEA authority—

- (a) would adversely affect the sovereignty, security or public policy of Gibraltar; or
- (b) relates to the same matters and the same persons in respect of whom prosecutions in Gibraltar have been initiated or a judgment has been delivered by a court in Gibraltar.

(4) Sections 13, 14 and 15 shall apply to any exercise of the powers contained in section 12 for the purpose of this section.

PART V.
MISCELLANEOUS.

Offences by corporate bodies, partnerships and unincorporated associations.

17.(1) Where an offence under section 13 or 14 committed by a corporate body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the corporate body is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a corporate body are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a corporate body.

(3) Where an offence under section 13 or 14 committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where an offence under section 13 or 14 committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Jurisdiction and procedure in respect of offences.

18.(1) Proceedings for an offence alleged to have been committed under section 13 or 14 by an unincorporated association shall be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a corporation.

(2) Section 123 of and Schedule 4 to the Criminal Procedure Ordinance¹ (which relate to procedure where a corporation is charged with an offence before the Magistrates' Court) apply in a case where an unincorporated association is charged with an offence under section 13 or 14 as they apply in the case of a corporation.

(3) Section 144 of the Criminal Procedure Ordinance (which relates to procedure where a corporation is arraigned on indictment) applies in a case where an unincorporated association is charged with an offence under section 13 or 14 as it applies in the case of a corporation.

(4) A fine imposed upon an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

Sanction for prosecution.

19. No prosecution in respect of an offence against this Ordinance may be commenced except at the instance of or with the sanction of the Attorney-General.

Powers of the Authority under the Financial Services Ordinance in respect of authorised persons and licensees.

20.(1) Where a person convicted of an offence under section 6 or 13 is a licensee of the Authority or authorised under the Financial Services Ordinance 1989² or the Financial Services Ordinance 1998³, that Authority may serve a notice on him—

- (a) cancelling any authorisation or licence of his to carry on investment business after the expiry of a specified period after the service of the notice;
- (b) disqualifying him from becoming authorised or licensed to carry on investment business after the expiry of a specified period;

¹ 1961-24

² 1989-47

³ 1998-10

- (c) restricting any authorisation or licence of his in respect of investment business during a specified period to the performance of contracts entered into before the notice comes into force;
- (d) prohibiting him from entering into investment business transactions of a specified kind or entering into them except in specified circumstances or to a specified extent;
- (e) prohibiting him from soliciting investment business from persons of a specified kind or otherwise than from such persons; or
- (f) prohibiting him from carrying on investment business in a specified manner or otherwise than in a specified manner.

(2) The period mentioned in paragraph (a) and (c) of subsection (1) shall be such period as appears to the Authority reasonable to enable the person on whom the notice is served to complete the performance of any contracts entered into before the notice comes into force and to terminate such of them as are of a continuing nature.

(3) A notice served on a person under subsection (1) may be revoked at any time by the Authority by serving a revocation notice on him.

(4) The revocation of such a notice as is mentioned in subsection (1)(a) shall not have the effect of reviving the authorisation or licence cancelled by the notice, but nothing in this subsection shall be construed as preventing any person who has been subject to such a notice from again becoming authorised or licensed after the revocation of the notice.

(5) The provisions of sections 44 and 45 of the Financial Services Ordinance 1989 shall apply to any powers exercised under this section.

(6) In this section—

- (a) “investment business” means investment business consisting of dealing in securities or acting as a professional intermediary and includes any business carried out by an authorised firm under Part III of the Financial Services Ordinance 1998;
- (b) the expressions “the Authority”, “licensee” and “authorised by” have the same respective meanings as in the Financial Services Ordinances 1989 and 1998.

Power to make regulations.

21.(1) The Minister may make regulations for the purpose of giving proper effect to this Ordinance and regulations made under this section may make such transitional, incidental or supplementary provisions as the Minister may deem proper for the better execution of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may—

- (a) make provision with respect to the appointment of such persons as the Minister shall deem necessary for the administration and enforcement of this Ordinance and the regulations;
- (b) make provision with respect to the power of persons to—
 - (i) enter such premises as may be specified; and
 - (ii) conduct such inspections and serve such notices as may be specified;
- (c) provide that notwithstanding the provisions of section 23(b) of the Interpretation and General Clauses Ordinance⁴, a contravention of a prohibition or requirement imposed by or under regulations shall constitute an offence for which the offender shall be liable on summary conviction to a fine not exceeding a specified amount;
- (d) provide for the extent (if any) to which breach of a duty imposed by the regulations shall be actionable;
- (e) provide for any specified defence to be available, either generally or in specified circumstances, in proceedings for an offence under the regulations, or an action for breach of duty;
- (f) make provision with respect to the institution of proceedings for an offence under the regulations, with respect to the circumstances in which, in the case of an offence committed by a corporate body, partnership or unincorporated association, an officer, partner or member of the governing body of that undertaking shall also be guilty of an offence, with respect to the onus of proof of specified matters, other questions of evidence in proceedings for an offence, and with respect to the powers of a court to order an offender to remedy any matter; and
- (g) make provision in respect of fees or other charges.

⁴ 1962-08

1998-41
Repealed

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- (4) in this section—
 - (a) “contravention” includes failure to comply or perform;
 - (b) “requirement” includes duty.

SCHEDULE 1

Section 4(1)

SECURITIES

Shares.

1. Shares and stock in the share capital of a company (“shares”).

Debt securities.

2. Any instrument creating or acknowledging indebtedness which is issued by a company or public sector body, including, in particular, debentures, debenture stock, loan stock, bonds and certificates of deposit (“debt securities”).

Warrants.

3. Any right (whether conferred by warrant or otherwise) to subscribe for shares or debt securities (“warrants”).

Depository receipts.

- 4.(1) The rights under any depository receipt.

(2) For the purposes of subparagraph (1), a “depository receipt” means a certificate or other record (whether or not in the form of a document)–

- (a) which is issued by or on behalf of a person who holds any relevant securities of a particular issuer; and
- (b) which acknowledges that another person is entitled to rights in relation to the relevant securities or relevant securities of the same kind.

(3) In subparagraph (2) “relevant securities” means shares, debt securities and warrants.

Options.

5. Any option to acquire or dispose of any security falling within any other paragraph of this Schedule.

Futures.

6.(1) Rights under a contract for the acquisition or disposal of relevant securities under which delivery is to be made at a future date and at a price agreed when the contract is made.

(2) In subparagraph (1)–

- (a) the references to a future date and to a price agreed when the contract is made include references to a date and a price determined in accordance with the terms of the contract; and
- (b) “relevant securities” means any security falling within any other paragraph of this Schedule.

Contracts for differences.

7.(1) Rights under a contract which does not provide for the delivery of securities but whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in–

- (a) a share index or other similar factor connected with relevant securities;
- (b) the price of particular relevant securities; or
- (c) the interest rate offered on money placed on deposit.

(2) In subparagraph (1) “relevant securities” means any security falling within any other paragraph of this Schedule.

SCHEDULE 2

Section 4(1)

CONDITIONS APPLYING TO SECURITIES

1. Paragraphs 2 to 6 set out conditions for the purposes of section 4 (securities to which this Ordinance applies).
2. The following condition applies in relation to any security which falls within any paragraph of the Schedule, that is, that it is officially listed in an EEA State or that it is admitted to dealing on, or has its price quoted on or under the rules of, a regulated market.
3. The following alternative condition applies in relation to a warrant, that is, that the right under it is a right to subscribe for any share or debt security of the same class as any share or debt security which satisfies the condition in paragraph 2.
4. The following alternative condition applies in relation to a depository receipt, that is, that the rights under it are in respect of any share or debt security which satisfies the condition in paragraph 2.
5. The following alternative conditions apply in relation to an option or a futures contract, that is, that the option or rights under the future are in respect of—
 - (a) any share or debt security which satisfies the condition in paragraph 2; or
 - (b) any depository receipt which satisfies the condition in paragraph 2 or 4.
6. The following alternative condition applies in relation to a contract for differences, that is, that the purpose or pretended purpose of the contract is to secure a profit or avoid a loss by reference to fluctuations in—
 - (a) the price of any shares or debt securities which satisfy the condition in paragraph 2; or
 - (b) an index of the price of such shares or debt securities.

SCHEDULE 3

Section 7(5)

SPECIAL DEFENCES

Market makers.

1.(1) An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that he acted in good faith in the course of—

- (a) his business as a recognised market maker with obligations to deal in the investment; or
- (b) his employment in the business of a recognised market maker with obligations to deal in the investment.

(2) A recognised market maker is a person who—

- (a) holds himself out at all normal times in compliance with the rules of a regulated market or an approved organisation as willing to acquire or dispose of securities; and
- (b) is recognised as doing so under those rules.

(3) In this paragraph “an approved organisation” means a corporate body or unincorporated association approved under paragraph 25B of Schedule 1 to the United Kingdom Financial Services Act 1986.

Market information.

2.(1) An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that—

- (a) the information which he had as an insider was market information; and
- (b) it was reasonable for an individual in his position to have acted as he did despite having that information as an insider at the time.

(2) In determining whether it is reasonable for an individual to do any act despite having market information at the time, there shall, in particular, be taken into account—

- (a) the content of the information;

- (b) the circumstances in which he first had the information and in what capacity; and
 - (c) the capacity in which he now acts.
- (3) An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows—
- (a) that he acted—
 - (i) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals; and
 - (ii) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals; and
 - (b) that the information which he had as an insider was market information arising directly out of his involvement in the acquisition or disposal or series of acquisitions or disposals.
- (4) For the purposes of paragraphs (2) and (3) market information is information consisting of one or more of the following facts—
- (a) that securities of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;
 - (b) that securities of a particular kind have not been or are not to be acquired or disposed of;
 - (c) the number of securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;
 - (d) the price (or range of prices) at which securities have been or are to be acquired or disposed of or the price (or range of prices) at which securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of;
 - (e) concerning the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.

Price stabilisation.

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Repealed

Insider Dealing

3. An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that he acted in conformity with the price stabilisation rules made by the Financial Services Authority in the United Kingdom under section 48 of the Financial Services Act 1986.

SCHEDULE 4

Sections 2 and 8 (1)

REGULATED MARKETS

PART I

1. A regulated market which is regulated in the United Kingdom for the purposes of Part II of this Ordinance is any market which is established under the rules of—

- (a) the London Stock Exchange Limited;
- (b) LIFFE Administration and Management, and
- (c) OMLX, the London Securities and Derivatives Exchange Limited.

PART II

2. Any market which is established under the rules of one of the investment exchanges mentioned in this Part is a regulated market for the purposes of Part II of this Ordinance, that is to say—

Amsterdam Stock Exchange
Antwerp Stock Exchange
Athens Stock Exchange
Barcelona Stock Exchange
Bavarian Stock Exchange
Berlin Stock Exchange
Bilbao Stock Exchange
Bologna Stock Exchange
Bremen Stock Exchange
Brussels Stock Exchange
Copenhagen Stock Exchange
Dusseldorf Stock Exchange
The exchange known as EASDAQ
Eurex Deutschland
Eurex Zurich
Florence Stock Exchange
Frankfurt Stock Exchange
Genoa Stock Exchange
Hamburg Stock Exchange
Hanover Stock Exchange
Helsinki Stock Exchange
Iceland Stock Exchange
The Irish Stock Exchange Limited

1998-41

Repealed

Insider Dealing

Liege Stock Exchange
Lille Stock Exchange
Lisbon Stock Exchange,
LIFFE Administration & Management
The London Stock Exchange Limited
Luxembourg Stock Exchange
Lyon Stock Exchange
Madrid Stock Exchange
Milan Stock Exchange
Naples Stock Exchange
The exchange known as NASDAQ
The exchange known as the nouveau Marche
OMLX, the London Securities and Derivatives Exchange Limited
Oporto Stock Exchange
Oslo Stock Exchange
Palermo Stock Exchange
Paris Stock Exchange
Rome Stock Exchange
Securities Exchange of Iceland
Stockholm Stock Exchange
Stuttgart Stock Exchange
Tradepoint Financial Networks plc
Trieste Stock Exchange
Turin Stock Exchange
Valencia Stock Exchange
Venice Stock Exchange
Vienna Stock Exchange