

**Draft Insider Dealing (Securities and Regulated Markets) (Amendment)  
Order 2002**

**Preface**

1. This document sets out a draft Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2002 which updates the list of regulated markets and includes a generic definition of a regulated market.
2. As the Government intends to lay the draft order as soon as practically possible in order to designate the necessary markets as regulated markets and thereby bring them into the scope of the insider dealing regime, the consultation will not be given a normal consultation period of 12 weeks. The Government also expects to receive comments largely from specifically interested bodies. Therefore comments should be sent no later than 19 April to:

Draft Insider Dealing (Securities and Regulated Markets)  
(Amendment) Order 2002 consultation  
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Extra copies can be obtained from Sue Cook on 020 7270 4345.

When commenting, respondents should give details of any organisation whose views they represent. It will also be assumed unless indicated to the contrary, that respondents have no objection to their response being made public.

## Introduction

3. The EC Insider Dealing Directive 1989 requires member states to impose an insider dealing regime on all markets in transferable securities which are regulated by exchanges they recognise. Transferable securities are defined as:
  - shares and bonds;
  - rights to subscribe (warrants) to shares and bonds;
  - futures and options in shares and bonds;
  - other contracts (contracts for differences) based on shares and bonds.
  
4. The insider dealing regime in the UK is contained in Part V of the Criminal Justice Act 1993 (CJA), attached at Annex C. The effect is that the criminal offence of insider dealing applies only in relation to the list of securities set out in Schedule 2 to the CJA.
  
5. The criminal offence of insider dealing applies only under section 52(1) where:
  - (i) an individual is within the UK when he is alleged to have done any act constituting part of the dealing on a regulated market;
  - (ii) an individual is not within the UK when he is alleged to have done any act constituting part of the dealing but the market is regulated within the UK; or
  - (iii) the professional intermediary is within the UK, regardless of whether it is a regulated market.
  
6. The criminal offence of insider dealing applies only under section 52(2) where:

- (i) an individual is within the UK when he disclosed or encouraged a person to trade on a regulated market; or
  - (ii) the recipient of the information was within the UK at the time of receiving such disclosure or encouragement.
7. The list of regulated markets for the purposes of Part V in the CJA is contained in the Insider Dealing (Securities and Regulated Markets) Order 1994. The Order has been updated twice in two amendment orders in 1996 and 2000. The three Orders are at Annex B.

#### The 1994 Order

8. The 1994 Order lists by name the markets which are “regulated markets” and those regulated markets which are “regulated in the UK”.
9. It also contains conditions which must be met in order for the insider dealing regime to apply to the securities listed in Schedule 2 to the CJA. The two basic conditions are:
- that the security is officially listed in a European Economic Area (EEA) state; or
  - that it is admitted to dealing on, or has its price quoted on or under the rules of, a regulated market.

#### Articles 9 and 10 of the 1994 Order

10. Article 9 provides that all markets established under the rules of any of the exchanges listed in the Schedule to the Order are regulated markets for these purposes.

11. Article 10 provides the markets which are regulated in the UK for the purposes of Part V of the CJA. The effect of the article is that insider dealing on these markets is an offence even when the relevant conduct occurs outside the UK.

#### Treatment of commodity and derivative exchanges

12. The list in the Schedule does not contain commodity exchanges because their contracts are not included in the definition of securities to which the insider dealing regime applies.
13. Nor does it contain derivative exchanges in the EEA<sup>1</sup> because of the intention to cover only equity exchanges trading in equity contracts. However, derivative Recognised Investment Exchanges (LIFFE and OM) are on the list so that their financial derivative contracts (e.g. UK interest rate derivative contracts) traded on their markets are also subject to the regime.
14. The only equity exchange outside the EEA in the list is Nasdaq. It is a Recognised Overseas Investment Exchange under section 285 of the Financial Services and Markets Act 2000.

#### Draft affirmative procedure

15. The 1994 Order is amended only by draft affirmative procedure in Parliament i.e. any draft amendment order must be laid before both Houses of Parliament and cannot be made unless and until each House has passed a resolution approving the draft. Therefore this procedure must be followed each time an exchange is to be added to the list of exchanges in the Schedule to the Order, thereby designating any of its markets established under its rules as a regulated market.

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<sup>1</sup> An overseas derivative exchange may still be subject to the regime if the dealing is in a derivative contract with an underlying security that is listed in Schedule 2 to the CJA which meets either of the basic conditions in paragraph 9, and involves a professional intermediary.

16. Given the demands on Parliamentary time, it is not always possible to designate quickly a regulated market in this way.

### **The draft amendment order**

#### Generic definition of a regulated market

17. The purpose of the consultation proposes an amendment order which designates regulated markets without the need for making a further order. It therefore introduces a generic definition of a regulated market which brings markets established by exchanges which fit into the definition within the insider dealing regime at once.

18. A draft amendment order to this effect is attached at Annex A. A regulated market can therefore be defined in three ways:

- (i) by being on the list in the Schedule; or
- (ii) by being a Recognised Investment Exchange (RIE) or Recognised Overseas Investment Exchange (ROIE) under section 285 of the Financial Services and Markets Act 2000; or
- (iii) by meeting the criteria in the generic definition in Part II.

OFEX is defined separately but is considered to be a regulated market for the purposes of section 52.

19. This will mean that the list will never be out of date in relation to UK RIEs. New EEA exchanges will be covered by virtue of the generic definition.

20. Further amendment orders will only be required for any markets which, for any reason, do not fit into the generic definition.
21. We would be grateful for any comments on introducing this generic definition of a regulated market into the draft amendment order.

#### Other proposed changes in the amendment order

22. The generic definition also includes derivative exchanges elsewhere in the EEA, in addition to equity exchanges. ROIEs which are derivative exchanges will also be included.
23. We would therefore be grateful for any comments on this extension of the insider dealing regime to the dealing in financial derivative contracts (e.g. non-UK interest rate derivative contracts) traded on these foreign derivative exchanges.

#### Other features of the amendment order

24. The draft amendment order retains a list of exchanges in the Schedule to the 1994 Order. This will mean a combination of certainty and flexibility. Markets established under the rules of exchanges on the list or referred to as RIEs will automatically be covered by the insider dealing regime. For others, the definition would have to be consulted.
25. Other features simplifies the text, updates the list in the Schedule, and consolidates the references of RIEs into a single reference under the Financial Services and Markets Act 2000.

#### Commodity exchanges

26. The insider dealing regime will continue to apply to the same definition of securities. It is not the intention of the consultation to bring the dealing in commodity derivatives into the regime.

## **DRAFT REGULATORY IMPACT ASSESSMENT**

### **1.(i) Title of proposed measure**

The Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2002

### **2.(i) The issue and objective**

**Issue:** The Insider Dealing (Securities and Regulated Markets) Order 1994 lists in its Schedule the investment exchanges whose markets which are established under the exchanges' rules as regulated markets for the purposes of Part V of the Criminal Justice Act 1993 (CJA). Regulated markets are therefore subject to the insider dealing regime in the UK which makes insider dealing a criminal offence. The securities to which the regime applies are listed in Schedule 2 to the CJA. The Order can only be changed by draft affirmative procedure, so that an exchange which needs to be included in the list must follow the Parliamentary procedure of an amendment order being laid before both Houses. It can only be made if each House passes a resolution approving the draft before the exchange can be added to the list and thus designated as a regulated market.

**Objective:** The purpose of the draft amendment order is to:

- (a) use a generic definition of a regulated market. This definition would bring markets established by exchanges which fit into the definition within the insider dealing regime at once without the need for making a further order;
- (b) extend the insider dealing regime to non-UK interest rate derivative contracts traded on derivative exchanges in the European Economic Area (EEA), or on Recognised Overseas Investment Exchanges (ROIEs) which are derivative exchanges.

### **2.(ii) Risk assessment**

Corresponding to paragraphs (a) and (b) in the previous paragraph above:

- (a) none;
- (b) none.

### **3.(i) Identification of options**

There are two options:

- Option 1 – do nothing;  
Option 2 – implement the draft amendment order.

### **3.(ii) Issues of equity or fairness**

Option 1 – the list would include markets and exclude others until they were added by virtue of an amendment order. In relation to derivative exchanges, the list would only

include those which were UK derivative Recognised Investment Exchanges (RIEs) and not overseas ones.

Option 2 – markets which meet the criteria of the generic definition of a regulated market or were established under the rules of an RIE would come into the scope of the regime at once. Overseas derivative exchanges elsewhere in the EEA or which were ROIEs would also be included.

#### **4. Identification of the benefits**

Option 1 - this has 100% certainty over what is a regulated market simply by referring to the list in the 1994 Order.

Option 2 - this designates markets as regulated markets at once without having to go through the draft affirmative procedure in Parliament. Therefore such markets are covered by the insider dealing regime without delay. UK derivative RIEs and other overseas derivative exchanges in the EEA or which were ROIEs would all be treated the same.

##### **4.(ii) Quantifying and valuing the benefits**

Option 1 – business or public need only consult the list in the 1994 Order.

Option 2 – it would reduce the number of amendment orders being made to designate further regulated markets. Markets which meet the generic definition of a regulated market or were established under the rules of RIEs would be covered by the regime immediately.

##### **5.(i) Compliance costs for business, charities and voluntary organisations**

Option 1 – unlikely.

Option 2 – unlikely.

##### **5.(ii) Compliance costs for a typical business**

Option 1 – unlikely.

Option 2 – unlikely.

##### **5.(iii) Policy costs**

None.

##### **5.(iv) Implementation costs**

None.

#### **6. Consultation with small businesses**

A first public consultation is being conducted on the draft amendment order.

**7. Identification of any other costs**

None.

**8. Results of Consultation**

This is the first consultation on the draft amendment order.

**9. Summary and recommendation**

Option 2 is recommended because it enables markets to be designated as regulated markets at once without going through the draft affirmative procedure in Parliament. It therefore reinforces the coverage of the insider dealing regime without delay. It also applies the regime to derivative exchanges in the EEA or which are ROIEs, as is currently the case for UK derivative RIEs. Any costs arising from this option is unlikely.

**10. Enforcement, sanctions, monitoring and review**

None. There will still be a need for further amendment orders in relation to any special markets which do not fit into the generic definition of a regulated market or are not established under the rules of an RIE.

HM Treasury  
February 2002