Open-Market Repurchases - Market Abuse Issues and Announcement Obligations

Eurobond issuers frequently wish to buy-back their bonds in the open market. Reasons for doing so include a desire to refinance existing bonds at lower current market rates; a desire to reduce indebtedness; and/or a desire to repurchase bonds at an attractive price. Eurobonds typically include a provision permitting the issuer to repurchase them and will often require that bonds so purchased must be cancelled by the issuer.\(^1\) There are a number of ways for an issuer to repurchase its bonds.

This note examines open-market purchases by financial institutions on behalf of an issuer\(^2\) and the market abuse/disclosure obligations an issuer should consider in that context. The note is limited in its application to an issuer of bonds which are listed in the UK and admitted to trading on a UK regulated market which intends to buy-back its bonds (and is expressly permitted to do so under the terms of the bonds). It is also limited to English law.

We assume for the purposes of this note that an issuer entering into a bond buy-back does not do so with the intention of committing market abuse, does not have any inside information,\(^3\) and that any buy-back will be done through appropriate channels and on arm’s length terms without the use of false or misleading information.

**Key conclusions:**

In the absence of other factors affecting an open-market buy-back of bonds, there is no specific requirement: (i) for an issuer or its advisers to pre-announce either the intention to buy-back or the identity of the issuer as the ultimate purchaser or (ii) to announce the result of any repurchase of bonds. This is on the basis that failure to do so would not have an abusive effect on the market. This is a matter to be determined on the particular facts, considering a number of factors outlined in Part 3 below, particularly given the lack of regulatory guidance following implementation of the Market Abuse Directive.

**Background:**

The implementation of the Market Abuse Directive (“MAD”) in the UK on 1 July 2005 did not substantively change the characteristics of market abuse. However, it did introduce greater uncertainty in relation to open-market bond buy-backs. First, EU Regulation No. 2273/2003 introduced a specific safe harbour for share buy-backs but not bond buy-backs. Secondly, the Financial Services Authority (the “FSA”), in revising its listing rules for implementation of MAD, deleted the provision, which had been part of the Listing Rules for many years, that required a public announcement relating to bonds bought back by an issuer initially when the aggregate amount repurchased exceeded 10% of the principal amount in issue, and at each 5% thereafter. In the UK market, these thresholds gave issuers and financial institutions alike confidence that so long as they made announcements following the thresholds being met, they would avoid any market abuse issues. The removal of the thresholds has caused differing practices to emerge.

An issuer is, of course, only obliged to make an announcement of its repurchases if required by law or regulation to do so. Therefore, this note looks at:

---

\(^1\) The vast majority of repurchased bonds are cancelled.

\(^2\) In these circumstances the issuer is not normally disclosed as the ultimate purchaser.

\(^3\) Other than the intended repurchase of bonds itself which may amount to inside information - see further Part 3
(i) the various “behaviours” which are relevant in determining whether open-market repurchases are abusive for the purposes of the Financial Services and Markets Act 2000 ("FSMA") and the Criminal Justice Act 1993 ("CJA");

(ii) the announcements an issuer may be required to make in respect of a bond buy-back to ensure compliance with its obligations to disclose inside information.

Market Abuse – The Civil Offences

Market abuse is defined in section 118 of FSMA as inappropriate behaviour relating to qualifying investments on a prescribed market. Section 118 of FSMA sets out various categories of inappropriate behaviour such as:

(i) market manipulation giving rise to a false or misleading impression; and

(ii) insider dealing.

Part 1 - Section 118(5) - Market manipulation/misleading behaviour

An issuer’s purchase of its own securities may raise questions as to market manipulation. Section 118(5) of FSMA prohibits:

“transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which . . . give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments”.

Even if a buy-back is considered to give a misleading impression, an issuer will not be in breach of this prohibition if it can establish both that it had legitimate reasons for carrying out the buy-back and that the buy-back conformed to accepted market practices ("AMP"). Unfortunately, no clear practice has, as yet, been established as to what constitutes AMP. It is helpful however that the Code of Market Conduct ("MAR 1") states that it is unlikely that the behaviour of market users when trading at times and in sizes most beneficial to them and seeking the maximum profit from their dealings will of itself amount to distortion.

Nonetheless, the emphasis in the provisions of section 118(5) of FSMA on the consequences for the market in the securities, gives rise to certain questions, the answers to which will depend on the facts of the particular case:

---

4 Annex 1 to this note sets out our legal analysis in relation to the criminal offences under section 397 of FSMA and section 52 of the CJA. Annex 2 to this note sets out the relevant pieces of legislation i.e. sections 118 and 397 of FSMA and section 52 of CJA.

5 This note does not deal with other obligations under the market abuse regime (such as insider lists) or the transparency obligations regime (such as equal treatment of bondholders under the Transparency Directive and the DTRs). It is worth noting that these provisions only require equal treatment of holders with respect to existing rights under the bonds.

6 For example an issuer might be buying its own securities with the aim of supporting the price of those securities or with a view to profiting from an abusive squeeze because of problems with supply and demand. Alternatively an issuer might be involved in wash trades or other deceptive trading behaviour which might create a misleading impression of trading activity. These examples are given in the Code of Market Conduct (MAR 1).

7 Section 118(8) contains a similar provision that applies to behaviour that falls outside section 118(5), but is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments.

8 MAR 1.3.6. In addition, MAR 1.6.6 states that the FSA will take into account, when considering whether behaviour is for “legitimate reasons”, whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.
(i) Will the market think that the buyer is an arm’s length investor, and not someone buying to cancel the bonds (and thus be misled as to demand)?

*It is unlikely that investors will be misled into thinking that a buy-back is arm’s length demand from someone other than the issuer. Many people buy bonds in the market for a multitude of purposes. Some of these are what might be called standard investment purposes - the buyer likes the risk and the price and has money to invest. Some will be driven by other considerations - the need to hedge another position, for example. Investors in the market cannot assume that all buy orders result from such standard investment decisions. They know from their experience in the market that this is not so; and they know from the terms of the bond (or any bondholder notification) that the issuer may from time to time buy.*

(ii) Will the market be misled as to price or value because, had investors known that it was the issuer who was buying (for example) to refinance at cheaper rates, they would have been able to demand a higher price from it than from other buyers in the market?

*It could be argued that investors are misled as to the price they could charge the issuer because, had they known that the issuer was the buyer they might have concluded that the issuer had a pressing need to buy (to reduce debt or refinance at a cheaper rate) and used this to drive up the price for the sale. However, this argument is flawed because it produces the unfair result that the market abuse regime can be used by unscrupulous investors to abuse issuers. The issuer is entitled, just like any other market participant, to buy at the market price. In addition, the price that section 118(5) refers to is not the price that will be exacted from a particular buyer, but the general price in the market between willing sellers and willing buyers.*

(iii) Will the bonds in issue after the buy-back has taken place be significantly less liquid (so that the market would have been given a misleading impression as to supply)?

*This will depend on the particular securities, how liquid they are, and the principal amount repurchased. A more detailed analysis of these issues is set out in Part 3 below.*

(iv) Will the price of the bonds in issue after the buy-back has taken place drop significantly as people realise that the issue is illiquid (so that the market would have been misled as to price)?

*Again, depending on the liquidity of the issue and the principal amount repurchased, the price may or may not drop as a result of the buy-back and therefore people may or may not be misled as to price.*

On this basis, it is our view that the market will only be “misled” by an issuer carrying out a bond buy-back in the open market on an undisclosed basis (via a financial institution), if the principal amount repurchased, in light of the liquidity of the issue in question, would lead to a significant price movement.

**Part 2 - Section 118 FSMA - Insider dealing**

Bond buy-backs can raise questions as to the application of the insider dealing regime because the issuer (or the financial institutions carrying out the repurchase on its behalf) may, at the relevant time, have inside information in relation to the securities. Section 118(2) of FSMA prohibits dealing in qualifying investments by an insider, on the basis of inside information possessed by him relating to those investments.
The definition of inside information is contained in section 118C of FSMA.9

“Inside information” is information which is:

- of a precise kind
- not generally available
- relates, directly or indirectly, to a company with securities trading on a “prescribed market”; and
- would, if generally available, have a “significant effect” on the price of securities.10

Examples of inside information may include information that there is about to be a change in the issuer’s credit rating or as to the content of an imminent results announcement or trading update, or information about potential M&A transactions by the issuer. Clearly an issuer could not make market purchases of its own bonds where it possesses this type of information (unless it is prepared to make that information available to the public prior to making the purchases) and we assume for the purposes of this note that an issuer carrying out a debt buy-back is not in possession of this type of inside information.

Therefore, the key issue is whether the fact of the proposed buy-back is, in itself, inside information. For this to be so, the knowledge would (among other things) have to have a “significant effect on the price of the qualifying investments”. There is a possibility that the knowledge, if imparted to the market, would have an effect on the price (as sellers ramp up their offer price to the issuer) and this effect could be significant. But this does not make the issuer an insider. Section 118C refers to the general market price, not the price that sellers can make against an issuer who has revealed itself and its purposes to them thereby enabling them to ramp the price against it (and it alone).

In addition, the fact that the issuer has knowledge of its own intention to make market purchases and that the information is “inside information” should not prevent it from carrying out that intention. This is because the MAR 1 contains a safe harbour for persons acting on knowledge of their own intentions.11 Therefore, absent exceptional factors, the issuer’s position should not be different (for these purposes - but see Part 3 below regarding the obligations in DTR 2) from the position of any other investor carrying out significant market purchases which have an impact on the market price.

For these reasons, the mere knowledge of the fact that the issuer is the ultimate buyer and of its purposes in buying should not be inside information preventing the issuer, or the financial intermediary appointed by it to buy bonds, from carrying out a repurchase of bonds.

**Part 3 - Continuing disclosure of Inside Information - DTR 2**

Bond buy-backs also raise questions concerning an issuer’s obligations to make announcements under its continuing disclosure obligations. Rule 2.2.1 of the FSA’s Disclosure and Transparency

---

9 The definition of “inside information” applies for two purposes, namely to define the information which listed companies are obliged to disclose on an ad hoc basis (where it relates directly to them – see Part 3), and also to define information which it would be abusive to misuse, for example by dealing on the basis of that information prior to its being made generally available to the market.

10 For example, if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions (section 118C(6)).

11 MAR 1.3.6 and Recital 30 of MAD.
Rules (“DTRs”) requires an issuer to disclose, as soon as possible, all “inside information” which directly concerns the issuer.

There is a distinction to be made between the scenario where an issuer has not yet made any market repurchases of its bonds, and where it already has. In the former case (even if the proposed repurchase is such that it may have a significant price impact), as mentioned in Part 2 above, MAR 1 contains a safe harbour for persons acting on knowledge of their own intentions. In addition, the issuer may delay disclosure of the proposed repurchase so as not to prejudice its legitimate interests in relation to an impending development, that could be jeopardised by premature disclosure. Therefore it is unlikely that an issuer would have to make an announcement in advance of making any market repurchases.

However, once an issuer has already carried out a significant level of open-market purchases, the key issue is whether the information about the open-market purchases might amount to inside information in relation to the outstanding bonds. It is possible that it might because the reduction in the liquidity of the market in the remaining bonds could have a significant effect on the price of those bonds. Factors which an issuer will have to consider include whether the information would, if generally available, have a “significant effect” on the price of the bonds or on the price of related derivative financial instruments and whether it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions. Therefore the important thing to consider on a case-by-case basis is whether the overall amount of purchases is such that it would trigger the requirement for an announcement. If an announcement is required as a result of a market purchase, the issuer should make that announcement as soon as possible and may not be able to make further market purchases pending the making of the announcement.

This is where the previous FSA rule, which required disclosure of bonds bought back only when the amount exceeded 10% of the amount in issue, was helpful. The nature of the new regime however, is based on the effect on the particular issue of bonds. In a very liquid issue, a buy-back of greater than 10% might not require an announcement. In an illiquid issue, a buy-back of less than 10% might require an announcement or alternatively, might have little or no effect on the already illiquid bonds. The liquidity of issued bonds is affected by many factors. These vary from the terms of the bonds themselves (the tranche size, currency, coupon size, period to maturity, covenants and any security) to market based factors (such as the extent to which the bonds are in retail hands or in the hands of liquid benchmarked funds). In light of these factors, it is often difficult for issuers to gauge how a buy-back will affect liquidity. Given the difficulty in determining this, many issuers may conclude that (if they wish to avoid disclosure) it is prudent to remain within the 10% threshold. Market participants have informed us that in the majority of bond buy-backs purchases of more than 10% are likely to have a significant effect on the price.

Sanctions

Issuers found guilty of breaching section 118 of FSMA or DTR 2 can be subjected to an unlimited fine. In addition, the FSA can publish a report naming the miscreant and his misdeeds and it can (if...
it becomes aware in good time) obtain an injunction to stop them doing it or (if they have done it) order them to unwind the transaction. Authorised persons who breach section 118 can be suspended or put out of business.

Under section 123(2) of FSMA, the FSA may not impose a penalty on a person if there are reasonable grounds for it to be satisfied that:

(i) the person believed, on reasonable grounds, that his behaviour did not fall within the market abuse regime or
(ii) the person took all reasonable precautions and exercised all due diligence to avoid behaving in a way which breached the market abuse regime.

Both defences suggest that a careful paper trail, evidencing discussion, consideration and advice from legal and compliance advisers, may be beneficial in establishing a defence if it subsequently becomes necessary to resort to one.

Where the smooth operation of the market is, or may be, temporarily jeopardised or where protecting investors so requires, the FSA may suspend the listing of any securities at any time. In addition, if the FSA is satisfied that there are special circumstances which preclude normal regular dealings in any listed securities, it may cancel the listing of any security.

**UK Companies - Chapter 12 of the Listing Rules**

The purchase by a company of its own securities is dealt with in Chapter 12 (Dealing in own securities and treasury shares) of the FSA's Listing Rules ("LR 12"). The rules in LR 12 are only applicable to issuers who have a primary listing of preference shares or "equity securities" in London. Therefore issuers which have only debt securities listed will not have to comply with LR 12.

An issuer which has a primary listing of preference shares or "equity securities" in London and which wishes to enter into a bond buy-back arrangement, will need to comply with LR 12.2 (Prohibition on purchase of own securities). LR 12.2 (subject to certain exceptions) prohibits a relevant issuer from purchasing or redeeming its own securities during a prohibited period. A prohibited period is defined as any close period; or any period when there exists any matter which constitutes inside information in relation to the company. Again, such issuers will have to consider whether any such dealings take place within a prohibited period and, if they do, whether the price or value would be likely to be significantly affected by the publication of the information giving rise to the prohibited period. In doing so, an issuer may take account of the type of security being repurchased. For example, the publication of interim results may have a greater effect on the price of an equity-linked security, by virtue of the embedded equity option, than on the price of a plain vanilla debt security. However each case will need to be considered on its facts.

**Conclusions**

In the absence of any inside information (other than the intended repurchase of bonds itself), our view is that an open-market bond buy-back will not constitute market abuse for the purposes of Part 2 above. The more difficult questions are whether, in fact the market will be misled (Part 1) or whether market disclosure is required (Part 3). This requires an analysis of the circumstances

---

18 Equity securities are defined as equity shares and securities convertible into equity shares.

19 It should be noted that LR 12 contains separate rules requiring specific notifications in relation buy-backs of convertible debt securities or preference shares. These are outside of the scope of this note.
surrounding the particular issue of bonds. Issuers and their financial advisers should consider on a case by case basis whether, as a factual matter, a buy-back will affect liquidity and would lead to a significant effect on the price of the bonds, once they approach a 10% level.
Appendix 1

Market Abuse — The Criminal Offences

1 Section 397(2) FSMA

An offence will be committed under section 397(2) in, inter alia, the following circumstances:

1.1 a person dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise

1.2 for the purpose of inducing, or is reckless as to whether it may induce, another person

1.3 to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement.

We have assumed for the purposes of this note that an issuer, in carrying out a bond buy-back will not be guilty of any dishonest concealment or misleading, false or deceptive statement as part of the conduct of the buy-back or otherwise.

2 Section 397(3) FSMA

An offence will be committed under section 397(3) if the following elements are present:

2.1 a person does any act or engages in any course of conduct which creates an impression as to (i) the market in or (ii) the price of or (iii) the value of;

2.2 any relevant investments which impression is false or misleading;

2.3 if the person does so (i) for the purpose of creating that impression and (ii) for the purpose of thereby inducing another person to deal or not to deal in those investments.

Most of the elements set out above are self explanatory and their presence or absence in any particular buy-back will be a question of fact. However, the most difficult area is to establish the requisite purpose which must be present for there to be a breach of the section. In determining whether any particular circumstances give rise to a breach of section 397(3), the relevant questions are (a) what impression was created, (b) did the person have the purpose of creating that impression, (c) was that impression in fact false or misleading and (d) did the person have the purpose of inducing, by that impression, another person to deal or not to deal in investments. If the answer to these questions is affirmative then (assuming the other elements required by the section are present) an offence will have been committed and the person committing it will only avoid the consequences if he can prove that he reasonably believed that his act or conduct would not create a false or misleading impression.

Section 397(3) does not apply unless either:

(i) the act is done or course of conduct is engaged in the United Kingdom or

(ii) the false or misleading impression is created in the United Kingdom.

Given these extensive definitions and London's central role in the Eurobond markets, the repurchase of a bond outside the UK may nonetheless fall within the territorial scope of section 397 of FSMA and, moreover, a firm should be wary of taking action which, apart from the territoriality provision, would amount to a criminal offence. An authorised person is subject to the FSA principles which require, inter alia, that it observes high standards of integrity and fair dealing.
It is likely that action which would infringe section 397 of FSMA but for the territorial restriction, could not be said to be in accordance with those standards.

It is our view that if the issuer complies with its obligations relating to the disclosure of repurchases (see Part 3 above), then the simple fact of carrying out a buy-back in itself (that is, absent any other false or misleading impression the issuer may have created as a result of the manner in which it conducted the buy-back) will not mean that the issuer has the necessary purpose to commit the offence.

Breach of section 397(3) is an offence, punishable by up to seven years imprisonment or a fine or both, at the discretion of the court. The offence may be committed either by the individuals concerned or by the company. Moreover, under section 400, where the offence is committed by a body corporate with the consent or connivance, or through the neglect of, a director, manager, secretary or other similar officer that person may be charged with the offence as well.

3 Section 52 Criminal Justice Act

An offence is committed under section 52 of the CJA if an insider deals in price-affected securities when in possession of inside information or an insider encourages another to deal in price-affected securities when in possession of inside information.

These offences can only be committed by an individual and only then if he holds inside information as an insider. A company cannot commit the offence. However, by arranging for a company to deal on the basis of inside information, an individual may commit the offence of encouraging the company to deal. In addition, a company may be guilty of conspiracy or aiding and abetting an offence under the CJA.

If the issuer complies with its obligations relating to the disclosure of repurchases (see Part 3 above), then it is unlikely that the issuer will be in possession of inside information for the purposes of this offence. In addition, the CJA contains certain defences to what would otherwise constitute insider dealing. One such defence is that an individual will not be guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he/she can show that he/she 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. On this basis, it is our view that it is unlikely that a criminal action for insider dealing would arise from a buy-back of bonds on the open market.

An individual found guilty of insider dealing is liable to unlimited fines and/or imprisonment (for a term not exceeding six months on summary conviction or seven years on a conviction on indictment).
Appendix 2
Financial Services and Markets Act 2000

Part VIII Penalties for Market Abuse

Market abuse

118 Market abuse

(1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which—

(a) occurs in relation to—

(i) qualifying investments admitted to trading on a prescribed market,

(ii) qualifying investments in respect of which a request for admission to trading on such a market has been made, or

(iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and

(b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).

(2) The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.

(3) The second is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.

(4) The third is where the behaviour (not falling within subsection (2) or (3))—

(a) is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in qualifying investments should be effected, and

(b) is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

(5) The fourth is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which—

(a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or

(b) secure the price of one or more such investments at an abnormal or artificial level.

(6) The fifth is where the behaviour consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

(7) The sixth is where the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying
investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

(8) The seventh is where the behaviour (not falling within subsection (5), (6) or (7))—
(a) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, or
(b) would be, or would be likely to be, regarded by a regular user of the market as behaviour that would distort, or would be likely to distort, the market in such an investment,

and the behaviour is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

(9) Subsections (4) and (8) and the definition of “regular user” in section 130A(3) cease to have effect on 30 June 2008 and subsection (1)(b) is then to be read as no longer referring to those subsections.

Part XXVII Offences

Miscellaneous offences

397 Misleading statements and practices

(1) This subsection applies to a person who—
(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;
(b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or
(c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made)—
(a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or
(b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.

(3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

(4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for him to show that the statement, promise or forecast was made in conformity with—
(a) price stabilising rules;
(b) control of information rules; or

(5) In proceedings brought against any person for an offence under subsection (3) it is a defence for him to show—
(a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection;
(b) that he acted or engaged in the conduct—
  (i) for the purpose of stabilising the price of investments; and
  (ii) in conformity with price stabilising rules;
(c) that he acted or engaged in the conduct in conformity with control of information rules; or

(6) Subsections (1) and (2) do not apply unless—
(a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;
(b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
(c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

(7) Subsection (3) does not apply unless—
(a) the act is done, or the course of conduct is engaged in, in the United Kingdom; or
(b) the false or misleading impression is created there.

(8) A person guilty of an offence under this section is liable—
(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

(9) “Relevant agreement” means an agreement—
(a) the entering into or performance of which by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
(b) which relates to a relevant investment.
“Relevant investment” means an investment of a specified kind or one which falls within a prescribed class of investment.

Schedule 2 (except paragraphs 25 and 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.

Nothing in Schedule 2, as applied by subsection (11), limits the power conferred by subsection (9) or (10).

“Investment” includes any asset, right or interest.

“Specified” means specified in an order made by the Treasury.

Criminal Justice Act 1993

Part V Insider Dealing

The offence of insider dealing

52 The offence

(1) An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3), he deals in securities that are price-affected securities in relation to the information.

(2) An individual who has information as an insider is also guilty of insider dealing if—

(a) 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 (3); or

(b) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(3) The circumstances referred to above 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.

(4) This section has effect subject to section 53.
This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2007

Please refer to www.linklaters.com/regulation for important information on our regulatory position.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP together with a list of those non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ and such persons are either solicitors, registered foreign lawyers or European lawyers.