

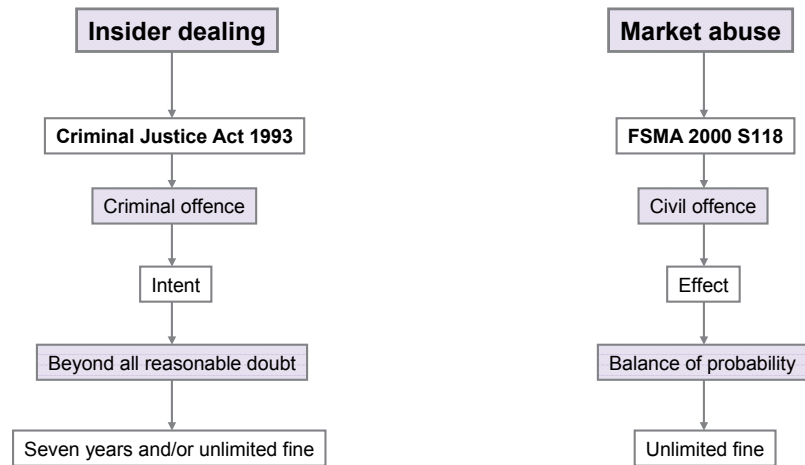


6-8 Questions

Answer to the question on the previous slide:
A: When an authorised firm becomes insolvent

1. Introduction

Summary



2. Insider Dealing (Criminal Justice Act 1993)

Insider dealing: offences

- Dealing on...
- Encouraging others to deal on...
- Disclosure of...

Instruments covered

- Shares, ADRs
- Warrants
- Gilts, Bonds, Debentures
- Options, futures and CFDs

Excluded investments

- Assets with no secondary market (e.g. bank account, unit trusts, etc.)
- Commodities and commodity derivatives
- Foreign exchange markets
- Insurance products

Inside information

Specific or precise
From an inside source
Price sensitive

Hints

An inside source

Insiders can be primary or secondary.

- Primary insider: someone who has acquired the information due to their connections with the company
- Secondary insider: someone who has come across the information, directly or indirectly, from a primary insider



Hints

Information reported through the London Stock Exchange's regulatory news service is considered public information.



2. Insider Dealing (Criminal Justice Act 1993)

Insider dealing: defences

- General defences
 - Passed on information in proper course of employment
 - Deal was not to make a profit or avoid a loss
 - Did not expect the recipient to deal
 - Information already publicly available
- Specific defences
 - Stabilisation
 - Market information
 - Market makers in the ordinary course of business

Insider dealing: enforcement

- LSE market operations division monitors transaction
- FCA prosecutes

Maximum penalty

- Seven years and/or unlimited fine

Further information

Stabilisation: the artificial support of newly issued share prices by the appointed issuing house.

Market information: inside information that one would reasonably expect participants to deal on. For example, a predator company buying shares in the target before the takeover is announced.



Hints

Although the FCA will use the CJA to secure a prosecution for insider dealing, the power to prosecute this offence is given to the FCA by FSMA 2000.



Keeping on target

Which of the following investors would be committing an offence under the Insider Dealing legislation of the Criminal Justice Act?

- A: HLP plc deals in a rival company's shares based on inside information received from an inside source, making a profit
- B: Sheila dealt on inside information using silver options that she received from a friend, an inside source, and made a profit
- C: Roger buys some gilt futures after receiving inside information from a source at the Bank of England, and suffered a loss
- D: EDC Ltd sells a large quantity of shares in another company just before the release of disappointing trading information to the marketplace, based on inside information from the company's accountant, preventing a large loss



3. Market Abuse (S118 FSMA 2000)

A civil matter (not a crime)

- Lighter burden of proof
- Effect-based

The seven types of market abuse

- Insider dealing
- Improper disclosure
- Misuse of information (regular user test applies)
- Manipulating transactions
- Manipulating devices
- Dissemination
- Misleading behaviour and distortion (regular user test applies)

Answer to the question on the previous slide:

C: Roger buys some gilt futures after receiving inside information from a source at the Bank of England, and suffered a loss

Further information

1. Insider dealing

This is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information.

2. Improper disclosure

This is where an insider discloses inside information to another person other than in the proper course of his/her employment, profession or duties.

3. Misuse of information (UK only)

The behaviour does not fall into type 1 or 2, but it is based on information which is not generally available to those using the market and which a regular user would regard as relevant, and the behaviour would be regarded as a failure to observe the standards of behaviour reasonably expected.

4. Manipulating transactions

This is behaviour which consists of effecting transactions or orders to trade that are likely to give:

- A false or misleading impression as to the supply of, or demand for, or price of, the qualifying investment
- Secure the price of such investments at an abnormal or artificial level

5. Manipulating devices

Behaviour that consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

6. Dissemination

This 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.

7. Misleading behaviour and distortion (UK only)

The behaviour does not fall into types 4, 5 or 6 but:

- It is likely to give a regular user of the market a false or misleading impression
- It would be regarded by a regular user of the market as behaviour that would distort the market, due to a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his/her position



3. Market Abuse (S118 FSMA 2000)

Market abuse: scope

- Occurs in UK or in relation to qualifying investments traded on a prescribed market
- Prescribed market:
 - UK RIE (including AIM, which is not a regulated market under MiFID)
 - Any regulated market as defined in MiFID (regulated markets cover main EEA exchanges)
- OTC products also covered

Hints

Suspicious?

There is a requirement for firms to notify the FCA of any suspicious transaction, within the scope of market abuse, without delay.



Links

	Insider Dealing Market Abuse	
Type?	Criminal	Civil
Intent based?	Yes	No
Jail time?	Up to 7 yrs	No
OTC covered?	No	Yes*

* Where the OTC instrument is linked to one that trades on a prescribed market



4. Money Laundering (Proceeds of Crime Act 2002)

Money laundering: the three stages

- Legislation

- Proceeds of Crime Act 2002

1. Placement:

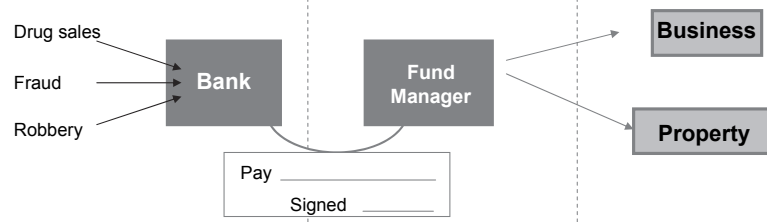
Proceeds of **any** crime are placed into a bank or building society

2. Layering:

A cheque is drawn on the bank and used to buy different investments to cover the audit trail

3. Integration:

The money appears as a legitimate source of income



Hints

Incorporation and segregation are not stages in money laundering.



4. Money Laundering (Proceeds of Crime Act 2002)

Money laundering

- Money laundering directive
 - Applies to all EU financial institutions
 - Aims to ensure:
 - Deterrence, cooperation and detection
 - Implemented in UK through money laundering regulations 2007
- The money laundering regulations 2007
 - Application
 - Financial institutions
 - Bureau de change
 - Relevant businesses such as casinos, lawyers, estate agents etc.

Hints

Suspicious?

Examples when a firm may be suspicious of the motives of a new/existing client include:

- A reluctance of a new client to provide identification documents
- The unnecessary use of a third party to act as an intermediary
- Continual patterns of unusual trading
- A request for non-market price transactions
- The constant use and transfer of bearer securities
- An introduction from a suspicious party or jurisdiction
- Where the client has no obvious reason to use the firm's services
- Unusual and/or frequent payment to third parties



4. Money Laundering (Proceeds of Crime Act 2002)

Money laundering

- The money laundering regulations 2007
 - Internal controls
 - Money laundering reporting officer (MLRO)
 - Annual report
 - Education and training
 - Training on recognising suspicious transactions
 - Identification procedures
 - Obtain satisfactory evidence regarding identity **as soon as reasonably practicable**
 - Reporting suspicions
 - Employees report to MLRO, who reports to the National Crime Agency
 - Record keeping
 - Five years

Further information

Identification

Firms are obliged to verify the identity of new clients as part of customer due diligence (CDD).

Firms must:

- Identify the customer and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source
- Identify the beneficial owner and take adequate measures on a risk-sensitive basis to verify their identity, so that the firm is satisfied that it knows who the beneficial owner is
- Obtain information on the purpose and intended nature of the business relationship
- Keep the documents, etc, obtained for the purpose of applying CDD up to date
- Conduct ongoing monitoring of the business relationship



Further information

Simplified due diligence (SDD)

Identification procedures are **not** required in the following circumstances:

- Credit or financial institutions subject to the Third Money Laundering Directive
- Supervised credit or financial institutions in states with comparable controls
- Listed companies on regulated markets with specified disclosure obligations
- The beneficiaries of solicitor's accounts



4. Money Laundering (Proceeds of Crime Act 2002)

Money laundering: the five offences

- The five offences:
 - Concealing
 - Arrangements (assisting)
 - Acquiring and/or possessing

} 14 years
and/or
unlimited fine
- Failure to report (five years and/or unlimited fine)
- Tipping off (two years and/or unlimited fine)

The Joint Money Laundering Steering Group (JMLSG)

- The JMLSG is a combination of UK trade associations including the BBA
 - Guidance notes on how to implement the Money Laundering Regulations
 - Risk-based approach

Further information

JMLSG guidance

Senior management roles should include a MLRO and a senior manager responsible for the direction and oversight of anti-money laundering and combating the financing of terrorism (AML/CFT).

Adequate documentation should be produced, including the policy and procedures of the firm to implement AML/CFT. This documentation must include a named employee responsible for its implementation and an assessment of the firm's risks. These documents must be specific to the firm's business and customer risks – a generic document is not adequate.

As part of the risk-based approach, the JMLSG identifies high-risk and low-risk clients.

High-risk clients require enhanced due diligence. These clients include politically exposed persons and relationships where there is no face-to-face contact.

Low-risk clients are afforded simplified due diligence. These are clients that are regulated financial services firms, listed companies, UK public authorities, etc.



4. Terrorism

Terrorism

- Terrorism Act 2000
 - Statutory obligation for regulated firms to report suspicions in the regulated financial sector of:
 - Provision of funds for terrorism
 - Use and possession of terrorist funds
 - Laundering money which is terrorist property
 - Failure to report (five years and/or unlimited fine)

4. Bribery Act 2010

Bribery Act 2010

- Four offences
 - Paying or offering bribes
 - Receiving or soliciting bribes
 - Failing to prevent bribery
 - Bribery of foreign officials
- Firms may be liable for failing to prevent a person from bribing on their behalf, but only if that person performs services for the firm in business
 - Defence: adequate procedures to prevent bribery
 - No need if there is no risk of bribery on firm's behalf
- Hospitality is not prohibited
- Facilitation payments are bribes
- Maximum punishment
 - Individual – 10 years' jail term
 - Company – unlimited fine