

# Contents

<i>Table of cases</i>	xv
<i>Table of statutes</i>	xxxiii
<i>Table of statutory instruments</i>	xli
<b>Chapter 1 The nature of insider dealing and market abuse</b>	1
Insider dealing in perspective	1
What is insider dealing?	4
<b>Chapter 2 Insider dealing: the civil law</b>	17
A wrong to the market or the company?	17
Conflicts of interest	18
Secret profits	20
Loss to the insider's company	22
A narrow obligation	24
Benefiting another – a breach of duty?	28
Shadow directors and others	38
The position of investors	39
Illegality and public policy	42
Remedies	43
<b>Chapter 3 The main offences of insider dealing – dealing on the basis of inside information</b>	47
The law before 1980	47
The offence of insider dealing	51
Insiders	52
Encouraging insider dealing	71
Disclosure of inside information	71
Territorial scope of offences relating to encouragement and disclosure	73
Tippee liability	73
Secondary persons and tippee liability	74
The FSMA 2000 and tippee liability	77
Defences to allegations of insider dealing	77
<b>Chapter 4 The market abuse regime</b>	85
Introduction	85
The EU Market Abuse Directive and the UK market abuse regime	87
The prescribed markets	89
Qualifying investments	90
Related investments	91
Prescribed markets, qualifying investments and the <i>Jabre</i> case	92
The duty to the market	93
What constitutes market abuse	94
Manipulating devices	95
Insider and inside information	95
Information that is 'precise' and has an 'effect' on price	98
Behaviour	99

## Contents

The code of market conduct (MAR)	99
The MAR specifying behaviour	101
Behaviour which does not amount to market abuse	101
Safe harbours	102
Sanctions	106
Regulatory policy and the Market Abuse Directive	106
UK implementation	107
EU Market Abuse Regulation (EU MAR)	108
 <b>Chapter 5 FSMA criminal offences of market manipulation</b>	 111
Introduction	111
Manipulation	112
UK criminal offences for misleading statements and practices	113
Market distortion and market manipulation	116
Abusive squeezes	116
FCA prosecution	117
EU Market Abuse Regulation and market manipulation	118
Buybacks and price stabilisation	119
Analysis and conclusion	120
 <b>Chapter 6 Fraud and financial crime</b>	 123
Introduction	123
The creation of false markets	127
The common law	128
The fair price	130
Conspiracy	131
Enforcing the bargain	132
Fraud (by representation or conduct)	134
Requisite state of mind – mens rea	135
Proof of dishonesty and fraudulent intention	136
Misrepresentation by words or conduct	137
Silence	138
Concealment	139
Criminal Breach of Trust (CBT)	140
Misappropriation (including theft)	142
Requisite state of mind – mens rea	144
False statements and manipulation	146
High pressure selling	147
Fraudulent trading and insolvency related offences	148
Reckless management of banks	153
Blackmail and extortion	155
Computer-related crime	156
Corruption	157
False reporting	160
Forgery and the reliability of documentation	162
Acts preparatory to fraud	164
Perjury and false declarations	167
Civil fraud	168
Disclosure orders and freezing orders	171
Disqualification procedures	175
Offences by bodies corporate	177
Conclusion	178

<b>Chapter 7 Anti-money laundering and proceeds of crime</b>	179
The corporate and financial dimension	179
Money laundering in context	182
Proceeds of crime	185
Money laundering liability in the civil law	197
Naughty knowledge and mens rea	200
Compliance	202
Confiscation	205
Terrorist finance	212
 <b>Chapter 8 Conflicts of interest</b>	 219
A fundamental rule	219
Directors and their duty of loyalty	220
Multiple appointments	222
Modification of duties	223
Other fiduciaries	226
Contracting out	229
Informed consent	231
A case at last!	233
Conflicts compliance and the regulatory environment	234
 <b>Chapter 9 Issuer disclosure and liability</b>	 243
Disclosure and the issuer	243
Disclosure obligations	243
Delayed disclosure	246
Selective disclosure	248
Managerial disclosures	249
Safe harbours	249
Issuer disclosure and third party lists	249
Issuer and senior officer liability	250
Professional disclosure requirements	250
Professionals and confidentiality	251
FCA favours enhanced disclosure	251
Issuer's disclosure decision tree	252
Takeovers	252
General principles	252
The takeover panel's powers	252
The FCA's role	254
Market abuse	255
Actual or potential offerors	255
 <b>Chapter 10 Information gathering</b>	 257
Introduction	257
General reporting and the obligation to cooperate	258
The FCA's statutory information gathering	267
 <b>Chapter 11 Investigations</b>	 273
Introduction	273
Investigations and transparency	273
Powers of investigation	276
Confidentiality	285
Sanctions for failing to comply with an investigation	286
Criteria for enforcement action	286
Case selection by the FCA	286



## *Contents*

<b>Chapter 12 Enforcement issues</b>	289
Introduction	289
Sanctions for market abuse	290
Principles based enforcement	293
Statements and penalties	305
Enforcement and the impact on business permissions	313
Applications to the court	314
 <b>Chapter 13 Compliance procedures and systems</b>	319
Introduction	319
Authorisation, governance, senior management and compliance	320
Governance and the need for policy, process, and procedure	323
The compliance function and regulatory characteristics	325
Authorised firms' obligation to maintain records	331
Transaction records and electronic communications	332
Compliance and conflicts management, information barriers and dealing controls	333
Personal account dealing rules	335
 <b>Chapter 14 Personal liability of senior managers and compliance officers</b>	339
Personal responsibility	339
The role of the law	340
The duty of fidelity	342
Contract and tort	343
Accessory liability in equity	346
Personal criminal liability	352
Criminal proceedings	353
Sentencing policy	354
Regulatory liability and approved persons	358
 <b>Chapter 15 Control liability</b>	365
Responsibility and control	365
Vicarious liability in the criminal law	366
Vicarious liability in the law of tort	367
Vicarious responsibility in restitution	369
Directors' knowledge	371
Financial services regulation and control liability	373
Control liability and authorisation	375
Approved persons	376
Liability when acting without approval	379
Significant management regime and certified persons	379
 <b>Chapter 16 The impact of other laws: domestic and overseas</b>	383
Introduction	383
Impact of EU law on market abuse and cooperation in investigations and enforcement	384
Extra-territorial application of US securities laws, foreign issuers and anti-fraud provisions	386
IOSCO and UK efforts at international cooperation	393
Conclusion	396
 <b>Index</b>	399