Chapter 8

Insider dealing and market manipulation

8.1 Introduction

8.1.1 G **Who should read this chapter?** This chapter applies to firms subject to ■ SYSC 6.1.1R.

8.1.2 G Insider dealing is a criminal offence under section 52 of the Criminal Justice Act 1993. Sections 89-91 of the Financial Services Act 2012 set out a range of behaviours which amount to criminal offences, which are together referred to in this guide as market manipulation.

8

8.1.3 G Section 1H(3) of the *Act* defines financial crime to include 'any offence involving:

(a) fraud or dishonesty,

(b) misconduct in, or misuse of information relating to, a financial market,

(c) handling the proceeds of crime, or

(d) the financing of terrorism'.

Insider dealing and market manipulation both meet this definition, in particular because they involve misconduct in a financial market.

8.1.4 G To avoid doubt, all references to insider dealing and market manipulation in this chapter refer to the criminal offences set out above. This chapter does not seek to reproduce a list of those markets, particularly because that list may change over time. Therefore, all references to 'financial markets' and 'markets' in this chapter refer to the markets to which the criminal regimes of insider dealing and market manipulation apply, unless the context specifies otherwise. The civil offences of insider dealing, unlawful disclosure of inside information and market manipulation set out in the *Market Abuse Regulation* are referred to collectively herein as market abuse.

8.1.5 G We recognise that many firms will not distinguish between the criminal or civil regimes for the purposes of conducting surveillance and monitoring of their clients' and employees' activities. As such, firms may find it simpler to consider this guidance as applying to all instruments to which both the *Market Abuse Regulation* and the criminal regimes set out in ■ FCG 8.1.2G apply. Note though that the *FCA* cannot and does not mandate that this guidance applies to those financial instruments which are captured by the *Market Abuse Regulation*, but not by the criminal regimes set out above.

8.1.6 G To commit insider dealing, as well as certain forms of market manipulation, the perpetrator must typically engage with, or work within, a firm able to access the relevant financial markets on their behalf. It is critical that firms that offer access to relevant financial markets have adequate policies and procedures to counter the risk that the firm might be used to further financial crime, in accordance with ■ SYSC 6.1.1R.

FCG is not intended to be prescriptive to every business model type. It is incumbent upon a firm to ensure that its policies, procedures and risk framework are tailored and appropriate to the nature of its business, eg client type(s), product type(s), means of order transmission and execution, risks posed by employees, etc.

8.1.7 G On 3 July 2016, *Market Abuse Regulation* came into force. The *Market Abuse Regulation* sets out the civil offences of market abuse. Article 16 of the *Market Abuse Regulation* also imposes specific requirements on:

- Market operators and investment firms that operate a trading venue to establish and maintain effective arrangements, systems and procedures aimed at detecting and preventing insider dealing, market manipulation and attempted insider dealing and market manipulation. Such persons shall report orders and transactions that could constitute insider dealing or market manipulation (or attempts at such) to the competent authority of the trading venue. This is imposed under article 16(1).

- Any person professionally arranging or executing transactions to establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. This is imposed under article 16(2).

8.1.8 G There is a key distinction between the obligations under article 16(2) of the *Market Abuse Regulation* and the requirements of ■ SYSC 6.1.1R. Article 16(2) of the *Market Abuse Regulation* requires persons professionally arranging or executing transactions to establish arrangements, systems and procedures to detect and report potential market abuse, whereas ■ SYSC 6.1.1R requires firms to have policies and procedures for countering the risk that the firm might be used to further financial crime. (As noted above, article 16(1) of the *Market Abuse Regulation* obliges market operators and investment firms that operate a trading venue to have systems aimed at preventing as well as detecting potential market abuse). This document does not provide any *FCA* guidance in relation to the *Market Abuse Regulation* article 16.

8.1.9 G Appropriate policies and procedures for countering the risk that the firm might be used to further financial crime are likely to fall into two distinct categories:

(1) Identification of, and taking steps to counter financial crime pre-trade, and

(2) Mitigation of future risks posed by clients or employees who have been identified as having already traded suspiciously.

8.1.10 G Firms which have identified activity they suspect may amount to insider dealing or market manipulation should consider their further obligations in relation to countering the risk of financial crime should the relevant client seek to transfer or use the proceeds of that suspicious activity (see ■ FCG 3). This includes, where appropriate, seeking consent from the National Crime Agency.