

STATES OF JERSEY

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DRAFT FINANCIAL SERVICES (AMENDMENT No. 3) (JERSEY) LAW 200

**Lodged au Greffe on 30th July 2007
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT FINANCIAL SERVICES (AMENDMENT No. 3) (JERSEY) LAW 200

REPORT

REPORT ON THE FINANCIAL SERVICES (AMENDMENT No. 3) (JERSEY) LAW 200 ("AMENDMENT No. 3") – REFORMING THE MARKET ABUSE REGIME IN JERSEY

The proposed changes to the Financial Services (Jersey) Law 1998 ("**the Law**") would modernise the market abuse regime and facilitate international co-operation in keeping with international standards. The changes form part of the Commission's efforts to develop the financial regulatory laws in preparation for the International Monetary Fund ("**IMF**") assessment in 2008.

The modernising of the current market abuse regime will consolidate the two key market abuse offences, namely insider dealing and market manipulation under one Law helping to ensure consistency in the enforcement of the market abuse regime. The Law will retain the offence of market manipulation as currently provided for under Article 30 of the Law and the offence of insider dealing will be introduced under the Law in accordance with proven international models. The changes mirror the established regime in the U.K. as provided for under the under Part V of the U.K. Criminal Justice Act 1993 ("**CJA**") and the U.K. Financial Services and Markets Act 2000 ("**FSMA**").

The threshold tests which must be passed in order for the Jersey Financial Services Commission (the "**Commission**") to use its investigatory powers in market abuse cases are harmonised under Article 32(2) of the Law so that the Commission may invoke its investigatory powers only in circumstances where it is reasonable to do so. This will ensure consistency in the use of the Commission's investigatory powers and help to avoid inconsistencies arising from having different legal procedures for related offences set out in separate provisions and Laws in the existing fragmented regime.

The new regime will also facilitate Jersey's role in investigating, and assisting overseas regulators to investigate, suspected insider dealing and market manipulation where there is a Jersey connection in accordance with Jersey's obligations as a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding, while retaining those protections currently available to the public.

Article 36 of the Law, which provides for the Commission's powers of co-operation with overseas regulators, is amended in accordance with international standards by expanding the scope and character of the offences in relation to which the Commission may provide assistance. The current provision is considered to be overly restrictive and impedes the Commission's ability to co-operate with overseas regulators, with reputational consequences for the Island. The change will enable the Commission to provide assistance where the overseas offence is similar (but not necessarily exact) to the specified offence in Jersey.

There are also two minor changes designed to correct apparent errors in the existing provisions of the Law. Firstly, a typographical error in Article 33(1)(i) of the Law is corrected, so that the term "**financial services business**" with a plural in "services", will now read "**financial service business**" in the singular form as it is used in the rest of the Law.

Secondly, the changes will require the Commission to take into account the interests of existing customers when deciding whether or not to issue directions under Article 23(1)(b). The current law only permits the Commission to issue a direction in the interests of potential and future customers. The amendment will enable consistency with parallel provisions such as Article 11(4) and 33(1) of the Law, which require the Commission to consider the interests of both existing and future customers.

Financial and manpower implications

This Draft Law will have no implications for the financial or manpower resources of the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 27th July 2007 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Financial Services (Amendment No. 3) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

Article 1 specifies that the Financial Services (Jersey) Law 1998 is the “principal Law” referred to in this Law.

Article 2 amends the long title of the principal Law to fit with the new Part 3A that is to be inserted by this amending Law.

Article 3 makes a consequential amendment to the definition of “company”.

Article 4 makes an amendment to the principal Law that is consequential to the other amendments made by this Law.

Article 5 amends Article 23 of the principal Law. Article 23 currently enables the Commission to issue directions where certain events may happen in the future (namely where a person may transact financial service business with a provider of financial services business, may enter into an agreement with such a person, or may receive the benefit of services from such a person). The amendment will enable the Commission to issue directions if these events have already occurred.

The amendment also alters, by way of consequential amendment, the reference to the Articles to which Article 23 shall relate.

Articles 6, 7 and 8 make amendments to the principal Law that are consequential to the other amendments made by this Law.

Article 9 amends Article 32 of the principal Law, which sets out when the Commission can require information and documents to be provided. Article 32 is amended by changing the grounds on which information and documents may be sought, from “suspecting that a person is guilty” of contravening a provision, to “suspecting that a person may have contravened” a provision. The new requirement will broaden the circumstances in which the Commission can require information and documents to be provided. The amendment also alters, by way of consequential amendment, the reference to the Articles to which Article 32 shall relate.

Article 10 amends a typographical error and makes an amendment to the principal Law that is consequential to the other amendments made by this Law.

Article 11 amends Article 36 of the principal Law, which relates to the powers of investigation of the Commission. The amendment shall expand the ability of the Commission to provide assistance to overseas investigators, by widening the types of offences in relation to which assistance may be given.

Currently assistance may only be given if the offence against a law of another country or territory would, if it occurred in Jersey, constitute an offence against Article 7(1), 39G or 39L of the Financial Services (Jersey) Law 1998.

The amendment to Article 36 will enable assistance to be given in relation to a suspected contravention of a provision of a law of another country or territory if the Commissioner reasonably believes the provision to be similar to Article 7(1), 39G or 39L of the Financial Services (Jersey) Law 1998.

Article 12 makes an amendment to the principal Law that is consequential to the addition of Part 3A to the principal Law.

Article 13 inserts a new Part 3A, dealing with insider dealing, misleading information and market manipulation. The Part consists of proposed Articles 39A to 39N.

Proposed Articles 39A to 39F are interpretative provisions. Amongst other things, Article 39A gives to the States the power to amend the definition of “securities” set out in Schedule 6 for the purposes of new Part 3A.

Proposed Article 39G sets out the offence of insider dealing. A person commits the offence if he or she has information as an insider that, if made public, would be likely to have a significant effect on the price of securities, and –

- (a) deals on a securities market in the securities to which the information relates;
- (b) encourages another person to deal, as a professional intermediary or in reliance on a professional intermediary, in the securities to which the information relates; or
- (c) discloses the information to another person otherwise than in the proper performance of his or her employment, office or profession.

A person has information as an insider if he or she has inside information and knows it is inside information, and has it, and knows he or she has it, from an inside source.

Proposed Article 39H specifies that actions by or on behalf of public sector bodies that are taken in pursuit of monetary policies, in respect of exchange rates or the management of public debt or foreign exchange reserves, shall not constitute insider dealing.

Article 39I specifies that behaviour referred to in Article 39G must be connected to Jersey to constitute an offence against this Law.

Proposed Article 39J sets out general statutory defences to the offence of insider dealing.

Proposed Article 39K specifies that a person has a defence to the offence of insider dealing if he or she proves that the information was, in effect, public knowledge in the relevant securities market and that it was reasonable to act as he or she did. There shall also be a defence if the person can prove that the insider dealing related to an acquisition or disposal of securities with which he or she was involved and his or her inside information arose directly from his or her involvement in the acquisition or disposal.

Proposed Article 39L sets out the offence of providing misleading, false or deceptive information for the purpose of inducing another person to enter or refrain from entering into certain financial transactions or exercising certain rights in relation to financial instruments.

Proposed Article 39M specifies the same defence to a charge of an offence against Article 39L as is set out in Article 39H.

Proposed Article 39N provides a statutory defence to a charge of an offence against Article 39L if the person charged proves that he or she was acting in conformity with the relevant rules of the securities market in relation to the use and dissemination of information.

Article 14 adds a new Schedule 6 to the principal Law. The schedule defines what shall constitute “securities” for the purposes of Part 6.

Article 15 repeals and amends certain enactments, which repeals and amendments are required as a consequence of the insertion of the proposed Part 3A into the principal Law.

Article 16 specifies the name by which the amendment Law may be cited and specifies that the Law shall come into force on a date to be appointed by the States.



Jersey

DRAFT FINANCIAL SERVICES (AMENDMENT No. 3) (JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Long title substituted</u>
<u>3</u>	<u>Article 1 amended</u>
<u>4</u>	<u>Cross heading amended</u>
<u>5</u>	<u>Article 23 amended</u>
<u>6</u>	<u>Article 24 amended</u>
<u>7</u>	<u>Article 26 amended</u>
<u>8</u>	<u>Article 30 repealed</u>
<u>9</u>	<u>Article 32 amended</u>
<u>10</u>	<u>Article 33 amended</u>
<u>11</u>	<u>Article 36 amended</u>
<u>12</u>	<u>Article 38 amended</u>
<u>13</u>	<u>New Part 3A inserted</u>
<u>14</u>	<u>Schedule 6 added</u>
<u>15</u>	<u>Amendment and repeal of enactments</u>
<u>16</u>	<u>Citation and commencement</u>

SCHEDULE 1

SCHEDULE 2

AMENDMENTS OF ENACTMENTS

REPEALED ENACTMENTS



Jersey

DRAFT FINANCIAL SERVICES (AMENDMENT No. 3) (JERSEY) LAW 200

A LAW to amend further the Financial Services (Jersey) Law 1998.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “principal Law” means the Financial Services (Jersey) Law 1998^[1].

2 Long title substituted

For the long title to the principal Law there shall be substituted the following long title –

“A Law to make provision for the supervision of certain types of financial service business, generally to provide for purposes connected with, and incidental to, the supervision of certain types of financial service business, and to create certain offences, including offences relating to insider dealing, market manipulation, and providing misleading information, in respect of financial matters.”.

3 Article 1 amended

In Article 1(1) of the principal Law, in the definition “company”, before the words “paragraph (1)” there shall be inserted the words “Part 3A of”.

4 Cross heading amended

After Article 18 of the principal Law, for the heading “POWERS, CONTROLS, MISLEADING STATEMENTS, ETC.” there shall be substituted the heading “POWERS, CONTROLS, FALSE INFORMATION, ETC.”.

5 Article 23 amended

In Article 23(1)(b) of the principal Law–

- (a) in clause (i) before the words “may transact” there shall be inserted the words “has transacted or”;
- (b) in clause (ii) before the words “may enter” and “may receive” there shall be inserted the words “have entered or” and “have received or”, respectively.

6 Article 24 amended

In Article 24(1)(c) of the principal Law, for the words “Article 28, 30 or 31” there shall be substituted the words “Article 28, 31, 39G or 39L”.

7 Article 26 amended

In Article 26(2) of the principal Law, for the words “Article 30’ there shall be substituted the words “Article 39G or 39L”.

8 Article 30 repealed

Article 30 of the principal Law shall be repealed.

9 Article 32 amended

In Article 32(2) of the principal Law, for the words “for suspecting that a person is guilty of contravening Article 7(1) or 30’ there shall be substituted the words “to suspect that a person may have contravened Article 7(1), 39G or 39L”.

10 Article 33 amended

In Article 33 of the principal Law—

- (a) in paragraph (1)(i) for the words “financial services business” there shall be substituted the words “financial service business”;
- (b) in paragraph (4) for the words “the provisions of Article 7(1) or 30’ there shall be substituted the words “Article 7(1), 39G or 39L”.

11 Article 36 amended

In Article 36 of the principal Law—

- (a) for paragraph (6)(a) there shall be substituted the following subparagraph –
 - “(a) a reference –
 - (i) in Article 32(2) or 33(4) to a contravention of Article 7(1), 39G or 39L, or
 - (ii) in Article 34(1) to a contravention of a type referred to in Article 32(2), shall include a reference to a contravention (committed at any time, including a time before the enactment of a provision of this Law) of a provision of a law of a country or territory outside Jersey, which provision the Commission reasonably considers to be similar to Article 7(1), 39G or 39L; and”;
- (b) in paragraph (7) for the words “Article 7 or 30 (or in any provision necessary for the interpretation of that Article)” there shall be substituted the words “Article 7, 39G or 39L (or in any provision necessary for the interpretation of any of those Articles)”.

12 Article 38 amended

In Article 38 of the principal Law, in paragraph (1)(k), the words “under Article 15 of the Company Securities (Insider Dealing) (Jersey) Law 1988,” shall be deleted.

13 New Part 3A inserted

After Part 3 of the principal Law there shall be inserted the following Part –

“PART 3A MARKET MANIPULATION, MISLEADING INFORMATION AND INSIDER DEALING

Interpretative provisions

39A Interpretation

(1) In this Part and in Schedule 6–

‘company’ means any body (whether or not incorporated and wherever incorporated or constituted) which is not a public sector body;

‘issuer’, in relation to any securities, means any company, public sector body or person by which or by whom the securities have been or are to be issued;

‘market maker’ means a person who –

- (a) holds himself or herself out at all normal times in compliance with the rules of a securities market as willing to acquire or dispose of securities; and
- (b) is recognized as doing so under those rules;

‘public sector body’ means –

- (a) the States or the government of any country or territory outside Jersey;
- (b) a parish in Jersey or the local government of any country or territory outside Jersey;
- (c) any international organization the members of which include Jersey or a member state of the European Economic Community; and
- (d) the central bank of any sovereign State, the European System of Central Banks or any other system of central banks;

‘relevant market rules’, in relation to a securities market, means the rules, regulating the activities of the securities market in relation to the use and dissemination of information, that are –

- (a) specified in a legislative instrument of the country or territory, or the part of a country or territory, that hosts the securities market; or
- (b) made by the securities market, if the securities market is authorized to make such rules by a legislative instrument of the country or territory, or the part of a country or territory, that hosts the securities market;

‘securities’ has the meaning set out in Schedule 6;

‘securities market’ means any securities market that is established by or under, or is regulated by or under, a legislative instrument made by the country or territory, or the part of a country or territory, that hosts the securities market.

(2) The States may by Regulations amend the meaning of “securities” set out in Schedule 6.

39B 'Dealing' in securities

- (1) For the purposes of this Part, a person deals in securities if –
 - (a) he or she acquires or disposes of the securities (whether as principal or agent); or
 - (b) he or she procures, directly or indirectly, an acquisition or disposal of the securities by any other person.
- (2) For the purposes of this Part and Schedule 6, 'acquire', in relation to a security, includes –
 - (a) agreeing to acquire the security; and
 - (b) entering into a contract which creates the security.
- (3) For the purposes of this Part and Schedule 6, 'dispose', in relation to a security, includes –
 - (a) agreeing to dispose of the security; and
 - (b) bringing to an end a contract which created the security.
- (4) For the purposes of paragraph (1), a person procures an acquisition or disposal of a security if the security is acquired or disposed of by a person who is –
 - (a) his or her agent;
 - (b) his or her nominee; or
 - (c) a person who is acting at his or her direction, in relation to the acquisition or disposal.
- (5) Paragraph (4) is not exhaustive as to the circumstances in which one person may be regarded as procuring an acquisition or disposal of securities by another.

39C Meaning of 'inside information', etc.

- (1) For the purposes of this Part, 'inside information' means information which –
 - (a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities generally;
 - (b) is specific or precise;
 - (c) has not been made public; and
 - (d) if it were made public would be likely to have a significant effect on the price of any securities.
- (2) For the purposes of this Part, securities are 'price-affected securities' in relation to inside information, and inside information is 'price-sensitive information' in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price of the securities.
- (3) For the purposes of this Part, information shall be treated as relating to an issuer of securities which is a company not only where it is about the company but also where it may affect the company's business prospects.
- (4) For the purposes of this Article 'price' includes value.

39D Meaning of 'having information as an insider'

- (1) For the purposes of this Part, a person has information as an insider if and only if –
 - (a) it is, and he or she knows that it is, inside information; and

- (b) he or she has it, and knows that he or she has it, from an inside source.
- (2) For the purposes of paragraph (1), a person has information from an inside source if and only if –
 - (a) he or she has it through –
 - (i) being a director, employee or shareholder of an issuer of securities, or
 - (ii) having access to the information by virtue of his or her employment, office or profession; or
 - (b) the direct or indirect source of his or her information is a person within sub-paragraph (a).

39E Meaning of ‘made public’

- (1) For the purposes of this Part, ‘made public’, in relation to information, shall be construed in accordance with this Article but the provisions of this Article are not exhaustive as to the meaning of that expression.
- (2) Information is made public if –
 - (a) it is published in accordance with the rules of a securities market for the purpose of informing investors and their professional advisers;
 - (b) it is contained in records which by virtue of any legislation of the country or territory, or a part of a country or territory, that hosts the securities market are open to inspection by the public;
 - (c) it can be readily acquired by those likely to deal in any securities –
 - (i) to which the information relates, or
 - (ii) of an issuer to which the information relates; or
 - (d) it is derived from information which has been made public.
- (3) Information may be treated as made public even though –
 - (a) it can be acquired only by persons exercising diligence or expertise;
 - (b) it is communicated to a section of the public and not to the public at large;
 - (c) it can be acquired only by observation;
 - (d) it is communicated only on payment of a fee; or
 - (e) it is published only outside the country or territory, or the part of the country or territory, in which is situated the securities market to which the information relates.

39F Meaning of ‘professional intermediary’

- (1) For the purposes of this Part, a ‘professional intermediary’ is a person –
 - (a) who carries on a business consisting of an activity mentioned in paragraph (2) and who holds himself or herself out to the public or any section of the public (including a section of the public constituted by persons such as himself or herself) as willing to engage in any such business; or
 - (b) who is employed, by a person falling within sub-paragraph (a), to carry out any such activity.
- (2) The activities referred to in paragraph (1) are–
 - (a) acquiring or disposing of securities (whether as principal or agent); or
 - (b) acting as an intermediary between persons taking part in any dealing in securities.

- (3) A person is not to be treated as carrying on a business consisting of an activity mentioned in paragraph (2)–
 - (a) if the activity in question is merely incidental to some other activity not falling within paragraph (2); or
 - (b) merely because he or she occasionally conducts one of those activities.
- (4) For the purposes of this Part, a person dealing in securities relies on a professional intermediary if and only if a person who is acting as a professional intermediary carries on an activity mentioned in paragraph (2) in relation to that dealing.

Insider dealing

39G Insider dealing

- (1) A person who has information as an insider is guilty of an offence if, in the circumstances mentioned in paragraph (3), he or she deals in securities that are price affected securities in relation to the information.
- (2) A person who has information as an insider is guilty of an offence if –
 - (a) he or she encourages another person to deal in securities that are (whether or not that other person 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 paragraph (3); or
 - (b) he or she discloses the information, otherwise than in the proper performance of the functions of his or her employment, office or profession, to another person.
- (3) The circumstances referred to in paragraph (1) and (2) are that–
 - (a) the acquisition or disposal in question occurs on a securities market; or
 - (b) the person dealing relies on a professional intermediary or is himself or herself acting as a professional intermediary.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or a fine.

39H Monetary policy activity, validity of contracts not affected

- (1) Article 39G does not apply to anything done by a person acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.
- (2) No contract shall be void or unenforceable by reason only of Article 39G.

39I Territorial scope of offence of insider dealing

- (1) A person is only guilty of an offence under Article 39G(1) if–
 - (a) he or she was within Jersey at the time when he or she is alleged to have done any act constituting or forming part of the alleged dealing; or
 - (b) the professional intermediary referred to in Article 39G was within Jersey at the time when he or she is alleged to have done anything by means of which the offence is alleged to have been committed.
- (2) A person is only guilty of an offence under Article 39G(2) if–
 - (a) he or she was within Jersey at the time when he or she is alleged to have encouraged the dealing or disclosed the information; or

- (b) the alleged recipient of the encouragement or information was within Jersey at the time when he or she is alleged to have received the encouragement or information.

39J General defences

- (1) A person is not guilty of an offence under Article 39G(1) by virtue of dealing in securities if he or she proves –
 - (a) that at the time he or she did not 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;
 - (b) that at the time he or she believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
 - (c) that he or she would have done what he or she did even if he or she had not had the information.
- (2) A person is not guilty of an offence under Article 39G(2) by virtue of encouraging another person to deal in securities if he or she proves –
 - (a) that at the time he or she did not 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;
 - (b) that at the time he or she believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
 - (c) that he or she would have done what he or she did even if he or she had not had the information.
- (3) A person is not guilty of an offence under Article 39G(2) by virtue of a disclosure of information if he or she proves –
 - (a) that he or she did not at the time expect any person, because of the disclosure, to deal in securities in the circumstances mentioned in Article 39G(3); or
 - (b) that, although he or she had such an expectation at the time, he or she did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to the securities.
- (4) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities or encouraging another person to deal if he or she proves that he or she acted in good faith in the course of –
 - (a) his or her business as a market maker; or
 - (b) his or her employment in the business of a market maker.
- (5) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities in a securities market or encouraging another person to deal in a securities market if he or she proves that he or she acted in conformity with the relevant market rules.
- (6) In this Article references to a profit include references to the avoidance of a loss.

39K Defence if information was market information

- (1) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities or encouraging another person to deal if he or she proves that –
 - (a) the information which he or she had as an insider was market information; and

- (b) it was reasonable for a person in his or her position to have acted as he or she did despite having that information as an insider at the time.
- (2) In determining for the purposes of paragraph (1) whether it is reasonable for a person to do any act despite having market information at the time, there shall, in particular, be taken into account –
- (a) the content of the information;
 - (b) the circumstances in which he or she first had the information and in what capacity; and
 - (c) the capacity in which he or she acts at the time the determination is made.
- (3) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities or encouraging another person to deal if he or she proves –
- (a) that he or she acted –
 - (i) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals, and
 - (ii) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals; and
 - (b) that the information which he or she had as an insider was market information arising directly out of his or her involvement in the acquisition or disposal or series of acquisitions or disposals.
- (4) For the purposes of this Article, market information is information consisting of one or more of the following facts –
- (a) that securities of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;
 - (b) that securities of a particular kind have not been or are not to be acquired or disposed of;
 - (c) the number of securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;
 - (d) the price (or range of prices) at which securities have been or are to be acquired or disposed of or the price (or range of prices) at which securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of;
 - (e) the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.

Market manipulation and misleading information

39L Market manipulation and misleading information

- (1) Any person who –
- (a) makes a statement, promise or forecast which the person knows to be misleading, false or deceptive;
 - (b) dishonestly conceals any material facts; or
 - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,
- is guilty of an offence if he or she 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 other person is the person to whom the statement, promise or forecast is made or from whom the facts are concealed) –

- (i) to enter or offer to enter into, or refrain from entering or offering to enter into, an agreement or arrangement the making of which or performing of which constitutes financial service business or would do so but for Schedule 2; or
 - (ii) to exercise, or refrain from exercising, any rights conferred by an investment or contract of general insurance.
- (2) 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 investment or a contract of general insurance is guilty of an offence if the person does so for the purpose of creating that impression and of thereby inducing another person –
 - (a) to acquire, dispose of, subscribe for or underwrite that investment or contract of general insurance; or
 - (b) to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by that investment or contract of general insurance.
- (3) A person does not commit an offence under this Article unless –
 - (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, Jersey, or arrangements are made in or from the Jersey 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 Jersey; or
 - (c) the agreement or arrangement is or would be entered into or the rights are or would be exercised in Jersey.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or a fine.
- (5) In paragraphs (1) and (2), ‘contract of general insurance’ means a contract of general insurance, general insurance product or general insurance service.

39M Application

Article 39L does not apply to anything done by a person acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.

39N Defences

- (1) A person is not guilty of an offence under Article 39L(1) in relation to a statement, promise or forecast if the statement, promise or forecast was made in respect of a securities market and he or she proves that he or she acted in conformity with the relevant market rules.
- (2) A person is not guilty of an offence under Article 39L(2) in relation to an act or a course of conduct if he or she engaged in the act or course of conduct in respect of a securities market and he or she proves that –
 - (a) he or she reasonably believed that the act or conduct would not create an impression that was false or misleading as to the matters contained in Article 39L(2); or
 - (b) he or she acted in conformity with the relevant market rules.”.

14 Schedule 6 added

In the principal Law, after Schedule 5, there shall be added the Schedule set out in Schedule 1.

15 Amendment and repeal of enactments

The enactments set out in Schedule 2 shall be amended or repealed as set out in that Schedule.

16 Citation and commencement

- (1) This Law may be cited as the Financial Services (Amendment No. 3) (Jersey) Law 200.
- (2) This Law shall come into force on such day or days as the States may by Act appoint, and different days may be appointed for different provisions.

SCHEDULE 1

Article 14

“SCHEDULE 6

Article 39A

SECURITIES

For the purposes of Part 3A, ‘securities’ means any of the following –

1 Shares

Shares and stock in the share capital of a company (‘shares’).

2 Debt securities

Any instrument creating or acknowledging indebtedness which is issued by a company or public sector body including, in particular, debentures, debenture stock, loan stock, bonds and certificates of deposit (‘debt securities’).

3 Warrants

Any right, (whether conferred by warrant or otherwise) to subscribe for shares or debt securities.

4 Depositary receipts

- (1) The rights under any depositary receipt.
- (2) For the purpose of sub-paragraph (1) a ‘depositary receipt’ means a certificate or other record (whether or not in the form of a document) –
 - (a) which is issued by or on behalf of a person who holds any relevant securities of a particular issuer; and
 - (b) which acknowledges that another person is entitled to rights in relation to the relevant securities or relevant securities of the same kind.
- (3) In sub-paragraph (2) ‘relevant securities’ means shares, debt securities and warrants.

5 Options

Any option to acquire or dispose of any security falling within any other paragraph of this Schedule.

6 Futures

- (1) Rights under a contract for the acquisition or disposal of relevant securities under which delivery is to be made at a future date and at a price agreed when the contract is made.
- (2) In sub-paragraph (1)–
 - (a) the references to a future date and to a price agreed when the contract is made include references to a date and a price determined in accordance with terms of

the contract; and

(b) 'relevant securities' means any security within the meaning of any other paragraph of this Schedule.

7 Contracts for differences

- (1) Rights under a contract which does not provide for the delivery of securities but whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in –
 - (a) a share index or other similar factor connected with relevant securities;
 - (b) the price of particular relevant securities; or
 - (c) the interest rate offered on money placed on deposit.
- (2) In sub-paragraph (1) 'relevant securities' means any security falling within any paragraph of this Schedule.”.

SCHEDULE 2

(Article 15)

AMENDMENTS OF ENACTMENTS

- (1) In the Collective Investment Funds (Jersey) Law 1988^[2], in Article 29(3), the words “under Article 15 of the Company Securities (Insider Dealing) (Jersey) Law 1988”, shall be deleted.
- (2) In the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988^[3], in Article 37(3), for the words “the Company Securities (Insider Dealing) (Jersey) Law 1988”, there shall be substituted the words “Part 3A of the Financial Services (Jersey) Law 1998”.
- (3) In the Money Laundering (Jersey) Order 1999^[4], in Article 10(4), subparagraph (e) shall be deleted.
- (4) Nothing in paragraph (2) or (3) shall prevent the amendment by an Order of an Article amended by paragraph (2) or (3).

REPEALED ENACTMENTS

Company Securities (Insider Dealing) (Jersey) Law 1988^[5]

Company Securities (Insider Dealing) (Amendment) (Jersey) Law 1989^[6]

Company Securities (Insider Dealing) (Recognized Stock Exchange) (Jersey) Order 1992^[7]

Company Securities (Insider Dealing) (Amendment No. 2) (Jersey) Law 1998^[8]

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- [1] *chapter 13.225*
- [2] *chapter 13.100*
- [3] *chapter 13.100.70*
- [4] *chapter 08.780.30*
- [5] *chapter 13.150 (L.1/1988)*
- [6] *chapter 13.150 (L.7/1989)*
- [7] *chapter 13.150.50 (R&O.8401)*
- [8] *chapter 13.150 (L.31/1998)*