

Hints and tips for ensuring your share dealing policy, and practice, is fit for purpose

For a premium listed company, breaches in connection with the Model Code can involve breaches of the Listing Rules, the Listing Principles and the DTR. Following recent enforcement action by the FCA in connection with breaches of the Model Code, here are some hints and tips to help ensure your share dealing policy, and practice, is fit for purpose.

Share dealing policy and practice

Whether your share dealing policy is bespoke to your company, or you adopt the Model Code, ask yourself:

- Can you monitor all share dealings by each “person discharging managerial responsibilities” (your PDMRs)? Not just those carried out with the assistance of the company’s own administrators, but dealings carried out on behalf of PDMRs by third parties such as custodians.
- Can you identify breaches (actual or potential) of your share dealing policy?
- Do you review the share dealing policy, and its operation, to identify or mitigate the risk of breaches?

Educating and informing PDMRs

It is vital that PDMRs understand their obligations under the share dealing policy:

- Do the PDMRs have the knowledge and experience to comply with the share dealing policy?
- Are they provided with regular and structured training? This should cover refreshers on the existing policy, and updates on developments, such as changes to the Model Code and statements published by the FCA - even if a company has its own dealings code, it will need to reflect any changes to the Model Code. For example, how did you make sure the PDMRs were aware of the 2009 statement by the FCA (then the FSA) confirming that any grant of security over shares is a dealing under the Model Code, which must be notified to the market?
- Do you remind the PDMRs of their obligations on a regular basis? Not just reminding them in advance of a close period, but general reminders about their obligations outside of a close period, and the process for seeking clearance to deal.
- How do you ensure the PDMRs actually comply with the share dealing policy? For some, compliance will be a term of their employment contract. Some companies seek an annual confirmation from their PDMRs that (i) they are aware of their obligations under the share dealing policy and (ii) they will comply with those obligations.

Follow your own rules and procedures!

Having the right rules and procedures in place is no good if you don't always follow them:

- Make sure clearance to deal is obtained from the right person (as prescribed in the Model Code).
- Keep a record of all responses and clearances given, and give a copy to the relevant PDMR.
- If you have a prescribed form seeking clearance to deal, don't give informal clearances (e.g. by email or even orally) - only give clearance to deal on the basis of a completed form.
- If you ask the PDMRs to confirm that they are aware of their obligations under the share dealing policy and will comply with those obligations, make sure they sign and return those confirmations – follow up on any missing forms promptly.
- Make sure the PDMRs provide all the necessary information on their actual share dealing so that the company can, in turn, inform the market. An incomplete notification to the market will breach the DTR.
- Make sure the company has systems in place to make notifications to the market in the prescribed timeframe.

Whilst companies are to an extent reliant on their PDMRs following the rules, having the correct procedures, systems and controls in place, and keeping them under review, will go a long way towards protecting the company from breaches of the Listing Rules, Listing Principles and the DTR in connection with the Model Code. It is worth remembering that the FCA will take enforcement action irrespective of whether breaches are deliberate or reckless, or whether dealings took place on the basis of inside information.

If you have any questions or require specific advice on any matter discussed in this update, please contact:

Kate Ball-Dodd

Partner

+44 20 3130 3611

kball-dodd@mayerbrown.com

Justine Usher

Professional Support Lawyer

+44 20 3130 3517

jusher@mayerbrown.com

Kirsty Payne

Professional Support Lawyer

+44 20 3130 3795

kpayne@mayerbrown.com

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