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Changes to insider dealing rules will impact share plans.

Contents

What is changing?

The rules on insider dealing in the EU are going to change from July 2016. For UK listed companies, this will affect (among other things):

> how senior executives get clearance for dealings in shares (currently governed by the Model Code);

> how those dealings are disclosed to the market (currently governed by the Disclosure Rules); and

> the general prohibitions on insider dealing (currently governed by the Financial Services and Markets Act and the Criminal Justice Act).

The changes mean a move from a system of UK rules which mostly implement EU directives to EU rules which have direct effect with member states free to adopt higher standards on any rule.

In some respects the new EU rules are less onerous than the existing UK rules so it remains to be seen if the current Listing Rules requirements will be retained. In any event, the changes provide a good opportunity for companies to review and refresh their dealing codes, as some changes will no doubt be required.

Over the next few months, we will be monitoring the position and will provide further updates leading up to the changes in July next year. We understand that the UKLA is planning to consult on its approach in the Autumn. Once this has been published, we plan to hold some round table discussions and prepare a response. When the rules have been finalised, we will hold a series of workshops to help companies prepare for the changes.

Dealing codes – a new model?

The biggest change from the current UK system is that the EU rules do not require senior executives to get clearance before they deal in shares. Instead, the new rules just rely on:

> a blanket ban on dealings in the run-up to the announcement of results (see below); and

> the general prohibition on insider dealing.

In practice, we think it would be prudent for companies to continue with some kind of clearance system as it is a good way to minimise the risk (or, more likely, the suspicion) of insider dealing and it may be that the Listing Rules retain the existing clearance requirements. If they do not, then companies will be free to design their own bespoke systems for clearance, rather than having to follow the Model Code. Properly drafted, such a system could operate much more effectively than the Model Code by:

> removing some of the uncertainties (e.g. around vesting of awards);

> aligning clearance requirements to the company's specific share plans;

> streamlining the procedure for getting clearance;

> permitting dealings which are currently caught by the Model Code but where there is a low risk of insider dealing such as sales to cover tax and grants of awards on the normal timetable; and

> allowing exceptions from the system in low risk situations.

Blackout periods

The new rules impose a blanket ban on all dealings by senior executives in the 30 days before the announcement of interim or full-year results (to be known as a "**closed period**"). This is shorter than the closed period currently imposed by the Model Code. There are a few (narrow and eccentrically drawn) exceptions to this but, in general, there is a lot less flexibility than there is under the existing rules. For example:

> there does not appear to be any general exemption for dealings under SAYE and SIP (though it should be possible still to operate these plans as now, with some new checks);

> the exemptions for grants of awards and exercise of options which are about to lapse during closed periods are much narrower than the current ones; and

> there is no concept of trading plans to enable dealings to continue through a closed period.

This is not as worrying as it first appears because, under the new rules, a closed period can **only** be triggered by an imminent results announcement and **not** (as currently) by the existence of unpublished price sensitive information arising from, for example, a proposed transaction. So the closed periods will be known in advance, enabling companies and executives to plan for them.

Nevertheless, companies will need to take a close look at their grant and vesting timetables and their plan rules. For example, there may be difficulties in selling shares to cover tax if awards vest in a closed period. Waiting to the end of the closed period to sell shares may lead to a mismatch between the tax liability and the number of shares sold. This issue will arise in relation to any awards which will vest after the rules come into effect – including awards which have already been granted or are granted before July next year. So companies should start planning for the new rules as soon as possible.

Although the concept of a ‘prohibited period’ may disappear (unless the UKLA decides to keep the Model Code), the general prohibition on insider dealing means that companies will want to ensure that insiders do not deal.

Disclosure of dealings by senior executives

The new rules on disclosure are very similar to the existing disclosure rules – though the timings and process are a little different. Companies are likely to have to tweak their existing systems rather than totally redesign them. There is the same opaque language on ‘transactions on [the PDMR’s] own account’ which must be disclosed and there is a non-exhaustive list of such transactions (which, interestingly, includes automatic vestings).

The main difference is that there will be an exemption for the first €5,000 worth of dealings in any calendar year. The UKLA can raise this to €20,000. The high level of share ownership by executives in the UK will mean that most will quickly exhaust the exemption so they may be happy not to take advantage of it. Ignoring the exemption will certainly be administratively easier for the company secretary than keeping track of the exemption for each executive, taking into account movements in the exchange rates and the share price.

Another difference relates to timing: currently a PDMR has four business days to notify the company of the transaction and the company must notify the market (via the RIS) by the end of the next business day. Under the new rules, each of these notifications must be made within three business days.

What happens next?

> If you have grants coming up, ensure that they are timed to minimise the effect of new closed periods on the vesting or exercise of those awards and consider whether any rules changes are required.

> Consider the same issues in relation to awards which are already outstanding which will vest after July next year.

> Consider responding to the UKLA’s consultation - we will let you know when it is out and hold our workshops then.

> Review internal dealing codes – this is probably a good idea anyway, though it will be essential if the Model Code is amended or removed following the consultation.

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