The Market Abuse Regulation: Share Dealing

Introduction

An important part of the Market Abuse Regulation (MAR) introduced in July 2016, deals with the trading in shares and other financial instruments by those in a company who are in positions of senior management and have regular access to inside information. These executives are termed by MAR as ‘persons discharging managerial responsibility’ (PDMRs). Article 19 of MAR places obligations on PDMRs and on the companies that they work for to ensure that inside information is not abused.

Definitions under MAR

“Person discharging managerial responsibility”
- A member of the administrative, management or supervisory body; or
- A senior executive who is not a member of the administrative, management or supervisory body, who has regular access to inside information relating directly or indirectly to the company and the power to take managerial decisions affecting the future developments and business prospects of the company.

“Person closely associated”
- A spouse, or a partner considered to be equivalent to a spouse in accordance with national law;
- A dependent child;
- A relative who has shared the same household for at least one year on the date of the transaction; or
- A legal person, trust or partnership, the managerial responsibilities of which are discharged by a PDMR or by a person referred to above, which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

What are the obligations under MAR for PDMRs?

PDMRs and persons closely associated (PCAs) are required to notify both the company and Financial Conduct Authority (FCA) of all transactions relating to the shares or debt instruments in the company promptly and no later than three business days after the date of the transaction. The definition of transactions under MAR has been extended to include pledging or lending of financial instruments and transactions undertaken by a portfolio manager on the PDMR’s behalf, irrespective of where the investment decision lies.

The PDMR is also responsible for notifying their PCAs of their responsibilities and for keeping a copy of this notification. In practice, the vast majority of companies keep copies of the relevant documents and notify the FCA of the PDMRs transaction on their behalf.
There is currently a de minimis threshold of under €5,000 per calendar year in aggregate before notification of dealing is required. A review by the European Securities and Markets Authority (ESMA) of this threshold is underway with results expected sometime in 2020. The Financial Conduct Authority (FCA) has indicated that companies may disclose all PDMR transactions on a voluntary basis. This approach has been adopted by many companies as it gives comfort that the threshold has not been triggered inadvertently or other considerations such as what exchange rate to use to calculate the limit.

Closed periods

PDMRs may not trade in the company’s shares during a closed period. MAR introduced mandatory closed periods which are the thirty day periods prior to the announcement of an interim report or year-end report. ESMA has confirmed in its Q&A on MAR that a preliminary results announcements constitutes this announcement and hence the end of the closed period, provided that the results announcement contains all key financial information expected to be included in the annual report.

In practice, many companies chose to have a longer closed period than 30 days before a year-end report, for example from the end of the financial year until publication of the results. This ensures that dealing cannot take place by PDMRs when there is a likelihood that inside information may be emerging. There is also no requirement under MAR to have a closed period before the announcement of voluntary quarterly results or trading statements. However, many companies also chose to impose a short closed period before such announcements.

When may a PDMR deal in a closed period?

There are some limited exceptions to the ban on dealing in closed periods which are:

- on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares; or
- due to the characteristics of the trading involved for example transactions made under, or related to, an employee share or savings scheme or transactions where the beneficial interest does not change.

What must companies do?

Companies are required keep a list of all PDMRs and PCAs and notify them of their obligations under MAR in writing. The PDMR is responsible for notifying their PCAs of their responsibilities and keep a copy of this notification. In practice the company also usually keeps these records. The list of those designated as PDMRs will vary from company to company depending on the company’s size and particular circumstances but will almost certainly include all board members and possibly executive committee members.
A Share dealing code?

There is no requirement under the Listing Rules for a company to have a share dealing code containing a clearance to deal procedure for PDMRs. However, companies should seriously consider implementing a voluntary dealing code for their PDMRs and other employees. This will provide a check that dealing is not being carried out during closed periods, ensure that dealings are notified properly and that the company has the necessary policies and procedures in place to comply with the company’s obligations as required by Listing Principle 1 of the Listing Rules.

A set of specimen share dealing policy documents has been developed by the ICSA, GC100 and QCA which many companies have adopted as a best practice standard. These include a group-wide dealing policy for all employees, a dealing code to be issued to PDMRs and a dealing procedures manual of use to company secretaries and others tasked with implementing procedures under MAR.

Any voluntary share dealing code should include procedures for obtaining permission to deal and identify who should give permission to directors, PDMRs and other employees. It should be clear as to when the closed periods are, set out time scales for when dealing should take place after permission has been given and deadlines for PDMRs to notify the company remembering that the company will need to make the dealing announcement within the same three day period from the date of the transaction. Copies of the relevant notifications forms may also be included.

Key areas for companies to consider

In summary key areas that need to be thought through are:

- Who are the relevant PDMRs given the size, complexity and individual circumstances of the company?
- Should more extensive closed periods be adopted by the company then those specified by MAR given the need to ensure that share dealing does not take place when it is likely there will be inside information emerging for example immediately after the year-end?
- Should PDMRs be required to notify the company of any transactions within a shorter time period than three business days given that notification to the market must also be made by the company within this time frame?
- Are arrangements in place and responsibilities allocated for making notifications to the FCA often at short notice?
- How is training for new PDMRs most effectively carried out and at what intervals should refresher training be given?
COVID-19

The FCA published Primary Market Bulletin No. 27 in March 2020 containing guidance to companies during the coronavirus pandemic which is updated as circumstances require. The FCA guidance states that companies should continue to comply with all MAR obligations. In particular if a company’s position is badly affected then they may have to make relevant MAR disclosures to the market to comply with the release of inside information. PDMR notifications should also continue to be made within the time frames set down.

Prism Cosec is able to provide help and guidance in relation to share dealing policies and providing training on all aspects of MAR. If you would like further information or have any comments on this briefing please email us at enquiries@prismcosec.com or contact us via Twitter (@PrismCosec) or LinkedIn (https://www.linkedin.com/company/726062/).

Useful Sources

ICSA, GC100 & QCA MAR Dealing Code and Policy Documents June 2016
https://www.icsa.org.uk/knowledge/resources/mar-dealing-code
ESMA: Q&A on the Market Abuse Regulation (revised March 2019)
City of London Law Society (and others) Q&A on market abuse
Prism Briefing: MAR A Summary
Prism Briefing: MAR Disclosure of Inside Information
Prism Briefing: MAR Insider Lists
Prism Briefing: MAR and AIM

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