

Introduction

On 30 January 2015, ASX Limited released a revised Guidance Note 27 (GN27) on Trading Policies to assist entities in complying with their obligations under ASX Listing Rules 12.9 to 12.12. This was in response to learnings from market activity since the last update in 2012.

Discussion

Whilst not substantially altering the central requirements for a trading policy, the updated Guidance Note provides expanded commentary on issues such as:

- application to people beyond key management personnel (KMP);
- application to transactions beyond the basic trading in shares;
- the process for giving a trading clearance; and
- measures to ensure compliance.

The result is a Guidance Note that offers comprehensive commentary on a range of issues, which may affect trading by KMPs or other personnel having access to inside information.

Key Considerations

The new Guidance Note makes it clear that “the purpose of a share trading policy is not only to minimise the risk of actual insider trading, but also to avoid the appearance of insider trading and the reputational damage that may cause”.

The updated Guidance Note provides new guidance on a range of peripheral issues, which companies may often encounter when preparing or implementing share trading policies, with suggestions as to what content should be included in the trading policy to address those issues.

Key considerations taken from the updated Guidance Note are:

- An emphasis on a company to create a fit-for-purpose trading policy for that company, tailored to its specific circumstances;
- Commentary on the value of an expansion of the trading policy to family members of KMPs and other employees (such as IT staff, next layer of management below KMP, executive assistants), utilising contractual

obligations under employment agreements to establish a legal footing for enforcement and including the use of ad hoc trading restrictions for staff below KMP level;

- Expanded discussion on the determination of “closed periods”, including generally accepted “trading windows”, and other prohibited periods, with an emphasis on reserving the right to impose ad hoc restrictions and suggestions for ensuring that such restrictions are implemented in a manner that will not create speculation itself;
- An emphasis on the inclusion of a warning statement within the policy that trading during a permitted period does not preclude a person from breaching inside trading laws if they are in possession of inside information at the time;
- New commentary on approaches for implementing a policy which covers more than simple shares trades - including trading in derivatives, short-term trading activity, short selling activity, hedging transactions, margin lending transactions and trading in securities of other entities;
- Increased commentary on the procedure for granting a written clearance to trade, including who should give the clearance, the factors to take into account and the duration of the clearance; and
- Expanded examples of suggested steps that a company can take to bring awareness and understanding to the trading policy and to monitor compliance with the policy.

ASX listed companies are contractually bound by their listing application to comply with the ASX Listing Rules, in particular, ASX Listing Rule 12.9 (share trading policy). Because ASX Listing Rules 12.9 to 12.12 have not been amended to cover the detail required by GN27, GN27 would seem to have status as ‘good practice guidance’ rather than being prescriptive content backed by the ASX Listing Rules. However, given that GN27 may only be influential over a decision for a company to amend its share trading policy, good corporate governance suggests that by adopting the GN27 changes, a listed entity is demonstrating to its shareholders and other stakeholders that it treats share trading seriously.

What Should You be Doing?

Listed entities should now review their share trading policies and approval processes, and make individual approval decisions, with this guidance in mind.

If you need assistance with this transition, please do not hesitate to contact us.

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