

Guidance Note 27

Trading Policies

Issued: 1 January 2011

Key topics

1. Requirement to have a trading policy
2. Disclosure of material changes to the trading policy
3. Trading that may be excluded from the operation of the trading policy
4. Exceptional circumstances
5. Trading in derivative products

Listing Rules

1. Listing Rule 12.9
2. Listing Rule 12.10
3. Listing Rule 12.12

Cross-reference

1. Chartered Secretaries Australia *Good Governance Guide: No 3.2 – Issues to consider in developing or reviewing the policy on trading in company securities*

Guidance Note History

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Introduction

1. This Guidance Note is published to assist listed entities to comply with their obligations under listing rules 12.9, 12.10 and 12.12.

General

2. Listing rule 12.9 requires each listed entity to have a trading policy that complies with certain minimum content requirements set out in listing rule 12.12. Listing rule 12.12 includes a requirement that an entity's trading policy specify fixed periods when its key management personnel are prohibited from trading in the entity's securities.
3. Subject to the requirements of listing rule 12.12, it is for each entity to determine the details of its trading policy, having regard to its circumstances and to listing rule 19.2, which sets out the manner in which each listed entity should approach its obligation to comply with the listing rules. The primary purpose of this Guidance Note is not otherwise to restrict the matters that a listed entity may have regard to in determining its trading policy, but to indicate some trading that ASX considers may commonly be excluded from the operation of the trading restrictions established under the trading policy (noting that under listing rule 12.12.3, any such trading must be specified in the entity's trading policy) and some circumstances that ASX considers may commonly be deemed exceptional for purposes of listing rule 12.12.4.
4. Listed entities should also note that listing rule 12.12 sets out the minimum requirements for the content of a trading policy with respect to trading in a listed entity's securities by its key management personnel. A listed entity can choose to adopt a more restrictive and broad-ranging policy, applicable to trading in its securities by a wider group or all of its employees.
5. A listed entity's trading policy should raise awareness and provide an explanation of the prohibition on insider trading under the Corporations Act. An entity's trading policy should also explain that trading is prohibited at any time if the person possesses inside information, irrespective of whether the policy provides that trading could occur in a

trading window or outside a prohibited period, or whether it is excluded from the operation of the policy.

6. Guidance on the issues to consider in developing and reviewing a trading policy is provided by Chartered Secretaries Australia in *Good Governance Guide: No 3.2 – Issues to consider in developing or reviewing the policy on trading in company securities*.

Listing Rule 12.10 and material changes to the trading policy

7. For the purposes of listing rule 12.10, amendments to an entity's trading policy that would constitute a material change and which would require that the amended policy be given to ASX for release to the market include:
 - 7.1. changes to the fixed periods specified in the trading policy when the entity's key management personnel are prohibited from trading in the entity's securities;
 - 7.2. changes with respect to the trading that is excluded from the operation of the entity's trading policy; and
 - 7.3. changes with respect to the exceptional circumstances in which the entity's key management personnel may be permitted to trade during a prohibited period.

Listing Rule 12.12.3 and excluded trading

8. The listing rules contemplate that there may be trading that a listed entity excludes from the operation of its trading policy. This may be appropriate, for instance, where the trading results in no change in beneficial interest in the securities, where trading occurs via investments in a scheme or other arrangement where the investment decisions are exercised by a third party, where the restricted person has no control or influence with respect to trading decisions, or where the trading occurs under an offer to all or most of the security holders of the entity.
9. For the purposes of listing rule 12.12.3, some examples of trading that a listed entity may consider excluding from the operation of its trading policy are:
 - 9.1. transfers of securities of the entity already held into a superannuation fund or other saving scheme in which the restricted person is a beneficiary;
 - 9.2. an investment in, or trading in units of, a fund or other scheme (other than a scheme only investing in the securities of the entity) where the assets of the fund or other scheme are invested at the discretion of a third party;
 - 9.3. where a restricted person is a trustee, trading in the securities of the entity by that trust provided the restricted person is not a beneficiary of the trust and any decision to trade during a prohibited period is taken by the other trustees or by the investment managers independently of the restricted person;
 - 9.4. undertakings to accept, or the acceptance of, a takeover offer;
 - 9.5. trading under an offer or invitation made to all or most of the security holders, such as, a rights issue, a security purchase plan, a dividend or distribution reinvestment plan and an equal access buy-back, where the plan that determines

the timing and structure of the offer has been approved by the board. This includes decisions relating to whether or not to take up the entitlements and the sale of entitlements required to provide for the take up of the balance of entitlements under a renounceable pro rata issue;

- 9.6. a disposal of securities of the entity that is the result of a secured lender exercising their rights, for example, under a margin lending arrangement. The trading policy should also set out the rules that are applicable to key management personnel with respect to entering into agreements that provide lenders with rights over their interests in the entity's securities;
- 9.7. the exercise (but not the sale of securities following exercise) of an option or a right under an employee incentive scheme, or the conversion of a convertible security, where the final date for the exercise of the option or right, or the conversion of the security, falls during a prohibited period and the entity has been in an exceptionally long prohibited period or the entity has had a number of consecutive prohibited periods and the restricted person could not reasonably have been expected to exercise it at a time when free to do so; and
- 9.8. trading under a non-discretionary trading plan for which prior written clearance has been provided in accordance with procedures set out in the trading policy and where:
 - 9.8.1. the restricted person did not enter into the plan or amend the plan during a prohibited period;
 - 9.8.2. the trading plan does not permit the restricted person to exercise any influence or discretion over how, when, or whether to trade; and
 - 9.8.3. the entity's trading policy does not allow the restricted person to cancel the trading plan or cancel or otherwise vary the terms of his or her participation in the trading plan during a prohibited period other than in exceptional circumstances.

Listing Rule 12.12.4 and exceptional circumstances

10. A restricted person, who is not in possession of inside information in relation to the entity, may be given prior written clearance to sell or otherwise dispose of the securities of the entity during a prohibited period under the trading policy where the restricted person is in severe financial hardship or there are other exceptional circumstances. It is for each listed entity to determine what constitutes exceptional circumstances and to set that out in its trading policy.
11. A person may be in severe financial hardship if he or she has a pressing financial commitment that cannot be satisfied otherwise than by selling the relevant securities of the entity.
 - 11.1. For example, a tax liability of such a person would not normally constitute severe financial hardship unless the person has no other means of satisfying the liability. A tax liability relating to securities received under an employee incentive scheme would also not normally constitute severe financial hardship or otherwise be considered an exceptional circumstance for the purpose of obtaining prior written clearance to sell or otherwise dispose of securities during a prohibited period.

12. An entity may consider it an exceptional circumstance if the person is required by a court order, or there are court enforceable undertakings, for example, in a bona fide family settlement, to transfer or sell the securities of the entity or there is some other overriding legal or regulatory requirement for him or her to do so.
13. The determination of whether the person in question is in severe financial hardship or whether a particular set of circumstances falls within the range of exceptional circumstances identified in the policy can only be made by the designated officer(s) under the policy for this purpose. In recognition of the case that exceptional circumstances, by their nature, cannot always be specified in advance, it is envisaged that there may be other circumstances, which have not been identified in the policy, that may be deemed exceptional by the chairman or the chief executive officer (where the chairman is involved) and whereby prior written clearance is granted to permit trading. The person seeking clearance to trade must satisfy the designated officer(s) that they are in severe financial hardship or that their circumstances are otherwise exceptional and that the proposed sale or disposal of the relevant securities is the only reasonable course of action available.
14. If the designated officer is in any doubt in making such determinations on behalf of the entity, consideration should be given to the purpose of the listing rules and the discretion should be exercised with caution.
15. The trading policy should also include details as to the duration of any prior written clearance to trade in exceptional circumstances during a prohibited period and the form of written clearance that is acceptable (for example, whether electronic clearance via email is acceptable).

Trading in derivative products

16. The trading policy should specify that key management personnel are prohibited from trading during prohibited periods in financial products issued or created over or in respect of the entity's securities.