

## Chapter 9

# Continuing obligations



## THE MODEL CODE (R)

This annex is referred to in LR 9.2 (Requirements with continuing application) and LR 15 (Investment entities).

**FCA**

Table: The Model Code

### Introduction

This code imposes restrictions on dealing in the *securities* of a *listed company* beyond those imposed by law. Its purpose is to ensure that *persons discharging managerial responsibilities* do not abuse, and do not place themselves under suspicion of abusing, *inside information* that they may be thought to have, especially in periods leading up to an announcement of the *company's* results.

Nothing in this code sanctions a breach of section 118 of the *Act* (Market abuse), the insider dealing provisions of the Criminal Justice Act or any other relevant legal or regulatory requirements.

### Definitions

1 In this code the following definitions, in addition to those contained in the *listing rules*, apply unless the context requires otherwise:

- (a) *close period* means:
  - (i) the period of 60 days immediately preceding a preliminary announcement of the *listed company's* annual results or, if shorter, the period from the end of the relevant financial year up to and including the time of announcement; or
  - (ii) the period of 60 days immediately preceding the publication of its annual financial report or if shorter the period from the end of the relevant financial year up to and including the time of such publication; and
  - (iii) if the *listed company* reports on a half yearly basis the period from the end of the relevant financial period up to and including the time of such publication; and
  - (iv) if the *listed company* reports on a quarterly basis the period of 30 days immediately preceding the announcement of the quarterly results or, if shorter, the period from the end of the relevant financial period up to and including the time of the announcement;
- (b) *connected person* has the meaning given in section 96B (2) of the *Act* (Persons discharging managerial responsibilities and connected persons);
- (c) *dealing* includes:

- (i) any acquisition or disposal of, or agreement to acquire or dispose of any of the *securities* of the *company*;
  - (ii) entering into a contract (including a contract for difference) the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the price of any of the *securities* of the *company*;
  - (iii) the grant, acceptance, acquisition, disposal, exercise or discharge of any option (whether for the call, or put or both) to acquire or dispose of any of the *securities* of the *company*;
  - (iv) entering into, or terminating, assigning or novating any stock lending agreement in respect of the *securities* of the *company*;
  - (v) using as security, or otherwise granting a charge, lien or other encumbrance over the *securities* of the *company*;
  - (vi) any transaction, including a transfer for nil consideration, or the exercise of any power or discretion effecting a change of ownership of a beneficial interest in the *securities* of the *company*; or
  - (vii) any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of any *securities* of the *company*;
- (d) [deleted]
- (e) *prohibited period* means:
- (i) any *close period*; or
  - (ii) any period when there exists any matter which constitutes *inside information* in relation to the *company*;
- (f) *restricted person* means a *person discharging managerial responsibilities* ; and
- (g) *securities of the company* means any publicly traded or quoted *securities* of the *company* or any member of its *group* or any *securities* that are convertible into such *securities*.

#### Dealings not subject to the provisions of this code

#### 2 The following dealings are not subject to the provisions of this code:

- (a) undertakings or elections to take up entitlements under a rights issue or other offer (including an offer of *securities* of the *company* in lieu of a cash dividend);
- (b) the take up of entitlements under a rights issue or other offer (including an offer of *securities* of the *company* in lieu of a cash dividend);
- (c) allowing entitlements to lapse under a rights issue or other offer (including an offer of *securities* of the *company* in lieu of a cash dividend);
- (d) the sale of sufficient entitlements nil-paid to take up the balance of the entitlements under a rights issue;
- (e) undertakings to accept, or the acceptance of, a takeover offer;
- (f) dealing where the beneficial interest in the relevant *security* of the *company* does not change;

- (g) transactions conducted between a *person discharging managerial responsibilities* and their spouse, civil partner, child or step-child (within the meaning of section 96B(2) of the *Act*);
- (h) transfers of *shares* arising out of the operation of an *employees' share scheme* into a savings scheme investing in *securities* of the *company* following:
  - (i) exercise of an option under an approved SAYE option scheme; or
  - (ii) release of *shares* from a HM Revenue and Customs approved share incentive plan ;
- (i) with the exception of a disposal of *securities* of the *company* received by a restricted person as a participant, dealings in connection with the following *employees' share schemes* ;
  - (i) an HM Revenue and Customs approved SAYE option scheme or share incentive plan, under which participation is extended on similar terms to all or most employees of the participating *companies* in that scheme; or
  - (ii) a scheme on similar terms to a HM Revenue and Customs approved SAYE option scheme or share incentive plan, under which participation is extended on similar terms to all or most employees of the participating *companies* in that scheme; or
- (j) the cancellation or surrender of an option under an *employees' share scheme*;
- (k) transfers of the *securities* of the *company* by an independent trustee of an *employees' share scheme* to a beneficiary who is not a restricted person;
- (l) transfers of *securities* of the *company* already held by means of a matched sale and purchase into a saving scheme or into a pension scheme in which the restricted person is a participant or beneficiary;
- (m) an investment by a restricted person in a scheme or arrangement where the assets of the scheme (other than a scheme investing only in the *securities* of the *company*) or arrangement are invested at the discretion of a third party;
- (n) a dealing by a restricted person in the units of an authorised unit trust or *authorised contractual scheme* or in *shares* in an *open-ended investment company*; and
- (o) bona fide gifts to a restricted person by a third party.

#### Dealing by restricted persons

3 A restricted person must not deal in any *securities* of the *company* without obtaining clearance to deal in advance in accordance with paragraph 4 of this code.

#### Clearance to deal

- 4 (a) A *director* (other than the chairman or chief executive) or company secretary must not deal in any *securities* of the *company* without first notifying the chairman (or a *director* designated by the board for this purpose) and receiving clearance to deal from him.
- (b) The chairman must not deal in any *securities* of the *company* without first notifying the chief executive and receiving clearance to deal from him or, if

the chief executive is not present, without first notifying the senior independent director, or a committee of the board or other officer of the *company* nominated for that purpose by the chief executive, and receiving clearance to deal from that director, committee or officer .

- (c) The chief executive must not deal in any *securities* of the *company* without first notifying the chairman and receiving clearance to deal from him or, if the chairman is not present, without first notifying the senior independent director, or a committee of the board or other officer of the *company* nominated for that purpose by the chairman, and receiving clearance to deal from that director, committee or officer .
- (d) If the role of chairman and chief executive are combined, that *person* must not deal in any *securities* of the *company* without first notifying the board and receiving clearance to deal from the board.
- (e) *Persons discharging managerial responsibilities* (who are not *directors*) must not deal in any *securities* of the *company* without first notifying the company secretary or a designated *director* and receiving clearance to deal from him.

5 A response to a request for clearance to deal must be given to the relevant restricted person within five *business days* of the request being made.

6 The *company* must maintain a record of the response to any dealing request made by a restricted person and of any clearance given. A copy of the response and clearance (if any) must be given to the restricted person concerned.

7 A restricted person who is given clearance to deal in accordance with paragraph 4 must deal as soon as possible and in any event within two *business days* of clearance being received.

#### Circumstances for refusal

- 8 A restricted person must not be given clearance to deal in any *securities* of the *company*:
- (a) during a prohibited period; or
  - (b) on considerations of a short term nature. An investment with a maturity of one year or less will always be considered to be of a short term nature.

#### Dealings permitted during a prohibited period

##### Dealing in exceptional circumstances

9 A restricted person, who is not in possession of *inside information* in relation to the *company*, may be given clearance to deal if he is in severe financial difficulty or there are other exceptional circumstances. Clearance may be given for such a *person* to sell (but not purchase) *securities* of the *company* when he would otherwise be prohibited by this code from doing so. The determination of whether the *person* in question is in severe financial difficulty or whether there are other exceptional circumstances can only be made by the *director* designated for this purpose.

10 A *person* may be in severe financial difficulty if he has a pressing financial commitment that cannot be satisfied otherwise than by selling the relevant *securities* of the *company*. A liability of such a *person* to pay tax would not normally constitute severe financial difficulty unless the *person* has no other means of satisfying the liability. A circumstance will be considered exceptional if the *person* in question is required by a court order to

transfer or sell the *securities* of the *company* or there is some other overriding legal requirement for him to do so.

- 11 The *FCA* should be consulted at an early stage regarding any application by a restricted person to deal in exceptional circumstances.

#### Awards of securities and options

- 12 The grant of options by the board of *directors* under an *employees' share scheme* to individuals who are not restricted persons may be permitted during a prohibited period if such grant could not reasonably be made at another time and failure to make the grant would be likely to indicate that the *company* was in a prohibited period.

- 13 The award by the *company* of *securities*, the grant of options and the grant of rights (or other interests) to acquire *securities* of the *company* to restricted persons is permitted in a prohibited period if:

- (a) the award or grant is made under the terms of an *employees' share scheme* and the scheme was not introduced or amended during the relevant prohibited period; and
- (b) either:
  - (i) the terms of such *employees' share scheme* set out the timing of the award or grant and such terms have either previously been approved by shareholders or summarised or described in a document sent to shareholders, or
  - (ii) the timing of the award or grant is in accordance with the timing of previous awards or grants under the scheme; and
- (c) the terms of the *employees' share scheme* set out the amount or value of the award or grant or the basis on which the amount or value of the award or grant is calculated and do not allow the exercise of discretion; and
- (d) the failure to make the award or grant would be likely to indicate that the *company* is in a prohibited period.

#### Exercise of options

- 14 Where a *company* has been in an exceptionally long prohibited period or the *company* has had a number of consecutive prohibited periods, clearance may be given to allow the exercise of an option or right under an *employees' share scheme*, or the conversion of a convertible security, where the final date for the exercise of such option or right, or conversion of such security, falls during a prohibited period and the restricted person could not reasonably have been expected to exercise it at a time when he was free to deal.

- 15 Where the exercise or conversion is permitted pursuant to paragraph 14, clearance may not be given for the sale of the *securities* of the *company* acquired pursuant to such exercise or conversion including the sale of sufficient *securities* of the *company* to fund the costs of the exercise or conversion and/or any tax liability arising from the exercise or conversion unless a binding undertaking to do so was entered into when the *company* was not in a prohibited period.

#### Qualification shares

**16** Clearance may be given to allow a *director* to acquire qualification *shares* where, under the *company's constitution*, the final date for acquiring such *shares* falls during a prohibited period and the *director* could not reasonably have been expected to acquire those shares at another time.

#### Saving schemes

**17** A restricted person may enter into a scheme under which only the *securities* of the *company* are purchased pursuant to a regular standing order or direct debit or by regular deduction from the *person's* salary, or where such *securities* are acquired by way of a standing election to re-invest dividends or other distributions received, or are acquired as part payment of the *person's* remuneration without regard to the provisions of this code, if the following provisions are complied with:

- (a) the restricted person does not enter into the scheme during a prohibited period, unless the scheme involves the part payment of remuneration in the form of *securities* of the *company* and is entered into upon the commencement of the *person's* employment or in the case of a non-executive *director* his appointment to the board;
- (b) the restricted person does not carry out the purchase of the *securities* of the *company* under the scheme during a prohibited period, unless the restricted person entered into the scheme at a time when the *company* was not in a prohibited period and that person is irrevocably bound under the terms of the scheme to carry out a purchase of *securities* of the *company* (which may include the first purchase under the scheme) at a fixed point in time which falls in a prohibited period;
- (c) the restricted person does not cancel or vary the terms of his participation, or carry out sales of *securities* of the *company* within the scheme during a prohibited period; and
- (d) before entering into the scheme, cancelling the scheme or varying the terms of his participation or carrying out sales of the *securities* of the *company* within the scheme, the restricted person obtains clearance in accordance with paragraph 4.

#### Acting as a trustee

**18** Where a restricted person is acting as a trustee, dealing in the *securities* of the *company* by that trust is permitted during a prohibited period where:

- (a) the restricted person is not a beneficiary of the trust; and
- (b) the decision to deal is taken by the other trustees or by investment managers on behalf of the trustees independently of the restricted person.

**19** The other trustees or investment managers acting on behalf of the trustees can be assumed to have acted independently where the decision to deal:

- (a) was taken without consultation with, or other involvement of, the restricted person; or
- (b) was delegated to a committee of which the restricted person is not a member.

#### Dealing by connected persons and investment managers

20 **A person discharging managerial responsibilities** must take reasonable steps to prevent any dealings by or on behalf of any *connected person* of his in any *securities* of the *company* on considerations of a short term nature.

21 **A person discharging managerial responsibilities** must seek to prohibit any dealings in the *securities* of the *company* during a close period:

- (a) by or on behalf of any *connected person* of his; or
- (b) by an investment manager on his behalf or on behalf of any *person* connected with him where either he or any *person* connected has funds under management with that investment fund manager, whether or not discretionary (save as provided by paragraphs 17 and 18).

22 **A person discharging managerial responsibilities** must advise all of his *connected persons* and investment managers acting on his behalf:

- (a) of the name of the *listed company* within which he is a *person discharging managerial responsibilities*;
- (b) of the *close periods* during which they cannot deal in the *securities* of the *company*; and
- (c) that they must advise the *listed company* immediately after they have dealt in *securities* of the *company*.

#### Dealing under a trading plan

23 A restricted person may deal in *securities* of a *company* pursuant to a *trading plan* if clearance has first been given in accordance with paragraph 4 of this Code to the person entering into the plan and to any amendment to the plan. A restricted person must not cancel a *trading plan* unless clearance has first been given in accordance with paragraph 4 of this Code for its cancellation.

24 A restricted person must not enter into a *trading plan* or amend a *trading plan* during a *prohibited period* and clearance under paragraph 4 of this Code must not be given during a *prohibited period* to the entering into, or amendment of, a *trading plan*. Clearance under paragraph 4 of this Code may be given during a *prohibited period* to the cancellation of a *trading plan* but only in the exceptional circumstances referred to in paragraphs 9 and 10 of this Code.

25 A restricted person may deal in *securities* of a *company* during a *prohibited period* pursuant to a *trading plan* if:

- (a) the *trading plan* was entered into before the *prohibited period*;
- (b) clearance under paragraph 4 of this Code has been given to the person entering into the *trading plan* and to any amendment to the *trading plan* before the *prohibited period*; and
- (c) the *trading plan* does not permit the restricted person to exercise any influence or discretion over how, when, or whether to effect dealings.

26 Where a transaction occurs in accordance with a *trading plan*, the restricted person must notify the *issuer* at the same time as he makes the notification required by **DTR 3.1.2 R** of:

- (a) the fact that the transaction occurred in accordance with a *trading plan*; and

(b) the date on which the relevant *trading plan* was entered into.