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Insights

FCA FINES CHAIR OF A LISTED COMPANY FOR UNLAWFULLY DISCLOSING INSIDE INFORMATION

8 August 2022

SUMMARY

The chair of a premium-listed company has been fined £80,000 for unlawfully disclosing inside information to major shareholders before the information was announced to the market.

This case acts as a reminder for companies to continuously consider what information, if any, can be disclosed and to whom, as well as the scope for individual senior officer accountability. Commenting, Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA said, "*The law requires inside information to be disclosed properly and not to major shareholders or others in advance of announcements, as in this case. We will continue to rigorously enforce against breaches when we see them to ensure this important principle remains uppermost in the minds of issuers and their senior officers*."

Facts

In October 2018, the chair of a premium-listed company (Company A) disclosed to senior individuals at two of Company A's major shareholders that Company A expected to make an RNS announcement (within five days), depending on the board's analysis, saying:

- Company A was revising its financial guidance (for revenue growth); and
- that the CEO was retiring.

The FCA determined that this amounted to unlawful disclosure of inside information. Based on the chair's considerable experience, position and having previously received training on the Market Abuse Regulation (MAR), the FCA found that the chair acted negligently in disclosing the information to the individuals.

Despite representations made by Company A and its brokers to the contrary, the FCA reached the view that the information constituted inside information within the meaning of MAR and that the

disclosures to the individuals were made otherwise than in the normal exercise of employment, profession or duties. Notwithstanding that the recipients had acknowledged the confidential nature of the information and agreed not to deal, the disclosure to them still needed to be reasonable and necessary for it to fall inside the scope of the normal exercise of employment, profession or duties.

The chair's explanation that he did not want to "*surprise shareholders of scale with announcements*" was not considered a good reason and although the FCA agreed that engaging/fostering good relations with shareholders formed part of the chair's duties, disclosing inside information for this reason is not consistent with MAR which seeks to prevent "*unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence*".

It is worth noting that MAR permits discussions of a general nature regarding the business and market developments between shareholders and management concerning a company but that this is narrowly interpreted and the FCA found that these disclosures by the chair of inside information were outside the scope of that type of discussion.

The FCA noted that:

- the chair did not make similar disclosures to several other larger shareholders of Company A notwithstanding his explanations referred to above; and
- the potential for the information to be abused was all the greater as the chair was aware that one of the recipients of the information had indicated to the chair its intention to build a more significant shareholding in Company A. This was an important additional factor which should have made the chair question the appropriateness of making the disclosure and to seek clear, formal advice first. The FCA also noted that: inside information in relation to the CEO's retirement existed, at the latest, from the time the CEO had indicated that he would leave immediately subject to settlement of his arrangements, contradicting the chair's view that such information was not inside information because he *"wasn't quite sure how [the indication of retirement] was going to work out"*.

Conclusions

The fine reflected, to some extent, the fact that the chair did not make any profit or avoid any loss as a result of the disclosures nor did the market abuse have an adverse effect on the markets. The FCA also accepted the chair's explanation that he believed he was acting in the best interests of the company at the time. These were factors taken into account when considering the level of the financial penalty but did not dissuade the authority from taking the action it did.

This case highlights the importance of a company classifying what constitutes inside information and taking clear, formal advice regarding the specific question of what information can be properly

disclosed as well as in what manner and to whom, before it is disclosed.

FCA Final Notice

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