

UK Financial Conduct Authority Fines a Senior Executive for Failing to Notify Personal Trades as Required by the Market Abuse Directive

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On 20 December 2019, the UK financial services regulator, the Financial Conduct Authority (“FCA”), announced that it had fined a senior executive of a UK-listed company £45,000 for a failure to disclose several trades in the company’s shares, as required under Article 19 of the Market Abuse Regulation (“MAR”).

Background. Article 19 of MAR provides that persons discharging managerial responsibilities, as well as persons closely associated with them, must notify the issuer and the competent authority of every transaction conducted on their own account relating to the shares, debt instruments or other linked financial instruments of that issuer. The notification must be made no later than three business days after the date of the transaction. Article 19 also imposes an obligation on the issuer to ensure that this information is made public within the same three-day period.

Persons discharging managerial responsibilities (“PDMRs”) are those who are members of the administrative, management or supervisory body of an issuer or senior executives with access to inside information and power to take managerial decisions affecting the future developments and business prospects of the entity.

The Case. Mr. Gorman was employed as the Managing Director of the Logistics Division of Braemar Shipping Services plc (“Braemar”), a company listed on the main market of the London Stock Exchange. Although not a member of the Board of Directors of Braemar, Mr. Gorman was a senior employee and a member of Braemar’s Executive Committee. For the purposes of MAR, he was a PDMR.

In 2016, when MAR came into effect, Braemar informed Mr. Gorman that he was a PDMR. He was provided with a copy of Braemar’s share-dealing policy, which required that:

- Prior to dealing in Braemar’s shares, a PDMR must make a written application for clearance to deal.

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- Following a trade in Braemar's shares, a PDMR must notify Braemar (within one business day) and Braemar's competent authority, the FCA (within three business days) in writing, of the transaction.

Braemar also provided Mr. Gorman with a briefing pack explaining his responsibilities as a PDMR under MAR. He signed an acknowledgement to say that he had received and read the information and understood his legal obligations. In his defence, Mr. Gorman stated that he did not read or check the documents and was not aware of his obligations as a PDMR. The FCA made it clear that it does not consider a claim of ignorance of obligations as a defence for a breach of MAR.

In 2016–2017, Mr. Gorman sold Braemar shares on three occasions over a six-month period and failed to notify either Braemar or the FCA of any of these transactions. He also failed to seek prior authorisation from Braemar to trade as required by the company's internal policies.

The FCA's Decision. The FCA found that each of Mr. Gorman's three failures to notify a trade in Braemar's shares to the company or the FCA amounted to a breach of Article 19(1) of MAR and decided to impose a £45,000 fine on Mr. Gorman.

The detailed methodology for how the fine was calculated is set out in the FCA's Final Notice on the case. In the first instance, the FCA considered Mr. Gorman's income at the time of the breaches, which was £643,684. They also looked at various factors which reflected the impact and nature of the breach and whether it was committed deliberately or recklessly. Taking all this into consideration, the FCA set the fine as 10% of Mr. Gorman's annual income, but taking into account Mr. Gorman's co-operation with the investigation, the FCA applied a 30% discount to the fine, bringing it to £45,000. It should be noted that the FCA has powers to impose a fine up to 40% of an individual's income in the case of a breach of MAR.

Key Takeaways. It is important to note is that there was no suggestion that Mr. Gorman was trading in possession of inside information or in breach of any other obligations under MAR or any insider dealing regime. His offence was simply a failure to notify his share dealings as required by Article 19 of MAR.

When detailing the factors that "aggravated" the offence, the FCA noted that in the months prior to MAR coming into force in July 2016, the FCA and other agencies had published a large volume of materials relating to the implementation of MAR, including the obligations of PDMRs, and such materials were widely accessible. The FCA made it clear that it does not consider a claim of ignorance of obligations as a defence for a breach of MAR.

This is the first time that the FCA has used its powers to impose a fine for a breach of the PDMR reporting requirements and it indicates both that the FCA monitors breaches of obligations under Article 19 of MAR and its willingness to take action for breaches of MAR by PDMRs. This decision underlines the importance of PDMRs having a clear understanding of, and complying with, their reporting and disclosure obligations under MAR.



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