

Feedback to Trust and Corporate Service Providers (“TCSPs”) on presentations by Commission staff

In August and September 2015, Financial Supervision Commission staff gave presentations to TCSPs on regulatory topics relevant to the industry. This is a summary of the three topics covered in those presentations:

- *Provision of services to public companies*
- *Insider dealing, market abuse and market manipulation*
- *Guidance on directorships and trusteeships*

Provision of services to public companies

Public companies make up less than 1% of the companies to which Isle of Man TCSPs provide services. However, they are more important than numbers alone would indicate. Public companies present opportunities to the industry for the provision of high quality, high added-value services, but also challenges because of the number of investors who are affected if things go wrong.

The presentation distinguished between those companies which are Listed on (the main market) of a Stock Exchange or quoted (on a secondary market); and other companies which offered shares to the public but are not Listed or quoted.

The presentation drew attention to the need to plan for growth when commencing services to a start-up which plans to become a Listed or quoted company. Indicators of good practice included:

- Planning for other advisers and functionaries to be taken on by the company (typically this might include legal advisers, auditors, a broker or NOMAD, a share registrar and PR agency);
- Keeping terms of business under regular review to ensure that they reflect both the developing role of the TCSP in providing services to the company, and interaction between the TCSP and the new advisers and functionaries (for example moving responsibility for share registers when a new registrar is appointed);
- Addressing issues of confidentiality and insider dealing risk (see below);
- Taking great care in the wording and preparation of documents. The speakers drew attention to the First Deemster’s comments on interpretation of company Articles of Association at paragraph 94 in judgment CHP2014/49 - Origo Partners Ltd. v Brooks MacDonald Asset Management & other (judgment of 9 July 2015);
- Being aware of the risk that an error in the conduct of the company’s affairs could result in public announcements and possibly the suspension of share trading while the error was rectified;
- For fully Listed securities, having regard to the [“Recognised auditor” regime](#);
- Having regard to all of the stakeholders and particularly the interests of investors who are not part of the management;

- Pricing services realistically to allow for the additional duties and responsibilities involved. Although this was primarily a commercial consideration, it could have regulatory implications.

Finally it was noted that whilst Listed and quoted companies were subject to a disclosure regime, which could contribute to effective ongoing monitoring, the same was not true of other companies which offered shares to the public. Licenceholders needed to be vigilant in handling such companies.

Insider dealing, market abuse and market manipulation

Licenceholders' compliance with relevant Insider Dealing, Market Abuse and Market Manipulation provisions falls under the regulator's supervisory powers via rules 8.4 and 8.5. In particular rule 8.4(2)(f)¹ states that:

"The responsible officers of a licenceholder must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure... appropriate safeguards to prevent and detect market manipulation or market abuse;"

The presentation covered three main risks to TCSPs from insider dealing, market abuse and market manipulation.

Direct contact with inside information

This is primarily a risk (but not limited) to TCSPs who provide services to Listed or quoted companies. Such licenceholders may come into contact with price-sensitive information before it is made public. This presents a risk that an employee of the licenceholder may use the inside information to deal in the securities of the quoted company or the information may be disseminated resulting in dealing by others.

Actions that a TCSP could undertake to control this risk include:

- *Identifying when inside information is received:* Ensuring controls etc in place to ensure any inside information received is identified as such e.g. recording / controlling the channels through which inside information is received;
- *Controlling how inside information is handled once received:* Ensuring controls are in place to ensure that inside information is not disseminated too widely, controls may include restricting those members of staff who have access to inside information;
- *Protecting against misuse of inside information:* Ensuring that inside information is not misused by employees. Controls may include having notification requirements or restrictions on staff trading in listed or quoted client companies.

¹ For Professional Officers, rule 9.12(3)(d) requires that *...appropriate consideration is given to risks of market manipulation or market abuse.*

Use of TCSP client structures to commit insider dealing

TCSP structures may also be used to commit insider dealing if the TCSP operates a stockbroking account and the UBO makes recommendations on investment selections. The use of a company (or trust) may disguise the UBO's involvement in the transaction, and be used to conceal his position as an insider:

Actions that a TCSP could take to control this risk include:

- *Reviewing Due Diligence held on the client:* Identifying whether any due diligence indicates that the client has a particular connection with any listed companies which may lead to them coming into contact with inside information;
- *Monitoring client trading activity:* Identifying whether there are conspicuous or suspicious trading movements on the account e.g. taking quick profits, particularly close to stock announcements.

Use of TCSP client structures to circumvent disclosure requirements

Most stock exchanges require that significant shareholders² and high profile persons (e.g. directors) within listed or quoted companies must disclose any personal account dealings. Directors or other persons within a listed company will probably also be subject to 'closed periods' where they cannot deal on their personal accounts, usually this is around the time the company is preparing its financial results. It is possible that a client of a TCSP may deliberately, or otherwise, circumvent these requirements.

Actions that a TCSP could take to control this risk include:

- *Reviewing CDD held on the client:* Identifying whether the client is a director or shareholder of a listed or quoted company;
- *Monitoring Trading:* Checking when trades are being made and whether disclosure is being made to the market.

Guidance on directorships and trusteeships

The Commission had updated its [guidance on TCSPs on the supply of staff to act as directors or trustees](#) of client companies and trust (whether directly or via a corporate director or corporate trustee).

The presentation distinguished this guidance from the [guidance on directors' duties](#).

The updated guidance stresses the need for key persons to have skills relevant to their role; enough time to discharge their responsibilities effectively; and support,

² For instance for most companies listed on the London Stock Exchange, shareholders are required to report when they go above a 3% shareholding and every 1% point thereafter.

both in the sense of technical support and support from management in the exercise of judgment in problem situations.

Some vetting applications are for key persons being proposed for the directorship roles for the first time. The guidance notes that the regulator would expect TCSPs to give new key persons a phased introduction to the role and with experienced co-directors.

Attention was drawn to the statement in the guidance that “the Commission will hold all of the directors of a corporate trustee or director responsible for the decisions of that corporate officer”.

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