Securities trading policy

Whitehaven Coal Limited ACN 124 425 396

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Table of contents

1 Introduction ---------- 1

1.1 General 1

1.2 Purpose 1

1.3 Policy overview 1

2 Definitions and interpretation ---------- 1

2.1 Definitions 1

2.2 Interpretation 3

3 Insider Trading ---------- 3

3.1 Prohibited conduct 3

3.2 Subsidiaries and associated entities 3

3.3 Consequences of Insider Trading 3

3.4 Prohibition 3

3.5 What is Inside Information 3

4 Securities Trading ---------- 4

4.1 Permitted Trading 4

4.2 Prohibited Trading 4

4.3 Hedging 5

4.4 Excluded Trading 5

4.5 Authorised Trading with Written Clearance 5

4.6 Written Clearance procedure 5

4.7 Guidance for Authorising Officers 6

4.8 Trading by Directors 7

4.9 Informing the Company of Trades 7

5 Persons covered by this Policy ---------- 7

5.1 Restricted Persons 7

5.2 Families and trusts 7

5.3 Trustees 7

6 Securities covered by this Policy ---------- 7

6.1 Company Securities 7

6.2 Other companies 8

6.3 Trading in other companies' Securities 8

6.4 Margin loans by Directors 8

Securities trading policy

Whitehaven Coal Limited ACN 124 425 396

1 Introduction

1.1 General

Key Management Personnel (including the Directors) and certain other employees nominated by the Board of Whitehaven Coal Limited ACN 124 425 396 are restricted from trading in securities and are subject to the Insider Trading prohibitions.

1.2 Purpose

This document records the Board's trading policy adopted on 24 May 2011.

1.3 Policy overview

This document outlines:

(a) when Key Management Personnel (including Directors) and certain other employees nominated by the Board may Trade;

(b) how to apply for approval to Trade during a Prohibited Period;

(c) sanctions for a breach of the Policy; and

(d) potential sanctions for a breach of the Insider Trading provisions.

2 Definitions and interpretation

2.1 Definitions

In this document:

Term	Definition
ASX	means ASX Limited ACN 008 624 691 and the exchange operated by it.
Authorised Trade	means a Trade authorised under paragraph 4.6.
Board	means the Company's board.
Chairman	means the chairman of the Board.
CEO	means the executive officer (by whatever title known, whether chief executive officer, managing director or otherwise) with sole responsibility for the strategic and operational management of the Company.
Closed Period	means any time other than an Open Period.

Term	Definition
Company	means Whitehaven Coal Limited ACN 124 425 396 and, as the context requires, its controlled entities.
Corporations Act	means *Corporations Act 2001* (Cth).
Designated Officer	means a person who is assigned the role of 'Designated Officer' for this Policy by the Board.
Director	means a director of the Company.
Excluded Trading	means Trading in circumstances set out in paragraph 4.4.
Inside Information	has the meaning given to that term in section 1042A Corporations Act (summarised in paragraph 3.5).
Insider Trading	has the meaning given to that term under Part 7.10, Division 3 Corporations Act (summarised in paragraph 3.1).
Key Management Personnel	has the meaning given to that term in the Listing Rules.
Listing Rules	means the listing rules of ASX.
Open Period	means a period of one month starting immediately after each of: (a) the announcement to the ASX of the half-yearly and annual results; and (b) the conclusion of the AGM.
Policy	means the policy contained in this document or in any amending or replacement document.
Prohibited Period	means each of the following periods (inclusive): (a) any Closed Period; and (b) any other period the Board decides Restricted Persons are to be prohibited from Trading in Securities.
Restricted Person	means a person to whom this Policy applies being Key Management Personnel and employees nominated by the Board under paragraph 5.
Secretary	means the secretary of the Company.
Securities	has the meaning set out in paragraph 6.1.
Security Holder	means a registered holder of Securities.
Trader	means a Restricted Person who Trades.
Trade	means to apply for, acquire or dispose of securities or to enter into an agreement to apply for, acquire or dispose of securities or to grant, accept, acquire, dispose, exercise or discharge an option or other right or obligation to acquire or dispose of securities and **Trading** has a corresponding meaning.
Written Clearance	means the authority written or electronic format to Trade given under paragraph 4.6.

2.2 Interpretation

Concepts not defined in this document but which have a meaning in the Corporations Act or the Listing Rules have that same meaning in this document.

3 Insider Trading

3.1 Prohibited conduct

If a person has Inside Information in relation to a company and knows, or ought reasonably to know that the information is Inside Information, that person must not:

(a) Trade in that company's securities;

(b) procure another person to Trade in that company's securities; or

(c) communicate the information, directly or indirectly, to another person who the person knows, or ought reasonably to know, is likely to Trade in those securities or procure another person to Trade in those securities.

3.2 Subsidiaries and associated entities

The prohibition against Insider Trading:

(a) extends to Trading in the securities of a subsidiary of a company about which a person has Inside Information;

(b) may extend to Trading in securities of other companies that deal with or are associated with the Company about which a person has Inside Information.

3.3 Consequences of Insider Trading

(a) Insider Trading is a criminal offence.

(b) Persons Trading with Inside Information risk prosecution, punishable by substantial fines or imprisonment or both, under the Corporations Act.

(c) The Company may also be liable if a Restricted Person engages in Insider Trading.

(d) Insider Trading is subject to the civil penalty provisions under the Corporations Act which empower a court to impose substantial pecuniary penalties, order payment of compensation to persons who suffer loss or damage as a result of the Insider Trading and make a disqualification order.

(e) In addition to any consequence under the Corporations Act, Insider Trading breaches this Policy. Breaches will be treated seriously by the Company and may attract disciplinary action, including termination of employment for any Restricted Person involved.

3.4 Prohibition

Insider Trading is prohibited at all times.

3.5 What is Inside Information

(a) Inside Information is information that:

(i) is not generally available; and

(ii) if it were generally available:

(A) a reasonable person would expect it would have a material effect on the price or value of the securities in question; or

(B) would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the Securities in question.

(b) Information is generally available if it:

(i) is readily observable;

(ii) has been made known in a manner likely to bring it to the attention of persons who commonly invest in securities of the relevant type and a reasonable period for that information to be disseminated has elapsed since it was made known; or

(iii) consists of deductions, conclusions or inferences made or drawn from information falling under paragraphs 3.5(b)(i) or 3.5(b)(ii).

4 Securities Trading

4.1 Permitted Trading

A Restricted Person may Trade if:

(a) they do not have Inside Information;

(b) outside:

(i) a Closed Period (unless it is with Written Clearance); or

(ii) a Prohibited Period; and

(c) not for short term or speculative gain.

4.2 Prohibited Trading

A Restricted Person must not Trade:

(a) if they have Inside Information;

(b) during a Closed Period (unless it is an Excluded Trade or an Authorised Trade);

(c) for short term or speculative gain; or

(d) for more than $50,000 worth of Securities to any party and written approval from the Chairman is not obtained, covering the form of and timing of the sale, and the management of its public disclosure, before entering into discussions for the potential sale of those Securities.

4.3 Hedging

A Restricted Person must not enter into hedging arrangements over any unvested Securities to which they (or an associate of theirs) may be entitled.

4.4 Excluded Trading

This Policy does not apply to:

(a) transfers of securities already held by a Restricted Person into a superannuation fund or other saving scheme in which the Restricted Person is a beneficiary;

(b) undertakings to accept, or the acceptance of, a takeover offer;

(c) Trading under an offer or invitation made to all or most of the Security Holders, such as a pro-rata 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 (which 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);

(d) disposals by a secured lender exercising their rights, for example, under an approved margin lending arrangement;

(e) 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;

(f) Trading under a non-discretionary trading plan for which prior written clearance has been provided in accordance with this Policy provided the Restricted Person did not enter into the plan or amend the plan during a Prohibited Period and the trading plan does not permit the Restricted Person:

    (i) to exercise any influence or discretion over how, when, or whether to Trade; or

    (ii) 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.

4.5 Authorised Trading with Written Clearance

A Restricted Person may Trade during a Closed Period if they have a Written Clearance to do so.

4.6 Written Clearance procedure

(a) The following persons (**Authorising Officers**) may issue a Written Clearance for a proposed Trade:

    (i) by the Chairman - another non-executive Director;

    (ii) by the CEO and any Director other than the Chairman - the Chairman or, in the absence of the Chairman, a non-executive Director nominated by the Chairman for the purpose; and

(iii) by any other person - the CEO or, in the absence of the CEO, a non-executive Director nominated by the CEO for the purpose.

(b) An Authorising Officer may only issue a Written Clearance if satisfied:

(i) that the Trade would not be:

(A) contrary to law;

(B) for speculative gain;

(C) to take advantage of Inside Information; or

(D) seen by the public, press, other Security Holders or ASX, as unfair; and

(ii) exceptional circumstances exist justifying the exercise of the discretion to issue the Written Clearance.

(c) Exceptional circumstances include where:

(i) the Trade is necessary:

(A) to sell securities to realise cash in a time of exceptional financial hardship (excluding a tax liability); or

(B) to comply with the requirement of Court order or enforceable undertaking; and

(C) because delaying the Trade to the next permitted period under paragraph 4.1, would:

(I) cause greater exceptional financial hardship;

(II) be exceptionally detrimental to the family's affairs; or

(III) be a breach of a Court order; or

(ii) a person has been restricted from trading for an extended period (including an Open Period) due to having been in possession of Inside Information; or

(iii) there are other circumstances that the Authorising Officer deems to be exceptional.

(d) Any Written Clearance must state the period for which the authority for Trading is given.

(e) Despite any authority given under this Policy, the responsibility for Trading rests with the individual Trader.

4.7 Guidance for Authorising Officers

An Authorising Officers' powers under this Policy must be exercised in accordance with the law and in a responsible and sensible manner having regard to the purpose of this Policy and having regard to desirable protocols to be followed to prevent Trading inside Closed Periods (except in exceptional circumstances) and protocols regarding Inside Information or the public perception that Insider Trading may have occurred by reason of this Policy not being adhered to.

4.8 Trading by Directors

(a) Each Director must notify the Secretary of any Trading by that Director so as to facilitate the timely lodgement with ASX of an Appendix 3Y or other prescribed form notifying ASX of the initial acquisition, change of interests or cessation of Directors' interests as required by the Listing Rules.

(b) Each Director's disclosure obligations in relation to their notifiable interests are set out in a director's disclosure deed (required by Listing Rule 3.19B).

4.9 Informing the Company of Trades

(a) Each Trader must notify the Secretary of the details of completed transactions within fourteen days after each transaction. Notification is necessary whether or not prior authority was required.

(b) The Secretary must maintain a register of securities transactions under this Policy.

5 Persons covered by this Policy

5.1 Restricted Persons

The Board may nominate persons to be included as a Restricted Person. Those persons must be informed of their nomination and be listed in a schedule maintained by the Designated Officer. As at the date of adoption, they include:

(a) corporate and divisional accounting officers reporting directly to any of the Directors or Key Management Personnel;

(b) secretaries and assistants performing confidential work and reporting to Directors or Key Management Personnel; and

(c) employees who have access to the Company's financial results.

5.2 Families and trusts

A Restricted Person must not Trade through any member of their family, or through a trust or company over which they have influence or control, in circumstances where they would have been prohibited from Trading in their own name.

5.3 Trustees

A Restricted Person who is a trustee of a deceased estate, should inform any co-trustees or trust beneficiaries, of his or her relationship with the Company and the restrictions on his ability to give advice in respect of Securities.

6 Securities covered by this Policy

6.1 Company Securities

This Policy applies to all securities issued by the Company of any kind including ordinary shares, preference shares, debentures, convertible notes, options and hedging mechanisms or derivatives instruments (**Securities**).

6.2 Other companies

This Policy also applies to the securities of:

(a) companies which are either a joint venture partner of the Company or for which the Company has made (or is planning to make) a takeover offer; and

(b) other companies under paragraph 6.3.

6.3 Trading in other companies' Securities

(a) Trading by a Restricted Person in the securities of other companies in which the Company has a substantial interest (10% or more) is subject to this Policy.

(b) This Policy does not affect the operation of the law, in particular the prohibition against Insider Trading, applying to a Restricted Person if they had Inside Information concerning another company.

6.4 Margin loans by Directors

(a) If a Director obtains a margin loan or similar arrangements in relation to a material number of Securities, he or she must notify the Board of those arrangements.

(b) Where a Director has entered into margin loan or similar funding arrangements for a material number of Securities, the Company may need to disclose the key terms of the arrangements, including the number of Securities involved, the trigger points, the right of the lender to sell unilaterally and any other material details.

(c) Whether a margin loan arrangement is material under the Listing Rules is a matter which the Company must decide having regard to the nature of its operations and its particular circumstances.