



Securities Client Alert

Is It Time to Update Your Insider Trading Policy?

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If you have not updated your Insider Trading Policy in the last 5-10 years, it may be time to dust it off and confirm that it is still in the mainstream of such policies. As noted in a [prior Client Alert](#), developments related to cybersecurity incidents is one area that the SEC has encouraged companies to consider including in their Insider Trading Policies. We referred to a few surveys by the Society for Corporate Governance to provide you with some of the common parameters related to trading blackout periods and preclearance procedures. Armed with this information, you will be in a better position to decide whether your policy is a candidate for updating.

I. Trading Blackout Periods

The first question is whether to impose a trading blackout period at all. Of the companies surveyed, nearly all of the responding companies impose blackout periods.

Approximately 90% of those companies started the trading blackout prior to the end of the fiscal quarter, with nearly 40% starting the blackout between 15-29 days before the end of the fiscal quarter and nearly 20% doing so 10-14 days before the end of the fiscal quarter. Between 15-20% of the responding companies began their blackout periods (i) 30 days or more before the end of the fiscal quarter or (ii) fewer than 10 days before the end of the fiscal quarter. This is a function of when the company has a good understanding of the financial results for the fiscal quarter (or fiscal year in the case of the fourth quarter).

The vast majority of responding companies ended the trading blackout period within one or two days following the release of the company's earnings release for the applicable period. Fewer companies waited three days before ending the trading blackout. This appears to be a function of the number of financial analysts who follow the company and how quickly the market absorbs the information.

In a surprising finding, nearly a quarter of the responding companies have a trading blackout period that covers all company employees. In our experience, companies may have a company-wide policy that prohibits trading on material nonpublic information, but they only impose the trading blackout on insiders, such as executive officers and directors or other employees who have access to this information.

II. Preclearance Procedures

Nearly 90% of the responding companies require their executive officers and directors to obtain individual preclearance to complete a trade in the company's securities. Only a small percentage of the responding companies issue a blanket preclearance to a designated group of employees. We recommend that the preclearance be in writing.

Most of the responding companies preclear trades for a limited number of days rather than the entire open trading window period, subject to early closing of the trading window for unanticipated developments. Of the companies that limit the number of days to complete a trade, the range of days is generally between 1-14 days. However, most of the responding companies limit the preclearance to five business days or less.

III. Conclusion

If your policy varies significantly from the parameters described above, it may be time to update your Insider Trading Policy.

If you have questions about your Insider Trading Policy, feel free to contact one of the attorneys in our Corporate & Securities Law Practice, including:

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