

Insider Trading Policies: A Survey of Recent Filings

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White & Case's Public Company Advisory Group has conducted a survey of publicly filed insider trading policies to assess emerging trends with respect to key insider trading policy terms. Starting with Form 10-K/20-F annual reports for June 30 fiscal year end companies, new SEC rules¹ (under Item 408 of Regulation S-K) now require companies to disclose whether they have adopted an insider trading policy, and, if so, to file such policy as Exhibit 19 to their Form 10-K² or Exhibit 11 to their Form 20-F. Companies with calendar year-end fiscal years will be required to meet these new insider trading policy requirements in their upcoming annual reports filed in early 2025.³

White & Case Survey of Filed Insider Trading Policies

White & Case has surveyed the insider trading policies recently filed by 50 public companies, including 25 Fortune 100 companies and 25 mid-cap companies. At their most basic level, a U.S. public company's insider trading policy prohibits insiders who possess material non-public information ("MNPI") from purchasing, selling, or otherwise trading in that company's securities, or in the securities of a related company about which the insider has MNPI as a result of serving as an employee, director or officer of his/her own company. They also typically prohibit "tipping," or providing MNPI to anyone outside of the company and recommending that they purchase, sell, or otherwise trade in the company's securities or the securities of a related company. Our survey found the trends set forth below.

How long after its release is MNPI considered "public" (outside of quarterly blackout periods)?

For information to be considered "public," it must be broadly disseminated, and the public market must be given adequate time to absorb and respond to the information. Companies adopt a variety of approaches as to how much time should pass after the company's release of material information via broad dissemination before that information is no longer "non-public." The data we found showcases this variety.

¹ Our alert on these rules is available [here](#).

² This exhibit filing requirement is satisfied if all of the company's insider trading policies and procedures are included in its "code of ethics," as defined in Item 406(b) of Regulation S-K, and the company has filed its code of ethics as Exhibit 14 to its Form 10-K pursuant to Item 406(c)(1) and Item 601(b)(14). In these cases, the exhibit index should list Exhibit 19, Insider Trading Policies and Procedures, and include a statement similar to the following: "Included in Exhibit 14."

³ Companies with a June 30 or September 30 fiscal-year end were already required to include this disclosure in their recently-filed Form 10-Ks/20-Fs.

Time Period for MNPI to be considered "public"	Number of Companies	Percentage of Companies
One trading day	22	44%
Two trading days	21	42%
Three trading days	1	2%
Not specified	6	12%

When do quarterly "blackout periods" start and end, and who is subject to them?

All companies surveyed impose a quarterly blackout period, or a set period running from sometime near the end of a quarter until the release of financial results for such quarter, when all or certain insiders are prohibited from trading in the company's stock given their access to MNPI about those results.

Start of quarterly blackout period

The start date of a quarterly blackout period should be determined in part by when insiders might first have knowledge of the company's quarterly results, which can in turn depend upon a company's particular data accumulation and financial close processes and timeline for preparing and accumulating consolidated quarterly financial information.

Start of quarterly blackout period	Number of Companies	Percentage of Companies
~ Two weeks before quarter end	26	52%
~ Three to four weeks before quarter end	11	22%
~ Five to six weeks before quarter end	4	8%
~ One week before quarter end	3	6%
Last day of quarter	3	6%
Other	3	6%

End of quarterly blackout period

The end date for a quarterly blackout period is tied to the release of quarterly financial information, but the precise date depends on when information is considered to be broadly disseminated in the public market. To be clear, in every policy that specifically addresses both points, the end date for quarterly blackouts is the same time period for when a company considers MNPI in general to be "public."

End of quarterly blackout period	Number of Companies	Percentage of Companies
One full trading day after earnings are released	27	54%
Two full trading days after earnings are released	20	40%
Three full trading days after earnings are released	1	2%
Company discretion	2	4%

Insiders subject to quarterly blackouts

A significant majority of companies surveyed do not subject all insiders to quarterly blackouts. Instead, they only impose quarterly blackouts on directors and Section 16 officers/executive officers, along with other employees with access to quarterly financial information.

Group of insiders subject to quarterly blackout periods	Number of companies	Percentage of companies
Directors, Section 16 officers/executive officers and other designated employees with access to quarterly financial information	43	86%
Directors, Section 16 officers/executive officers and all other employees	7	14%

Who is subject to preclearance procedures?

All but one surveyed company imposes preclearance procedures, or procedures by which all or certain insiders must receive pre-approval from the administrator of the policy before trading. The insiders subject to preclearance procedures largely, but not entirely, align with those who are subject to a company's quarterly blackout periods.

Group of insiders subject to preclearance procedures	Number of companies	Percentage of companies
Directors, Section 16 officers/executive officers and other designated employees with access to quarterly financial information	43	86%
Directors, Section 16 officers/executive officers and all other employees	2	4%
Directors and Section 16 officers/executive officers only	4	8%
Not addressed in insider trading policy ⁴	1	2%

How are hedging and pledging addressed?

All but one company surveyed prohibits hedging and/or pledging in some form. The overwhelming majority extend this prohibition across all insiders, and allow no exceptions, with only a small minority of two companies providing exceptions or distinguishing treatment of hedging and pledging among categories of insiders. One of these companies allows for an exception to the prohibition on pledging where a person wishes to pledge company securities as collateral for a loan (not including margin debt) and clearly demonstrates the financial capacity to repay the loan without resort to the pledged securities. The other company allows hedging and pledging for any insider if the transaction is for legitimate non-speculative purposes and the insider obtains prior approval from the relevant parties at the company.

⁴ This company references additional policy documents that may be supplied to company personnel who are notified that they are subject to such additional policies.

Group of insiders	Who is prohibited from hedging/pledging?		Are exceptions allowed?	
	Number of companies	Percentage of companies	Number of companies	Percentage of companies
All insiders (including all employees)	46	88%	2	4%
Directors, Section 16 officers/executive officers and other designated employees, with all other insiders strongly discouraged ⁵	2	4%	0	0%
Directors and Section 16 officers/executive officers only	1	2%	0	0%
Not addressed in insider trading policy	1	2%	n/a	n/a

How are gifts addressed?

Treatment of gifts of company securities in insider trading policies has become a hot topic recently, in part due to the SEC’s statement on gifts in dicta in a recent rule adopting release.⁶ The vast majority (72%) of companies explicitly address gifts, with varying treatments.

How are gifts treated?	Number of companies	Percentage of companies
The same as other trading activity (prohibited when insider has MNPI or is subject to blackout; requires preclearance)	28	56%
Allowed even when the insider is in possession of MNPI or in a blackout, unless the insider has reason to believe that the recipient will sell at a time when the insider has MNPI	11	22%
Treatment depends on the circumstances; insider must consult with the legal department and all Section 16 officers must pre-clear gifts	1	2%
Charitable and non-profit gifting by directors and officers is permitted at any time (no preclearance required)	1	2%
Not explicitly addressed	14	28%

⁵ One of these companies also requires any insider to preclear a hedge or pledge of company securities.

⁶ In the context of the 2023 rule change for Section 16 reporting of gifts, the SEC provided commentary on gifts, noting “that a gift followed closely by a sale, under conditions where the value at the time of donation and sale affects the tax or other benefits obtained by the donor, may raise the same policy concerns as more common forms of insider trading....[B]ecause the donor is in a position to benefit from the asset’s value at the time of donation and sale, the donor may be motivated to give at a time when the donor is aware of [MNPI] and may expect the donee to sell prior to the disclosure of such information.” The SEC also stated that “a gift made with the knowledge that the donee will soon sell can be seen as in effect a sale for cash followed by gift of the cash.”

How are other transactions addressed?

- **Net exercises of options:** 56% of companies surveyed explicitly carve out net exercise of options (without any corresponding market sales) as exempt from the restrictions in the insider trading policy.
- **ESPP purchases:** 56% of companies surveyed explicitly carve out employee stock purchase plan purchased made via regular payroll deductions (some companies may choose not to address this because they do not have employee stock purchase plans).
- **401(k) plan purchases:** 36% of companies surveyed explicitly carve out 401(k) plan purchases in company stock made via regular payroll deductions (some companies may choose not to address this because they do not offer investment of their employees' 401(k) plans in company stock).
- **Changes in the form of beneficial ownership:** While a feature of some policies, none of the policies in our survey specifically addresses changes in the form of ownership only.

How is shadow trading addressed?

“Shadow trading” is the practice of an insider trading shares of another company that is “economically linked” to the insider’s company, while in possession of MNPI about the insider’s company. Companies are “economically linked” when the MNPI about the insider’s company could influence the market price of shares of the other company. The SEC recently successfully prosecuted *SEC v. Matthew Panuwat*, an insider trading case based on shadow trading.⁷ This may cause companies to reconsider the extent to which their insider trading prohibitions apply to securities of other companies, considering the potential reputational consequences of an insider trading action. In our survey, 18% of companies specifically prohibit “shadow trading” by insiders.⁸

Who administers the policy?

Policy administrator	Number of Companies	Percentage of Companies
General counsel (GC)/chief legal officer	28	56%
Compliance officer	8	16%
Corporate secretary’s office/corporate governance department	7	14%
Chief executive officer (CEO)	6	12%
Chief financial officer (CFO)	6	12%
Legal/compliance department	5	10%
In-house securities counsel	2	4%

⁷ For details on the case, see our prior alerts [here](#) and [here](#), and for a discussion of the implications of the case for insider trading policies, see [here](#).

⁸ The 18% of companies surveyed that specifically prohibit “shadow trading” by insiders were mainly part of the group of established Fortune 100 companies.

Are waivers of the policy permitted, and if so, who can approve them?

A majority (56%) of companies surveyed permit waivers of the policy, but differ with respect to the individual or group of individuals approving these waivers.

Approver of waivers	Number of Companies	Percentage of Companies
GC/assistant GC/chief legal officer	12	24%
Compliance officer	7	14%
Corporate law department	3	6%
Corporate secretary	2	4%
CFO	1	2%
Audit committee	1	2%
Board of directors	1	2%

Does the policy explicitly apply post-termination?

Half of the companies surveyed explicitly extend the application of the policy past the date an individual ceases to be employed by or serving the company, while the other half do not.

Explicit post-termination application	Number of companies	Percentage of companies
Yes, to all insiders, until any MNPI they possess has become public or is no longer material (for those subject to blackouts, the later of the opening of the blackout period or until MNPI becomes public or is no longer material)	22	44%
Yes, to Section 16 officers and designated employees only, until the later of 90 days or when any MNPI they possess has become public or is no longer material	2	4%
Yes, to all insiders, without specifying a period	1	2%
No	25	50%

Conclusion

While this preliminary data is instructive, it is based on a limited sample selected only from companies with a June 30 or September 30 fiscal year end; policies filed in the upcoming Form 10-K/20-F reporting season will provide a more robust picture of market practices and procedures. In addition, companies' policies should and will vary based on their specific circumstances and needs, and we expect policies and practices to evolve as companies continue to update and refine their policies in light of emerging market trends.

The following White & Case attorneys authored this alert:

Maia Gez
Scott Levi
Michelle Rutta
Tami Stark
Melinda Anderson
Danielle Herrick

White & Case Team Members:

A.J. Ericksen: 713-496-9688, aj.ericksen@whitecase.com
Elodie Gal: 212-819-8242, egal@whitecase.com
Maia Gez: 212-819-8217, maia.gez@whitecase.com
David Johansen: 212-819-8509, djohansen@whitecase.com
Scott Levi: 212-819-8329, scott.levi@whitecase.com
Daniel Nussen: 213-620-7796, daniel.nussen@whitecase.com
Kimberly Petillo-Decossard: 212-819-8398, kimberly.petillo-decossard@whitecase.com
Jason Rocha: 713-496-9732, jason.rocha@whitecase.com
Jonathan Rochwarger: 212-819-7643, jrochwarger@whitecase.com
Joel Rubinstein: 212-819-7642, joel.rubinstein@whitecase.com
Michelle Rutta: 212-819-7864, mrutta@whitecase.com
Elliott Smith: 212-819-7644, elliott.smith@whitecase.com
Tami Stark: 212-819-2674, tami.stark@whitecase.com
Melinda Anderson: 212-819-7002, melinda.anderson@whitecase.com
Danielle Herrick: 212-819-8232, danielle.herrick@whitecase.com
Patti Marks: 212-819-7019, pmarks@whitecase.com
Sarah Hernandez: 212-819-8429, sarah.hernandez@whitecase.com

White & Case LLP
1221 Avenue of the Americas, Floor 49 Reception
New York, NY 10020

T +1 212 819 8200

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