Client Alert | US Public Company Advisory Group

Insider trading policies: A survey of public company policy terms

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White & Case's US Public Company Advisory Group has conducted its second annual survey of publicly filed insider trading policies to assess trends with respect to insider trading policy terms. Calendar-year end public companies were first required to publicly disclose their insider trading policies in 2025 following recent SEC rule changes, and as companies approach their second year with this disclosure, it is a good time to review policy terms and confirm whether any changes would be appropriate. Key findings and considerations from our White & Case survey are found in this alert.

White & Case Survey of Filed Insider Trading Policies

White & Case's second annual survey reviews the policy terms of a broad cross-section of public companies' insider trading policies filed during the 2025 reporting season, including Fortune 50 companies, mid-cap companies and pre-revenue companies across a range of industries.[1] In December 2022, the SEC had amended its rules to require public companies to publicly disclose whether they have an insider trading policy, and, if so, to file such policy as Exhibit 19 to their Form 10-K[2] or Exhibit 11 to their Form 20-F.

At its 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.

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1 Companies surveyed in 2024 were among the first companies to be required to file their insider trading policy and were limited to Fortune 100 companies and mid-cap companies. Our 2024 survey results can be found 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."

Time period for MNPI to be considered "public"	Number of companies	Percentage of companies
One trading day	23	46%
Two trading days	10	20%
Not specified	17	34%

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

Thirty-six out of the 50 companies surveyed (or 72%) impose a specified quarterly blackout period, or a set period each quarter when all or certain insiders are prohibited from trading in the company's stock given their access to MNPI about the results of the fiscal quarter.[3] This was a shift from our survey in 2024, where all of the policies surveyed specified a quarterly blackout period. The companies in 2025 that did not impose a specified quarterly blackout period in their insider trading policies were mainly in the biotechnology and pharmaceuticals sectors (as opposed to other industries, including energy, utilities, manufacturing and financial services).

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
~ One month before quarter end	4	8%
~ Three weeks before quarter end	4	8%
~ Two weeks before quarter end	15	30%
~ One week before quarter end	2	4%
Last day of quarter	5	10%
~ One week after quarter end	1	2%
~ Two weeks after quarter end	2	4%
No blackout specified	17	34%

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 in our survey that specifically addresses both points, the end date for quarterly blackouts is the same as when a company considers MNPI in general to become "public" under the policy.

[3] Quarterly blackout periods are distinct from "ad hoc" or "special" blackout periods, which can generally be imposed at the discretion of the policy administrators based on material news or other developments. While they are common, the specific practices on "ad hoc" or "special" blackout periods vary.

End of quarterly blackout period	Number of companies	Percentage of companies
One full trading day after earnings are released	22	44%
Two full trading days after earnings are released	14	28%
Not specified	14	28%

Insiders subject to quarterly blackouts

A significant majority of companies (72%) surveyed only impose quarterly blackouts on directors and Section 16 officers[4], along with other employees with access to quarterly financial information. Twenty percent of companies impose quarterly blackouts on directors, Section 16 officers and *all* other employees – this latter group included three pre-revenue companies in the biotechnology/biopharmaceuticals industries and seven large cap companies, six of which were in biotechnology/bio-pharmaceutical or technology-related industries.

Group of insiders subject to quarterly blackout periods	Number of companies	Percentage of companies
Directors, Section 16 officers and other designated employees with access to quarterly financial information	36	72%
Directors, Section 16 officers and all other employees[5]	10	20%

Two of the 36 companies that impose a blackout period on directors, Section 16 officers and other designated employees with access to quarterly financial information also impose a distinct, shorter blackout period on other persons as well, with one company[6] doing so for all other employees and the other[7] for certain other employes designated by an established "Securities Watch Team."[8]

Who is subject to preclearance procedures?

All but one surveyed company impose preclearance procedures, or procedures by which all or certain insiders must receive prior approval from the administrator of the policy before trading. The insiders subject to preclearance procedures largely align with those who are subject to a company's quarterly blackout periods,

4 When used in this alert, "Section 16 officers" means either those officers who file Section 16 reports (as defined in Rule 16a-1(f) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) or those officers who are considered "executive officers" under Rule 3b-7 under the Exchange Act. These groups largely tend to be the same, except that the chief accounting officer/controller is generally considered a "Section 16 officer" but not always an "executive officer." Insider trading policies may use these terms interchangeably or to refer to slightly different groups. In this alert, we have grouped them together for the sake of streamlined presentation.

5 This group included three pre-revenue companies in the biotechnology/biopharmaceuticals industries and seven large cap companies, six of which were in biotechnology/bio-pharmaceutical or technology-related industries.

6 This company is in the e-commerce sector.

7 This company is in the healthcare sector.

8 The e-commerce company's blackout for all employees is two weeks shorter than the blackout for directors, Section 16 officers and designated employees with access to quarterly financial information. The healthcare company's blackout for other designated employees is one month shorter than the blackout for directors, section 16 officers and designated employees with access to quarterly financial information.

although certain surveyed companies impose preclearance procedures on a smaller group of insiders than those subject to blackout periods.

Group of insiders subject to preclearance procedures	Number of companies	Percentage of companies
Directors and Section 16 officers only	23	46%
Directors, Section 16 officers and other designated employees with access to quarterly financial information	17	34%
Directors, Section 16 officers and key employees only	5	10%
Directors, Section 16 officers and all other employees	3	6%
Designated insiders (no additional detail)	1	2%
Not addressed in insider trading policy[9]	1	2%

How long is preclearance effective once granted (before approval must be re-obtained)?

About half the companies surveyed (52%) specify how long the granted preclearance remains valid, after which time the insider has to re-seek preclearance if the contemplated transaction was not consummated.

How long is preclearance effective once granted (before approval must be re-obtained)?	Number of companies	Percentage of companies
Two trading/business days	13	26%
Four trading/business days	2	4%
Five trading/business days	9	18%
Between two and five depending on circumstances	1	2%
For a specified period, not to exceed 10 trading days	1	2%
Not addressed in insider trading policy	24	48%

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

How are hedging and pledging addressed?

All but one company surveyed prohibits hedging and pledging[10] in some form under their insider trading policy.[11] The overwhelming majority extend this prohibition for both hedging and pledging 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.

Group of insiders	**Who is prohibited from hedging and pledging?**		**Are exceptions allowed?**	
	Number of companies	Percentage of companies	Number of companies	Percentage of companies
All insiders (including all employees)	38	76%	4	8%
Directors, Section 16 officers and other designated employees with access to material non-public information	6	12%	1	2%
Directors and Section 16 officers only	4	8%	1	2%
Not addressed in insider trading policy	2	4%	n/a	n/a

How are exchange funds addressed?

Forty percent of companies surveyed specifically prohibit insiders from investing in exchange funds using company securities, while 60 percent did not address exchange funds in their policies.

In 2018, the SEC adopted Item 407(i) of Regulation S-K, which requires disclosure of hedging policies applicable to employees, officers and directors in proxy statements. The SEC's rule on hedging disclosure in Item 407(i) specifically references exchange funds and requires disclosure of any "practices or policies" regarding the ability of directors, officers and employees to purchase a financial instrument (including exchange funds) that constitute hedging.[12] Given the increasing availability of exchange funds to serve as a way to diversify an insider's portfolio rather than to hedge a company's stock, companies may want to consider clarifying how exchange funds are addressed under their policies, either by prohibiting the practice or adding explicit language that subject exchange

10 Hedging and pledging may be discussed in different sections of a company's insider trading policy, but in all cases the companies in our survey treated hedging and pledging the same way.

11 This is likely in response to Item 407(i) of Regulation S-K, which requires that companies describe any practices or policies they have adopted regarding the ability of employees (including officers) or directors to engage in hedging or similar transactions, or disclose that they generally permit such activities.

12 *See* footnote 21 of the adopting release, which indicates the SEC intended to cover exchange funds as a type of hedging instrument: "*By covering "exchange funds," we believe that Section 14(j) should be interpreted to cover transactions involving dispositions or sales of securities*."

fund investments to specific review and pre-approval, so long as the exchange fund does *not* constitute hedging due to being sufficiently well diversified.[13]

How are gifts addressed?

Treatment of gifts of company securities in insider trading policies represents one of the most significant recent shifts in insider trading policies, in part due to the SEC's rule changes effective in 2023 that now require a Form 4 for gifts within two business days (rather than being reportable on a Form 5).[14] The vast majority (86%) of companies explicitly address gifts in their insider trading policies as shown below..

How are gifts treated?	Number of companies	Percentage of companies
The same as other trading activity, with no special exceptions (same for all insiders)	30	60%
Generally the same as other trading activity, but with exceptions provided certain conditions are met (same for all insiders)[15]	7	14%
For Section 16 directors and officers, the same as other trading activity, with no special exceptions; for all other employees, generally permitted (i.e., not like other trading activity) with certain conditions[16]	7	14%
Allowed when the recipient agrees not to sell at a time when the insider him/herself could not sell	1	2%
Not explicitly addressed	7	14%

13 For example, examples of publicly available policy provisions include: "*Investments in exchange funds using Company stock may be permitted on a case-by-case basis if the fund is broadly diversified. Contact Legal in advance to review and approve such an investment"* and ""*Exchange fund transactions, and the purchase of related financial instruments, that in substance are sale transactions (not a hedge) are permitted."* A company with such a provision should (i) confirm for each such investment that it would not be considered a "derivative" security that is reportable under Section 16, and (ii) consider adding appropriate disclosure on such a provision in the insider trading policy description in the proxy statement.

14 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."

15 For example, bona-fide gifts or gift transactions for estate planning purposes are permitted even when the insider is in possession of MNPI or in a blackout period, as long as preclearance is received.

16 In these policies, gift transactions by non-Section 16 officers and directors are generally permitted *even when the insider is in possession of MNPI or in a blackout period*, *unless* the insider is in possession of MNPI and has reason to believe that the recipient will sell at a time when the insider has MNPI.

How are other transactions addressed?[17]

- ***Net exercises of options:*** *54% of companies* surveyed explicitly carve out net exercise of options (without any corresponding open market sales) as exempt from the restrictions in the insider trading policy.
- ***Sales or company withholding to cover vesting of RSUs:*** *66% of companies'* policies specifically carve out sales or withholding to cover taxes upon the vesting of restricted stock units. Of these:
  - *62% of all companies surveyed, or 94% of the companies that specifically address this issue,* explicitly carve out withholding of shares by the company to satisfy tax obligations related to the vesting of RSUs, but do *not* carve out open market sales to cover such taxes.[18]
  - *4% of all companies surveyed, or 6% of the companies that specially address this issue,* also carve out open market sales to cover tax withholding obligations, but only if the election to do so is made in advance and is automatic as set forth in the equity award agreement.[19]
- ***ESPP purchases:*** *50% of companies* surveyed explicitly carve out employee stock purchase plan purchases made via regular payroll deductions (but not the sale of any such stock and the establishing or changing of instructions regarding the level of withholding contributions which are used to purchase stock).[20]
- ***401(k) plan purchases:*** *24% of companies* surveyed explicitly carve out 401(k) plan purchases in company stock made via regular payroll deduction (but not the sale of any such stock or the election to transfer, increase or decrease funds into or out of, or a loan with respect to amounts invested in, the stock fund).[21]
- ***Changes in the form of beneficial ownership:*** *22% of the companies* surveyed explicitly carve out 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. This issue came to the fore in *SEC v. Matthew Panuwat*, when the SEC successfully prosecuted an insider trading case based on shadow trading.[22] Companies may want 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. 20% of companies surveyed specifically prohibit "shadow trading" by insiders,[23] which was an increase (by 2%) from what we saw in our 2024 survey. Note that most companies' insider trading policies already explicitly apply to trading in the securities of the company's customers, suppliers,

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17 These results are fairly consistent with those from our 2024 survey, with a couple of differences to note: (i) the percentage of companies explicitly carving out 401(k) plan purchases was slightly lower than we found in 2024 (36%); and (ii) none of the companies surveyed in 2024 specifically addressed changes in form of beneficial ownership. The larger percentage of surveyed companies addressing changes in beneficial ownership may reflect increased attention being paid to insider trading policies now that they are required to be filed.

18 One company in this category also specifically carves out "sell to cover" transactions directed by the company. One additional company only carves out company withholdings for non-Section 16 officers.

19 Policies we surveyed were mostly silent on additional requirements, but companies can consider language making clear that the carve out only applies to sales/withholdings necessary to cover the required taxes.

20 Some companies may choose not to address this, because they do not have employee stock purchase plans.

21 Some companies may choose not to address this, because they do not offer investment of their employees' 401(k) plans in company stock.

22 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.

23 Such companies are mainly established Fortune 50 companies. Three of the ten companies were in the biotechnology/ biopharmaceuticals industry and two were in the energy industry. Example language is as follows, with the "Issuer" referring to the company that administers the policy and where the individual is an insider: "No Insider may buy or sell (or otherwise trade in) securities of another company at any time when the Insider has [MNPI] about that company or has [MNPI] that could affect the share price of that company, when that information was obtained as a result of the Insider's employment or relationship to the Issuer."

and strategic partners etc., based on any information about such other companies learned through the individual's employment. This concept is drafted more narrowly than the concept of shadow trading.

Who administers the policy?

Policy administrator	Number of companies	Percentage of companies
General Counsel (GC)/Chief Legal Officer (CLO)	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%

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

Seventeen of the 50 companies surveyed (34%) 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/CLO	5	10%
Compliance Officer	1	2%
Legal/compliance department	4	8%
Members of the board of directors (e.g., special committee)	4	8%
Decision by combination of the CEO, CFO and CLO	3	6%

Does the policy explicitly apply post-termination?

Thirty-four of the 50 companies surveyed (68%) explicitly extend the application of the policy past the date an individual ceases to be employed by or serving the company.

Explicit post-termination application	Number of companies	Percentage of companies
Yes, to all insiders, until any MNPI they possess has become public/is no longer material (for those subject to blackouts, the later of the opening of the blackout period or when MNPI they possess becomes public/is no longer material)[24]	28	56%

[24] One company's policy noted that directors, officers and Section 16 officers may be subject to additional restrictions, contained in a supplemental policy that was not publicly available.

Yes, to all insiders, without specifying a period	4	8%
Yes, to Section 16 officers and designated employees only, until the later of the opening of the blackout period or when MNPI they possess has become public/is no longer material	1	2%
Yes, to Section 16 officers only, for 6 months following termination	1	2%
Not addressed in insider trading policy	16	32%

White & Case continues to review insider trading policies as they are filed with the SEC. The data in our survey is based on a limited sample that attempts to represent a cross-section of the market and results will vary based on the companies in the sample. 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.

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