

TORONTO STOCK EXCHANGE

# Policy Statement on Timely Disclosure



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# Introduction

It is a cornerstone policy of Toronto Stock Exchange (TSX or the Exchange) that all persons investing in securities listed on TSX have equal access to information that may affect their investment decisions. Public confidence in the integrity of the Exchange as a securities market requires timely disclosure of material information concerning the business and affairs of companies listed on the Exchange, thereby placing all participants in the market on an equal footing.

The timely disclosure policy of the Exchange is the primary timely disclosure standard for all TSX listed issuers. National Policy 51-201 Disclosure Standards (NI 51-201), assists issuers in meeting their legislative disclosure requirements. While the legislative and Exchange timely disclosure requirements differ somewhat, the Canadian Securities Administrators clearly state in NI 51-201 that they expect TSX listed issuers to comply with the requirements of the Exchange.

To minimize the number of authorities that must be consulted in a particular matter, in the case of securities listed on the Exchange, TSX is the relevant contact. The issuer may, of course, consult with the government securities administrator of the particular jurisdiction. In the case of securities listed on more than one stock market, the issuer should deal with each market.

The requirements of the Exchange and NI 51-201 are in addition to any applicable statutory requirements. The Exchange enforces its own policy. Companies whose securities are listed on the Exchange are legally obligated to comply with the provisions on timely disclosure set out in section 75 of the Securities Act (Ontario) (OSA) and the regulation under the OSA. Reference should also be made to National Instrument 71-102 - Continuous Disclosure and Other Exemptions Relating to Foreign Issuers, National Instrument 55-102 - System for Electronic Disclosure by Insiders, National Instrument 62-103 - The Early Warning System and Related Take-Over bid and Insider Reporting Issues, and National Instrument 62-104 Take-Over Bids and Issuer Bids.

In addition to the foregoing requirements, companies whose securities are listed on the Exchange and who engage in mineral exploration, development and/or production, must follow the "Disclosure Standards for Companies Engaged in Mineral Exploration, Development and Production" as outlined in Appendix B of the TSX Company Manual (Manual) for both their timely and continuous disclosure.

Market Surveillance division of Investment Industry Regulatory Organization of Canada (IIROC) monitors the timely disclosure policy on behalf of the Exchange.

# Material Information

## Definition

Material information is any information relating to the business and affairs of a company that results in or would reasonably be expected to result in a significant change in the market price or value of any of the company's listed securities.

Material information consists of both material facts and material changes relating to the business and affairs of a listed company. In addition to material information, trading on the Exchange is sometimes affected by the existence of rumours and speculation. Where this is the case, IIROC may require that an announcement be made by the company whether such rumours and speculation are factual or not. The policy of the Exchange with regard to rumours is set out more fully on page five.

The timely disclosure policy of the Exchange is designed to supplement the provisions of the OSA which requires disclosure of any "material change" as defined therein. A report must be filed with the Ontario Securities Commission concerning any "material change" as soon as practicable and in any event within ten days of the date on which the change occurs. The Exchange considers that "material information" is a broader term than "material change" since it encompasses material facts that may not entail a "material change" as defined in the OSA. It has long been the practice of most listed companies to disclose a broader range of information to the public pursuant to the Exchange's timely disclosure policy than a strict interpretation of the OSA might require. Companies subject to securities legislation outside of Ontario should be aware of their disclosure obligations in other jurisdictions.

It is the responsibility of each listed company to determine what information is material according to the above definition in the context of the company's own affairs. The materiality of information varies from one company to another according to the size of its profits, assets and capitalization, the nature of its operations and many other factors. An event that is "significant" or "major" in the context of a smaller company's business and affairs is often not material to a large company. The company itself is in the best position to apply the definition of material information to its own unique circumstances. The Exchange recognizes that decisions on disclosure require careful subjective judgments, and encourages listed companies to consult IIROC when in doubt as to whether disclosure should be made.

## Rule: Immediate Disclosure

A listed company is required to disclose material information concerning its business and affairs forthwith upon the information becoming known to management, or in the case of information previously known, forthwith upon it becoming apparent that the information is material. Immediate release of information is necessary to ensure that it is promptly available to all investors and to reduce the risk of persons with access to the information acting upon undisclosed information. Unusual trading marked by significant changes in the price or trading volumes of any of a company's securities prior to the announcement of material information is embarrassing to company management and damaging to the reputation of the securities market, since the investing public may assume that certain persons benefited from access to material information which was not generally disclosed.

In restricted circumstances, disclosure of material information may be delayed for reasons of corporate confidentiality. In this regard, please see the section entitled "Confidentiality" on page eight.

## Developments to be disclosed

Companies are not required to interpret the impact of external political, economic and social developments on their affairs, but if the external development will have or has had a direct effect on their business and affairs that is both material in the sense outlined above and uncharacteristic of the effect generally experienced as a result of such development by other companies engaged in the same business or industry, companies are urged, where practical, to explain the particular impact on them. For example, a change in government policy that affects most companies in a particular industry does not require an announcement, but if it affects only one or a few companies in a material way, an announcement should be made.

The market price of a company's securities may be affected by factors directly relating to the securities themselves as well as by information concerning the company's business and affairs. For example, changes in a company's issued capital, stock splits, redemptions and dividend decisions may all impact upon the market price of a security.

Other actual or proposed developments that are likely to give rise to material information and thus to require prompt disclosure include, but are not limited to, those listed below. Of course, any development must be material according to the definition of material information before disclosure is required.

Many developments must be disclosed at the proposal stage, or before an event actually occurs, if the

proposal gives rise to material information at that stage. Announcements of an intention to proceed with a transaction or activity should be made when a decision has been made to proceed with it by the board of directors of the company, or by senior management with the expectation of concurrence from the board of directors. Subsequently, updates should be announced at least every 30 days, unless the original announcement indicates that an update will be disclosed on another indicated date. In addition, prompt disclosure is required of any material change to the proposed transaction, or to the previously disclosed information.

Examples of developments likely to require prompt disclosure as referred to above include the following:

- Changes in share ownership that may affect control of the company.
- Changes in corporate structure, such as reorganizations, amalgamations, etc.
- Take-over bids or issuer bids.
- Major corporate acquisitions or dispositions.
- Changes in capital structure.
- Borrowing of a significant amount of funds.
- Public or private sale of additional securities.
- Development of new products and developments affecting the company's resources, technology, products or market.
- Significant discoveries by resource companies.
- Entering into or loss of significant contracts.
- Firm evidence of significant increases or decreases in near-term earnings prospects.
- Changes in capital investment plans or corporate objectives.
- Significant changes in management.
- Significant litigation.
- Major labour disputes or disputes with major contractors or suppliers.
- Events of default under financing or other agreements.
- Any other developments relating to the business and affairs of the company that would reasonably be expected to significantly affect the market price or value of any of the company's securities or that would reasonably be expected to have a significant influence on a reasonable investor's investment decisions.

Forecasts of earnings and other financial forecasts need not be disclosed, but where a significant increase or decrease in earnings is indicated in the near future, such as in the next fiscal quarter, this fact must be disclosed. Forecasts should not be provided on a selective basis to certain investors not involved in the management of the affairs of the company. If disclosed, they should be generally

disclosed. Reference should be made to National Instrument 51-102 - *Continuous Disclosure Obligations (FOFI and Financial Outlooks)*.

# IIROC

## Monitoring Trading

IIROC maintains a continuous stock watch program which is designed to highlight unusual market activity, such as unusual price and volume changes in a stock relative to its historical pattern of trading. Where unusual trading activity takes place in a listed security, IIROC attempts to determine the specific cause of such activity. If the specific cause cannot be determined immediately, company management will be contacted. Should this contact result in IIROC staff becoming aware of a situation which requires a news release, the company will be asked to make an immediate announcement. Should the company be unaware of any undisclosed developments, IIROC staff will continue to monitor trading and, if concerns continue, may ask the company to issue a statement that it is not aware of any undisclosed developments that would account for the unusual trading pattern.

## Timing of Announcements

IIROC has the responsibility of receiving all timely disclosure news releases from listed companies detailing material information concerning their affairs. The overriding rule is that significant announcements are required to be released immediately. Release of certain announcements may be delayed until the close of trading, subject to the approval of IIROC. Company officials are encouraged to seek assistance and direction from IIROC as to when an announcement should be released and whether trading in the company's shares should be halted for dissemination of an announcement.

## Rumors

Unusual market activity is often caused by the presence of rumours. The Exchange recognizes that it is impractical to expect management to be aware of, and comment on, all rumours, but when market activity indicates that trading is being unduly influenced by rumours, IIROC will request that a clarifying statement be made by the company. Prompt clarification or denial of rumours through a news release is the most effective manner of rectifying such a situation. A trading halt may be instituted pending a "no corporate developments" statement from the company. If a rumour is correct in whole or in part, immediate disclosure of the relevant material information must be made by the company and a trading halt will be instituted pending release and dissemination of the information.

## OSC Cease Trading Order

In certain circumstances, trading in a listed security may be stopped by IIROC as a result of a cease trading order being issued by the Ontario Securities Commission (OSC). Such an order may be issued by the Commission where it is of the opinion that a halt in trading is in the public interest. However, IIROC generally handles halts for the dissemination of announcements of material information. Additional information with respect to trading halts is included on page seven.

# Announcements of Material Information

## Pre-Notification

The Exchange's policy requires immediate release of material information except in unusual circumstances. While IIROC may permit certain news releases to be issued after the close of trading, the policy of immediate disclosure frequently requires that news releases be issued during trading hours, especially when an important corporate development has occurred. If this is the case, it is absolutely essential that company officials notify IIROC prior to the issuance of a news release. IIROC staff will then be in a position to determine whether trading in any of the company's securities should be temporarily halted. Also, if the Exchange is not advised of news releases in advance, any subsequent unusual trading activity will generate enquiries and perhaps a halt in trading.

Regardless of when an announcement involving material information is released, IIROC must be advised of its content and supplied with a copy in advance of its release. IIROC must also be advised of the proposed method of dissemination. IIROC must be advised by telephone in advance if an announcement is ready to be made during trading hours, and submission of a written copy of the release should follow. Where an announcement is to be released after the Exchange has closed, IIROC staff should be advised before trading opens on the next trading day. Copies may be sent through email: [surveillance@iroc.ca](mailto:surveillance@iroc.ca) or Fax (416) 646-7263 and IIROC can be reached by telephone through (416) 646-7220. Copies may be filed through TMX LINX.

IIROC co-ordinates trading halts with other exchanges and markets where a company's securities are listed or traded elsewhere. A convention exists that trading in a security traded in more than one market shall be halted and resumed at the same time in each market. Failing to pre-notify IIROC of an imminent material announcement could disrupt this system.



## Dissemination

After notifying IIROC, a news release must be transmitted to the media by the quickest possible method, and by one that provides the widest dissemination possible. To ensure that the entire financial community is aware of the news at the same time, a wire service or combination of services must be used which provides national and simultaneous coverage.

The Exchange accepts the use of any news services that meet the following criteria:

- Dissemination of the full text of the release to the national financial press and to daily newspapers that provide regular coverage of financial news;
- Dissemination to all Participating Organizations; and
- Dissemination to all relevant regulatory bodies.

Companies are also expected to use services such as Dow Jones and Reuters that provide wide dissemination at no charge to the issuer. However, companies should be aware that these services do not carry all releases and may substantially edit releases they do carry. News services that guarantee that the full text of the release will be carried are required to be used.

Dissemination of news is essential to ensure that all investors trade on equal information. The onus is on the listed company to ensure appropriate dissemination of news releases, and any failure to properly disseminate news shall be deemed to be a breach of this policy and shall be grounds for suspension of trading or delisting of the company's securities. In particular, the Exchange will not consider relieving a company from its obligation to disseminate news properly because of cost factors.

## Content of Announcements

Announcements of material information should be factual and balanced, neither over-emphasizing favourable news nor underemphasizing unfavourable news. Unfavourable news must be disclosed just as promptly and completely as favourable news. It is appreciated that news releases may not be able to contain all the details that would be included in a prospectus or similar document. However, news releases should contain sufficient detail to enable media personnel and investors to appreciate the true substance and importance of the information so that investors may make informed investment decisions. The guiding principle should be to communicate clearly and accurately the nature of the information, without including unnecessary details, exaggerated reports or editorial commentary designed to colour the investment community's perception of the announcement one way or another.

The company should be prepared to supply further information when appropriate, and the Exchange recommends that the name and telephone number of the company official to contact be provided in the release.

## Misleading Announcements

While the policy of the Exchange is that all material information must be released immediately, judgment must be exercised by company officials as to the timing and propriety of any news releases concerning corporate developments, since misleading disclosure activity designed to influence the price of a security is considered by the Exchange to be improper. Misleading news releases send signals to the investment community which are not justified by an objective examination of the facts, and may detract from the credibility of the company. Announcements of an intention to proceed with a transaction or activity should not be made unless the company has the ability to carry out the intent (although proceeding may be subject to contingencies) and a decision has been made to proceed with the transaction or activity by the board of directors of the company, or by senior management with the expectation of concurrence from the board of directors. Disclosure of corporate developments must be handled carefully and requires the exercise of judgment by company officials as to the timing of an announcement of material information, since either premature or late disclosure may result in damage to the reputation of the securities markets.

# Trading Halts

## When Trading May Be Halted

The Exchange's objective is to provide a continuous auction market in listed securities. The guiding principle is therefore to reduce the frequency and length of trading halts as much as possible.

Trading may be halted in the securities of a listed company upon the occurrence of a material change during normal trading hours, which requires immediate public disclosure. The determination that trading should be halted is made by IIROC. IIROC determines the amount of time necessary for dissemination in any particular case, which determination is dependent upon the significance and complexity of the announcement.

It is neither the intention nor practice of IIROC to halt trading for all news releases from listed companies. A news release is discussed by IIROC and the listed company prior to its release and a

determination is made as to whether a trading halt is justified based upon the impact which the particular announcement is expected to have on the market for the company's securities.

A halt in trading does not reflect upon the reputation of management of a company nor upon the quality of its securities. Indeed, trading halts for material information announcements are usually made at the request of the listed company involved. IIROC normally attempts to contact a company before imposing a halt in trading.

## Requests for Trading Halts

It is not appropriate for a listed company to request a trading halt in a security if a material announcement is not going to be made forthwith.

When a listed company (or its advisors) requests a trading halt for an announcement, the company must provide assurance to Market Surveillance that an announcement is imminent. The nature of this announcement and the current status of events shall be disclosed to IIROC, so the staff can assess the need for and appropriate duration of a trading halt.

## Length of Trading Halts

When a halt in trading is necessary, trading is normally interrupted for a period of less than two hours. In the normal course, the announcement should be made immediately after the halt is imposed and trading will resume within approximately one hour of the dissemination of the announcement through major news wires.

A trading halt in a security shall not normally extend for a period longer than 24 hours from the time the halt was imposed. This is a maximum time period intended to address unusual situations. The only exception to the 24-hour time limit is where IIROC determines that resumption of trading would have a significant negative impact on the integrity of the market.

## Failure to Make An Announcement Immediately

If trading is halted but an announcement is not immediately forthcoming as expected, IIROC will establish a reopening time, which shall not be later than 24 hours after the time that the halt was imposed (excluding non-business days). If the company fails to make an announcement, IIROC will issue a notice stating that trading was halted for dissemination of news or for clarification of abnormal trading

activity, that an announcement was not immediately forthcoming, and that trading will therefore resume at a specific time.

When IIROC advises a company in applying Section 423 of the Manual that it will announce the reopening of trading the company should reconsider, in light of its responsibility to make timely disclosure of all material information, whether it should issue a statement prior to the reopening becoming effective to clarify why it requested a trading halt (if this is the case) and why it is not able to make an announcement prior to the reopening of trading.

# Confidentiality

## When Information May Be Kept Confidential

In restricted circumstances, disclosure of material information concerning the business and affairs of a listed company may be delayed and kept confidential temporarily where immediate release of the information would be unduly detrimental to the interests of the company.

Examples of instances in which disclosure might be unduly detrimental to the company's interests are as follows:

- Release of the information would prejudice the ability of the company to pursue specific and limited objectives or to complete a transaction or series of transactions that are under way. For example, premature disclosure of the fact that a company intends to purchase a significant asset may increase the cost of making the acquisition.
- Disclosure of the information would provide competitors with confidential corporate information that would be of significant benefit to them. Such information may be kept confidential if the company is of the opinion that the detriment to it resulting from disclosure would outweigh the detriment to the market in not having access to the information. A decision to release a new product, or details on the features of a new product, may be withheld for competitive reasons. Such information should not be withheld if it is available to competitors from other sources.
- Disclosure of information concerning the status of ongoing negotiations would prejudice the successful completion of those negotiations. It is unnecessary to make a series of announcements concerning the status of negotiations with another party concerning a

particular transaction. If it seems that the situation is going to stabilize within a short period, public disclosure may be delayed until a definitive announcement can be made. Disclosure should be made once “concrete information” is available, such as a final decision to proceed with the transaction or, at a later point in time, finalization of the terms of the transaction.

It is the policy of the Exchange that the withholding of material information on the basis that disclosure would be unduly detrimental to the company’s interests must be infrequent and can only be justified where the potential harm to the company or to investors caused by immediate disclosure may reasonably be considered to outweigh the undesirable consequences of delaying disclosure, keeping in mind at all times the considerations that have given rise to the Exchange’s immediate disclosure policy. While recognizing that there must be a tradeoff between the legitimate interests of a company in maintaining secrecy and the right of the investing public to disclosure of corporate information, the Exchange discourages delaying disclosure for a lengthy period of time, since it is unlikely that confidentiality can be maintained beyond the short term.

## Maintaining Confidentiality

If disclosure of material information is delayed, complete confidentiality must be maintained. In the event that such confidential information, or rumours respecting the same, is divulged in any manner (other than in the necessary course of business), the company is required to make an immediate announcement on the matter. IIROC must be notified of the announcement in advance in the usual manner. During the period before material information is disclosed, market activity in the company’s securities should be closely monitored. Any unusual market activity probably means that news of the matter is being disclosed and that certain persons are taking advantage of it. In such case, IIROC should be advised immediately, and a halt in trading will be imposed until the company has made disclosure on the matter.

At any time when material information is being withheld from the public, the company is under a duty to take precautions to keep such information completely confidential. Such information should not be disclosed to any officers or employees of the company, or to the company’s advisors, except in the necessary course of business. The directors, officers and employees of a listed company should be reminded on a regular basis that confidential information obtained in the course of their duties must not be disclosed. It is contrary to law under the Ontario *Securities Act* for any person in a “special relationship” with a company to make use of undisclosed material information. This point is discussed in the next section - Insider Trading.

Listed companies must comply with the provisions of Section 75 of the OSA requiring confidential disclosure to the Ontario Securities Commission of any “material change” that is not immediately being disclosed to the public.

# Insider Trading

## Law

Every listed company should have a firm rule prohibiting those who have access to confidential information from making use of such information in trading in the company’s securities before the information has been fully disclosed to the public and a reasonable period of time for dissemination of the information has passed.

Insider trading is strictly regulated by Part XXI and Sections 76 and 134 of the OSA and the Regulation under the OSA. The securities laws of other provinces also regulate insider trading in their respective jurisdictions. Insider trading in the securities of companies incorporated under the *Canada Business Corporations Act* is also regulated by Part XI of that Act. The definition of an “insider” will vary from statute to statute, but in any case will include directors and senior officers of the company and large shareholders. In Ontario, directors and senior officers of any company that is itself an insider of a second company are considered insiders of that second company. It is recommended that directors and officers of listed companies be fully conversant with all applicable legislation concerning insider trading.

The OSA requires insiders who own securities of a listed company to file an initial report with the OSC upon becoming insiders and to report all trades made in the securities of the company of which they are insiders within ten days after a trade is made.

In addition, Section 76 of the OSA prohibits any person or company in a “special relationship” with a listed company from trading on the basis of undisclosed material information on the affairs of that company. Those considered to be in a “special relationship” with a listed company include those who are insiders, affiliates or associates of the listed company, a person or company proposing to make a take-over bid of the listed company, and a person or company proposing to become a party to a reorganization, amalgamation, merger or similar business arrangement with the listed company. A person or company in a “special relationship” also includes those involved, or which were involved, in the provision of business or professional services for the listed company, including employees.

An indefinite chain of “tippees” is created by including in the “special relationship” category persons or

companies who acquire information from a source known to them to have a “special relationship” with the listed company.

In any situation where material information is being kept confidential because disclosure would be unduly detrimental to the best interests of the company, management is under a duty to take every possible precaution to ensure that no trading whatsoever takes place by any insiders or persons in a “special relationship” with the company, such as lawyers, engineers and accountants, in which use is made of such information before it is generally disclosed to the public. Similarly, undisclosed material information cannot be passed on or “tipped” to others who may benefit by trading on the information.

In the event that IIROC is of the opinion that insider or improper trading may have occurred before material information has been disclosed and disseminated, the Exchange requires an immediate announcement to be made disclosing the material information of which use is being made.

# Guidelines – Disclosure, Confidentiality and Employee Trading

Companies listed on the Exchange must comply with two sets of rules:

- securities law governing corporate disclosure, confidentiality and employee trading;
- the Exchange's policy on timely disclosure, which expands on the requirements of securities law.

Collectively, these rules are referred to as the Disclosure Rules. Compliance with them is essential to maintaining investor confidence in the integrity of the Exchange's market and its listed companies.

Each listed company should establish a clear written policy to help it comply with the Disclosure Rules. The guidelines in this document are intended to help companies establish their policies. They should be viewed as a means to an end (compliance with the Disclosure Rules) and not as an end in themselves.

These guidelines are not hard and fast rules, and will not be appropriate for every listed company. The TSX recognizes that company policies will vary depending on the company's size and corporate culture.

Every company's policy, however, should:

- describe the procedures to be followed and spell out the consequences of violations;
- be updated regularly;
- be brought to the attention of employees regularly.

The policy should also give specific guidance in the following areas:

- disclosing material information;
- maintaining the confidentiality of information;
- restricting employee trading.



# Disclosing Material Information

The Disclosure Rules state that material information is information about a company that has a significant effect, or would reasonably be expected to have a significant effect, on the market price of the company's securities. A company must disclose material information to the public immediately. For exceptions, please see "Maintaining the Confidentiality of Information."

## Guidelines

The Exchange suggests that the company's policy include provisions to assist management in determining:

- if the information is material and must therefore be disclosed;
- when and how the material is to be disclosed;
- the content of any press release disclosing the information.

Specific corporate officers should be made responsible for disclosing material information.

These officers would:

- be completely familiar with the company's operations;
- be kept up to date on any pending material developments;
- have a sufficient understanding of the disclosure rules to be able to decide whether or not a piece of information is material; • be responsible for communications with the media, shareholders and securities analysts;
- have back-ups assigned, in case they are unavailable.

To assist these officers, it might be helpful for them to have access to a file containing all relevant public information about the company, including news releases, brokerage research reports and debriefing notes following analyst contacts.

Different corporate officers may be designated for different circumstances. For example, a specific employee might be designated as a corporate spokesperson for a particular area of operations or a particular press release. At the same time, investor relations personnel might be designated as the contact for shareholders, the media and analysts, but not have the authority to issue a particular press

release.

The names of the designated officers, the names of their backups, and their areas of responsibility should be given to IIROC. IIROC may need to contact them in the event of unusual trading in the company's securities.

Avoid situations where:

- delays occur because the person responsible for disclosure is unavailable or cannot be located;
- employees other than designated spokespersons comment on material corporate developments.

# Maintaining the Confidentiality of Information

The Disclosure Rules allow that if the early disclosure of material information would be unduly detrimental to the company, that information may be kept confidential for a limited period of time. To keep material information completely confidential, companies should:

- not disclose the information to anybody, except in the necessary course of business;
- make sure that if the information has been disclosed in the necessary course of business, everyone understands that it is to be kept confidential;
- make sure that there is no selective disclosure of confidential information to third parties, for example, in a meeting with an analyst. This is “tipping”, which is prohibited under securities law.

In the event that selective disclosure of confidential information inadvertently occurs, the company must immediately disclose the information publicly by issuing a press release.

## Guidelines

The Exchange suggests that a company’s policy might:

- limit the number of people with access to confidential information;
- require confidential documents to be locked up and code names to be used if necessary;
- make sure that confidential documents cannot be accessed through technology such as shared servers;
- educate all staff about the need to keep certain information confidential, not to discuss confidential information when they may be overheard, and not to discuss investment in the company, for example, in an investment club, when they are aware of confidential information (so that they don’t influence the investments of other people, when they themselves are not allowed to trade).

# Restrictions on Employee Trading

The Disclosure Rules require that employees with access to material information be prohibited from trading until the information has been fully disclosed and a reasonable period of time has passed for the information to be disseminated. This period may vary, depending on how closely the company is followed by analysts and institutional investors.

This prohibition applies not only to trading in company securities, but also to trading in other securities whose value might be affected by changes in the price of the company's securities. For example, trading in listed options or securities of other companies that can be exchanged for the company's securities is also prohibited.

In addition, if employees become aware of undisclosed material information about another public company such as a subsidiary, they may not trade in the securities of that other company.

In the case of pending transactions, the circumstances of each case should be considered in determining when to prohibit trading. In some cases, prohibition may be appropriate as soon as discussions about the transaction begin. The definition of materiality helps determine when trading should be prohibited in the case of pending transactions. Trading must be prohibited once the negotiations have progressed to a point where it reasonably could be expected that the market price of the company's securities would materially change if the status of the transaction were publicly disclosed. As the transaction becomes more concrete, it is more likely that the market will react. This prohibition on trading will often come into effect before the point in time when it must be disclosed publicly.

In all situations, it is a judgment call as to when employee trading should be restricted.

## Guidelines

The Exchange suggests that a company's policy address trading blackouts. Trading blackouts are periods of time during which designated employees cannot trade the company's securities or other securities whose price may be affected by a pending corporate announcement. A trading blackout:

- prohibits trading before a scheduled material announcement is made (such as the release of

financial statements);

- may prohibit trading before an unscheduled material announcement is made, even if the employee affected doesn't know that the announcement will be made;
- prohibits trading for a specific period of time after a material announcement has been made.

It is easiest to implement a policy on trading blackouts that applies to scheduled announcements, such as the release of financial statements. In this case the policy might:

- prohibit trading by employees for a certain number of days before and after the release of financial statements;
- provide "open windows", which are limited periods of time following the release of financial statements during which employees may trade.

It is more problematic to implement a policy on trading blackouts for unscheduled announcements. A company should make the following decisions about its policy on trading blackouts according to its particular circumstances:

- should the policy apply to employees other than those already prevented from trading by insider trading rules (for example, senior employees not directly involved in the material transaction)?
- would telling an employee not to trade tip them off as to the content of the pending announcement?

If a company decides to implement a pre-announcement blackout policy, it might want to consider one of the following options:

- without giving a reason, instruct employees not to trade until further notice if there is a pending undisclosed material development;
- require employees to obtain approval before trading, on the understanding that this approval will be denied if any material information has not been disclosed.

A company's policy on post-announcement trading blackouts should:

- state whether the blackout rules apply to all staff or only to those involved in the material transaction;
- allow the market time to absorb the information before employees can resume trading. The amount of time that the market needs to absorb the information and set a new price level will depend upon the size of the company and to what extent it is tracked by analysts and investors.

The Exchange also suggests that a company:

- circulate some basic do's and don'ts about employee trading to all their staff;
- designate a contact person who is familiar with the disclosure rules and who can help employees determine whether or not they may trade in a given circumstance;
- set expiry dates for the exercise of stock options and other such compensation plans so that the expiry dates normally would fall after the release of financial statements;
- educate employees about any additional specific trading restrictions that may apply to them (for example, Section 130 of the *Canada Business Corporations Act* generally prohibits insiders of CBCA companies from selling that company's shares short, or from buying or selling put or call options on the shares. Insiders of companies which have to report under the U.S. *Securities Exchange Act* of 1934 may be subject to other restrictions, such as liability to account for short swing profits.);
- decide whether employees who are subject to more stringent trading restrictions, and who are not required by law to file insider trading reports, should have to report details of their trading to the company;
- decide whether the company should review insider trading reports to make sure that employees have complied with company policy and disclosure rules.



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