

## INSIDER TRADING COMPLIANCE

*Michael Volkov, Partner, Mayer Brown LLP, Washington, D.C.*

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Aside from FCPA enforcement, the Justice Department proudly points to its aggressive enforcement against insider trading. The US Attorney's Office in the Southern District of New York has used aggressive tactics to uncover insider trading schemes, particularly in the private equity and hedge fund industry. The FBI has employed wiretaps, undercover recordings, search warrants, and ambush interviews to build cases which have sprawled across the securities industry to ensnare traders and uncover illegal trading in the expert networks investigation.

In this atmosphere, proactive compliance is a must for public companies to prevent insider trading committed by their directors, officers or employees. It is critical for public companies to develop controls over access and disclosure risks of material nonpublic information which company personnel obtain or are exposed to in carrying out their duties.

An Insider Trading Compliance program should include:

1. **Restricted Access to Sensitive Information** -- The two greatest risks for companies are earnings releases and possible mergers. The handling of information related to these two events has to be the focus of any compliance program. Such information should be restricted to individuals who have a need to know. Documentation of the handling of sensitive information is important to protect the company from any insider trading inquiry.

2. **Information Security** – There is a significant risk of disclosure of material nonpublic information outside a company by employees, officers and directors who have access to such information and may fail to protect access to such information from their personal computers, off-site work computers or documents. Data security procedures should be maintained so that sensitive information is protected against disclosure.

3. **Restricted Trading Programs** -- Insider trading investigations focus on trading activity in advance of disclosures of material events such as public financial reporting. Many companies impose “quiet periods” during which trading is prohibited by its directors, officers and employees. These periods usually begin before an expected event is scheduled to occur such as an earnings release. In addition, some companies add pre-clearance requirements for any trading so that an internal review can be conducted before any transaction is cleared.

4. **Written Buy/Sale Stock Plans** -- The SEC's rules create an affirmative defense to an insider trading charge for companies where trades are conducted pursuant to a written plan without any influence or control by the plan's participants. Officers and directors can buy or sell stock in the company if the transactions are conducted pursuant to the written plan.

5. **Stock Re-Purchase Plans** – Companies have to avoid repurchasing stock when they are in possession of material nonpublic information. A repurchase program must be carefully defined and monitored to make sure that companies do not run afoul of insider trading limits.

**6. Training and Certifications** -- Directors, officers and employees need to participate in regular training programs so that they understand how to avoid insider trading violations. Certifications of attendance and of compliance need to be completed to document the company's compliance efforts.