Material, Non-Public Information

A basic principle of securities law is the prohibition against the misuse of material, non-public information – often referred to as “insider trading”.

The prohibition against insider trading includes the following: if you are in possession of material non-public information about a company or the market for a company's securities, you must either publicly disclose the information to the marketplace or refrain from trading. Generally, disclosure is not an option and the effect is to require an individual to refrain from trading. You also may not communicate inside information to a second person who has no official need to know the information.

Information is considered material if there is a substantial likelihood that a reasonable investor would consider it important in deciding to buy or sell a security. In addition, information that, when disclosed, is likely to have a direct effect on a security's price should be treated as material. Examples include information concerning impending tender offers, leveraged buy-outs, mergers, sales of subsidiaries, significant earnings changes and other major corporate events.

Under United States law, no one may, while in the possession of inside information concerning an issuer of securities, buy, sell or recommend the purchase or sale of such securities for his or her own account or the accounts of others, regardless of whether the inside information is gained through the scope of one's employment or otherwise (unless pursuant to a plan adopted pursuant to a so-called Rule 10b5-1 plan). In most cases, the prohibition against insider trading remains in effect until the inside information has been fully disclosed to the public. Disclosure to the public generally means filing of documents containing the inside information or disclosure through publicly-available media or print distribution.

Information is non-public when it has not been disseminated in a manner making it available to investors generally. Information is public once it has been publicly disseminated, such as when it is reported on the Dow Jones or other news services or in widely disseminated publications, and investors have had a reasonable time to react to the information. Once the information has become public or stale (i.e., no longer material), it may be traded on or disclosed freely.

Generally, a person violates the insider trading prohibition when that person violates a duty owed either to the person on the other side of the transaction or to a third party (such as a customer or employer) by trading on or disclosing the information. The insider trading prohibition applies to an issuer's directors, officers and employees, investment bankers, underwriters, accountants, lawyers and consultants, as well as other persons who have entered into special relationships of confidence with an issuer of securities.