

## The Ins and Outs of Handling Material Non-Public Information Episode Guide

- When does information become material and what are the disclosure obligations?
- What are regulators looking at?
- What procedures can companies put in place to protect themselves from regulatory investigations?
- What is a 10b5-1 trading plan?

### When does information become material and what are the disclosure obligations?

- Information becomes material and subject to disclosure when it would be of interest to a "reasonable investor" making an investment decision
- In the US, there is also a periodic disclosure regime under the securities laws and US Securities and Exchange Commission (SEC) rules and regulations.
  - Public companies are required to file reports quarterly, annually and on an ad-hoc basis for specific material issues.
  - The US Securities and Exchange Commission is moving towards a principle-based materiality judgement.
  - Under exchange rules, public companies are also obligated to disclose material information.
- Information can become material over time, but the company and any insiders who know the material non-public information cannot trade as long as the information is not public.
- Companies must update prior disclosures if their public disclosures have become materially misleading as the result of the passage of time, or because the disclosure has become outdated due to further developments.

### What are regulators looking at?

- Usually regulators are looking at "big-ticket" events, such as public announcements on clinical data, financial results, or financings.
- Companies should undertake a thorough analysis of their insider trading policies to conform to best practices, keeping in mind that investigations may arise a significant period of time following a particular event.
- Since healthcare and life sciences companies are always handling material non-public information, it is important to ensure that senior management, employees and even third-party contractors or business partners who have access to the company's material non-public information are treating it appropriately. Consider the strength of your policies and procedures, training, and agreements to protect your material non-public information.

### What procedures can companies put in place to protect themselves from regulatory investigations?

- Pre-clearance reporting requirement procedure
  - Companies should require directors, officers and other employees who have access to material non-public information to pre-clear any transaction in company stock in advance with a designated compliance representative, and report any transactions.

## What procedures can companies put in place to protect themselves from regulatory investigations? (continued)

- Blackout period and trading windows
  - A blackout period is intended to prevent insider trading during a period where the company and its personnel are most likely to have or could be perceived to have material non-public information. Situational blackout periods can also be put in place depending on current developments within a company.
  - Trading windows are designed to permit insiders to trade in company stock only during a designated period of time after the release of material non-public information, for example, after the release of quarterly earnings, and insiders are unable to trade in company stock at any other point in time.

## What is a 10b5-1 trading plan?

- Two key elements to a 10b5-1 plan
  1. When an insider puts the plan into place, and sets up the trading parameters to be executed by a broker over time, the insider may not possess material non-public information.
  2. Once a plan is in place, the insider does not exercise control or influence over any trades.
- Best practice is that a 10b5-1 plan may only be put in place during a company's trading window and it must be subject to a cooling-off period before trades could begin under the plan.
- Benefits of 10b5-1 plan: Insiders, who may have a large position in company stock, can make predetermined trades that occur over time and the plan can be an affirmative defense to insider trading allegations.

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