



## **INSIDER TRADING COMPLIANCE PROGRAM**

### **Helping Public Company Insiders Prevent Insider Trading Violations**

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**Michael L. Andresino, Esq.  
Posternak Blankstein & Lund LLP  
The Prudential Tower  
Boston, MA 02199  
(617) 973-6100  
[mandresino@pbl.com](mailto:mandresino@pbl.com)**

## INSIDER TRADING COMPLIANCE PROGRAM

### Introduction - How to Use These Materials

The documents set forth on the following pages are intended to serve as a model for a publicly-traded company's comprehensive insider trading compliance program. The goals of this program are to prevent insider trading violations under Rule 10b-5 of the Securities Exchange Act of 1934. This will also have the effect of enhancing compliance with two other insider regulations, Section 16 and Rule 144.

Unless your company has only recently gone public, it is likely that you already have some type of insider compliance program in place. Even if this is the case, you should still find the enclosed materials helpful, either to fill in the gaps in your existing program or to suggest a way to standardize the program and establish control over your insiders' trading and reporting activities.

As with any models, the documents provided here for the hypothetical "ABC Corporation" describe situations which do not apply to every company, or may not cover an issue which is relevant for your company. *If in doubt as to the application of a particular document to your company's situation, please feel free to contact Michael L. Andresino at Posternak Blankstein & Lund LLP, phone: (617) 973-6100, e-mail: mandresino@pbl.com.*

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**INSIDER TRADING COMPLIANCE PROGRAM**

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**[ABC CORPORATION]**  
**STATEMENT OF COMPANY POLICY**  
**ON**  
**INSIDER TRADING <sup>1</sup>**

**Introduction**

It is illegal for any person, either personally or on behalf of others, to trade in securities on the basis of material, nonpublic information. It is also illegal to communicate (or “tip”) material, nonpublic information to others who may trade in securities on the basis of that information. These illegal activities are commonly referred to as “insider trading.”

Potential penalties for insider trading violations include imprisonment for up to 10 years (25 years if it constitutes fraud), civil fines of up to three times the profit gained or loss avoided through the trade, and criminal fines of up to \$1 million. In addition, a company whose employee violates the insider trading prohibitions may be liable for a civil fine of up to the greater of \$1 million or three times the profit gained or loss avoided as a result of the employee’s insider trading violations.

This memorandum sets forth [ABC Corporation’s] policy against insider trading. The objective of this policy is to protect both you and [ABC Corporation] from securities law violations. **All directors, officers and employees of [ABC Corporation] or its affiliates or subsidiaries must comply with this policy.**

Employees are encouraged to ask questions and seek any follow-up information that they may require with respect to the matters set forth in this policy. Please direct all questions to \_\_\_\_\_ . [Insert name and telephone extension of compliance officer.]

**General Statement**

**[ABC Corporation’s] policy, applicable to all directors, officers and employees, prohibits trading, and tipping others who may trade, when you are in possession of material, nonpublic information.**

**What information is material?** All information that an investor might consider important in deciding whether to buy, sell, or hold securities is considered material. Information that is likely to affect the price of a company’s securities is almost always material. Examples of

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<sup>1</sup> As adopted by the Board of Directors of [ABC Corporation] on \_\_\_\_\_, 20\_\_ . [Note: To be distributed to all employees.]

some types of material information are:

- financial results or expectations for the quarter or the year
- financial forecasts
- changes in dividends
- possible mergers, acquisitions, joint ventures and other purchases and sales of companies and investments in companies
- changes in customer relationships with significant customers
- obtaining or losing important contracts
- important product developments
- major financing developments
- major personnel changes
- major litigation developments

**What is nonpublic information?** Information is considered to be nonpublic unless it has been effectively disclosed to the public. Examples of public disclosure include public filings with the Securities and Exchange Commission and company press releases. Not only must the information have been publicly disclosed, but there must also have been adequate time for the market as a whole to digest the information. Although timing may vary depending upon the circumstances, a good rule of thumb is that information is considered nonpublic until the second business day after public disclosure.

**What transactions are prohibited?** When you know material, nonpublic information about [ABC Corporation], you, your spouse and members of your immediate family living in your household are prohibited from the following activities:

- trading in our company's securities (including trading in puts and calls for our securities)
- having others trade for you in our securities
- disclosing the information to anyone else who might then trade
- exercising stock options if the option shares are to be immediately sold

Neither you nor anyone acting on your behalf nor anyone who learns the information from you (including your spouse and family members) can trade. This prohibition continues whenever and for as long as you know material, nonpublic information.

Although it is most likely that any material, nonpublic information you might learn would be about [ABC Corporation] or its subsidiaries, these prohibitions also apply to trading in the securities of any company (such as a potential merger partner) about which you learn material, nonpublic information through your employment with [ABC Corporation].

### **Unauthorized Disclosure**

As discussed above, the disclosure of material, nonpublic information to others can lead to significant legal difficulties. Therefore, you should not discuss material, nonpublic

information about [ABC Corporation] or its affiliates or subsidiaries with anyone, including other employees, family or friends, except as required in the performance of your regular duties.

Also, it is important that only specifically designated representatives of [ABC Corporation] discuss [ABC Corporation] and its affiliates and subsidiaries and with the news media, securities analysts, and investors. Inquiries of this type received by any employee should be referred to \_\_\_\_\_. In his/her absence, inquiries should be referred to \_\_\_\_\_.

For similar reasons, no employee of [ABC Corporation] is permitted to discuss confidential financial or business information regarding [ABC], either in his or her own name or anonymously, and whether from the office or outside the office, on any Internet “chat” site or message board.

### **Questions About this Policy**

Compliance by all employees with this policy is of the utmost importance both for you and for [ABC Corporation]. If you have any questions about the application of this policy to any particular case, please contact Mr./Ms. \_\_\_\_\_ or Mr./Ms. \_\_\_\_\_ immediately.

**Your failure to observe this policy could lead to significant legal problems for you and the company, as well as other serious consequences, including termination of your employment.**

[ABC CORPORATION]

**POLICY REGARDING INSIDER TRADING PROCEDURES<sup>2</sup>**

**Two copies of this Policy Regarding Insider Trading Procedures are being provided to directors, officers and certain other employees with routine access to sensitive financial and business information. You should read this Policy, ask questions of the officers listed below, if desired, and return one signed copy by \_\_\_\_\_, 20 \_\_, to:**

\_\_\_\_\_.

**Policy Statement on Insider Trading.**

[ABC Corporation] has adopted a policy on insider trading that applies to each officer, director and employee of [ABC]. A statement regarding such policy has been distributed to all employees. Under [ABC's] insider trading policy, each officer, director and employee of ABC is forbidden from:

- (i) trading in securities of [ABC] (or in puts and calls for [ABC's] securities) on the basis of material, nonpublic information;
- (ii) having others trade for such person in such securities while he or she is in possession of material, nonpublic information; or
- (iii) communicating (or "tipping") to others confidential or nonpublic information concerning [ABC] or other companies.

While the general [ABC] insider trading restrictions outlined above also apply to you, as a director, officer or employee with access to sensitive information, the Board of Directors believes it is appropriate that your transactions in [ABC's] securities be subject to certain additional restrictions in order to reduce the risk of securities law violations. This Policy Regarding Insider Trading Procedures contains a discussion of insider trading and describes the special trading restrictions applicable to you. You must read, sign and retain this policy statement and, upon request by [ABC], re-acknowledge it on an annual basis.

**Discussion: What is "Insider Trading?"**

Insider trading is, in addition to being a violation of [ABC's] policy, a violation of the federal securities laws. The penalties for insider trading are discussed below.

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<sup>2</sup> As adopted by the Board of Directors of [ABC Corporation] on \_\_\_\_\_, 20 \_\_. The terms ["ABC Corporation"] and ["ABC"] refer to [ABC Corporation] and its affiliates and subsidiaries, collectively or individually, as the context requires.

[Note: To be distributed to all insiders.]

The term “insider trading” generally is used to refer to the use of material nonpublic information to trade in securities, or the communication of material nonpublic information to others who may trade on the basis of such information.

While the law concerning insider trading is not static, it is generally understood that the law prohibits insiders of [ABC] from doing the following:

- (1) Trading in ABC’s securities while in possession of material, nonpublic information concerning [ABC].
- (2) Having others trade on the insider’s behalf while the insider is in possession of material, nonpublic information.
- (3) Communicating nonpublic information concerning [ABC] to others who may then trade in [ABC’s] stock or pass on the information to others who may trade in [ABC’s] stock. Such conduct, also known as “tipping,” results in liability for the insider of [ABC] who communicates the information, even if the insider does not actually trade, and for the person who receives and trades on such information.

The elements of insider trading and the potential penalties for such unlawful conduct are discussed below.

## **1. Who is an Insider?**

The concept of “insider” is broad and generally includes any person who possesses nonpublic information about [ABC] and who has a duty to [ABC] to keep this information confidential. In the case of [ABC], “insiders” include officers and directors of [ABC Corporation] and may include officers and directors of [ABC Corporation’s] subsidiaries, as well as employees of any of such entities who routinely have access to material information that is not publicly available or who are working on significant corporate transactions or projects. In addition, a person can be a “temporary insider” if he or she enters into a relationship to serve [ABC] and as a result gains access to inside information. Outsiders who routinely become temporary insiders include, among others, [ABC’s] attorneys, accountants, consultants, bankers and the employees of their organizations.

## **2. What is Material Information?**

Trading while in the possession of inside information is not a basis for liability unless the information is “material.” Information is generally defined as material if there is a substantial likelihood that a reasonable investor would consider such information important in making his or her investment decisions, or information that is reasonably certain to affect the price of a company’s securities. It is important to remember that materiality will always be judged with the benefit of hindsight.

Although there is no precise, quantitative definition of materiality, information is likely to be “material” if it relates to:

- Earnings or sales results, or expectations for the quarter or the year
- Financial forecasts
- Changes in dividends
- Proposals or agreements involving a merger, acquisition, joint venture, divestiture or leveraged buy-out
- Changes in relationships with major customers, or obtaining or losing important contracts
- Important product developments
- Major financing developments
- Major personnel changes
- Criminal indictments or material civil litigation or government investigations
- Labor disputes including strikes or lockouts
- Substantial changes in accounting methods
- Debt service or liquidity problems
- Bankruptcy or insolvency
- Public offerings or private sales of debt or equity securities
- Stock splits, calls, redemptions or repurchases of [ABC’s] securities

“Inside” information could be material because of its expected effect on the price of [ABC’s] securities, the securities of another company, or the securities of several companies. Moreover, the resulting prohibition against the misuse of “inside” information includes not only restrictions on trading in [ABC’s] securities but restrictions on trading in the securities of other companies affected by the inside information.

### **3. What is Nonpublic Information?**

In order for information to qualify as “inside” information it must not only be “material,” it must be “nonpublic.” “Nonpublic” information is information which has not been made available to investors generally. This includes information received from sources or in

circumstances indicating that the information has not yet been generally circulated.

At such time as material, nonpublic information has been released to the investing public, it loses its status as “inside” information. However, for “nonpublic” information to become public information it must be disseminated through recognized channels of distribution designed to reach the securities marketplace, and sufficient time must pass for the information to become available in the market.

To show that “material” information is public, it is generally necessary to point to some fact verifying that the information has become generally available, such as disclosure by filing of a Form 10-Q, Form 10-K, Form 8-K or other report with the SEC, or disclosure by release to a national business and financial wire service (such as BusinessWire, Reuters or Bloomberg), a national news service, or a national newspaper (such as The Wall Street Journal). The circulation of rumors, Internet chat or “talk on the street,” even if accurate, widespread and reported in the media, does not constitute the requisite public disclosure, nor does the mere posting of the information on an Internet web site (other than the SEC’s).

Material, nonpublic information is not made public by selective dissemination. Material information improperly disclosed only to an institutional investor or to a favored analyst or a group of analysts at a conference retains its status as “nonpublic” information the use of which is subject to insider trading laws, as well as constituting a violation of the SEC’s prohibition against selective disclosure. Similarly, partial disclosure does not constitute public dissemination. So long as any material component of the “inside” information has yet to be publicly disclosed, the information is deemed “nonpublic” and may not be misused.

It is the policy of [ABC] to consider quarterly and annual earnings results public on the second business day after a press release regarding such earnings. Similarly, other material information will be considered public on the second business day after public disclosure in the manner described in the preceding paragraphs.

#### **4. Penalties for Insider Trading**

Penalties for trading on or communicating material nonpublic information are severe, both for the individuals involved in such unlawful conduct and, potentially, for their employers. A person can be subject to some or all of the penalties below even if he or she does not personally benefit from the violation (i.e., if the violation was one for tipping information). Penalties include:

- jail sentences of up to 10 years (25 years if the conduct constitutes fraud)
- disgorgement of profits
- fines for the person who committed the violation of up to three times the profit gained or loss avoided, whether or not the person actually benefited
- fines for the employer or other controlling person, such as a supervisor, of up to the

greater of \$1,000,000 or three times the amount of the profit gained or loss avoided

In addition, a violation of this policy statement can be expected to result in serious sanctions by [ABC], which may include dismissal of the person involved.

### **Insider Trading Procedures**

**The following Insider Trading Procedures are applicable to you because you are a director or an officer of [ABC] or an employee of [ABC] who may, by virtue of your duties or work conditions, have regular access to material, nonpublic information concerning [ABC].**

#### **1. Trading Windows/Blackouts and Pre-Clearance**

There are times when [ABC] may be engaged in a material, nonpublic development. Although you may not know the specifics of the development, if you engaged in a trade before such development was disclosed to the public you might expose yourself and [ABC] to a charge of insider trading that could be costly and difficult to refute. In addition, a trade by you during such a development could result in significant adverse publicity for [ABC].

**Therefore, you, your spouse and members of your immediate family sharing the same household may only purchase or sell securities of [ABC] during four 30-day “trading windows” that occur each year and only after pre-clearing your intent to trade with \_\_\_\_\_ [Compliance Officer.]**

The four trading windows consist of the 30-day periods that begin on the second business day after issuance of a press release by [ABC] disclosing quarterly or annual earnings. The periods when the trading window is closed are referred to as “blackout” periods. A blackout period will also be imposed during certain temporary trading halts in [ABC’s] broad-based stock benefit plans. In accordance with the procedure for waivers described below, in rare circumstances a waiver may be given to allow a trade to occur during a blackout period.

If you do intend to engage in a trade during a trading window you must first receive permission to engage in a trade from Mr./Ms. \_\_\_\_\_. Mr./Ms. \_\_\_\_\_ may refuse to permit any transaction if he/she determines that there are pending corporate developments that could give rise to a charge of insider trading. Mr./Ms. \_\_\_\_\_ may decide to consult with [ABC’s] outside legal counsel before responding to your request.

After receiving permission to engage in a trade, you should either complete your trade within one week or make a new trading request.

You may be advised by a broker or other source that it may be possible for [ABC] insiders to limit their insider trading exposure by entering into certain written plans or arrangements providing for a formula for stock transactions or for third-party control over such transactions. These are commonly referred to as “10b5-1 Trading Plans.” The establishment of these arrangements is subject to the policies set forth herein, and you should consult with

Mr./Ms. \_\_\_\_\_ and [ABC's] counsel prior to entering into such arrangements.

The exercise of options to purchase and hold common stock of [ABC] is not subject to the Insider Trading Procedures outlined above, but the shares so acquired may not be sold except during a trading window, after authorization from Mr./Ms. \_\_\_\_\_ has been received, and after all other requirements of this policy have been satisfied. Accordingly, the exercise of options and immediate sale of some or all of the shares through a broker is covered by these Insider Trading Procedures.

## **2. Post-Trade Reporting**

You or your broker is required to confirm to Mr./Ms. \_\_\_\_\_ the details of any transaction in securities of [ABC] by you, your spouse or any immediate family member sharing your household not later than the close of business on the day the transaction occurs. Each report you or your broker makes to Mr./Ms. \_\_\_\_\_ should include the date, quantity and price at which the transaction was effected. We will provide a form which you may use to instruct your broker to release this information to us. Copies of any Form 144 filings and any representation letters signed for the broker should also be provided.

The foregoing reporting requirement is designed to help monitor compliance with the Insider Trading Procedures set forth herein and to enable [ABC] to help those persons who are subject to reporting obligations under Section 16 of the Securities Exchange Act of 1934 to comply with such reporting obligations. Each officer and director, however, and not [ABC], is personally responsible for ensuring that his or her transactions do not give rise to "short-swing" liability under Section 16 and for filing timely reports of transactions with the SEC as required.

While not required, the Company recommends that you direct your [ABC] trades through the XYZ Brokerage Firm, with which we have negotiated a special commission rate. [NOTE: Revise the above if mandatory rather than merely recommended.] In any event, you are required to notify your brokerage firm(s) that you are subject to this policy, using a Broker Notification Form provided to you. [See Document No. 4.]

## **3. Restrictions on Short Sales and Trading in Puts and Calls**

Without explicit approval, neither you, your spouse nor any immediate family member sharing your household may sell any securities of [ABC] that are not owned by such person at the time of the sale (a "short sale"). Also, without explicit approval, no such person may buy or sell puts, calls or exchange-traded options in respect of [ABC's] securities. These transactions are speculative in nature and may involve a "bet against the Company" which is inappropriate for an insider. You should be aware that most hedging strategies promoted by brokerage firms involve these types of trades.

## **4. Compliance with [ABC's] Statement of Company Policy on Insider Trading**

**Even if you receive preclearance and it is during a trading window, you, your spouse and any member of your immediate family sharing your household may not trade**

**in securities of [ABC] if you are in possession of material, nonpublic information about [ABC]. In other words, the procedures set forth herein are in addition to the general insider trading policy and are not a substitute therefor.**

**Reporting of Violations**

If you know or have reason to believe that [ABC's] policy on insider trading or the Insider Trading Procedures described above have been or may be violated, you should bring the actual or potential violation to the attention of Mr./Ms. \_\_\_\_\_.

**Modifications; Waivers**

[ABC] reserves the right to amend or modify the procedures set forth herein at any time. Waiver of any provision of this policy statement in a specific instance may be authorized in writing by Mr./Ms. \_\_\_\_\_ (or his/her designee). Be advised that any such waiver may need to be publicly disclosed by [ABC], and shall be reported to the Board of Directors of [ABC] at its next regularly scheduled meeting.

**Questions**

If you have any questions regarding [ABC's] insider trading policy or the Insider Trading Procedures described above, you should contact Mr./Ms. \_\_\_\_\_, who may refer the question to [ABC's] legal counsel before giving a full reply.

[Acknowledgement page follows.]

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**ACKNOWLEDGMENT**

I have read [ABC's] Statement of Company Policy on Insider Trading and this Policy Regarding Insider Trading Procedures. I understand that, if I am an employee of [ABC], my failure to comply in all respects with [ABC's] policies, including the Insider Trading Procedures set forth herein, is a basis for termination of my employment from [ABC] and any subsidiary thereof to which my employment now relates or may in the future relate.

X \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**This document states a policy of [ABC Corporation] and is not intended to be regarded as the rendering of legal advice.**

## INSIDER TRADING POLICY BOARD RESOLUTIONS

### Draft Resolutions for Adoption at an [ABC Corporation] Board Meeting

**VOTED:** That, for the purpose of encouraging compliance with securities law prohibitions against insider trading, this Corporation does hereby adopt the Statement of Company Policy on Insider Trading presented to this Board, and that the President and any Vice President (each, a “Designated Officer”), and any officer designated by any of them (a “Designee”), and any of them acting singly, be, and each hereby is, authorized to (i) distribute a copy of such Insider Trading Policy to all of the Corporation’s employees by any means that such Designated Officer or Designee deems appropriate, and (ii) post a copy of such Statement in appropriate locations within the Corporation’s facilities.

**VOTED:** That, for the purpose of further encouraging compliance with the securities laws, this Corporation does hereby adopt the Policy Regarding Insider Trading Procedures presented to this Board, such Insider Trading Procedures to be applicable to each of the directors and officers of this Corporation, and to the other employees of this Corporation, or positions within the Corporation, set forth on Annex A to these resolutions; and, further, that the Corporation’s [           title           ] is hereby designated as the Corporation’s “Compliance Officer” under such policy.

**[ABC CORPORATION]**

**Broker Notification Form**

[Date] \_\_\_\_\_

To: [XYZ Brokerage Firm] (“Broker”)

Financial Consultant: \_\_\_\_\_

Re: Transactions in the Common Stock of ABC Corporation (the “Company”)

This is to confirm my advice to Broker that I am required to preclear with the Company, and report to the Securities and Exchange Commission any transactions in the Company’s Common Stock or other equity securities involving the accounts listed below that are executed by Broker.

In order to facilitate my compliance with the Company’s policies for its directors and officers, I instruct Broker to provide the Company’s designated contact person whose name I have provided below with the details of my transactions in the Company’s equity securities. Please provide such information (1) prior to execution of the transaction, to confirm that it has been pre-cleared by the Company, and (2) after execution. You shall provide such information as promptly as reasonably practicable by telephone at the telephone number listed below and [check one of the following]:

\_\_\_\_\_ - By e-mail, at the following address: \_\_\_\_\_

\_\_\_\_\_ - By fax, at the following number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

The name of the Company’s designated contact person is: \_\_\_\_\_

Respectfully,

\_\_\_\_\_  
[Client’s Signature]

\_\_\_\_\_  
[Print Client’s Name]

\_\_\_\_\_  
[Client’s Account Number(s)]

Accepted and Agreed to: \_\_\_\_\_ [Brokerage Firm]

\_\_\_\_\_  
[Branch Manager's Signature]

\_\_\_\_\_  
[Financial Consultant's Signature]

\_\_\_\_\_  
[Print Branch Manager's Name]

\_\_\_\_\_  
[Print Financial Consultant's Name]