



Material, Non-Public Information and FAQs

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.

Frequently Asked Questions

Question 1. I am a principal investigator in a clinical trial that is currently underway. May I consult with an investor about my experience in this trial?

Answer: No. An investigator is not permitted to discuss data from an ongoing trial.

Question 2. I served as a principal investigator in a clinical trial that has been completed. The results of the trial have not been read out. May I discuss my experience in the trial with an investor?

Answer: No. Until the results have been read out or published, you may not discuss your experience in the trial.

Question 3. I am involved in a clinical trial currently underway that is double-blinded. May I discuss my experience in this trial with an investor?

Answer: No. The methodology of the trial is not relevant. Until the results are read out or published, you are not permitted to discuss the trial with an investor.

Question 4. I am a member of the Scientific Advisory Board (SAB) for a publicly traded company that is developing an obesity drug. May I discuss my activities on the Scientific Advisory Board concerning that obesity drug with an investor?

Answer: No. SAB members are often subject to confidentiality agreements that restrict discussions concerning the activities of SAB members. You may also be limited in other activities because of your participation on the SAB and you should check with the publicly-traded company before consulting.

Question 5. I had a consulting project with a large pharma company that I completed two months ago. I did sign a confidentiality agreement prior to doing the consulting work. Because the project has been completed, can I discuss with an investor?

Answer: No. Even though the consulting project has been completed, the terms of the confidentiality agreement are still in effect.

Question 6. I was an investigator in Phase I, II and III trials for a cancer drug during the past three years. The results of all the trials have been read out. May I discuss with experiences during the trials with an investor?

Answer: Yes. Once the trials have been read out or published, you are permitted to discuss with investors.

Question 7. I have not participated in any clinical trials recently, but have stayed current on published reports relating to Phase I and II results of a cancer drug. I know there is a Phase III trial underway. May I respond to a question from an investor about my impressions from the published material?

Answer: Yes. You were not involved in the trials and are subject to any restrictions.

Question 8. I have not participated in any clinical trials recently, but have stayed current on published reports relating to Phase I and II results of a cancer drug. I know there is a Phase III trial underway. An investor has asked for my thoughts on how I expect Phase III to turn out. Can I do that?

Answer: Yes. You were not involved in the trials and are subject to any restrictions.

Question 9. I was told by a member of the board of directors of a publicly-traded pharmaceutical company that twenty-three patients in a clinical trial had experienced kidney failure but the company had not yet announced the information. Can I discuss this information with an investor?

Answer: No. You know that the person is on the board of the company and he has information because of that position. Further, the information would be considered material and non-public because it had not yet been announced.

Question 10. Six months ago, I did a consulting project for a drug manufacturer's subsidiary based in Ireland and signed a confidentiality agreement about that project. The drug manufacturer just announced that it has experienced manufacturing problems at one of its facilities in Massachusetts causing it to suspend operations. An investor has asked me what impact the shutdown will have. May I answer?

Answer: Yes. The consulting project involved work at a subsidiary in a foreign country and the company announced the problems at the Massachusetts facility.