



A Look Inside Canadian Insider Trading Policies

Goodmans^{LLP}

A Detailed Survey of Canadian Insider Trading Policy Terms

Canadian securities regulators recommend that public companies implement insider trading policies to approve and monitor the trading activity of insiders, prohibit trading based on material non-public information (“MNPI”), and establish trading “blackout periods” around key events like earnings announcements.

Canadian securities laws do not require public companies to publicly file or publicly disclose the terms of their insider trading policies.¹ However, some Canadian public companies voluntarily disclose copies of their insider trading policies on their websites. To identify emerging trends regarding insider trading governance, Goodmans recently analyzed the policies of 50 TSX-listed companies.² The findings highlight how many of Canada’s largest public companies are approaching key issues such as the start and end of blackout periods, the process around pre-approval of trades outside of blackout periods, the grant and exercise of options, short-term trading, margin loans, short selling, hedging and shadow trading.

¹ The United States Securities and Exchange Commission adopted new rules in 2024 that require U.S. public companies to make this disclosure.

² The survey included issuers with market capitalizations ranging from C\$3 billion to C\$130 billion across a variety of industries. All policies reviewed were available on the issuers’ websites.

Purpose of Insider Trading Policies

Canadian securities laws prohibit those who are in a “special relationship” with a public company, and who have knowledge of MNPI, from trading in securities of the public company. Additionally, these laws prohibit those in a special relationship from “tipping”, or disclosing MNPI to others (with an exception for disclosure made “in the necessary course of business”). These prohibitions are intended to promote the efficiency of, and ensure public confidence in, the capital markets. Implementing insider trading policies promotes compliance with these laws.

Application of Policies Generally

The surveyed policies generally apply to (i) all directors, employees, contractors and consultants of the issuer, together with (ii) their immediate family members who reside in the same home as those individuals and any legal entities controlled by those individuals.³



Additionally, 24% of the surveyed policies purport to apply to former employees who possess MNPI acquired prior to their resignation or termination, with the policies remaining in effect until the MNPI either is made public or becomes non-material.

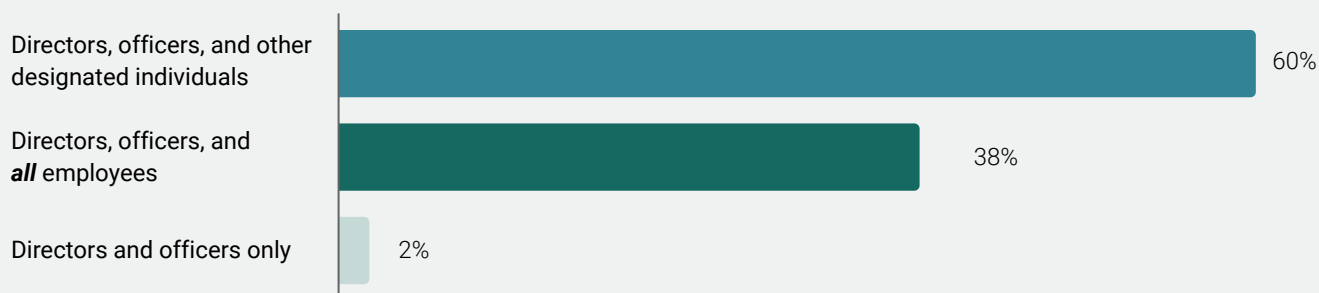
³ The formulations of (ii) differed by issuer.

Blackout Periods

Application of Blackout Period Trading Restrictions

Regularly scheduled “blackout periods” are designed to restrict the trading activities of insiders during times when they are particularly likely to have access to MNPI. All of the surveyed policies restrict directors and officers from trading during regularly scheduled blackout periods, while practice varies as to the other individuals subject to blackout period trading restrictions.

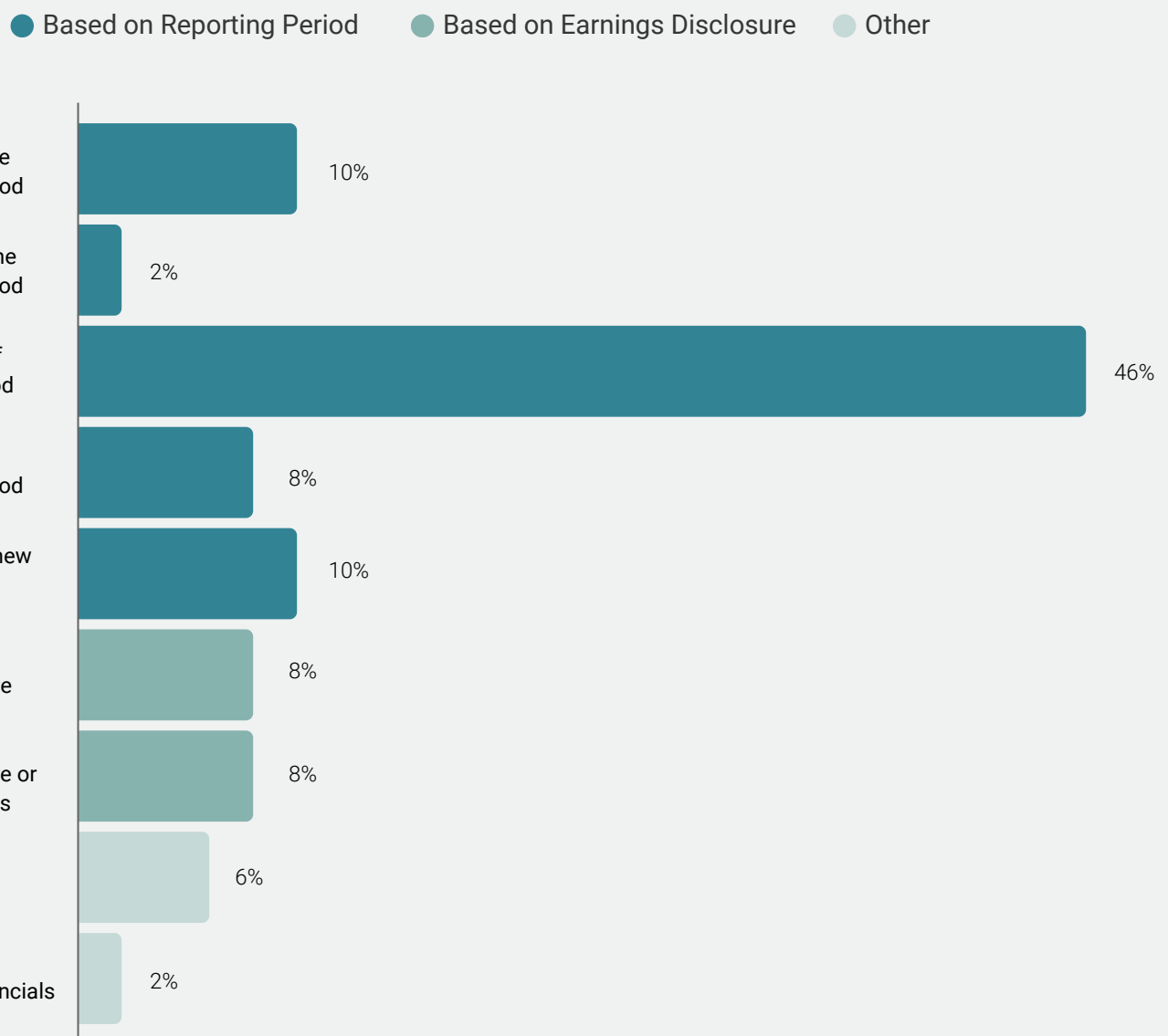
Individuals Subject to Regularly Scheduled Blackout Periods



Blackout Period Start Dates

Canadian securities regulators do not prescribe timelines for starting blackout periods, but encourage companies to incorporate blackout periods that best align with when insiders are likely to be in possession of MNPI. Among the policies surveyed, the majority of blackout period start dates are tied to a quarterly reporting period.

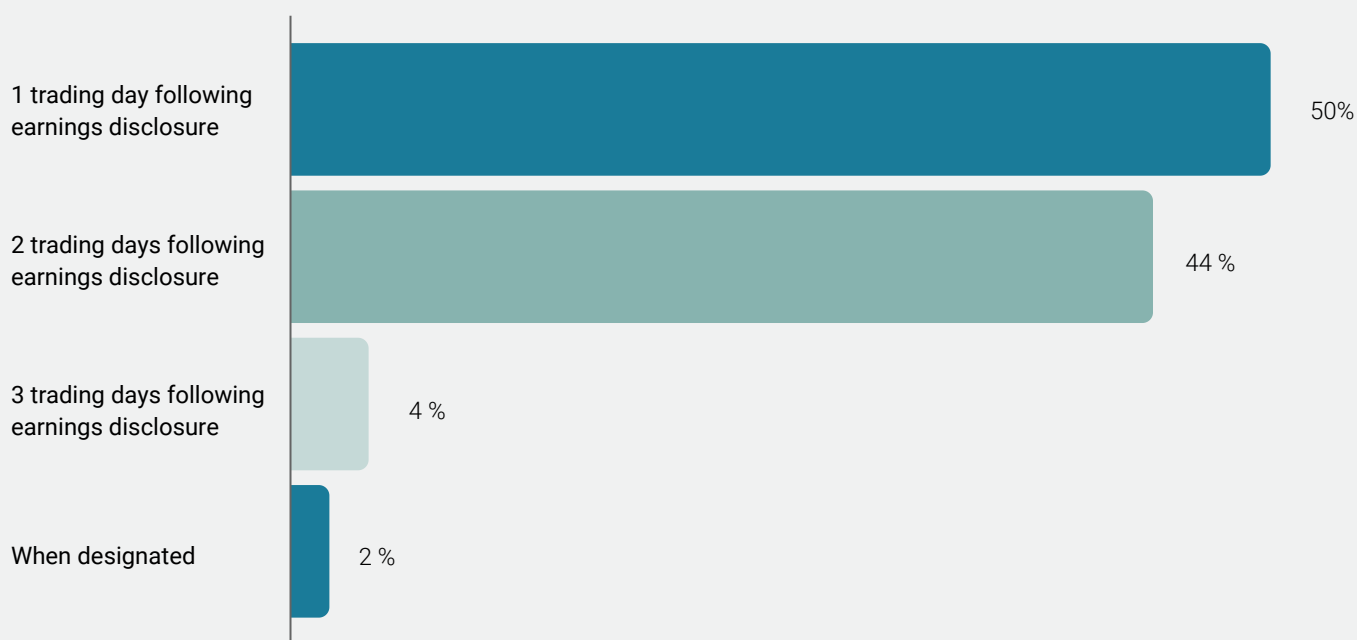
Blackout Period Start Dates



Blackout Period End Dates

Regularly scheduled blackout periods end after the issuance of financial results, as the MNPI is considered to have been generally disclosed. The overwhelming majority of the surveyed policies deem the passage of one to two trading days following earnings disclosure to be adequate time for the MNPI to become generally disclosed.

Blackout Period End Date

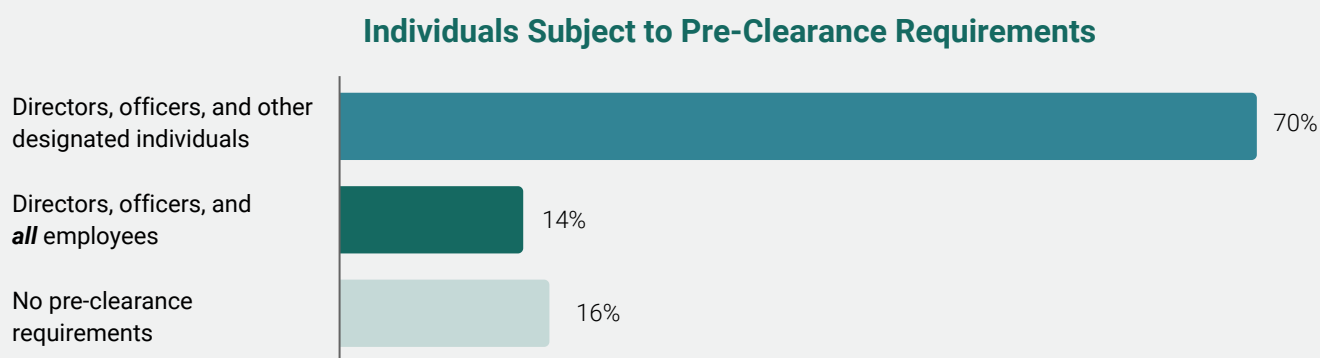


Special Blackouts

In addition to regularly scheduled quarterly blackout periods, insider trading policies often permit other trading blackouts to be imposed when there is potential MNPI. 94% of the surveyed policies permit a designated individual to impose special blackout periods on some or all of the issuer's personnel.

Trades Outside Blackout Periods

After the termination of the regular blackout periods, it is still possible that certain individuals, because of their position with the issuer, have access to MNPI. As a result, insider trading policies frequently require certain individuals to have their trades pre-approved. These requirements help reduce the risk of accidental violations and promote compliance with securities laws.

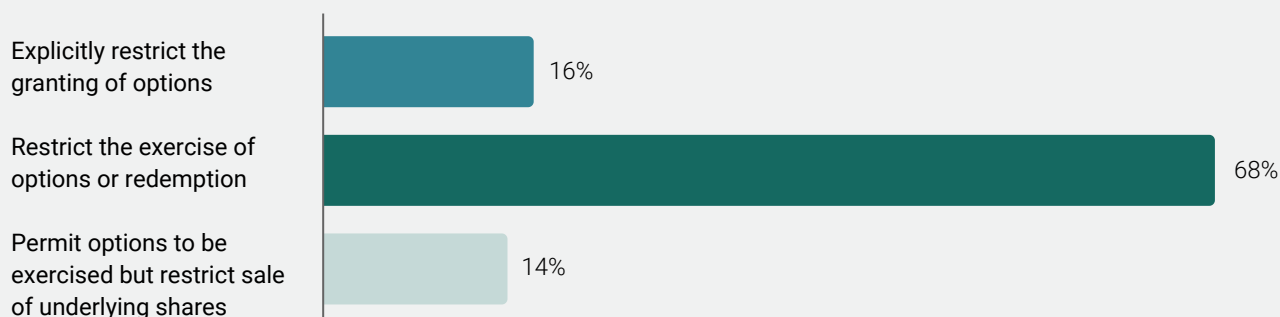


45% of the surveyed policies stipulate that trades outside a blackout period must be executed within a certain time period following pre-clearance, following which another pre-approval must be obtained. This requirement reduces the risk of individuals trading with MNPI acquired after receiving approval to proceed with the trade. Timelines to complete the trades generally vary from two to 14 days, with three to five trading days being the most common.

Granting and Exercising Equity Incentives

Canadian securities laws that prohibit insider trading stipulate that “securities” include options and derivatives whose value can vary materially with the market price of other securities of the public company. The granting and/or exercise of equity incentives may not technically be considered “insider trading” under securities laws (there is an exemption that applies when both parties to a trade have the same information), but securities regulators have expressed public interest concerns with the timing of granting equity-based compensation when MNPI exists (a practice known as “spring loading”). TSX rules also restrict the pricing of equity-based compensation when companies are in possession of MNPI.

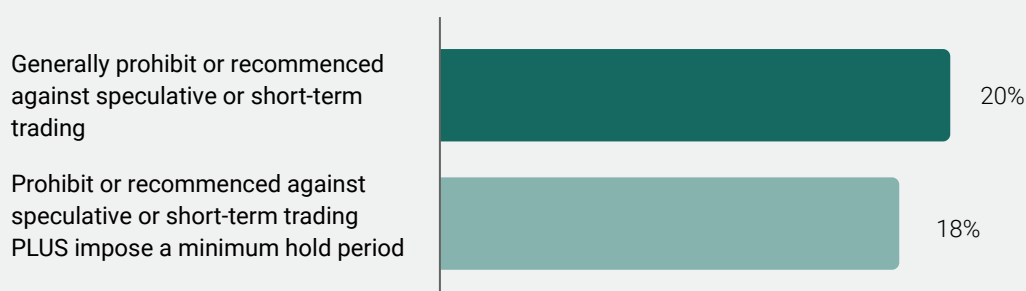
Only 16% of the surveyed policies explicitly restrict the granting of options or other equity incentives during blackout periods or when in possession of MNPI. However, 68% of the surveyed policies restrict the exercise of options or redemption of other equity incentives during blackout periods or when in possession of MNPI. 14% of the surveyed policies permit options to be exercised during blackout periods but restrict the sale of the underlying equity securities.



Other Trading Restrictions

Restrictions on Speculative Trading

20% of the surveyed policies generally prohibit (or in some cases recommend against) “speculative” or “short-term” trading. Another 18% of the surveyed policies prohibit or recommend against short-term trading, and impose a minimum hold period ranging from 30 days to 12 months.



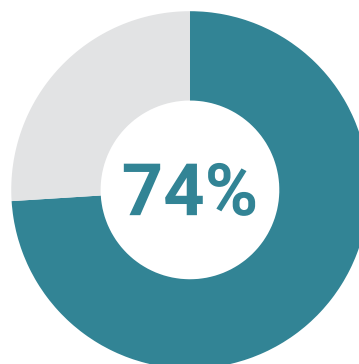
Margin Loans and Pledges

A margin loan is a loan secured or collateralized by public company securities, typically with the amount of the loan being limited to a certain percentage of the value of the collateralized securities. 44% of the surveyed policies expressly restrict the use of margin loans involving company securities and/or the pledging of securities as collateral in order to mitigate the risk of forced sales during blackout periods or when insiders possess MNPI. Approaches vary as to the individuals subject to this restriction and the terms of the restrictions.

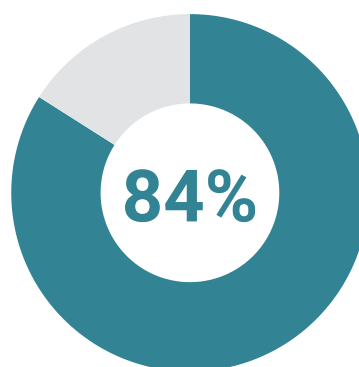


Short Selling and Hedging

Short selling refers to the practice of borrowing a security and immediately selling it with the expectation that the price of securities will fall, at which point it can be bought back. Hedging refers to using financial instruments, such as options or futures, to mitigate the risk of potential losses due to market downturns or company-specific events. 74% of the surveyed policies expressly restrict short sales and 84% of the surveyed policies contain some form of anti-hedging provision. While most of these restrictions apply to all individuals subject to the policy, certain policies impose the restriction only on designated individuals.



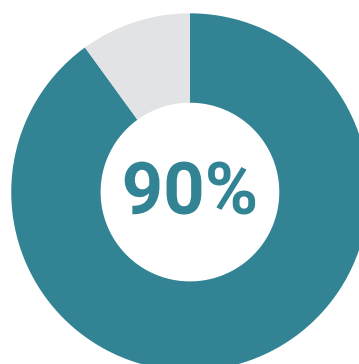
Expressly restrict short sales



Incorporate some form of anti-hedging provision

Trading in Securities of Other Companies

90% of the surveyed policies prohibit trading in securities of, or communicating information about, other companies (such as transactional counterparties, customers, vendors and suppliers) if MNPI about those companies is obtained in the course of employment or providing services. Most policies surveyed do not go further to restrict “shadow trading”, which refers to an insider using MNPI of their own company to trade in securities of another (different) public company whose value may simply be economically “linked” to the insider’s company.



Restrict Trading in Securities of Other Companies

A Word of Caution

While the above survey is informative, it is based on a limited sample size and thus not necessarily reflective of market practice. It is also not necessarily indicative of best practices. Public companies should consider their individual circumstances and consult with their legal advisors when drafting and reviewing their insider policies.

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