

CUG.COMments

A Newsletter from Chicago Underwriting Group, Inc.
Underwriters of D & O and Professional Liability Insurance

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In this Issue . . .

Insider Trading: The SEC Clarifies

On October 23, 2000 the SEC will implement new rules that address: (1) Fair disclosure of material corporate information [Rule FD] and (2) protocols and timing of stock selling by corporate insiders [Rule 10b5 -1]. This edition of CUG.COMments will look at the insider selling issue, Rule 10b5 -1.

within the plan parameters will not be seen as insider trading.

Could this penalize insiders by their having to comply with the plan and unload shares at a cheap price? Only if the plan failed to provide minimum trigger prices. Because the SEC decided - after public pressure - to allow pricing limits to be used in the plan as well as formulae and algorithms, a certain amount of precision can be achieved. While a plan might not necessarily let an insider take advantage of a stock's high point, it will at least allow a suspension of any planned sale if the price is too low.

In addition - and perhaps obviously - for protection under this rule to be effective the plan has to be in existence before trades are made; it cannot be tinkered with to adjust to new circumstances, and it must be adhered to.

Good for the Insider; Good for the D&O Insurer?

Initial reaction to this rule has been positive. The New York Times of September 27, 2000 ran a piece entitled, "Insiders Get a Sturdy Tool to Rake in Stock Gains." For the vast majority of insiders looking to sell their stock efficiently and legitimately, Rule 10b5 -1 offers some help. For the insurer of D&O liability, the existence and adherence to these plans should bring some comfort during the risk selection and underwriting process, and in the event of a claim, a poten-

Background

For corporate "insiders", defined as senior executives, board members and key advisors, it seems there is no good time for selling any of their stock in the company. Restricted by trading windows that only permit selling during periods of little corporate activity, and always presumed to have intimate and material knowledge of the company, well-intentioned executives can sometimes feel as though they are sailing a narrow course between the Scylla of the SEC and the Charybdis of private investor lawsuits. Even if trading is done within the prescribed windows, any significant sale these days can attract unwelcome scrutiny from the SEC as well as the plaintiff's bar. Certainly, it is a problem many people would like to have, but a problem none the less.

an "awareness" standard rather than a "use" standard. In other words, merely knowing material information while making a stock trade can be sufficient grounds for a charge of insider trading under securities laws; the SEC will not have to show that such knowledge was a motivating factor in the trade. However, for the "insider," the silver



lining to this cloud is that the SEC will now formally permit the adoption and utilization of a prior written, specific stock sales plan as a valid defense against insider trading allegations.

What does this mean?

It means that if, in advance of insider stock selling, the insider prepares a written plan detailing at what times, at what prices and how much stock will be sold, any trades falling

SEC Rule 10b5 - 1: An Option for Insiders

The rule actually arose out of a desire by the SEC to broaden the insider trading definition by stipulating

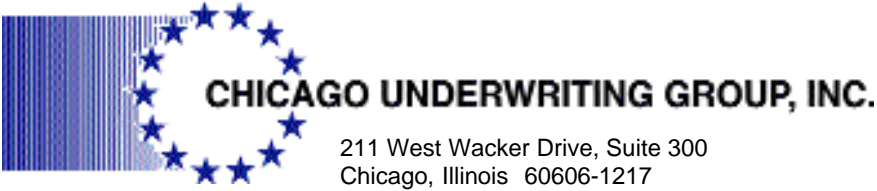
tially significant defense mechanism. As many of our brokers know, Chicago Underwriting Group has invariably requested a copy of a company's insider stock trading policy which we believe to be an important guide to D&O liability exposure. Since Rule 10b5 -1 gives companies an opportunity to mitigate the chance of investor lawsuits, our suggestion for brokers is

that they encourage their clients to consider adopting stock sale plans. ✉

**Please visit our web site
at
cug.com**

Editor's Note:
This topic will be discussed in more detail in the next issue of "Prior & Pending," Chicago Underwriting Group's quarterly publication that is primarily for buyers of D&O insurance. If you would like to be added to the mailing list, please contact us at: "info@cug.com" or call Bertha Sifuentes at 312.750.8985.

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