

# Insider trading, stock options

## 1. Insider Trading

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**Q:** As an officer of a public company, am I protected from insider-trading liability if I limit my trades in my company's stock to trading windows designated by my company?

**A:** Not necessarily. Trading windows can be arbitrary. Even during an open trading window, officers, directors, and employees of public companies should not trade in their company's stock when in possession of material non-public information. Moreover, the Securities and Exchange Commission deems possession of material non-public information the equivalent of using that information.

## 2. Web Privacy Policy

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**Q:** Are Web site privacy policies required? Where should a policy appear?

**A:** A privacy policy is required if the Web site collects personal information from children under the age of 13. Insurance and finance-oriented sites may also be required to post a privacy policy in the future. Where to post? Prominently. Consider colors and font styles. A hyperlink to the policy should appear high enough on the site so that users don't have to move their cursors to see it.

## 3. Stock Options

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**Q:** Is it possible to grant stock options to employees of a limited liability company?

**A:** Yes, sort of. Since a limited liability

company (LLC) does not issue stock to its owners, LLCs do not have stock option plans in the traditional corporate sense. (The benefits of incentive stock option plans under Internal Revenue Code Section 422 are not available to LLCs and their owners.) But LLCs may adopt equity incentive plans and offer employees non-qualified options to purchase equity interests in the LLC. In addition, LLCs can offer phantom units, unit appreciation rights, and profits interests. Income tax treatments vary.

## 4. Intellectual Property

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**Q:** Is it permissible for me to use any of my competitor's trademarks in my advertising materials?

**A:** Yes, with certain limitations. Uses for comparison purposes are generally acceptable provided that the competitor's mark is not overused or prominently featured and that the comparison is accurate. It may also be appropriate when the competitor's mark is a descriptive term capable of non-trademark meaning. Always avoid using your trademark symbols as opposed to word marks and avoid using your competitor's trademarks as metatags or searchable hidden data on Web pages where you might advertise your own products.

## 5. Venture Financing

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**Q:** What is cram-down venture financing?

**A:** A cram-down venture financing happens when venture funders provide follow-on financing at a much lower valuation than earlier rounds. The result is that earlier investors and common shareholders (including employees) are diluted, often by substantial amounts. In today's venture



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market, with money tight and valuations lower than in 1999 and 2000, cram-downs are becoming increasingly common. Companies and early investors accept them as an alternative to running out of cash.

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**Q:** What are some of the considerations involved with bringing in a strategic partner as an investor in my company?

**A:** In addition to capital, a strategic partner should bring you a marketing, sales, or technical relationship to leverage your business. However, the price of the relationship may be that your own limited resources might be directed to coincide with the business objectives of your partner. Teaming with one strategic partner may also limit your options to establish relationships with other industry players. Finally, if your partner changes the corporate objectives, you may find that the strategic leverage you bargained for is no longer attainable. ■

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