

Policy on Non-Public Information and Trading in GWR Stock



Corporate Policy

**AMENDED AND RESTATED
GENESEE & WYOMING INC.**

**POLICY ON NON-PUBLIC INFORMATION
AND TRADING IN GWR STOCK**

Including All Amendments Effective Through December 17, 2012

A. Introduction

This Policy is designed to make you aware that:

- confidential information relating to the business, operations and financial condition of Genesee & Wyoming Inc., its subsidiaries and unconsolidated affiliates (collectively, the “Company”) is sensitive and needs to be safeguarded;
- Federal and state law requires that you abstain from trading in Genesee & Wyoming Inc. Class A Common Stock (“GWR Stock”) while you are aware of important information concerning the Company that is not publicly known, and that you refrain from disclosing such non-public information to third parties; and
- failure to observe this Policy could lead to serious adverse consequences for both the Company and you (including substantial monetary liability, criminal penalties and termination of employment).

The Company has a compliance committee to implement, administer and enforce this Policy (the “Compliance Committee”), and all questions regarding this Policy should be directed to the Compliance Committee. Until further notice, the Compliance Committee consists of:

**John C. Hellmann
Allison M. Fergus
Christopher Liucci
Shayne L. Magdoff**

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This Policy is generally applicable to all employees, officers and directors of the Company (although, as described below, certain special policies and procedures apply only to certain persons designated as “Key Employees”).

B. Confidential Information

Unauthorized disclosure of internal information relating to the Company could cause competitive harm to the Company and in some cases could result in liability for the Company and for you.

- 1. *Unauthorized Disclosure.*** No employee, officer or director of the Company shall disclose any internal information about the Company to any person outside the Company, except for such disclosures which have been specifically authorized by a Corporate senior officer of the Company (a Senior Vice President or higher) as being required to facilitate a related project or transaction.
- 2. *Communications with the Media, Analysts and Investors.*** Communications on behalf of the Company with the media, securities analysts and other investors shall be made only by specifically designated representatives of the Company. Unless you have been expressly authorized to make communications on behalf of the Company, you must direct any inquiry from the media, a securities analyst or an investor to the Chief Executive Officer, President, Chief Financial Officer, Chief Operating Officer, General Counsel, Senior Vice President- Corporate Development or Director of Corporate Communications.
- 3. *Safeguarding Confidential Information.*** Because of the sensitive nature of internal information about the Company and the importance of such information to the Company, you must take extreme care to safeguard the confidentiality of such information. For example, documents containing sensitive information should not be left lying on desks or conference tables in open view, confidential information should be discussed with other Company personnel on a “need to know” basis only, and visitors should not be left unattended in offices or other areas containing internal Company documents.

C. No trading on the Basis of Material Non-Public Information

Federal and state securities laws make it unlawful for any person to trade or recommend trading in securities on the basis of material non-public information. It is the Company’s policy to require stringent avoidance of the fraudulent misuse of material inside information.

Fraudulent misuse of “inside” information includes purchasing or selling GWR Stock while aware of such information for your own account or for that of a relative or anyone else. Fraudulent misuse also includes “tipping” such information to **anyone** or using it as a basis for recommending the purchase or sale of GWR Stock.

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1. **Trading on Inside Information.** No employee, officer or director of the Company (including its subsidiaries), while aware of non-public information relevant to the business or affairs of the Company, shall:
 - a. purchase or sell, or recommend or direct the purchase or sale of, any GWR Stock for his or her own account, any account in which he or she has a direct or indirect beneficial interest (including the account(s) of family members) or the account of any other person or entity; or
 - b. disclose or “tip” any such information to any other person.

In addition, if you are aware of any material non-public information concerning another public company (for example, the possible acquisition of that company by the Company), the foregoing rules apply, and you must not trade in the securities of the other company or disclose or “tip” any such information until after such information has been disclosed to the public.

2. **Designation of “Key Employees.”** Until further notice, the Board of Directors has designated persons listed on Appendix 1 as “Key Employees” of the Company for purposes of this Policy. Certain Key Employees are also subject to the reporting requirements of Section 16 of the Securities Exchange Act of 1934 (“Section 16 Officers”) and all Key Employees have been sent a separate policy outlining their additional obligations.
3. **Permitted Trading Period for Key Employees.** Notwithstanding the foregoing, no Key Employee shall purchase or sell any GWR Stock for his or her own account or any account in which he or she has a direct or indirect beneficial interest (including the account(s) of family members) except during a 30-day period beginning two business days after the public release by the Company of its quarterly or year-end financial results. However, the Compliance Committee is authorized to make limited exceptions to the provisions of this paragraph C.3. (but only this paragraph C.3.) in the event of a tangible demonstration of a personal hardship to such Key Employee. All determinations by the Compliance Committee in this regard will be final and not subject to further review. Key Employees are reminded to consult the Key Employee policy prior to executing any transaction involving GWR Stock.
4. **Scope of Restrictions.** You must also understand that trading in GWR Stock includes not only the purchase or sale of GWR Stock, but also the purchase or sale of puts, calls, options or warrants (if any) relating to GWR Stock. Moreover, your spouse, members of your immediate family and persons and entities (such as trusts) under your control may be deemed to be aware of material non-public information known by you simply by virtue of your relationship with them. Further, GWR Stock owned by those persons may be deemed to be beneficially owned by you. Trading in GWR Stock by those persons while you are aware of material non-public information may cause legal problems for them and for you; consequently, those persons also should abstain from trading in GWR Stock except in accordance with the policies set forth above.

5. **Certain Exceptions**

- a. **Employee Stock Purchase Plan.** The automatic purchase of GWR Stock by payroll deduction under the Company's Employee Stock Purchase Plan is not a purchase which you control, and falls outside the scope of the restrictions set forth above.
- b. **Exercising Options.** The exercise of stock options in GWR Stock falls outside the scope of the restrictions set forth above, as long as:
 - i. You pay the Company the exercise price of the stock option in cash, by surrendering to the Company shares of GWR Stock which you already own prior to the exercise in an amount equal to the exercise price (or some combination of the two), by the Company retaining net settlement shares (if applicable), or pursuant to such other method approved in advance by the Legal Department, and
 - ii. You only sell the GWR Stock received in such transaction when you are permitted to under the restrictions outlined above.
- c. **Rule 10b5-1 Trading Programs.** The SEC has adopted a rule that permits employees and directors to trade in certain circumstances where it is clear that inside information was not a factor in the decision to trade. Rule 10b5-1 provides that an individual who buys or sells securities while aware of material, nonpublic information does not violate Rule 10b-5 if the buying or selling is in conformity with a binding contract, instruction or written plan that was put into place at a time when the individual was not aware of material, nonpublic information. Establishing such a pre-arranged trading plan provides an opportunity for you to limit the potential insider trading liability. However, these programs do not limit your potential liability you might encounter under Section 16 if you are also a Section 16 Officer. When your trading arrangements are prearranged, it becomes clearer to the investing public (and potential plaintiffs) that your purchases and sales are not being prompted by your knowledge of current developments within the Company, or your feelings about the Company's prospects.

The Company permits its directors and officers to set up Rule 10b5-1 trading programs. Please see Appendix 2 for some of the steps involved in establishing such a program. However, great care must be exercised in relying on new Rule 10b5-1, for the following reasons:

- i. In order to meet the requirements of Rule 10b5-1, binding contracts, instructions and written plans must: (i) lock in the amount, price and dates of future trades; (ii) provide a formula or algorithm for determining future trades; or (iii) delegate discretion for determining amount, price and dates to a third party precisely as provided under the rule.

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- ii. The ability to modify provisions once locked in is limited, and modification or termination of arrangements is risky.
- iii. The liability avoidance provisions of Rule 10b5-1 are affirmative defenses. If the government can prove that an individual was aware of material, nonpublic information at the time of a purchase or sale, the burden of proving that trading was pursuant to an adequate contract, instruction or written plan will be on the individual. Compliance must be well documented and capable of proof in court.

6. **Examples of material inside information.** The following events are meant to be an illustrative guide rather than an exhaustive list of events that would probably generate material inside information and require disclosure to the public before you and the other persons described above could trade in or recommend the purchase or sale of GWR Stock:

- negotiations concerning acquisitions, mergers or joint ventures;
- a significant new customer, or the loss of a significant customer;
- a significant new contract with another carrier, or the loss of such a contract;
- significant news (good or bad) about or affecting the prospects or future of a significant customer or connecting carrier;
- significant new routes, services or marketing plans;
- annual or quarterly earnings;
- financial results or forecasts;
- a change in revenues or earnings;
- a significant change in capital investment plans;
- a significant acquisition or disposition of assets;
- plans for facilities expansion or contraction;
- significant changes in regulation;
- plans for additional financing (debt or equity);
- write-offs;
- a significant change in accounting methods;

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- a significant dispute with a customer or another carrier;
- significant litigation or a significant labor dispute;
- a tender offer to purchase another company's securities;
- a program of the Company to acquire its own shares;
- a stock split;
- the declaration of a dividend;
- a change in senior management or a change in control;
- a default on debt or contracts; or
- bankruptcy or insolvency proceedings.

D. Consequences of Non-Compliance

Failure to observe the policies and procedures set forth in this Policy could lead to severe adverse consequences for the Company and for you, including termination of your employment, criminal sanctions (including imprisonment), monetary fines and penalties to you (in amounts up to three times the profit gained or loss avoided), injunctions, civil fines to the Company (up to the greater of \$1 million or three times the profit gained or loss avoided) and suspension of trading in GWR Stock. Further, any appearance of insider trading impropriety could impair investor confidence in the Company.

The Compliance Committee will be responsible for making determinations on a case-by-case basis of whether the policies and procedures set forth in this Policy have been violated and, if so, the appropriate action to be taken by the Company in response. Sanctions for violations of the policies and procedures may include whatever appropriate action the Compliance Committee deems advisable, including immediate termination of employment or other appropriate disciplinary action. The determinations of the Compliance Committee will be final and not subject to further review.

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Appendix 1

Key Employees

- Each member of the Company's Board of Directors (including non-employees)
- Each employee of the Company (including any of its subsidiaries) having any of the following titles:
 - Chairman
 - Chief Executive Officer
 - President
 - Chief Financial Officer
 - Chief Operating Officer
 - Chief Commercial Officer
 - General Counsel
 - Chief Accounting Officer
 - Executive Vice President
 - Senior Vice President
 - Treasurer
 - Director of Corporate Taxes
 - Director Revenue Accounting
 - Accounting Manager
- Each other full-time employee of Genesee & Wyoming Railroad Services who works at Corporate Headquarters in Greenwich, CT
- Each other employee who is an employee of Genesee & Wyoming Railroad Services holding a Vice President title or above
- The principal accounting/finance employees of the Company (including any of its subsidiaries)
- Each other employee who is notified by the Compliance Committee that he/she is a Key Employee.

Appendix 2

Procedures for Establishing Rule 10b5-1 Trading Programs

- Arrangements must be in the form of written contracts.
- The contract must be reviewed and approved in advance by the Legal Department.
- You must enter into the contract when you are not aware of any material nonpublic information and when you are not subject to any blackout.
- The contract must either:
 - Specify the amount of securities to be purchased or sold (i.e., a set number of shares or a set dollar amount) and the price and date on which the securities are to be purchased or sold;
 - Include a written formula or algorithm, for determining the amount of securities to be purchased or sold and the price and date of their purchase or sale; or
 - Effectively delegate to a third party who does not have access to any inside information all power to determine how, when or whether to effect purchases or sales.
- You will not be permitted to cancel or make any changes to the contract when you are aware of any material nonpublic information or during any blackout period.
- Cancellations or amendments must be approved in advance by the Legal Department and must be in writing.

Please be aware that the Company will publicly disclose any trading plan adopted by a director or an officer who is subject to the reporting obligations of Section 16 of the Securities and Exchange Act of 1934. Additional information concerning the requirements of Section 16 are set forth in the Key Employee Policy.

Most sophisticated brokers, investment bankers and advisors have developed standard documentation for Rule 10b5-1 trading plans. If you choose to adopt this type of plan, we strongly recommend you work with a brokerage firm that is experienced in these matters. **In order to ensure compliance with Rule 10b5-1, please remember that you must submit any trading plan or amendment to the Legal Department for review and approval *in advance* of entering the plan or amendment.**