

## Form Memorandum Advising Insiders Regarding Changes to Rule 10b5-1

**This is a TEMPLATE document and should be tailored to fit a particular Company's circumstances and needs.**

### MEMORANDUM

**TO:**

**FROM:**

**DATE:** \_\_\_\_\_, 20\_\_

**SUBJECT:** **Changes to SEC Rule 10b5-1**

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As you be aware, the Securities and Exchange Commission ("SEC") recently adopted changes to certain insider trading rules, specifically those impacting so-called "Rule 10b5-1 Plans," referring to contracts, instructions or plans adopted to comply with the affirmative defense from insider trading set forth in SEC Rule 10b5-1(c). The rules impacting Rule 10b5-1 Plans take effect February 27, 2023 and any Rule 10b5-1 Plan that is adopted or amended (at least with respect to certain amendments) on or after that date will need to comply with the new rules. The SEC's amendments also impact other aspects of insider trading and Section 16 reporting and the Company is reviewing the changes and considering how to amend our insider trading policy, which we expect to do in the coming months and you will be notified of and educated on those changes as they are proposed and adopted.

**Required Rule 10b5-1 Plan Changes.** In the meantime, for your planning purposes, we want to notify of the changes that will be required for any Rule 10b5-1 Plan adopted or amended as set forth above. As you know, the Company's [insider trading policy] requires pre-approval of any Rule 10b5-1 Plan or modification thereof by the Company's [General Counsel], and please be advised that any such approval will only be granted if the plan or amendment complies with the additional new rules, to the extent applicable.

The new requirements for Rule 10b5-1 Plans include:

- Rule 10b5-1 Plans must have a "cooling-off" period after adoption of the plan before trading may begin under the plan. The cooling-off period must be:
  - **For directors and Section 16 officers:** at least 90 days, or until two business days following filing of the Form 10-Q or 10-K for the quarter in which the plan was adopted, whichever is longer (and not to exceed 120 days)
  - **For all other insiders:** at least 30 daysThe cooling-off period will also apply to the effective date for certain modifications to a Rule 10b5-1 Plan, such as any modification affecting the amount, price or timing of transactions.
- Insiders may not have multiple Rule 10b5-1 Plans in effect at a time, subject to limited exceptions including to facilitate transactions from multiple accounts under a single arrangement and for sell-to-cover plans for tax withholding upon vesting of equity awards.
- Insiders may only enter into one Rule 10b5-1 Plan that is designed to effect the proposed stock transactions in a single transaction in any 12-month period, subject to limited exceptions including for sell-to-cover plans for tax withholding upon vesting of equity awards.

- For directors and Section 16 officers, the plan must include certain representations that the insider is not aware of any material nonpublic information about the Company or its securities, and that the insider is acting in good faith and not as part of a plan to evade the prohibitions of Rule 10b-5. The good faith requirement applies not only to adoption of the plan, but also to how the insider acts with respect to the plan during its term.

These new requirements are in addition to, and not in lieu of, the requirements previously applicable to Rule 10b5-1 Plan, including the requirement that the insider not be aware of any material nonpublic information about the Company or its securities when the Rule 10b5-1 Plan is adopted or amended. Accordingly, you may not rely on the cooling off period to “cleanse” material nonpublic you have when the plan is adopted or amended. Please see our [insider trading plan] for these other existing requirements.

**New Rule 10b5-1 Plan Reporting Requirements.** In addition to the requirements impacting Rule 10b5-1 Plans, the Company will be required, commencing with the quarter ending [June 30, 2023], to disclose in its Form 10-Qs and Form 10-Ks any Rule 10b5-1 Plans (and certain other arrangements) that were adopted or terminated (including certain plan modifications) in the quarter covered by the report. The Company will be required to disclose the date of the adoption or termination (or modification), the duration of the plan and the aggregate amount of securities to be sold or purchased pursuant to the plan, but will not be required to disclose any price parameters under the plan. For any officer or director subject to Section 16 reporting, the Form 4 reporting any transaction occurring pursuant to a Rule 10b5-1 Plan filed on or after April 1, 2023 will denote this fact by checking a new box on the Form 4, along with the customary footnote referencing the 10b5-1 plan.

**Gifts of Company Securities.** The new rules also accelerate the deadline for reporting gifts of securities. A disposition of shares by gift will need to be reported on a Form 4 within two business days (it can no longer be deferred until a year-end Form 5, as is currently the case) commencing with gifts made on or after February 27, 2023. As a result, please ensure that any gift transactions are previewed with the [General Counsel] and reported promptly.

The SEC also raised concerns about insider gifting Company securities during periods when the insider has material nonpublic information, especially when it is reasonably expected that the gift recipient will seek to sell the shares right away. We expect to review our policies regarding gifting of Company securities, and encourage you to discuss any planned gifts with the [General Counsel] while you are still in the planning stage until we provide further information.

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If you have a Rule 10b5-1 plan in place or anticipate adopting one, we encourage you to discuss these changes and new requirements with your own broker, financial advisor and/or legal advisor to ensure compliance with these requirements and consider their impact on your trading arrangements.

If you have any questions, please contact [General Counsel] at [contact information].