

Proposed 10b5-1 and Insider Trading Rule Amendments

- Amendments were proposed by the SEC on December 15, 2021
 - The SEC approved the proposed amendments by a rare unanimous vote
- Comments are due 45 days after the proposed rules are published in the Federal Register
- The proposed amendments to 10b5-1 include the following:
 - 10b5-1 plans adopted by insiders would need to be executed/adopted at least 120 days before the first trade is scheduled to commence
 - 10b5-1 plans adopted by issuers (such as for repurchase programs) would need to be executed/adopted at least 30 days before the first trade is scheduled to commence
 - The same cooling off periods would apply to the effective time of any amendment to a 10b5-1 plan
 - Officer and directors must certify to the company that they are not aware of material non-public information (“MNPI”) when adopting a new or modified trading arrangement (this is already typically part of the approval process and included as a representation in most 10b5-1 plans)
 - The 10b5-1 defense would only apply to one plan at a time, thus precluding the adoption of multiple, overlapping plans
 - 10b5-1 plans used to execute a single trade would be limited to no more than one plan per 12-month period
 - Companies would be required to disclose in Form 10-Ks and Form 10-Qs the adoption and termination of any 10b5-1 plans and the terms of the plans
 - Disclosure would include name and title of party, date of adoption or termination, duration of the plan, aggregate amount of securities to be sold or purchased
 - Form 4s and Form 5s reporting transactions made pursuant to 10b5-1 plans would require a new check-box to denote the use of a 10b5-1 plan (which is usually reflected in footnotes currently)
 - 10b5-1 plans must be adopted and operated in good faith
- Other proposed amendments
 - Companies would be required to disclose in Form 10-Ks whether or not (and if not, why not) the company has adopted insider trading policies and procedures and disclose those policies and procedures
 - Companies would be required to disclose in Form 10-Ks its option grant policies and practices, including a table showing grants made 14 days before or after the release of MNPI and the market price of the stock on the trading day before and after the release of MNPI
 - The table would also include disclosure of number of shares subject to the option, grant date, grant date fair value, exercise price
 - Gifts by insiders would need to be reported on a Form 4 within two business days (instead of being eligible for deferred reporting)