

June 9, 2021

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1020

Re: Investor Advisory Committee Meeting; File Number No. 265-28

Dear Ms. Countryman,

I applaud the Commission's initiative to consider 10b5-1 trading plans during its meeting. I appreciate the opportunity to submit comments to the committee in advance of the discussion. Commissioner Gensler has recently reiterated longtime concerns at the Commission about potential abuses of 10b5-1 trading plans by insiders. While I share these concerns, the SEC should also consider alternative uses of 10b5-1 trading plans. Given the declining liquidity of U.S. public equity markets, many issuers have resorted to confidentially marketed public offerings and at-the-market offerings (ATMs) to avoid the potential price impact experienced during a traditional fully-marketed public offering. Issuers undertaking share repurchase programs often use 10b5-1 trading plans to implement large-scale open market purchases instead of public tender offers. The terms of 10b5-1 trading plans, and their implementation on the trading desk, are typically established and carried out by a small group of executives at the company and its broker. Companies should monitor the trading activity and public statements of individuals knowing the terms of a 10b5-1 plan. Brokers must ensure robust information barriers exist to prevent trading plans from being reverse-engineered by nimble traders allowing them to benefit.

Many 10b5-1 plans utilize the trading volume limitations of Rule 10b-18 to govern the level of activity in the market for a company's shares. The adoption of the Rule 10b-18 safe harbor itself has resulted in a dramatic increase in share repurchase activity. In an [April 2015 letter](#) to the SEC, U.S. Senator Tammy Baldwin queried whether the agency had investigated potential violations of 10b-18.^[1] In a written response, SEC Chair Mary Jo White indicated there are limits on performing data analysis for issuer stock repurchases because detailed trading data is not available.^[2] Manipulation is of particular interest when analyzing share repurchase transactions because of the potential for conflicts of interest between managers and shareholders, other stakeholders. Although the adoption of Rule 10b-18 and the ability to create 10b5-1 trading plans provides for legitimate share purchases and sales by corporate insiders, they do not eliminate the ability to engage in manipulative trading behavior. At the market-microstructure level, *uneconomic* trading introduces artificial signals into the price-discovery process and impacts price formation.

[1] Available at, <https://www.baldwin.senate.gov/download/baldwin-to-sec-42315>

[2] See, <https://theintercept.com/2015/08/13/sec-admits-monitoring-stock-buybacks-prevent-market-manipulation/>