

September 7, 2021

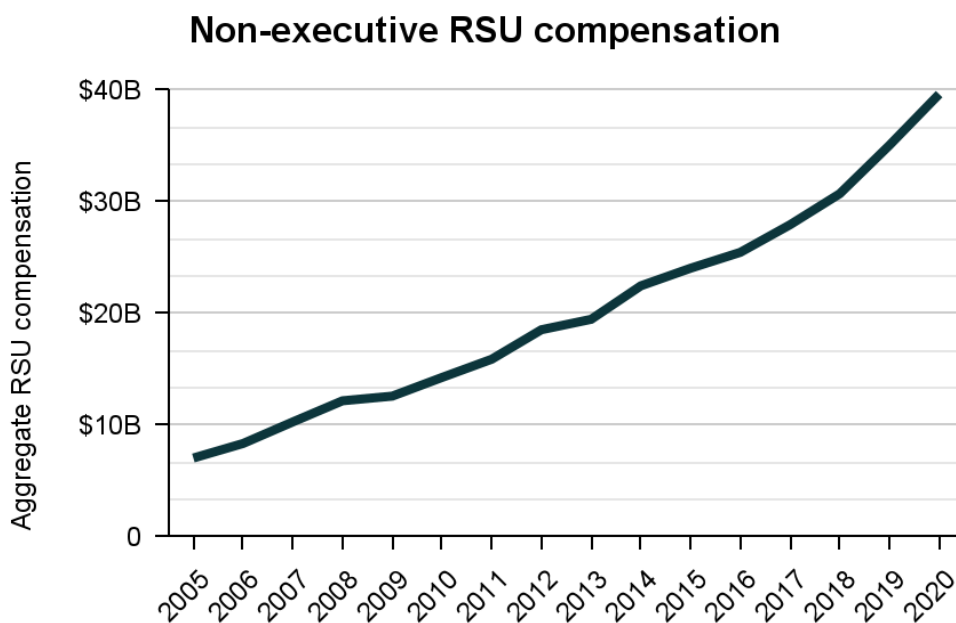
Ms. Vanessa Countryman
Secretary of The U.S. Securities and Exchange Commission
100 F Street NE Washington, DC 20549

Subject: Comments regarding rule 10b5-1 and its critical role as a financial wellbeing tool for non-executives earning RSUs

Dear Ms. Countryman:

Candor provides these comments in consideration of the **10b5-1 discussion** in the upcoming meeting of the Investor Advisory Committee.

While the SEC has made a lot of progress in the last 20 years in regulations for 10b5-1 trading plans, this regulation has only been geared at executives and has ignored the needs of **3,200,000¹ individual employees** who receive RSU (Restricted Stock Unit) compensation, many of whom use 10b5-1 plans to achieve predictable liquidity.



Source: Candor RSU compensation surveys and form 10-K filings

Candor is a leading voice in the technology industry, representing the interests of tech employees, such as engineers, designers and product managers, who work as individual contributors with no control interest for publicly traded companies.

Candor establishes 10b5-1 plans for individuals and are experts in tech industry compensation. Candor hosts the world's most reliable data source for tech compensation for U.S. companies with over 5,000,000 (5 million) datapoints across 6,000 companies and 20,000 roles. We deeply understand how RSU (stock grant) compensation is impacting the industry and what trends are emerging. We hope the Committee will consider our unique vantage point into compensation trends that only 10b5-1 plans can solve.

We need your help in urgently considering how the proposed change to 10b5-1 regulation can impact all U.S. tech workers at public companies.

Summary:

1. **We ask the Committee to consider a restriction on pre-earnings trades rather than a hard 4 month cooling off period.**

As the IAC and policymakers examine this issue, We ask that you **consider the interest of the 3,200,000¹ ordinary tech employees**, who represent a majority in both numbers and holdings relative to executives. The shift to RSU compensation is only increasing:

- In a survey of 325 companies, 72% reported using RSUs (Restricted Stock Units) in their long-term incentive compensation programs compared to only 47% ten years earlier and 4% 21 years earlier².

Furthermore,

- **RSU/stock compensation can represent up to 90% of an ordinary frontline tech employee's overall wealth holdings³.** In essence, by working at a tech company, employees are automatically exposed to an over-concentrated portfolio position and take market risk every day they're unable to liquidate or diversify. A 4 month cooling off period can be

catastrophic for ordinary families who are trying to pay off a loan or welcome a new child. Front-line employees like designers, engineers, etc. depend on 10b5-1 plans for achieving financial stability.

As the IAC and policymakers examine this issue, we also ask that you consider the following:

- **The technology industry faces unique diversity challenges:** by being an industry leader in championing diverse hiring of women, minorities and persons of color. Often tech employees are the first not just in their family, but in their entire community to accomplish meaningful wealth. Protecting easy access and education to 10b5-1 makes a significant difference to amplifying that wealth into communities that have rarely had any economic opportunity. If the Committee further restricts and complicates 10b5-1 plans, ordinary people will be subjected to harmful market and diversification risk.

The 4 month cooling off period will expose regular employees to unnecessary market and diversification risk. These populations are already vulnerable from lack of education and being forced into risk simply by taking a job and 10b5-1 is the only avenue they have to responsibly diversify away from their company stock.

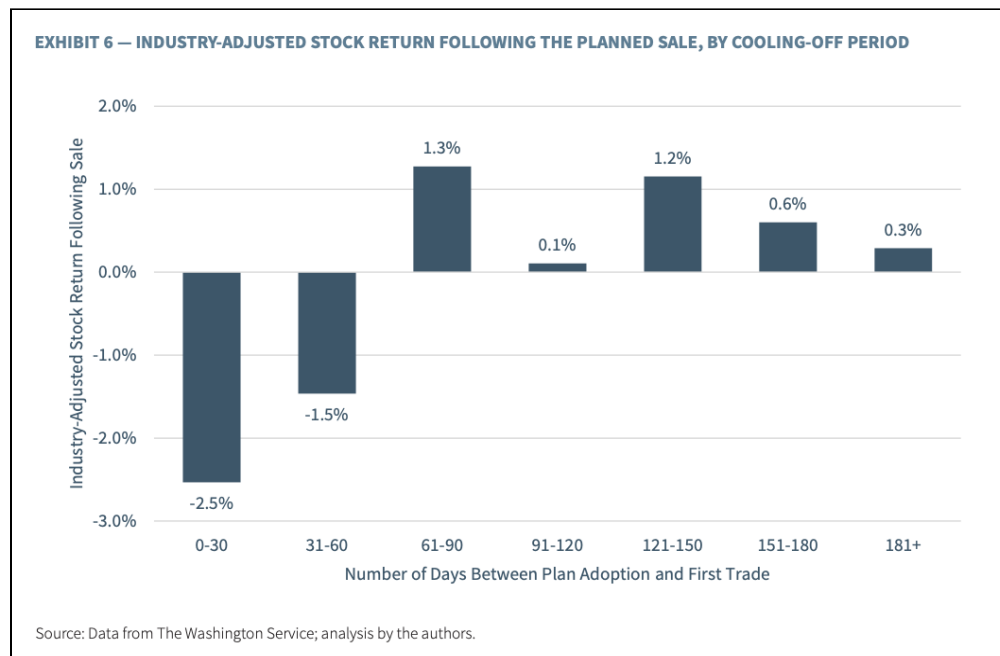
2. We humbly ask the Committee to consider that the SEC's justification needs additional review:

The SEC's justification leans heavily on [a study](#)⁴ by Stanford University and The Wharton School to justify a 4 month cooling off period. However, we strongly urge the Committee to consider the entirety of the study — the study also shows that the entirety of the benefit from a 4 month cooling off period can be achieved by instead requiring that trades can't happen before the following earnings.

Based on the same study, we urge the Committee to review these points:

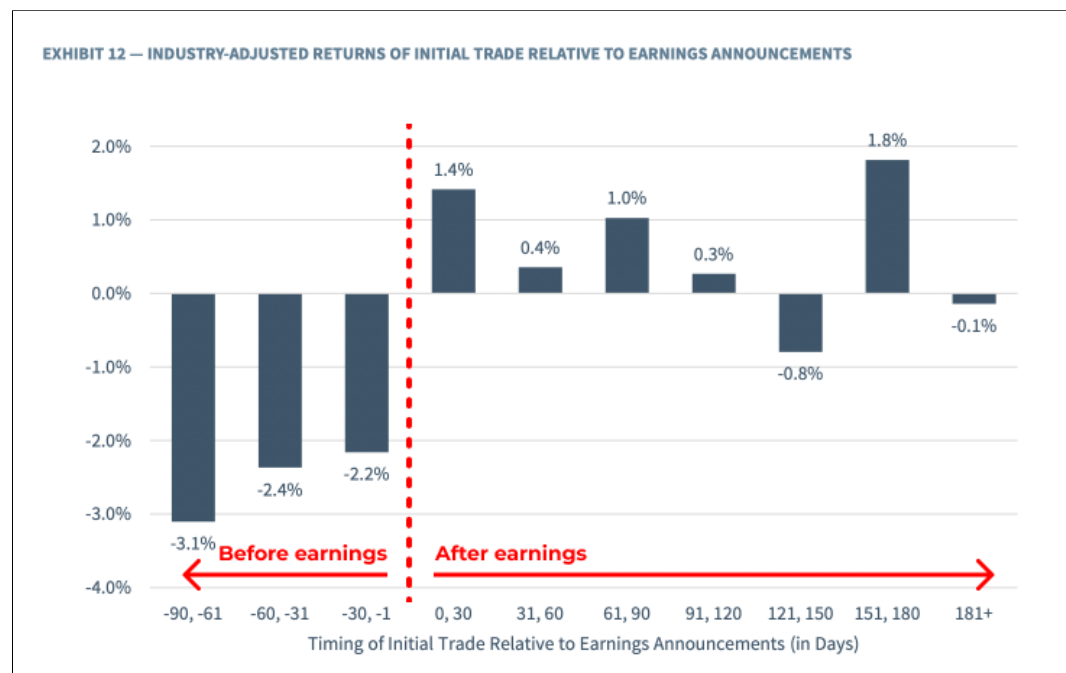
- The authors of the study found that plans with cooling off periods of less than 30 days were associated with a subsequent industry-adjusted return

of -2.5%, while initial trades in plans with cooling off periods of 31 to 60 days were associated with a subsequent -1.5% return⁴.



- However, the effect is much stronger when looking instead at days before earning announcement. Plans that are implemented before earnings have industry-adjusted returns -3.1% to -2.2% whereas plans implemented 0-30 days after earnings have +1.4% industry-adjusted returns⁴.

■ As the authors state, **"loss avoidance is not evident for trades occurring after the earnings announcement."**



The authors of the study themselves recommend a restriction on pre-earnings trades — the entirety of loss avoidance behavior is explained by plans that go into effect before earnings.

A 4-month cooling off period is only effective in that it forces trading to happen after the next quarterly earnings, but **it's unreasonably crude and inflexible** and **will deny financial flexibility** to ordinary people trying to achieve basic financial balance across the country.

Instead :

We ask the Committee to consider a restriction on pre-earnings trades rather than a hard 4 month cooling off period.

In consideration, please factor in that ordinary employees have very simple financial needs — needs like paying off a loan or preparing for a child. They are looking for the most basic features a 10b5-1 plan offers : liquidity and the ability to diversify away from an over-concentrated position. 4 months is a meaningful time to wait for an ordinary family, in addition to all the other restrictions imposed by the companies themselves.

3. We further urge the Committee to to review the need for separate rules for executives and ordinary employees in light of how compensation models at public companies have evolved

When 10b5-1 was first drafted, only affiliates and control persons received stock.

The world has changed.

In the last 10 years public companies have started heavily relying on RSU (stock) compensation as a way to attract talent, especially knowledge workers who are the future of the American economy. Stock is offered to virtually all employees in any department of a tech company, including new graduates. We are now seeing this practice in finance, consulting and other fields. **Stock compensation is no longer an incentive — it is a core compensation component that we cannot ignore.**

We urge the Committee to look forward to the current trends in corporate compensation and draft regulation that considers employees, not just executives. Executives have more sophisticated needs, often use complex strategies and have financial firms representing their interest. Employees do not enjoy the same luxuries and 10b5-1 plans are their only meaningful and affordable instrument. Preserving its accessibility so that all employee communities can use it, especially those who have historically been disenfranchised from financial services, is critical.

We ask that whatever market structure changes the SEC undertakes, that it will consider that protecting usability of 10b5-1 is of utmost importance for a whole generation of “employee stockholders”, who did not choose their position. Therefore, we see a need for separate rules for executives and employees – rules that take into consideration ordinary people’s needs, who need the Committee’s protection the most.

You can reach me at [REDACTED] if you have additional questions or would like to discuss further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dragova', with a large, stylized initial 'D'.

Stefaniya Dragova
Chief Executive Officer
Candor Financial LLC

¹ Based on LinkedIn data for employee count for 2021 at the top 100 publicly traded tech companies

² Foley & Lander LLP, Restricted Stock Units: 10 Fast Facts,
<https://www.foley.com/en/insights/publications/2020/08/restricted-stock-units-10-fast-facts>

³ Because of restrictive trading windows, many employees don't sell their RSUs and accumulate significant concentration risk

⁴ See, e.g., David F. Larcker, et al., Gaming the System: Three “Red Flags” of Potential 10b5-1 Abuse, Stan. Closer Look Series, Corp. Governance Res. Series 1 (Jan. 2021),
<https://www.gsb.stanford.edu/sites/default/files/publication-pdf/cgri-closer-look-88-gaming-the-system.pdf>