



February 23, 2022

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

*Submitted via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*

**Re: *Proposed Rule Regarding “Rule 10b5-1 and Insider Trading” (File Number S7-20-21)***

Dear Ms. Countryman:

The U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness writes regarding the Securities and Exchange Commission’s (SEC) proposed rule to amend its Rule 10b5-1 under the Securities Exchange Act of 1934 (“Proposed Rule”), published February 15, 2022.<sup>1</sup> The Proposed Rule is currently subject to a 45-day comment period ending on April 1, 2022. Given the complexity and history of the issues raised – as well as the precedent set by the SEC and other financial regulators – we ask that the SEC immediately extend this comment period by 45 days to allow stakeholders to formulate more thoughtful and robust feedback.

The Complexity of the Proposed Rule and the Topics on Which Feedback is Sought Warrant a Comment Period Extension

Originally adopted in 2000,<sup>2</sup> Rule 10b5-1 generally provides corporate insiders with an affirmative defense to insider trading liability in specified circumstances. The Proposed Rule would, among other things, add new conditions to the availability of this affirmative defense, impose new disclosure requirements regarding the insider trading policies of issuers, create disclosure requirements regarding the timing of certain equity compensation awards for executives and directors, and amend Forms 4

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<sup>1</sup> *Rule 10b5-1 and Insider Trading*, 87 Fed. Reg. 8686 (Feb. 15, 2022) (hereinafter, “Proposed Rule”).

<sup>2</sup> *Selective Disclosure and Insider Trading*, 65 Fed. Reg. 51716 (Aug. 24, 2000).

and 5 to require the identification of transactions made pursuant to a Rule 10b5-1(c)(1) trading arrangement and the disclosure of all gifts of securities.

The Proposed Rule includes 77 specific questions – many with multiple parts – to which the SEC is seeking responses. The rule also features a “General Request for Comment”<sup>3</sup> and requests for feedback on the SEC’s economic analysis, including its Regulatory Flexibility Analysis<sup>4</sup> and evaluations pursuant to the Paperwork Reduction Act<sup>5</sup> and Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)<sup>6</sup>. Pursuant to SBREFA, in particular, commenters are asked to opine on whether the Proposed Rule is a “major” rulemaking and, thus, subject to the Congressional Review Act. As the SEC acknowledges, such an assessment entails analysis of “empirical data and other factual support” on a range of complex issues.<sup>7</sup> These include the potential effect of the Proposed Rule on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment, or innovation.

Given the detail and sheer volume of information the SEC is seeking in response to the Proposed Rule, 45 days is simply inadequate for stakeholders to provide meaningful feedback. Such a truncated timeline does not allow for the collection and development of the kind of empirical data and analysis the SEC is requesting – including information addressing the costs and benefits of the Proposed Rule’s provisions and hypothetical alternative approaches. To allow a meaningful comment period on the Proposed Rule, we request that the Commission *immediately* announce a 45-day extension of the initial 45-day comment period.

### Longer Comment Periods Are Not Unusual for Financial Regulatory Proposals

The SEC’s original December 1999 proposed rule to adopt Rule 10b5-1 was subject to a 90-day comment period ending in March 2000.<sup>8</sup> It is difficult to imagine a reasonable argument against allowing a comment period of the same duration on the present Proposed Rule. There is no basis for the SEC insisting on a comment period that is half the time allowed for its original Rule 10b5-1 proposal – especially given the complexity of the amendments being considered and the new requirements that would be imposed.

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<sup>3</sup> Proposed Rule, *supra* note 1, at 8699.

<sup>4</sup> *Id.* at 8725.

<sup>5</sup> *Id.* at 8722.

<sup>6</sup> *Id.* at 8727.

<sup>7</sup> *Id.*

<sup>8</sup> *Selective Disclosure and Insider Trading*, 64 Fed. Reg. 72590 (Dec. 28, 1999).

Generally, it is commonplace for financial regulations that require the collection and analysis of empirical data to have comment periods longer than 45 days. In 2021 alone, the SEC provided 60-day comment periods for its January 19 proposed rule to amend Rule 144<sup>9</sup> and its October 15 proposed rule regarding Form N-PX and related amendments.<sup>10</sup> Moreover, in March 2021, when Acting Chair Lee requested public comment on the longstanding issue of climate disclosures, the public had 90-days to comment.<sup>11</sup> Even farther back, when the Obama-era SEC published a request for data and other information in 2013 to assist the Commission in considering whether to make new rules about the standards of conduct and regulatory obligations for broker-dealers and investment advisers dealing with retail customers, it allowed a 120-day comment period.<sup>12</sup>

Comment periods of such duration are not unique to the SEC. In October 2020, when the Federal Reserve published an advance notice of proposed rulemaking regarding the Community Reinvestment Act, it allowed a 120-day comment period.<sup>13</sup> The OCC, Federal Reserve, and FDIC allowed a 90-day comment period on their January 12, 2021 joint proposed rule on *Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers*.<sup>14</sup> In December 2019, the CFTC allowed 75-days when it re-opened the comment period for its proposed rule regarding *Capital Requirements of Swap Dealers and Major Swap Participants*.<sup>15</sup> It is also very common for agencies to initially propose 60-day comment periods on financial regulations and then extend them to 90 days and beyond.<sup>16</sup>

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<sup>9</sup> *Rule 144 Holding Period and Form 144 Filings*, 86 Fed. Reg. 5063 (Jan. 19, 2021).

<sup>10</sup> *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, 86 Fed. Reg. 57478 (Oct. 15, 2021).

<sup>11</sup> Public Input Welcomed on Climate Change Disclosures (March 15, 2021), *available at* <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

<sup>12</sup> *Duties of Brokers, Dealers, and Investment Advisers*, 78 Fed. Reg. 14848 (March 7, 2013).

<sup>13</sup> *Community Reinvestment Act*, 85 Fed. Reg. 66410 (Oct. 19, 2020).

<sup>14</sup> 86 Fed. Reg. 2299 (Jan. 12, 2021).

<sup>15</sup> 84 Fed. Reg. 69664 (Dec. 19, 2019).

<sup>16</sup> *See, e.g.*, Federal Reserve – [proposed rule](#) on *Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire (Regulation J)*, published June 11, 2021 subject to 60-day comment period ending Aug. 10, 2021, ultimately [extended](#) until Sept. 9, 2021; Federal Reserve – [proposed rule](#) on *Debit Card Interchange Fees and Routing*, published May 13, 2021 subject to 60-day comment period ending July 12, 2021, ultimately [extended](#) until August 11, 2021; OCC, Federal Reserve, FDIC, FCA, and NCUA – joint [proposed rule](#) on *Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance*, published July 6, 2020 subject to a 60-day comment period ending Sept. 4, 2020, ultimately [extended](#) until November 3, 2020; and FDIC – [proposed rule](#) on *Parent Companies of Industrial Banks and Industrial Loan Companies*, published March 31, 2020 subject to 60-day comment period ending June 1, 2020, ultimately [extended](#) until July 1, 2020.

We also wish to address SEC Chair Gary Gensler's recent remarks at a meeting of the Exchequer Club of Washington D.C. on January 19, 2022 during which he offered a defense for the SEC's use of shorter comment periods for agency rulemakings.<sup>17</sup> Chair Gensler conceded that agencies "*can* do more" than the bare minimum when it comes to comment period durations, but pointed to the SEC's use of fact sheets and posting of rule text on its website in advance of publication in justifying its current approach.<sup>18</sup> This rationale is suspect, particularly given that rule text is not final until published in the *Federal Register* and providing the minimum possible response time fails to create an atmosphere conducive for input. SEC Commissioner Hester Peirce is among those who are similarly skeptical of Chair Gensler's justification, arguing in a recent statement that "[f]or complicated rulemakings or at times when we have many rulemakings outstanding simultaneously, 90-day comment periods are likely more appropriate" to allow for proper analysis.<sup>19</sup> These criticisms are particularly relevant in the context of the Proposed Rule and we continue to find the SEC's rationale for providing unduly short comment periods lacking and unacceptable.

Finally, as Commissioner Peirce indicated in her comments above, the SEC has not promulgated the Proposed Rule in a vacuum. The agency is currently soliciting comments on a number of complex rulemakings. On February 15, 2022 – the same day that the Proposed Rule published in the *Federal Register* – the SEC also requested comment on a separate proposed rule regarding "Share Repurchase Disclosure Modernization."<sup>20</sup> This separate proposal is similarly subject to an unnecessarily short 45-day comment period which is also set to expire on April 1, 2022. Moreover, the SEC has slated the overlapping comment periods for these two rules to overlap with the comment period for three other proposals the Commission has published in the last two weeks. The Commission has done this with full knowledge that many parties interested in commenting on the February 15<sup>th</sup> proposals are also working to comment on:

- The SEC's February 2, 2022 notice re-opening the comment period on proposed "Pay Versus Performance" regulations on which comments are due March 4, 2022;<sup>21</sup>

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<sup>17</sup> See "Gensler Defends 30, 45-Day Comment Period for SEC Rulemaking Proposals," THOMSON REUTERS (Jan. 24, 2022), available at <https://tax.thomsonreuters.com/news/gensler-defends-30-45-day-comment-period-for-sec-rulemaking-proposals/>.

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> Statement of SEC Commissioner Hester Peirce, "Rat Farms and Rule Comments - Statement on Comment Period Lengths" (Dec. 10, 2021), available at <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021>.

<sup>20</sup> *Share Repurchase Disclosure Modernization*, 87 Fed. Reg. 8443 (Feb. 15, 2022).

<sup>21</sup> *Reopening of Comment Period for Pay Versus Performance*, 87 Fed. Reg. 5751 (Feb. 2, 2022).

- The SEC’s February 4, 2022 proposed rule regarding security-based swap transactions on which comments are due March 21, 2022;<sup>22</sup> and
- The SEC’s February 8, 2022 proposed rule regarding “Money Market Fund Reforms” on which comments are due April 11, 2022.<sup>23</sup>

The SEC’s decision to have unusually short, concurrent comment periods occur on five significant regulatory proposals calls into question its interest in receiving well-reasoned feedback informed by comprehensive data on any of these diverse rulemakings. The Commission’s choice to “flood the zone” by initiating so many overlapping comment periods in recent weeks, coupled with the short comment periods for these proposals, raises serious questions about the adequacy of the rulemaking process the Commission is pursuing.

### Conclusion

The SEC should immediately announce a 45-day comment period extension for the Proposed Rule to allow for meaningful input that addresses the many issues associated with the Rule 10b5-1 amendments on which it is requesting feedback. Forty-five days is insufficient for interested parties to review the proposal, gather the necessary data, and formulate thoughtful, reasoned responses. Failure to grant such an extension will at best deprive the SEC of valuable stakeholder insight and at worst call into question the SEC’s commitment to conducting this rulemaking in a fair, transparent, and inclusive manner.

Sincerely,



Tom Quadman  
Executive Vice President  
Center for Capital Markets Competitiveness  
U.S. Chamber of Commerce

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<sup>22</sup> *Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions*, 87 Fed. Reg. 6652 (Feb. 4, 2022).

<sup>23</sup> *Money Market Fund Reforms*, 87 Fed. Reg. 7248 (Feb. 8, 2022).