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March 28, 2022

Sent by e-mail to:

rule-comments@sec.gov

Vanessa Countryman
Secretary, United States Securities and Exchange Commission
100 F Street NE.,
Washington, D.C.
20549

Dear Ms Countryman

Re: File No. S7-20-21; Rule 10b5-1 and Insider Trading and File No. S7-21-21; Share Repurchase Disclosure Modernization

Manulife Financial Corporation (“Manulife”) is pleased to have the opportunity to submit comments to the United States Securities and Exchange Commission (“SEC”) on the proposed rule amendments referred to above. Manulife is a leading international financial services provider that helps people make their decisions easier and lives better. With our global headquarters in Toronto, Canada, we provide financial advice and insurance, operating as Manulife across Canada, Asia, and Europe, and primarily as John Hancock in the United States. Manulife is a Canadian foreign private issuer under U.S. securities laws and its common shares are listed on the New York Stock Exchange as well as the Toronto Stock Exchange, the Hong Kong Stock Exchange and the Philippines Stock Exchange.

Our comments relate primarily to the proposed amendments to Rule 10b5-1 (the “Rule 10b5-1 Amendments”) but we have included one comment related to proposed amendments to share repurchase disclosure requirements (“Repurchase Disclosure Amendments”, and together with the Rule 10b5-1 Amendments, the “Proposed Amendments”). We believe that the cooling off period proposed in the Rule 10b5-1 Amendments applicable to share purchase trading plans should be considered in conjunction with the new daily reporting requirements proposed in the Repurchase Disclosure Amendments and have included them together in this letter.

Overview

Manulife supports the SEC’s objectives of promoting fair and transparent securities markets and we agree that insider trading and the fraudulent use of material nonpublic information harms not only individual investors, but also undermines the foundations of our markets by eroding investor confidence. We believe that the Proposed Amendments will help to further these objectives. However, we also believe there are several areas where improvements can be made to the Proposed Amendments that will help ensure that the SEC’s objectives can be achieved while still recognizing the legitimate uses of Rule 10b5-1 trading arrangements and share repurchase programs in a fair, efficient and transparent capital market. Below we suggest alternative proposals for your consideration.

Comments

1. Do not extend the share repurchase reporting requirement to MJDS issuers or reduce the frequency of reporting

The Repurchase Disclosure Amendment proposes to introduce a new daily reporting requirement for share repurchases. We are very concerned with the frequency of this reporting as it provides sophisticated investors an opportunity to anticipate the trading parameters of an issuer's share repurchase program and front-run an issuer's trades to the detriment of all market participants as it undermines confidence in a fair market for securities, as well as increasing costs for issuers and harming its stakeholders. This risk is heightened by the use of Rule 10b5-1 trading plans, which, as the SEC notes, are often used to execute share repurchase programs in a manner that complies with insider trading requirements.

These trading plans specify certain parameters, such as price and volume, within which trading on behalf of the issuer will occur. Daily reporting will allow market participants to readily anticipate the price levels and share quantities an issuer will be trading at and use that information to front run the issuer's trading and increase the cost of share repurchases for issuers. Further, the new cooling off period the SEC is proposing to introduce in the Rule 10b5-1 Amendments, would prevent issuers from quickly and frequently easily modifying their trading parameters to avoid this form of front running. We believe that less frequent reporting will still achieve the goal of transparency while protecting issuers and other market participants from potentially predatory trading activity.

In Canada, issuers are required to publicly report share repurchases under a trading plan within 10 calendar days of the calendar month in which the trade occurs. The reporting is made using the Canadian Securities Administrators' System for Electronic Disclosure by Insiders and includes the kind of information proposed to be required in the Repurchase Disclosure Amendment. The reporting has satisfied the objective of transparency while protecting the market from front running. Given these requirements, we believe that the Repurchase Disclosure Amendment should not apply to MJDS issuers.

If the Repurchase Disclosure Amendment is to apply to MJDS issuers, we believe that reporting within 10 calendar days of the calendar month in which the trade occurred is an appropriate frequency. In conjunction with the removal or shortening of the cooling off period applicable to trading plans for share repurchases (see Comment 5 for further details regarding this recommendation), it would allow issuers to modify trading parameters before having to report their trading activity as a guard against front running.

2. Dividend Reinvestment Investment Plans ("DRIPs") should not be subject to the Rule 10b5-1 Amendments, other than the requirement that the DRIP is operated in good faith

DRIPs are designed to permit shareholders of an issuer to increase their ownership interest in a cost-effective manner through the regular purchase of securities using the proceeds of dividends declared by the issuer. In the Rule 10b5-1 Amendments the SEC notes that the prohibition on multiple overlapping plans does not apply to DRIPs where the dividends are used to purchase securities directly



from the issuer because these transactions do not raise the same insider trading concerns. We agree that DRIPs involving the purchase of securities from the issuer do not raise the same insider trading concerns. We also believe that DRIPs involving the purchase of securities from the open market do not raise insider trading concerns. Many DRIPs are operated using open market purchases where the issuer transfers the dividends of participants to its DRIP administrator who then uses the dividends to purchase shares on the open market and delivers those shares to participants. Similarly, many shareholders choose to participate in DRIPs established by their individual broker to avoid the need to transfer their shares into registered form with the issuer's transfer agent. Under these broker DRIPs, once dividends are received in the brokerage account of a participant, the broker uses the dividends to purchase shares on the open market.

As the timing of DRIP purchases are tied to the payment of dividends on a class of securities, and DRIPs are broadly available to holders of that class, we do not believe DRIPs raise the same concerns regarding the potential misuse of material non-public information. Regardless of the form of the DRIP, we believe that directors and officers of an issuer should be able to participate in them if they comply with the current requirements of Rule 10b5-1 augmented by proposed requirement that they be operated in good faith but without the additional requirements set out in the Rule 10b5-1 Amendments.

3. Employee Stock Ownership Plans ("ESOP") should not be subject to the Rule 10b5-1 Amendments, other than the requirement that the ESOP is operated in good faith

ESOPs are generally designed to provide employees an opportunity to establish or increase their ownership interest in their employer in a cost-effective manner through the regular purchase of securities using deductions from their pay, combined with any applicable employer match. Similar to its comments regarding DRIPs, the SEC also noted that that the prohibition on multiple overlapping plans does not apply to ESOPs where contributions are used to purchase securities directly from the issuer because these transactions do not raise the same insider trading concerns. Again, we agree with this perspective but again note that many ESOPs use open market purchases where the employer transfers the contributions of participants to an ESOP administrator who then uses the contributions to purchase shares on the open market and deposit those shares into ESOP accounts on behalf of participants.

Given that the timing of ESOP purchases are tied to pay periods, the parameters of the ESOPs are set by the issuer and ESOPs are broadly available to employees of an issuer and its affiliates, we do not believe ESOPs raise the same concerns regarding the potential misuse of material non-public information. Regardless of the form of the ESOP, we believe that directors and officers of an issuer should be able to participate in them if they comply with the current requirements of Rule 10b5-1 augmented by the proposed requirement that they be operated in good faith but without the additional requirements set out in the Rule 10b5-1 Amendments.

4. Trading Arrangements designed to permit the exercise of in-the-money options in the year of expiry should not be subject to the 10b5-1 Amendments related to having multiple overlapping

Manulife operates a trading arrangement that is compliant with the existing requirements of Rule 10b5-1 and that provides employees with outstanding stock options the opportunity to elect to have their vested stock options automatically exercised prior to expiration, and the newly acquired shares either retained or sold in the market. This program is designed to protect individuals from having in-the-money stock options expire worthlessly if they would otherwise be unable to exercise those options because they are subject to a trading restriction. Elections are only made at a time when the individuals are not in possession of material non-public information. The parameters of the program are set by Manulife and are the same for all participants.

As these options exercises involve the purchase of shares through the exercise of options and the sale of the newly acquired common shares, the Rule 10b5-1 Amendments could prohibit anyone who has entered into an expiring option exercise plan from participating in any other trading arrangement involving common shares. In addition, since our options were historically granted approximately annually (the actual grant date varied from year to year in connection with the approval of our year-end financial results) the prohibition on having more than one single trade plan in a 12-month period may prevent an optionholder from entering into consecutive annual expiring option exercise plans to the extent that the option expiry dates of the options subject to the plans may be a few days less than 12 months apart.

We believe that trading plans designed to permit the exercise of in-the-money options in the year of their expiry do not raise the same concerns regarding the misuse of material non-public information since the timing of these trades is driven by the pending expiry of the options. These trading plans are designed to allow holders a means to hold their options to expiry while still ensuring that in-the-money options do not expire unexercised because of material developments with the issuer in the year of expiry. The proposed requirements prohibiting overlapping trading plans and restricting single trade plans would make such plans impractical or impossible to operate.

5. Eliminate or shorten the length of the cooling off periods set out in the Rule 10b5-1 Amendments

We agree with the SEC proposal to adopt a waiting period for trading to commence under a new or modified trading arrangement for directors and officers. Including a waiting period will provide investors with greater confidence that trading plans are not being entered into so that participants can benefit from undisclosed material information. We believe that the requirement that directors and officers not be in possession of material information at the time they enter into the plan, coupled with a cooling off period that ends the earlier of 60 days after the trading plan is entered into or 48 hours after the next release of quarterly or annual financial results supports the rationale of the proposed amendment. This cooling off period would ensure that all material information related to the issuer has been disclosed as part of the release of financial results and reflected in the trading price of an issuer's securities before any trading under a new or modified trading plan commences.

We also agree with the SEC that the same cooling off period does not need to apply to share



repurchases as these programs do not raise the same concerns of insiders of the issuer engaging in trading activity that is to their personal benefit. We believe that a cooling off period is not necessary for share repurchases and allowing issuers to more readily adjust trading parameters to avoid the predatory trading activity described in Comment 1 above would be beneficial to the market. If the SEC feels a cooling off period is necessary, we propose a shorter 10 day cooling off period. We believe a cooling off period of this length, coupled with monthly reporting as described in Comment 1, supports the rationale of the proposed amendment.

6. Modify the restriction on multiple overlapping trading plans to state the restrictions only apply if the trading plans involve trading in the same security for the same time period

We agree that permitting directors and officers to enter into multiple trading arrangements covering the same class of security could provide opportunities for individuals to in effect “amend” the impact of an existing trading arrangement by entering into a second overlapping trading plan. However, the current proposal prohibits an individual from “*entering into*” a second plan that covers the same class of securities as an existing plan even if the new plan covers a different time period. We do not believe that multiple plans that apply to the same security but for different time periods should be prohibited. These are not overlapping plans and do not raise the concern that the new plan can be used to effectively “amend” the impact of the existing plan.

We believe that the existing proposal has the unintended consequence of limiting legitimate plans which provide for annual elections. For example, directors at Manulife enter into annual trading arrangements which meet the existing requirements for Rule 10b5-1 plans that permit directors to choose how they will receive their compensation for the following year which may be in the form of common shares, deferred share units (DSU), or a combination of cash and DSUs or common shares. In order to comply with income tax requirements applicable to DSUs, directors must elect how they will receive their next year’s compensation before that year starts. As the Rule 10b5-1 Amendments are currently drafted, this new election would be prohibited because it would be considered “entering into” a new plan at the same time there was an existing plan even though the two plans apply to different time periods. Revising the proposal to prohibit multiple overlapping plans that apply to (i) the same security for (ii) the same time period, will address this concern.

7. Reduce the time period between single trade arrangements

In the Rule 10b5-1 Amendments the SEC states that it is limiting single trade arrangements to one per 12-month period because its research indicates that single trade arrangements are consistently loss avoiding. We believe that the introduction of a cooling off period adequately addresses the concerns regarding single trade arrangements and that a prohibition on the number of plans that may be entered into in a 12-month period is unnecessary. A cooling off period will ensure that participants cannot enter into a Rule 10b5-1 plan and immediately trade securities, thereby eliminating the opportunity to capitalize on undisclosed material information. If a limitation on the number of single trade plans is determined by the SEC to be appropriate, we suggest modifying the time period to one trade every 6 or 9 months. Having a time interval that is less than 12-months would help alleviate issues



with trading arrangements that provide for annual elections (such as the plans described in Comment 6) or annual trades such as the expiring option exercise plan (described in Comment 4 above).

Thank you for the opportunity to provide these comments on the Proposed Amendments. We would be happy to provide additional information or further discuss our comments at your request.

Yours truly,

A handwritten signature in blue ink that reads "James D. Gallagher". The signature is written in a cursive style with a large initial 'J'.

James D. Gallagher

General Counsel
Manulife