March 29, 2022

VIA EMAIL

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

Re: File No. S7-20-21, Rule 10b5-1 and Insider Trading

Dear Madam Secretary:

On behalf of the Colorado Public Employees' Retirement Association (Colorado PERA or PERA), thank you for the opportunity to file public comment regarding the U.S. Securities and Exchange Commission's (Commission or SEC) proposed amendments to 10b5-1 and Insider Trading rules. We applaud the SEC for articulating fortifications to Rule 10b5-1, which we believe will benefit investors by increasing transparency and dissuading corporate insiders from misusing regulated trading plans for personal gain at the disadvantage of the company's investors.

Colorado PERA is the state's largest pension fund, overseeing approximately $60 billion on behalf of more than 630,000 current and former public employees and their beneficiaries. PERA's current long-term strategic target allocation for public equities is 54% of the defined benefit portfolio, and we manage, trade, and exercise shareholder voting for the majority of those assets in-house. PERA also manages public equity portfolio sleeves within PERA's Capital Accumulation Plans (CAPs) on behalf of member participants in those plans. Thus, PERA has a significant economic interest in the public equity asset class, including through domestic securities under the Commission's oversight.

Under fiduciary responsibility to PERA members and beneficiaries, our investors are focused on achieving successful long-term financial outcomes in the portfolio, which depends on the successful long-term financial outcomes of the companies and funds in which we invest on behalf of our members. Efficient capital allocation in active portfolio management is in turn dependent on transparency and integrity in the market. When institutional investors such as PERA have access to reliable, timely and decision-useful information on material aspects of a public company's business and governance, we are better able to value and select securities for inclusion in the portfolio that are expected to produce long-term returns in excess of anticipated risk. For these reasons, PERA has long supported enhanced transparency in capital markets through material disclosure by corporate issuers and management, as well as its oversight by the SEC.

Additionally, PERA is a member of the Council of Institutional Investors (CII) and I represent PERA through service on the CII Board. CII has been actively advocating since 2012 for the Commission to revisit Rule 10b5-1 based on concerns of potential misuse.[1] PERA is supportive of CII's advocacy on Rule 10b5-1, and PERA staff joined CII staff in meeting with SEC Chair Gensler, Commissioner Lee, and Commissioner Crenshaw in March 2022 to express shared support for the Commission to finalize the subject proposals.[2]

[1]https://www.cii.org/files/issues_and_advocacy/correspondence/2012/12_28_12_cii_letter_to_sec_rule%20_10b5-1_trading_plans.pdf
[2] https://www.sec.gov/comments/s7-20-21/s72021-20119416-272303.pdf

Regarding amendments to conditions for affirmative defense under Rule 10b5-1(c)(1) (Applicable to questions 1, 4, 5, and 8)

Recent academic studies find companies and their senior management may be abusing 10b5-1 trading arrangements by opportunistically trading based on material non-public information (MNPI).[3] Although these plans are intended to be adopted and used when not in possession of MNPI, corporate insiders may be motivated by personal gain in trading or cancelling planned trades with consideration to MNPI under cover of 10b5-1 plans. Likewise, issuers may be motivated to issue equity awards or repurchase shares under possession of MNPI and also be provided with legal cover through safe harbors in Rule 10b5-1. When corporations or their insiders deal in company securities based on MNPI, investors to whom those material details have not been disclosed are disadvantaged.

PERA is supportive of the Commission's proposed changes to conditions for reliance on affirmative defense under the current Exchange Act Rule 10b5-1(c)(1), which we view as reasonable provisions to counter potential misuse of trading arrangements under possession of MNPI. Specifically, we believe the newly proposed mandatory delays of 120 days for insiders and 30 days for issuers to execute trades under a 10b5-1 plan after its adoption or modification (including cancellation) are sufficient to dissuade companies and their senior management from opportunistically manipulating the use of these plans to provide legal cover for otherwise nefarious trading based on MNPI.

The proposed amendments to disallow affirmative defense for overlapping 10b5-1 trading plans and to limit single-trade execution under these plans to once per 12-month period should further discourage insiders and issuers from trading arrangement manipulation. Lastly, the SEC's proposal to also require certification from a company's officers and directors (as defined in Rule 16a-1(f)) that they are not in possession of MNPI at the time of plan adoption, modification, or cancellation, should deter illicit trading and fortify the Commission's ability to enforce Rule 10b5-1.[4]

Regarding proposed amendments to disclosure requirements under Rule 10b5-1 (Applicable to questions 21, 27, 35, and 38)

Investors rely on companies to disclose material information in a timely and reliable manner, and in compliance with federal securities laws. Appropriate disclosures allow investors to make informed decisions in their portfolio management and proxy voting to meet their investment objectives. When material information, such as that on which companies and insiders may be

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[3] *See, e.g.,* David F. Larcker et al., *Gaming the System: Three "Red Flags" of Potential 10b5-1 Abuse* (2021) https://www.gsb.stanford.edu/sites/default/files/publication-pdf/cgri-closer-look-88-gaming-the-system.pdf

[4] We note that some market participants may argue that corporate officers and directors may be in possession of MNPI at any given time, and thus, the proposed amendment to certify they are not adopting or modifying a plan under MNPI would be difficult to do. However, we understand the existing 10b5-1 rules to be intended to prohibit adopting, or trading under, covered arrangements when in possession of MNPI. In our interpretation of File No. S7-20-21, it is our view that the overarching goal of the Commission's proposal to fortify integrity, transparency, and oversight of Rule 10b5-1 plans is effectively met through this provision because it would foreseeably induce public company officers and directors who are expected to appropriately manage disclosure of material corporate information to investors and regulators to do so in a timely manner and to only adopt, amend, or terminate a Rule 10b5-1 trading arrangement once they have done so.

trading under Rule 10b5-1, is not disclosed, investors are unable to adequately assess the risks and opportunities associated with owning securities of that company. As currently there are no mandatory reporting requirements on the use of Rule 10b5-1 plans, investors do not have access to information about issuer and insider use of those arrangements which would be beneficial to investors' understanding of corporate governance and potential conflicts.

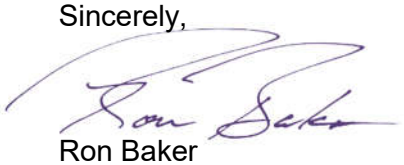
PERA is supportive of the Commission's proposed disclosure requirements, which we believe will strengthen investors' inputs for analysis of corporate use of share repurchases, executive remuneration in alignment with performance, and personal trading of company shares by the company's insiders under Rule 10b5-1.[5] Having access to information provided under the proposed amendments, including material terms of any trading arrangement adopted, amended, or terminated by a registrant or its officers as outlined in Item 408(a) would provide useful information to investors and markets about how companies are managing entity and individual planned trading of its securities. Additionally, the requirement for filers of Form 4 or 5 to include a checkmark indicating whether a transaction was made pursuant to a Rule 10b5-1(c) plan would further investors' understanding of the realized trades under planned arrangements. We would encourage the SEC to also require disclosure of the date of adoption of the covering Rule 10b5-1(c) plan on Forms 4 and 5, which could help investors and the Commission identify which arrangements are being actively traded, and further deter insiders from manipulating trading plans which may overlap.

Likewise, investor access to information regarding the registrant's insider trading policies and procedures would give insight into how companies are complying with insider trading legislation and regulation. The proposed Item 408(b) annual disclosure requirement that companies disclose their adopted insider trading policies and procedures, or explain why they have not adopted such policies, would fortify investor confidence in corporate management's ability to effectively mitigate related principal-agent conflicts.

PERA is also supportive of the proposed disclosure of each option award granted within 14 days before or after filings (including issuer share repurchase) that contain MNPI, as well as a narrative disclosure of the issuer's option grant policies and practices. We believe these amendments would sufficiently allow shareholders to consider any spring-loaded or bullet-dodging option grants during the reporting period, and would enable more informed proxy voting on say-on-pay proposals.

We respectfully urge the SEC to finalize the proposed 10b5-1 and Insider Trading rules in protection of investor interests and in fortification of confidence in the U.S. capital markets. We appreciate the Commission's devotion of time and consideration to our perspective as an institutional investor.

Sincerely,



Ron Baker
Executive Director
Colorado Public Employees' Retirement Association

[5] Not only is the SEC's proposed disclosure scheme and frequency expected to enhance transparency for investors and enforcement by regulators, it should also be relatively cost-efficient for companies and their senior management to certify and report on this cycle, as they already do so for other material reporting.