BrilLiquid

March 28, 2022

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

Re: Rule 10b5-1 and Insider Trading, File S7-20-21

Dear Ms. Countryman,

On behalf of BrilLiquid, a capital markets advisory boutique, I appreciate the opportunity to comment on potential amendments to Rule 10b5-1 and Insider Trading (the Insider Trading Proposal). I do not support the current Proposal and the introduction of amendments that will make Rule 10b5-1 trading plans more onerous as they will do little, if anything, to improve the integrity of equity markets. The lack of publicly available data about how widespread the use 10b5-1 trading plans is by company employees and companies themselves suggests there may be significant unintended consequences. The Commission has tried to eliminate illegal insider trading for decades. Political pressure is mounting to reduce the potential for abuses by corporate insiders using 10b5-1 trading plans. The Insider Trading Proposal may improve certain aspects of Rule 10b5-1, but its overall value is far from clear. Unfortunately, much of the discussion spurred by academic research about 10b5-1 trading plans deflects attention from areas where greater scrutiny will result in immediate and significant investor protections and contribute to the integrity of markets.

The Insider Trading Proposal	Summary Comment
Add new conditions to the availability of the affirmative defense under Exchange Act Rule 10b5-1(c)(1) that are designed to address concerns about abuse of the rule to opportunistically trade securities on the basis of material nonpublic information in ways that harm investors and undermine the integrity of the securities markets.	It is unclear if current Section 16 filings including 10b5 trading plans are of any use to investors. Preventing harm to investors and improving the integrity of markets requires modernization of rules and regulations, and new legislation.
Amend the disclosure requirements for executive and director compensation regarding the timing of equity compensation awards made in close proximity in time to the issuer's disclosure of material nonpublic information.	An issuer's policies and disclosures of transactions in its own shares and securities including share repurchases, share offerings, placements of warrants and equity-linked securities, employee and insider compensation, and underwriter's compensation should be accessible and regularly updated in Exchange Act filings.
Require disclosures regarding the insider trading policies of issuers, and the adoption and termination (including modification) of Rule 10b5-1 and certain other trading arrangements by directors, officers, and issuers.	Current definitions of insiders, along with exemptions, do not provide markets adequate information about transactions in public markets by individuals and entities with access to MNPI.

The Insider Trading Proposal	Summary Comment
Amend Forms 4 and 5 to require corporate insiders subject to the reporting requirements of Exchange Act Section 16 to identify transactions made pursuant to a Rule 10b5-1(c)(1) trading arrangement, and to disclose all gifts of securities on Form 4.	Electronic filings and updates to EDGAR provide the opportunity to modernize the traditional paper forms with user interfaces designed from structured data that better meet the needs of individual investors and data providers. What about Rule 144? Paper filings may be preferred by selling shareholders seeking to delay the potential market impact of public disclosure of potential sales. It may be appropriate to consider eliminating Rule 144 filings for certain Form 4 filers.

The Complex Dynamics of the Capital Markets Ecosystem

Market structure changes, limited effectiveness of patchwork rules, and episodic enforcement of regulations, have made public offerings more vulnerable to front-running and significant market impact. Issuers have increasingly resorted to confidentially-market public offerings, registered direct placements, and PIPEs involving a growing number of institutions being “wall-crossed” and commensurately a larger pool of “temporary” insiders often without robust controls in place to prevent trading on MNPI. In many instances, these institutions are pseudo underwriters on-selling shares into the market realizing compensation through price discounts and warrants. While the inside information was initially restricted to the financing or offering itself, the rise of the SPAC structure has resulting in sharing of significant corporate information about potential merger targets, structure, and terms of transactions. It is not clear that procedures currently employed adequately prevent illegal trading on MNPI.

A shift away from public markets to private markets has done little to enhance confidence in global capital markets. The market power of private investment funds has never been greater. Some funds perform many of the services traditionally undertaken by registered underwriters, dictating how a company should be marketed and, in some cases, leveraging their inside knowledge to publish an investment thesis online. It is clear from the Form 4 filings that private investment funds often distribute shareholders to limited partners once companies are public. In the past, such distributions would have been completed through organized public offerings to ensure market stability. The price impact associated with public offerings has made them less attractive to private investment funds who, pursue their own self-interest, and prefer to shift such costs to limited partners. It is unclear whether recipients of share distributions hold positions for three months before selling in the public markets as is typically the case for insiders when they transition to non-insider status. Many private investment funds have very close relationships with some of their limited partners and share information and opportunities for direct investment side by side with the fund.

With the mainstreaming of SPACs, the options of a direct listing and a traditional IPO,
large private companies have more alternatives paths to the public markets than ever.
The Commission should seize this opportunity to nudge more private companies into the public markets.
Prescribing that Unicorn companies, and more highly valued companies,
register with the Commission is a good public policy option.

Alternatively, the Commission could *lower* the threshold number of shareholders to trigger public company reporting from the 2,000 shareholders of record enshrined in the Jumpstart Our Business Startups Act (JOBS Act) in 2012. Eliminating this artificial barrier between public and private markets by forcing the many Unicorns and other companies into the public markets would bring welcome potential liquidity and greater investor protections to many limited partner investors and employees of private companies. It would represent a significant step towards leveling the playing field between public market investors and those funds that straddle public and private markets. The information asymmetries that exist at the time companies go public today may be greater than in the past as private investors have a longer period of ownership compared to companies going public earlier in their lifecycle.

Passive investors have historically been granted exemptions from Section 16. However, given the rise in passive and index-linked investing passive investors hold significantly more than 10% of many public equities, especially for smaller public companies. Information about index changes and their potential market impact of large orders has emerged as valuable "inside" information.

The requirement to disclose insider trading policies and procedures contained in the Insider Trading Proposal is of limited value to investors as such policies typically only apply to employees. Information about the distribution strategy of ten percent owners, if any, or the potential impact of index rebalancing by investors in index-linked products and passive investors is not currently provided to investors in public company disclosures. The Commission may consider adding disclosures traditionally found in prospectus filings in the sections "Shares Eligible for Future Sale", "Principal and Selling Shareholders", and "Underwriting (and Conflicts of Interest)" to Exchange Act filings to ensure investors are informed about the potential impact of (non-prospectus) distributions and trading activity. To the extent private funds have policies for a particular course of action, they may also be disclosed. Constraints on the creation of equity-linked products and caps on shareholder position size of passive investors should be evaluated.

The Games People Play: The More Things Change, The More They Stay The Same.

A review of how the gaming industry ecosystem handles cheating in multiplayer online games reveals many familiar player types active in the global capital markets.[1] Reframing the integrity of capital markets in terms of cheating, instead of the narrow focus on insider trading, may help to focus the Commission's efforts when seeking to modernize "rules of the game" and disclosures to improve the integrity of U.S. capital markets. Cheating encompasses a broader range of activities that are considered unfair and unacceptable within the norms of broader society. When considering the appropriate action for the Commission to pursue, I am reminded of the quip by former commissioner, Roberta Karmel,[2]

"The role of SEC in the public securities markets should be that of a net buyer."

Roberta Karmel

When insider trading is viewed through the wider lens of cheating, it is plain to see why existing rules are so ineffective and how many participants game the system.

[1] See, *Cheating: Gaining Advantage in Videogames*, Mia Consalvo (2009).

[2] See, "*What Should Be the Role of The SEC In Public Securities Markets?*", speech to the Public Securities Association, October 20, 1978, by Commissioner Roberta S. Karmel. Available at: https://www.sec.gov/news/speech/1978/102078karmel.pdf

Many ordinary investors today would agree with the sentiment expressed in an article published by *The Washington Post* in 1990,[3]

> "Insider trading used to be a lot like pornography.
> The law does not define either term,
> but as Supreme Court Justice Potter Stewart once said of pornography,
> 'I know it when I see it.'
>
> For a long time, it was the same with insider trading.
> If someone was making money by buying stock in some company
> based on confidential information
> that came from inside the company, that was insider trading.
>
> Now it's not so simple.
>
> Several recent insider trading cases demonstrate that
> the courts and the Securities and Exchange Commission
> are interpreting the term in ways that will
> do nothing to reassure the average investor's confidence in the integrity of the stock market.
> Sometimes, what might look to an ordinary investor like insider trading
> doesn't look that way to the judges and lawyers."

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[3] See, "*Even If It Walks And Talks Like Insider Trading, It May Not Be*", Jerry Knight, The Washington Post, May 22, 1990. My emphasis added in red.
Available at, https://www.washingtonpost.com/archive/business/1990/05/22/even-if-it-walks-and-talks-like-insider-trading-it-may-not-be/9684637a-26ea-4bfe-847b-bba19b5cfe38/

Insider trading and cheating mean different things to different people. In the context of the capital markets, the Commission has successfully pursued enforcement actions in a wide variety of situations as described below.[4] While insider trading cases are often presented as outliers in an otherwise fair market, many participants suspect they are drawn from a distribution's thick tail of unseen rare events.[5]

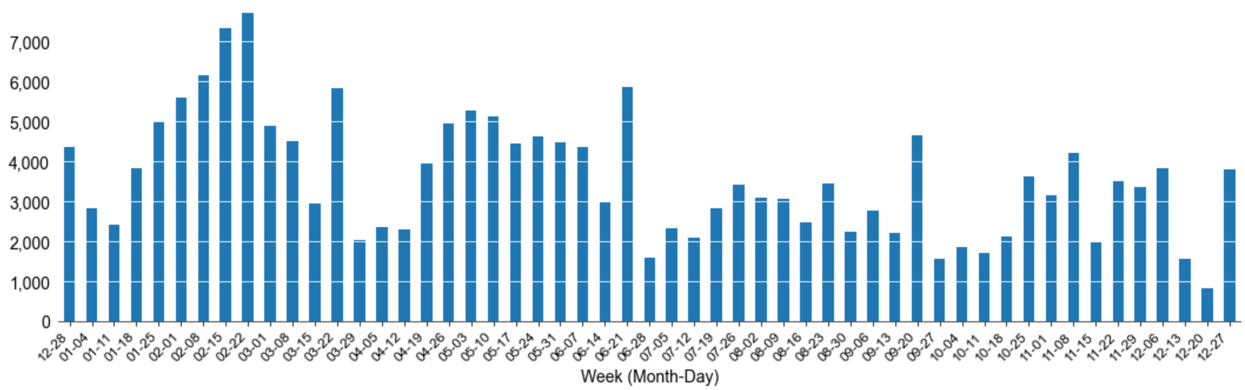
Illegal insider trading in securities of	Occurs most often by current and former	With access to
public companies	board members and officers	MNPI
private companies	affiliates and founders	merger & acquisition targets
biotech companies	bankers and PE professionals	control investments
pharma companies	venture capitalists	unregistered offerings
tech companies	investment managers	registered offerings
restaurant companies	mutual fund executives	"wall-crossed" information
consumer products companies	portfolio managers	EDGAR filings
media companies	research analysts	press releases
platform companies	registered brokers	earnings reports
subscription businesses	unregistered brokers	financial performance
U.S. companies	trading desk and support staff	subscriber growth
foreign companies	attorneys and auditors	trading strategies
ETFs, ETPs	stock exchange personnel	customer order information
SPACs, BDCs, CEFs	transfer agents	proprietary investments
OTC companies	ratings agency professionals	clinical trial data and results
	index data providers	regulatory disclosures
	investor relations professionals	FDA decisions
	public relations professionals	research reports
	company executives	index constituent changes
	finance managers	rating changes
	consultants and advisers	crisis information (e.g., oil spills, data breaches, cyberattacks, product recalls, HR policy violations, litigation, whistleblower complaints, SEC investigations)
	due diligence experts	
	contract and part-timers	
	gig employees	
	outsourced workers	
	salespeople	
	IT specialists	
	compliance professionals	
	government employees	
	regulators	
	government contractors	
	friends and lovers	
	immediate and extended family	
	members of professional associations	
	hackers and cybercriminals	

[4] See, for example, *https://www.sec.gov/spotlight/insidertrading/cases.shtml* and *https://www.sec.gov/enforce/selected-division-enforcement-accomplishments-december-2016-december-2020*
The Commission should consider disclosing aggregate statistics for insider trading case referrals it receives from FINRA, tips received through the TCR system, and leads from other sources. Disclosure of trading policies of Commissioners and staff would establish a standard for other public agencies. Voluntary disclosure of staff members' actual and potential conflicts of interest would provide the public guidance on potential bias.
[5] See, *Statistical Consequences of Fat Tails: The Technical Incerto*, Nassim Nicholas Taleb (2020).

Without comprehensive coverage, section 16 filings are little more than check-the-box bureaucracy. Currently the average number of reporting persons is only 20 for the largest 500 market capitalization U.S. companies. At many companies, the number of employees receiving significant components of their compensation in stock has increased dramatically, particularly as Big Tech companies have emerged as major competitors for talent. Many thousands of employees at the largest companies are receiving significant stock compensation, yet only a handful or two of employees at most companies are considered insiders for purposes of Section 16.

Figure 1

Weekly Number of Form 4 Filings, 2021



Note. Filings on Form 3 and 4 for issuers included in the S&P Total Market Index.

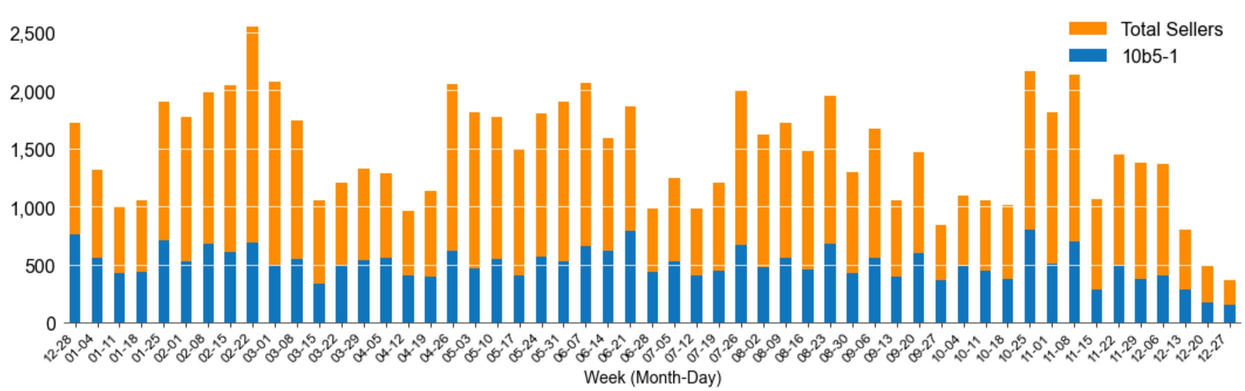
The S&P Total Market Index is a float-adjusted market capitalization weighted index.

As of January 2022, the S&P Total Market Index includes approximately 3,638 eligible equity securities.

Insiders that do not establish Rule 10b5-1 trading plans in good faith or when they possess material nonpublic information (MNPI) have had little reason to fear interventions by the Commission. The Commission should consider modernizing the format of many Exchange Act filings and re-evaluating who is required to make filings under Section 16 given the evolving roles of financial market participants due to regulatory and technological change in recent decades. Many executive officers and private equity firms actively use Rule 10b5-1 trading plans. It is also evident from aggregate filing activity that some companies have policies that restrict trading and impose blackout windows around the announcement of quarterly earnings.

Figure 2

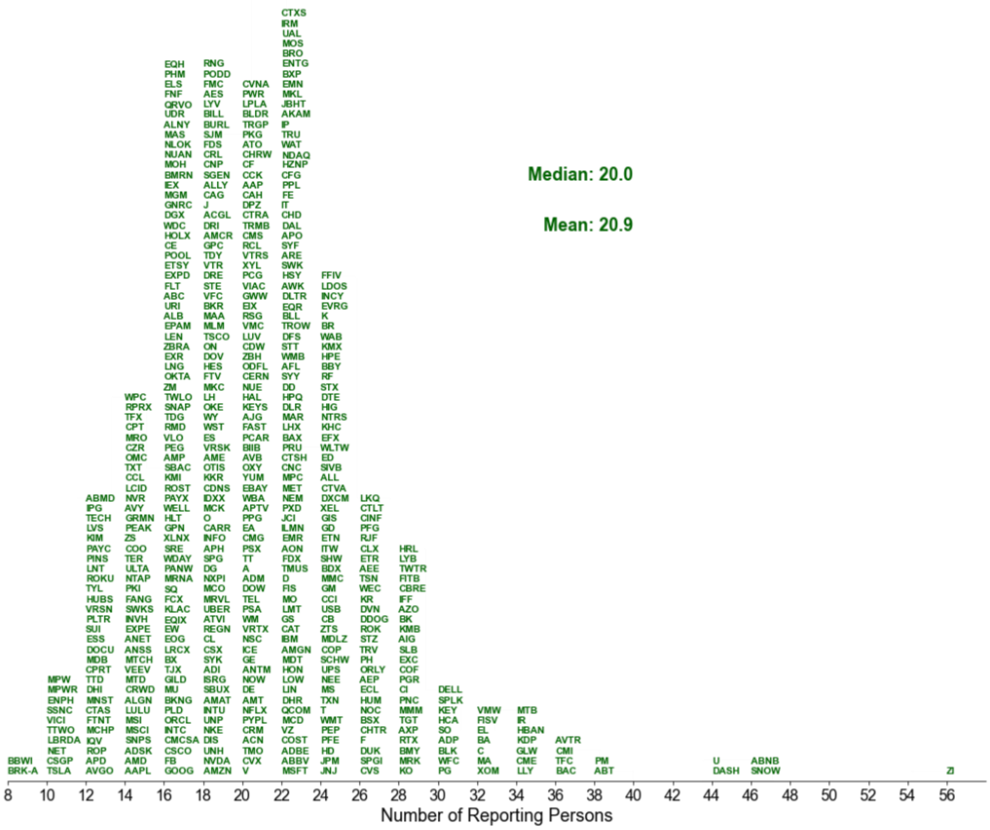
Weekly Number of Form 4 Filings with Transaction Code "S" and 10b5-1 Trading Plan Footnoted, 2021



Note. Filings for issuers included in the S&P Total Market Index.

Figure 3

Number of Reporting Persons Making Form 3 and Form 4 Filings at Largest 500 U.S. Companies, 2021



A Public Offering Process that is Compromised: Where to Disclose Transactions by Insiders?

After decades of the Commission shifting public company financing out of the public markets into private offering mechanisms, corporate disclosures no longer afford ordinary investors the protections they are entitled to. To remedy, this disclosure deficiencies, the Commission may consider incorporating some or all material items from Section 16 forms into Exchange Act filings. Exchange Act disclosures should provide investors a holistic view of issuer financing and repurchase transactions, stock compensation awards and grants, employee purchases and sales, and affiliate and insider transactions in a single filing. Currently, very little summary information is provided to investors and the EDGAR system is not very user-friendly in terms of locating the information or aggregating such information.

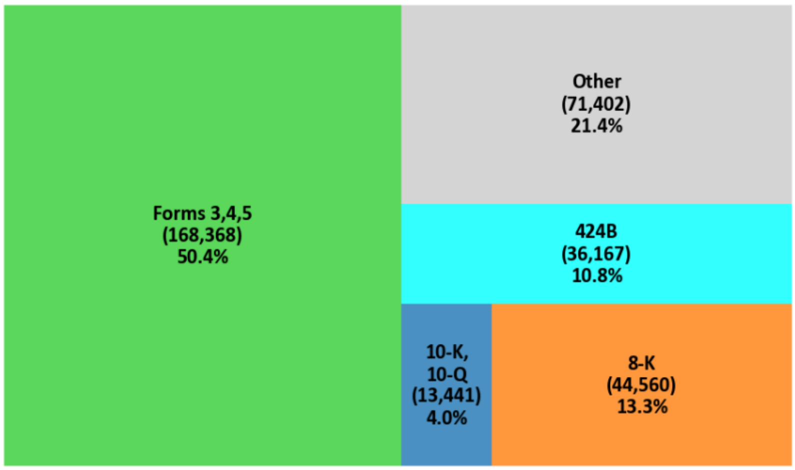
Public companies have increasingly raised equity capital through registered direct placements, PIPEs, block trades, confidentially marketed public offerings (CMPOs), and At The Market (ATM) offerings primarily to limit the market price impact often associated with organized marketed offerings. Although there has been an increase in recent years in the number of private equity and venture capital funds completing IPOs and SPACs (often combined with a PIPE at the time of the de-SPAC), once public many private investment funds are choosing to distribute equity securities directly to limited partners instead of distributing the cash proceeds from a sale through an organized public offering. Many investors in private investment funds have close relationships that include information-sharing and co-investment rights. There is almost no disclosure about limited partnership ownership activity, or insider status, after a distribution from a private investment fund has been completed. In most cases, one presumes most of the limited investors attempt to resell the shares directly into the public markets.

Investors are not well-served by current section 16 forms. Unless the number of reporting persons is dramatically increased, which is unlikely to be popular, there is a strong argument to scrap the current forms. If the Commission is intent on retaining form 4 filings, the form should be drastically simplified. Filings can be separated by transaction code and security type (e.g., Form 4P, Form 4S, etc.,).

Summary information of insider trading should be disclosed in Exchange Act filings. I would propose that such information is included together with issuer share repurchase (and similar information) and have outlined some ideas in comments on the Share Repurchase Disclosure Modernization Proposal S7-21-21.

Figure 4

EDGAR Filings by Form Type for U.S. Companies, 2021



Note. Filings for issuers included in the S&P Total Market Index.

Equity markets have evolved dramatically over the past three decades. For most of this time the so-called efficient markets hypothesis (EMH) has been the established doctrine. The growth in derivatives, exchange traded funds (ETFs), and structured notes are often thought to "complete" markets adding to liquidity and so forth. Investor protections and corporate disclosures have not kept pace with market structure changes and spillovers from increasingly interconnected markets. As many market participants question if EMH is valid so too should the Commission.

There is ample evidence that trading in certain types of equity and credit derivatives can dominate the share trading of underlying securities in certain market environments. Derivatives have been inadequately regulated for too long. Issuers include derivatives on their own securities when issuing convertible securities or warrants. Many investment grade companies issue convertible debt securities because of the favorable tax and accounting treatment of the securities relative to non-convertible debt. Often these issuers will engage in derivative transactions with banks to hedge or mitigate the dilution associated with the convertible notes.

For smaller market capitalization companies, the derivative component of the convertible debt offering and placements that include equity warrants can result in significant dilution of ownership to existing shareholders. There is some evidence of price impact in equity markets from issuance and hedging of non-investment grade debt securities. While initial terms of the financing transactions may appear reasonable and fixed, it is not uncommon for investors in convertible debt securities and warrants to approach issuers directly to negotiate an exchange of the securities for new shares of common stock (in an amount greater than the original conversion ratio prescribed in the terms of the securities). The transaction may be structured as an exchange under Section 3(a)(9) of the Securities Act allowing the investor to sell the newly issued shares without restriction, or meaningful disclosure. In this manner, such investors may establish a close relationship with corporate executives and avail themselves to provide the issuer liquidity as a pseudo standby underwriter and distribute shares into the marketplace on its behalf. For ordinary shareholders of the company the presence of such an investor can result in a death-spiral decline in the share price as excessive numbers of shares are dumped on the market. A similar dynamic can unfold when information about or hedging of credit default swap related transactions spills over into equity markets (e.g., Hovnanian).

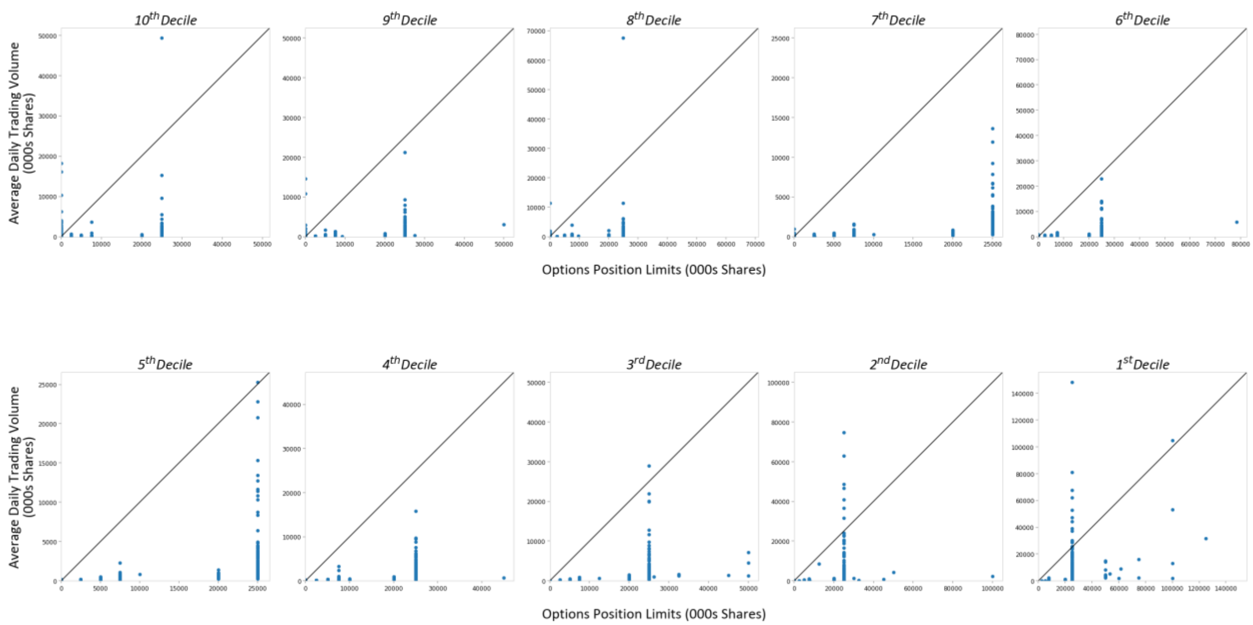
One might reason from the number of form 424B filings in Figure 4 that the public offering process is robust. However, together 5 U.S. banks included in the S&P Total Market Index account for 30,727 filings on form 424B2 (98% of the total). The overwhelming majority of these registered offerings are non-issuer-equity-linked structured notes whereby the banks are selling derivatives of the equity securities of other listed companies.

In recent years, more practitioners and some academics are drawn to a viewpoint described as the Inelastic Market Hypothesis (IMH), that suggests markets are, well, more inelastic. This work suggests the market impact of orders and other information may be more long-lasting than the EMH would suggest. This perspective may be important for the Commission when considering, for example, the impact of leveraged derivative positions, large orders from passive investment funds, and issuer share repurchase activity on the share prices used for purposes of compensating executives, employees, or other counterparties.

The explosion in OTC derivatives, structured notes, and ETF trading has made listed equity option position limits seemingly superfluous except to highlight the misalignment with the share trading volumes of most companies across all market capitalization segments. Together with outdated Rule 10b-18 volume limitations, it is little wonder most ordinary investors are unaware of the influences on the day-to-day and minute-to-minute share price of listed companies.

Figure 5

Individual Share Trading Volumes and Equity Option Position Limits by Market Capitalization Decile, Jan 2022



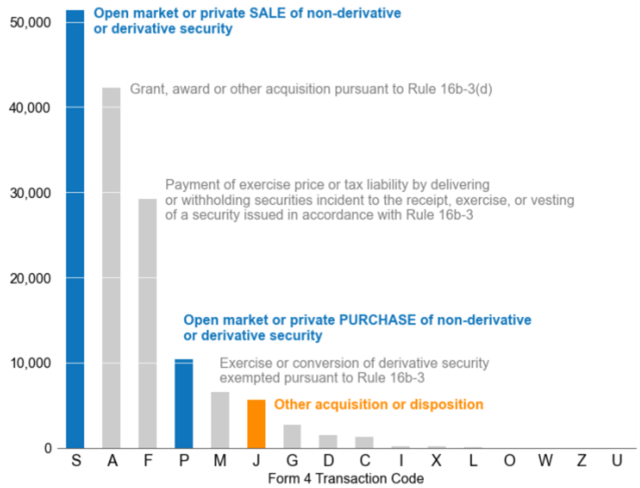
Note. Decile based upon market capitalization of companies in the S&P Total Market Index.

Equity option position limits for shares of TTD at 250,000,000 and CTRA at 125,250,000 in the daily reports published by the Options Clearing Corporation (OCC) were assumed to be incorrect.

Source: Options Clearing Corporation and BrilLiquid.

Figure 6

Number of Form 4 Filings by Transaction Code, 2021



Buy and sell transactions by a comprehensive group of internal investors provides potentially valuable information and liquidity to outside public investors.

Today's electronic markets provide the ability to match internal investor liquidity in regular market-based auctions with a level-playing field for all investors.

Issuer transactions may alternatively be reported on a version of the new Form SR to provide investors a complete picture of capital allocation activity via: share repurchase, dividends, stock compensation and other forms of share issuance.

Large distributions by affiliates of the issuer, and 10% shareholders, may warrant additional disclosures (e.g., distributions to limited partners by venture capital and private equity firms).

Note. Filings for issuers included in the S&P Total Market Index.

The emergence of private investment funds active in public markets in recent decades have also unnecessarily complicated Section 16 disclosures. For example, approximately 25,000 form 3 and form 4 filings in 2021 include multiple reporting persons on the same form with up to 11 reporting persons on a single form filed by several entities. Several executives from leading private equity firms are reporting persons more than 20 listed companies. Consolidating disclosures of affiliates and insiders within Exchange Act filings, with aggregate beneficial ownership type institution naming conventions, as provided in prospectus filings, will make information more understandable. Some forms include an excessive number of footnotes. This additional information is provided on forms that already include 16 different transaction codes for non-derivative and derivative security types. Because of space restrictions on forms, some reporting persons make multiple filings on the same day to provide additional transaction price details instead of providing an average price of the entire day.

In recent years, many private equity and venture capital firms have opted to distribute shares of companies that have become public to limited partners in their funds. Such unorganized distributions do not seek to generate investor interest through the traditional book-building underwritten public offering. Selling shareholders use public offering mechanisms less often for a variety of reasons. Fees are an obvious deterrent. The price impact in a public offering, regardless of the enthusiasm of new investors, is also a consideration. If prospects for the business are less robust, insiders may seek to avoid the critical scrutiny and regulation that come with a public offering.[6] Some combination of the market impact and delayed liquidity event diluting the fund's realized returns has led many investment firms to choose, and possibly coordinate, the unorganized distribution option.

Ordinary investors may be unaware of the potential price impact of distribution strategies of private equity and venture capital investors. The Commission should require companies to include shares eligible for future sale information, traditionally included in offering prospectuses, in Exchange Act filings and potentially require that companies announce and file an 8-K before affiliates and 10% shareholders make significant distributions.

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[6] For example, insider purchases or writing glowing articles on the Internet ahead of a distribution are less likely to attract scrutiny of regulations.

Figure 7

Select Issuers Ranked by Number of Ten Percent Holder Filing Form 4 Using Transaction Code "J", 2021

2021 IPO
2020 IPO
2018 IPO
2017 IPO
De-SPAC

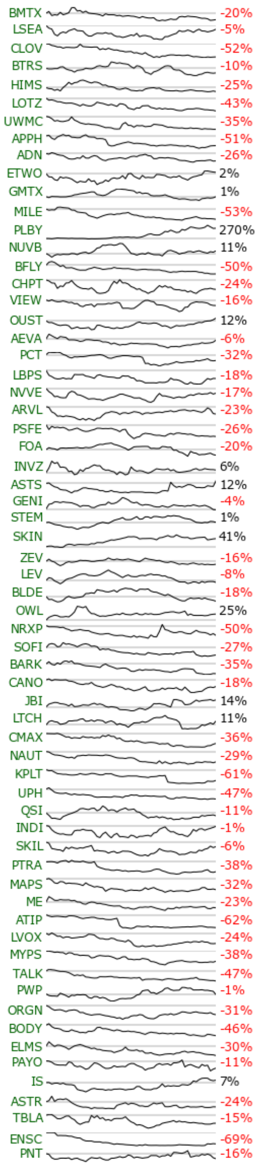
GTX – Honeywell spinoff in 2018 subsequently filed for bankruptcy. Emerged from Chapter 11 in 2020 with private equity owners.

CHK – Chesapeake emerged from Chapter 11 in February 2021 with private equity owners.

Ticker	Issuer Name	Number
HY	Hyster-Yale Materials Handling, Inc.	93
GTX	Garrett Motion Inc.	56
TDUP	Thredup Inc.	44
DASH	Doordash, Inc.	32
KNBE	Knowbe4, Inc.	31
FLYW	Flywire Corp	31
CHK	Chesapeake Energy Corp	30
SNOW	Snowflake Inc.	30
AMPL	Amplitude, Inc.	29
ESTE	Earthstone Energy Inc	29
ZI	Zoominfo Technologies Inc.	28
ABNB	Airbnb, Inc.	27
SFIX	Stitch Fix, Inc.	26
COIN	Coinbase Global, Inc.	26
IEA	Infrastructure & Energy Alternatives, Inc.	23
EAF	Graftech International Ltd	21
U	Unity Software Inc.	21
BLI	Berkeley Lights, Inc.	20
ORGO	Organogenesis Holdings Inc.	20
ETWO	E2Open Parent Holdings, Inc.	20
RXRX	Recursion Pharmaceuticals, Inc.	20
COUR	Coursera, Inc.	20
CZNC	Citizens & Northern Corp	20
BLUE	Bluebird Bio, Inc.	19
PUBM	Pubmatic, Inc.	19
NRIX	Nurix Therapeutics, Inc.	17
CRC	California Resources Corp	17
MQ	Marqeta, Inc.	17
DNB	Dun & Bradstreet Holdings, Inc.	16

Figure 8.1

Closed De-SPACs
1H 2021



Note. Share price performance reported for 60-days post-merger for de-SPACs closed in 2021.

SPACs Go Mainstream as Public Offering Process is Compromised

For decades, some U.S. finance academics have published theories about the underpricing of traditional U.S.-style book-building IPOs based upon evidence of an "IPO discount". A more accurate characterization of the positive average initial return to public investors is as a margin of safety to compensate public investors for a lack of trust and information asymmetries. Most analyses of first day average IPO share price pops ignore significant divergences in aftermarket performance. The research has primarily been used by a small cadre of U.S. capital market participants to promote alternative IPO methods such as reverse-mergers and SPACs. This avenue has often been trafficked by fraudsters seeking to inject companies into the public markets without the scrutiny and fanfare of a traditional IPO.

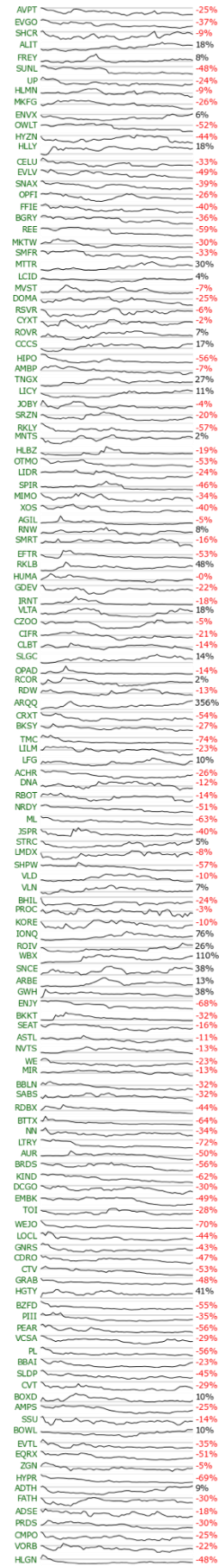
In recent years, the IPO discount research was taken on board by certain Silicon Valley venture capitalists seeking to promote the direct listing of companies on stock exchanges as a lower-cost/higher-price alternative to the traditional IPO. The venture capitalist is often incentivized to boost the share price to the highest value at a given point in time. Eliminating most of the "liquidity" from the IPO event provides a high reference price for a small number of shares. Historically, stock exchanges and underwriters have sought to restrict attempts to manipulate the share price in such a way through minimum float and offering size requirements for new listings.

The rising influence of Silicon Valley venture capitalists and other private equity firms, combined with the conversion of stock exchanges to for-profit exchange has made listing rules more malleable, and disrupted well-established IPO practices. While direct listings found favor with some companies, it did not take long for the alternative IPO players to promote the SPAC structure as to eliminate public market-based pricing and allow for pre-arranged private company "merger IPOs" to be injected into the public markets. Many private equity sponsors engage in sponsor-to-sponsor transactions. The opportunity for general partners to sponsor SPACs directly delivered rare win/win as both seller and buyer is proving irresistible. Bankers, lawyers, influencers, celebrities, and all sorts, from all corners of the world are chasing the same opportunity.

With Silicon Valley venture capitalists and private equity firms pressure on leading underwriters to embrace the SPAC structure, the American Bar Association requested FINRA to propose underwriting rule changes to sweep aside many potential conflicts that prevented the underwriters from marketing SPACs to many of their traditional clients. These changes were approved by the Commission and became effective in January 2020. More SPAC IPOs and SPAC mergers were completed in 2020 and 2021 than in all prior years combined.

Figure 8.2

Closed De-SPACs
2H 2021



Reconsidering SPAC and Affiliated Company Disclosures – A Hypothetical Mashup

Pre-Merger

$500 million SPAC with ½ warrant.

Sponsor is a Financial Services Firm currently in an IPO process.

Private Company (PrivCo) is a loss-making 80% owned subsidiary of
a Public SEC-Registered Company (PubCo) listed on national securities exchange.

SPAC Sponsor agrees with PubCo to merge with PrivCo at a valuation of $3 billion
(PrivCo is losing $200 million per year on $50 million of revenue).

SWFs, State pension plans, mutual funds, and other large customers of the Sponsor
agree to invest in a $300 million PIPE at $10 per share.

PubCo discloses to PIPE buyers that it is working on strategic partnerships that will provide a significant boost to
PubCo's business will be announced soon.

PubCo, other investors, and management of PrivCo agree to roll-over their investment in its entirety
into the combined entity and PubCo agrees to outside investors to control voting of its shares.

SPAC shareholders approve the business combination,
redeeming the shares to liquidate 50% of the investments held in trust.
PIPE closes and the business combination is completed and begins trading as CombCo.

Share Ownership Post-Merger

PubCo retains economic interest in CombCo of 63.6%

Other pre-merger investors: 15.9%

PIPE Investors: 10.0%

SPAC Shareholders: 6.3%

SPAC Sponsor: 4.2%

SPAC Sponsor warrants: 2.1% (if-converted)

SPAC warrant holders: 4.2% (if-converted)

Post-Merger Stakeholder Activity

CombCo announces two new strategic partnerships on the first trading day post-merger
and share price soars on the news.

Sponsor reports the $125 million gain on SPAC Sponsor shares as income
in the quarter immediately preceding its own IPO.

PubCo states it has reduced its voting control below 50% by assignment of voting rights and
will book pre-tax gain of $1.8 billion upon deconsolidation of PrivCo and
record its stake under the equity method going forward.

CombCo share price declines by 80% from its high in the next two months.

CEO and Co-Founder of CombCo announces on Twitter he has resigned to pursue other opportunities.

The Commission should seek public comment on improving the public securities offering process, not just for IPOs but also for secondary offerings for companies already listed. Some of the recent SPAC transactions highlight the inadequacy of the current disclosure rules to protect ordinary investors. The Commission is already increasing its scrutiny of SPACs. [7] Corporate spin-offs, including mergers into SPACs, also deserve scrutiny. While spin-offs have a long history in the toolbox of repackaging transactions, there are often problematic conflicts of interest and opaque incentives like those in many recent SPAC transactions especially when the market price is not determined through a traditional book-building underwritten initial public offering (IPO).

I am grateful to the Investor Advisory Committee (IAC) for bringing the topic of 10b5-1 trading plans into a public meeting and allowing a discussion of related issues such as issuer share repurchases. The Commission must ensure its role in educating and guiding policymakers is robust enough to overcome political rhetoric and the influence of lobbyists, and industry regulatory organizations and rules are adequate for the Commission to fulfill its purpose and mission.

Public meeting forums with public comments are an excellent way for the Commission to engage non-traditional interested parties and introduce a multidisciplinary approach to the Commission's policymaking. Requiring public discussion of all self-regulatory organization rulemaking proposals at existing or new Advisory Committees may help improve the integrity of U.S. capital markets.

The Commission faces the daunting task of reversing the pendulum that has swung too far in reducing investor protections in securities markets. Gravity will inevitably force the Commission to act so thoughtful planning is advisable even if implementing change remains difficult. In the order to ensure the integrity of capital markets, the Commission should consider modernizing and making regulations fit for purpose, and effective. Such an effort requires a close examination of who is covered by various regulations, disclosure of and remediation of actual and potential conflicts of interest, and refreshing registered and unregistered offering mechanisms for issuers, affiliates, and insiders.

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[7] After making "boomerang" rule changes at the beginning of 2020, at the request of the American Bar Association, FINRA announced a targeted exam of selected broker-dealer SPAC activity in October 2021.
See, *https://www.finra.org/rules-guidance/guidance/targeted-examination-letters/special-purpose-acquisition-companies-spacs*

None of this is to suggest the role of the Commission is easy but it has no choice whether to accept the mission as the societal chorus of “Blah, Blah, Blah!” grows ever louder.
In times of battle, one often turns to Churchill for inspiration.

“It’s no use saying,

‘We are doing our best.’

You have got to succeed in doing what is necessary.”

Winston Churchill

I appreciate the opportunity to submit comments to the Commission on the Insider Trading Proposal. [8]

Sincerely,

A. MacInnes

Andrew MacInnes

Managing Director

[8] *This document is for discussion purposes only and does not constitute advice of any kind, including tax, accounting, legal or regulatory advice, and BrilLiquid LLC is not and does not hold itself out to be an advisor as to tax, accounting, legal or regulatory matters. This communication is for informational purposes only and nothing herein should be construed as a solicitation, recommendation, or an offer to buy or sell any securities or product. The information contained herein was obtained from public sources and was relied upon by BrilLiquid LLC without assuming responsibility for independent verification as to the accuracy or completeness of such information. Any estimates are publicly available, and involve numerous and significant subjective determinations, which may not be correct. No representation or warranty, express or implied, is made as to the accuracy or completeness of such information and nothing contained herein is, or shall be relied upon as, a representation or warranty, whether as to the past or the future. BrilLiquid LLC assumes no obligation to update or otherwise revise these materials.*