

Rule 10b5-1 and Insider Trading: Proposed Rules



The Commission is considering proposed amendments to Rule 10b5-1 under the Securities Exchange Act of 1934. The proposed amendments would:

- Add new conditions to the availability of the affirmative defense under Exchange Act Rule 10b5-1(c)(1);
- Create new disclosure requirements regarding issuers' insider trading policies and regarding the adopting and termination (including modification) of Rule 10b5-1 and certain other trading arrangements by directors, officers, and issuers;
- Create new disclosure requirements for executive and director compensation regarding the timing of certain equity compensation awards; and
- Update 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.

Background and Current Rules

In August 2000, the Commission adopted Rule 10b5-1, which provides corporate insiders an affirmative defense to insider trading liability in circumstances where, subject to certain conditions, the trade was pursuant to a binding contract, an instruction to another person to execute the trade for the instructing person's account, or a written plan adopted when the trader was not aware of material nonpublic information.

Proposed Amendments to Rule 10b5-1

The proposed amendments would add new conditions to the availability of the Rule 10b5-1(c)(1) affirmative defense to insider trading liability, including:

- 10b5-1 trading arrangements entered into by corporate officers or directors must include a 120-day cooling-off period before any trading can commence under the trading arrangement after its adoption, including adoption of a modified trading arrangement;
- 10b5-1 trading arrangements entered into by issuers must include a 30-day cooling-off period before any trading can commence under the trading arrangement after its adoption, including adoption of a modified trading arrangement;

- Officers and directors must certify that they are not aware of material nonpublic information about the issuer or the security when adopting a new or modified trading arrangement;
 - The affirmative defense under Rule 10b5-1(c)(1) does not apply to multiple overlapping Rule 10b5-1 trading arrangements for open market trades in the same class of securities;
 - 10b5-1 trading arrangements to execute a single trade are limited to one plan per 12 month period; and
 - 10b5-1 trading arrangements must be entered into and operated in good faith.
-

Enhanced Disclosures

The proposed rules would require enhanced disclosure regarding Rule 10b5-1 trading arrangements, option grants, and issuer insider trading policies and procedures, including:

- A requirement for an issuer to disclose in its annual reports whether or not (and if not, why not) the issuer has adopted insider trading policies and procedures. Additionally, issuers would be required to disclose their insider trading policies and procedures, if they have adopted such policies and procedures;
- A requirement for an issuer to disclose in its annual reports its option grant policies and practices, and to provide tabular disclosure showing grants made within 14 days of the release of material nonpublic information and the market price of the underlying securities on the trading day before and after the release of such information;
- A requirement for an issuer to disclose in its quarterly reports the adoption and termination of Rule 10b5-1 trading arrangements and other trading arrangements by directors, officers, and issuers, and the terms of such trading arrangements; and
- A requirement that Section 16 officers and directors disclose by checking a box on Forms 4 and 5 whether a reported transaction was made pursuant to a 10b5-1(c) trading arrangement.

Finally, the proposed amendments would require corporate insiders subject to the reporting requirements of Exchange Act Section 16 to disclose promptly bona fide gifts of securities on Form 4.

Additional Information:

Visit [sec.gov](https://www.sec.gov) to find more information about the proposal and the full text of the proposed rules. The proposed rules will be published on [SEC.gov](https://www.sec.gov) and in the Federal Register.