

# Rule 10b5-1: Insider Trading Arrangements and Related Disclosure



The Securities and Exchange Commission adopted amendments to Rule 10b5-1 under the Securities Exchange Act of 1934. The amendments:

- Add new conditions to the availability of the affirmative defense under Exchange Act Rule 10b5-1(c)(1), including cooling-off periods for directors, officers, and persons other than issuers;
- Create new disclosure requirements regarding issuers' insider trading policies and procedures and the adoption and termination (including modification) of Rule 10b5-1 and certain other trading arrangements by directors and officers;
- Create new disclosure requirements for executive and director compensation regarding certain equity compensation awards made close in time to the issuer's disclosure of material nonpublic information; and
- Update Forms 4 and 5 to require filers to identify transactions made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) and to disclose all bona fide gifts of securities on Form 4.

## Background

In August 2000, the Commission adopted Rule 10b5-1, which, in part, provides an affirmative defense to insider trading liability under Section 10(b) of the Exchange Act and Rule 10b-5 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. In January 2022, the Commission proposed amendments to Rule 10b5-1 and related disclosure requirements to enhance investor protections concerning insider trading.

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## What's Required

The rule changes amend the Rule 10b5-1(c)(1) affirmative defense to insider trading liability to include:

- A cooling-off period for directors and officers of the later of: (1) 90 days following plan adoption or modification; or (2) two business days following the disclosure in certain periodic reports of the issuer's financial results for the fiscal quarter in which the plan

was adopted or modified (but not to exceed 120 days following plan adoption or modification) before any trading can commence under the trading arrangement;

- A cooling-off period of 30 days for persons other than issuers or directors and officers before any trading can commence under the trading arrangement or modification;
- A condition for directors and officers to include a representation in their Rule 10b5-1 plan certifying, at the time of the adoption of a new or modified plan, that: (1) they are not aware of material nonpublic information about the issuer or its securities; and (2) they are adopting the plan in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5;
- A limitation on the ability of anyone other than issuers to use multiple overlapping Rule 10b5-1 plans;
- A limitation on the ability of anyone other than issuers to rely on the affirmative defense for a single-trade plan to one such plan during any consecutive 12-month period; and
- A condition that all persons entering into a Rule 10b5-1 plan must act in good faith with respect to that plan.

The amendments also create new disclosure requirements that include:

- Quarterly disclosure by registrants regarding the use of Rule 10b5-1 plans and certain other written trading arrangements by a registrant's directors and officers for the trading of its securities;
- Annual disclosure of a registrant's insider trading policies and procedures;
- Certain tabular and narrative disclosures regarding awards of options close in time to the release of material nonpublic information and related policies and procedures;
- Tagging of the required disclosures; and
- A requirement that Form 4 and 5 filers indicate by checkbox that a reported transaction was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).

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## What's Next

The final rules will become effective 60 days following publication of the adopting release in the Federal Register. Section 16 reporting persons will be required to comply with the amendments to Forms 4 and 5 for beneficial ownership reports filed on or after April 1, 2023. Issuers will be required to comply with the new disclosure requirements in Exchange Act periodic reports on Forms 10-Q, 10-K, and 20-F and in any proxy or information statements in the first filing that covers the first full fiscal period that begins on or after April 1, 2023. The final amendments defer by six months the date of compliance with the additional disclosure requirements for smaller reporting companies.