

SEC Proposes Changes to Rule 10b5-1 Plans: 6 Things to Know

Yesterday, the SEC proposed changes to Rule 10b5-1 plans that would add new conditions to the availability of the affirmative defense to insider trading liability – here are the SEC's [press release](#), [fact sheet](#) and [proposing release](#). Here are six things to know about the proposal: **1. New Company Disclosure About Insider Trading Policies and Rule 10b5-1 Plans** - Companies would have to disclose their insider trading policies and procedures in their annual reports and to disclose in their quarterly reports the adoption and termination (including modification) of Rule 10b5-1 plans by directors, officers and issuers, including the duration and aggregate number of securities subject to the plan and a description of any modification. Disclosure would also be required of other trading arrangements that are not designed to satisfy the Rule 10b5-1 requirements.

2. New Company Disclosure About Timing of Equity Awards - Companies would have to provide proxy statement disclosure about the timing of option grants for named executive officers and directors and the release of material nonpublic information. A new table would report any options granted within 14 days before or after the filing of a periodic report, an issuer share repurchase or the filing or furnishing of a Form 8-K that contains MNPI, along with the market price of the underlying securities the trading day before - and the trading day after - the disclosure of the MNPI.

3. New 120-Day Cooling-Off Period (and No Overlapping Plans) - The affirmative defense would have a 120-day cooling-off period for insiders before trading could commence after the adoption of a plan (including adoption of a modified plan), there couldn't be overlapping trading plans, and there would be a limit of single-trade plans to one per 12-month period. Plans entered into by issuers would have a 30-day cooling-off period.

4. D&O Written Certifications When Entering Plans - Directors and officers would be required to furnish written certifications that they are not aware of any material nonpublic information when they enter into the plans.

5. New Checkbox on Forms 4 and 5 - Insiders would have to indicate via a new checkbox on Forms 4 or 5 whether the reported transactions were made pursuant to a Rule 10b5-1 trading arrangement. Many insiders already make this disclosure voluntarily.

6. Gifts Required to be Reported on Form 4 (Not Form 5) - Gifts of securities that were previously permitted to be reported on Form 5 would be required to be reported on Form 4 instead.

The SEC also [proposed](#) the use of a new Form SR for companies to report on any share repurchases conducted by a company itself - see [our blog](#) about that...

Explore more in

[Corporate Law](#)

Blog series

Public Chatter

Public Chatter provides practical guidance—and the latest developments—to those grappling with public company securities law and corporate governance issues, through content developed from an in-house perspective.

[View the blog](#)