

# FREQUENTLY ASKED QUESTIONS ABOUT RULE 10B5-1 PLANS

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## The Regulations

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### *What is Rule 10b-5?*

Rule 10b-5 of the Securities Exchange Act of 1934 (the “Exchange Act”) makes it illegal for any person to make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or to use any measure or engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

### *What is Rule 10b5-1?*

Section 10(b) and Rule 10b-5 of the Exchange Act prohibit the purchase or sale of a security on the basis of material non-public information. Rule 10b5-1 specifies that a purchase or sale constitutes trading “on the basis of” material non-public information where the person making the purchase or sale was aware of material non-public information at the time the purchase or sale was made. Rule 10b5-1, adopted in August 2000, codifies the position of the Securities and Exchange Commission (the “SEC”) that “possession,” not “use,” of material non-public information is sufficient to establish liability in insider trading cases.

### *Why was Rule 10b5-1 adopted?*

Prior to Rule 10b5-1, the U.S. Supreme Court had described insider trading as trades made “on” or “on the basis of” material non-public information. The federal Courts of Appeals did not interpret these terms uniformly. For example, the Second Circuit suggested that “knowing possession” of material non-public information was sufficient, while the Eleventh and Ninth Circuits required “use” of material non-public information. In addition, the Eleventh Circuit indicated that proof of possession provided a strong inference of “use,” while the Ninth Circuit required that “use” be proven in a criminal case.

These disparate results prompted the SEC to establish Rule 10b5-1, which provides greater clarity by specifying that trades are made “on the basis of” material non-public information when the person making the purchase or sale was “aware” of material non-public information when the purchase or sale was made. Although the rule creates more liability by prohibiting trades made while someone is merely “aware” of material non-public information (rather than “using” such information), the rule also provides the affirmative defense of a Rule 10b5-1 plan, which is available to any person or entity.

### ***What is a Rule 10b5-1 plan?***

A Rule 10b5-1 plan is a written plan for trading securities that is designed in accordance with Rule 10b5-1(c). Any person executing pre-planned transactions pursuant to a Rule 10b5-1 plan that was established in good faith at a time when that person was unaware of material non-public information has an affirmative defense against accusations of insider trading, even if actual trades made pursuant to the plan are executed at a time when the individual may be aware of material, non-public information that would otherwise subject that person to liability under Section 10(b) of the Exchange Act or Rule 10b5-1. Accordingly, Rule 10b5-1 plans are especially useful for people presumed to have inside information, such as officers, directors and other affiliates.

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### **Purpose and Benefits of Rule 10b5-1 Plans**

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#### ***What is the purpose of a Rule 10b5-1 plan?***

A trading plan created under Rule 10b5-1(c) provides two affirmative defenses against allegations of insider trading. See *“What is an ‘affirmative defense?’”*

The first affirmative defense, which is available to both individuals and entities, provides that trades pursuant to such a plan are not made “on the basis of” material non-public information, even if the person is actually aware of material non-public information at the time of the actual transactions provided for by the plan. To utilize this defense, the person or entity must be able to demonstrate that the plan meets all the required elements. See *“What are the elements of a Rule 10b5-1 plan?”*

The second affirmative defense is available only to entities, such as issuers or investment banks. Under this provision, an entity will not be liable if it demonstrates that the individual making an investment decision on behalf of the entity was not aware of material non-public information, and that the entity had implemented reasonable policies and procedures to prevent insider trading.

#### ***What are the benefits of a Rule 10b5-1 plan?***

Rule 10b5-1 plans provide the following benefits:

- An affirmative defense to insider trading allegations for persons trading pursuant to the plan;
- Greater certainty to insiders in planning securities transactions;
- Potentially more opportunities for insiders to sell their shares, especially if the issuer’s trading policy permits trading under a plan during a trading or earnings blackout period;
- Potentially less negative publicity associated with insider sales; and
- Decreased burden on counsel or trading compliance officers who otherwise would have to make subjective determinations about the availability or possession of material non-public information each time an insider seeks to buy or sell shares.

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## Protections of Rule 10b5-1 Plans

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### *Does a Rule 10b5-1 plan create a “safe harbor” for trades pursuant to the plan?*

No. A plan pursuant to Rule 10b5-1(c) is not a safe harbor that eliminates liability under Section 10(b) or Rule 10b-5 for trades made in accordance with the plan.

### *What is an “affirmative defense”?*

An affirmative defense allows a person to refute allegations of wrongdoing—in this case, trading on the basis of material non-public information. An affirmative defense will not protect a person from allegations of wrongdoing.

### *How does a Rule 10b5-1 plan provide an affirmative defense?*

A Rule 10b5-1 plan can be used as an affirmative defense against insider trading allegations if the person trading can demonstrate that the purchase or sale occurred pursuant to the terms of the plan. Once violations are alleged, the trader will need to set forth all of the elements of the defense, demonstrate that the Rule 10b5-1 plan was properly designed, and show that the trades at issue complied with the terms of the plan.

### *How does an entity establish an affirmative defense for trades?*

An entity will not be liable with respect to purchases or sales of securities if it demonstrates:

- that the individual making the investment decision on behalf of the entity was not aware of material non-public information, and

- that the entity had implemented reasonable policies and procedures to prevent insider trading.

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## Establishing a Rule 10b5-1 Plan

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### *Who can establish a Rule 10b5-1 plan?*

Any person or entity can establish a Rule 10b5-1 plan to sell or buy securities at a time when the person is not aware of material non-public information, so long as the plan is not part of a plan or scheme to evade the insider trading prohibitions of the rule. For example:

- An executive who receives a significant portion of his compensation in stock options may set up a Rule 10b5-1 plan to diversify his holdings.
- An executive who needs liquidity to pay for the college expenses of her children might set up a Rule 10b5-1 plan to sell stock several weeks before each tuition payment is due.
- A director may establish a Rule 10b5-1 plan to purchase issuer shares to satisfy stock ownership guidelines.
- Any entity that may be an affiliate of the issuer or that may become privy to material non-public information.
- A corporation interested in buying back its stock may set up a Rule 10b5-1 plan to repurchase its shares at certain prices.

***Can a non-insider of the issuer establish a Rule 10b5-1 plan for trading securities of the issuer?***

Yes. Typically it is insiders who establish Rule 10b5-1 plans; however, a person does not have to be an insider of the issuer of the relevant securities in order to establish such a plan. The concern is whether the person has access to material non-public information of the issuer. For example, an intern or a secretary at an issuer or a supplier or customer may set up a Rule 10b5-1 plan to purchase securities of the issuer to avoid potential insider trading liability.

***Should a Rule 10b5-1 plan be publicly announced?***

A public announcement by any person of the adoption of a Rule 10b5-1 plan is not required. A company may choose to disclose the existence of certain Rule 10b5-1 plans in order to reduce the negative public perception of insider stock transactions. A company making such disclosure generally will disclose the existence of a plan but not the specific details. Typically, the disclosure will be for executive officers, directors, and 10% shareholders required to file ownership forms under Section 16(a) of the Exchange Act (that is, Forms 3, 4, and 5).

A company can choose whether to announce the existence of a Rule 10b5-1 plan by a press release followed by a Form 8-K or solely by a Form 8-K. The applicable Form 8-K item is Item 8.01, although Item 7.01 may be used under appropriate circumstances.

If a company decides to publicly announce the adoption of a Rule 10b5-1 plan, it is advisable to publicly announce changes to or termination of such plan as well.

On February 9, 2015, the SEC proposed a rule requiring disclosure by reporting issuers of their hedging policies. The proposed rule, if it becomes final in its current form, may result in more companies disclosing the existence of trading programs of executive officers.

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**Elements of Rule 10b5-1 Plans**

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***What are the elements of a Rule 10b5-1 plan?***

A Rule 10b5-1 plan provides an affirmative defense only if the following elements are met:

- the plan was entered into in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1;
- the plan was adopted at a time when the person trading was not aware of any material non-public information;
- the terms of the plan specified the amount, price, and date of the transaction(s) (or included a written formula, algorithm, or computer program for determining the amount, price, and date);
- the person trading under the plan did not exercise any subsequent influence over how, when, or whether to make purchases or sales; and
- the purchase or sale was made pursuant to the plan.

***What is the good faith requirement?***

A Rule 10b5-1 plan must be entered into in “good faith” and not as part of a plan or scheme to evade the

prohibitions of Rule 10b5-1. The “good faith” provision gives the SEC the right to challenge the affirmative defense created by the rule when the agency suspects abuse.

***What kinds of transactions can be the subject of Rule 10b5-1 plans?***

Rule 10b5-1 plans can be constructed for purchases, sales, monetization transactions (like collars), and the exercise of options and the subsequent sale of the shares received.

***Can a Rule 10b5-1 plan be used for debt and equity securities?***

Yes. A Rule 10b5-1 plan can be used for debt or equity securities or derivative instruments.

***Can a Rule 10b5-1 plan be designed to accommodate sophisticated trading strategies?***

Yes. A simple plan may authorize trades on specified dates or at specified prices. A more complicated plan may utilize targets based on the performance of the stock relative to various market or industry indices, or even relative to certain selected competitors. The plan itself must sufficiently identify the calculation of the relevant prices and triggers.

***Can a person enter into trades to hedge or alter a transaction under the plan?***

No. Rule 10b5-1 prohibits the person trading from entering into or altering a corresponding or hedging transaction or position with respect to securities subject to the plan. The affirmative defense will be inapplicable to both the transaction made pursuant to the plan and the hedging transaction. See “*May trades be deemed to be made outside of the Rule 10b5-1 plan?*”

***Can a person maintain multiple Rule 10b5-1 plans for a single issuer?***

A person should not maintain multiple Rule 10b5-1 plans for a single issuer because it raises suspicion that the person is seeking to evade the requirements of the rule and could adversely affect the availability of the affirmative defense. It should be possible to incorporate different trading strategies into one plan in order to provide the trader with the desired flexibility.

***Are there forms of plans?***

Law firms and investment banks will have forms of Rule 10b5-1 plans with varying complexity, ranging from a simple one-page trading instruction to a complex formula-based plan administered by a trust company or other third party.

***Can trades occur under a Rule 10b5-1 plan immediately after the plan is established?***

A Rule 10b5-1 plan generally should not be used immediately after it is adopted. The plan should include a waiting period (e.g., 30 days) during which no trades can occur under the plan to prevent the appearance that the person designed the plan as a cover for trades based on material non-public information. Another consideration is to adopt a Rule 10b5-1 plan shortly after the company announces its financial results because previously material non-public information regarding the company’s financial situation should have been publicly disclosed.

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## Trading under a Rule 10b5-1 Plan

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### ***How many securities may a Rule 10b5-1 plan cover?***

There is no restriction on the amount of securities a Rule 10b5-1 plan may cover. A plan may be designed to cover all or a small portion of a person's holdings. The plan should be carefully constructed to include an amount that is suited to the purposes of the person trading. To avoid the need for frequent modifications, a plan should not cover too few securities. On the other hand, a plan should not cover too many securities because it will be difficult for the trader to take advantage of legitimate trading opportunities outside of the plan.

### ***How is the amount of shares to be traded pursuant to the plan defined?***

Rule 10b5-1(c)(1)(iii)(A) defines "amount" as either a specified number of shares or other securities or a specified dollar value of securities.

### ***How is the price of the shares to be traded pursuant to the plan determined?***

Rule 10b5-1(c)(1)(iii)(B) defines "price" as the market price on a particular date or a limit price, or a particular dollar price.

### ***Can a Rule 10b5-1 plan set minimum or maximum prices for trades?***

A Rule 10b5-1 plan can be set up to execute trades with minimum or maximum prices or with price targets that change over time, so long as the price targets or the method for determining the price targets are set forth in the plan.

### ***How are trading dates determined under a Rule 10b5-1 plan?***

Rule 10b5-1(c)(1)(iii)(C) defines "date" as, in the case of a market order, the specific day of the year on which the order is to be executed (or as soon thereafter as is practicable under ordinary principles of best execution). In the case of a limit order, "date" is defined as a day of the year on which the limit order is in force.

### ***How often can trades be made pursuant to a Rule 10b5-1 plan?***

A plan can be tailored to the specific needs of the individual who sets it up. For example, the plan can specify that trades will be made on a regular basis, such as monthly or bi-weekly. Alternatively, a Rule 10b5-1 plan can be designed to initiate transactions upon the occurrence of certain trigger events. For example, a plan can provide for sales several days before a tuition payment is due, with the number of shares to be linked to the average cost of tuition as published by the college.

### ***Are there time limits on Rule 10b5-1 plans?***

The SEC does not require a limit on the term of a Rule 10b5-1 plan. A plan should be designed to meet the needs of the person trading and also to avoid the appearance of manipulation. A series of short-term plans may subject the trader to allegations of manipulation. On the other hand, plans covering more than a year may deprive the trader of the ability to control the disposition (or acquisition) of his or her securities or to react to significant changes in the issuer's condition or his or her own obligations.

***Who actually makes the trade?***

Anyone other than the person establishing the Rule 10b5-1 plan may execute trades. Typically, the person establishing the plan designates an administering broker who executes the trades pursuant to the plan specifications.

***How often should the person trading under the plan communicate with the administering broker of his or her Rule 10b5-1 plan?***

Once the Rule 10b5-1 plan is adopted, there should be no communications between the administering broker and the trading party (other than notices that trades have been executed). Any clarification by the trader to the administering broker could be construed as an improper exercise of influence or discretion over the plan by the trader in violation of Rule 10b-5, and any trades executed based on such communications could be considered a modification of the plan.

***May trades be made outside of the Rule 10b5-1 plan?***

Yes, trades may be made outside of the Rule 10b5-1 plan. However, the Rule 10b5-1 affirmative defense will not apply to trades made outside of the plan.

In addition, a trader should not sell securities that have been designated as plan securities because any such sale may be deemed a modification of the plan. Further, if the trader is subject to the volume limitations of Rule 144, the sale of securities outside the plan could effectively reduce the number of shares that could be sold under the plan, which could be deemed an impermissible modification of the plan. See “Changes to or Termination of Rule 10b5-1 Plans” and “Interaction between Rule 10b5-1 Plans and Other Federal Securities Laws.”

***May trades be deemed to be made outside of the Rule 10b5-1 plan?***

Rule 10b5-1(c)(1)(i)(C) specifies that a purchase or sale is not made pursuant to the plan if, among other things, the person who entered into the plan altered or deviated from the plan to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to those securities.

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**Changes to or Termination of Rule 10b5-1 Plans**

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***Can a Rule 10b5-1 plan be modified?***

While amendments to Rule 10b5-1 plans are permitted as long as the modifier does not possess material non-public information at the time of the modification and meets all of the elements required at the inception of the plan, modifications should be avoided because they create the perception that the person is manipulating the plan to benefit from material non-public information, jeopardizing the good faith element and the availability of the affirmative defense. As a result, Rule 10b5-1 plans should be modified rarely and should be designed to prevent the need for amendment.

***Can a Rule 10b5-1 plan be suspended?***

Voluntary suspension of a Rule 10b5-1 plan should be avoided. The affirmative defense will be unavailable if it appears that the person trading under the plan is exerting subsequent influence over the plan, so such persons should not be permitted to suspend and reinstate trading. In addition, suspension of a Rule 10b5-1 plan can lead to the same issues as

modification of a plan: it may appear that the plan is being manipulated, jeopardizing the good faith element and the availability of the affirmative defense. When reinstating the ability to trade under the plan, all of the elements required at the inception of the plan must be met again.

***Can a Rule 10b5-1 plan be terminated?***

It is not advisable for the trader to terminate a Rule 10b5-1 plan except under unusual circumstances. Termination of a plan, by itself, is not a violation of Rule 10b-5 because the termination does not occur in connection with the sale or purchase of securities. However, termination of a plan may create the appearance that the plan is being manipulated, jeopardizing the good faith element and the availability of the affirmative defense.

The SEC has made clear that once a Rule 10b5-1 plan is terminated, the affirmative defense may not apply to any trades that were made pursuant to that plan if such termination calls into question whether the good faith requirement was met or whether the plan was part of a plan or scheme to evade Rule 10b5-1. The problem is increased if the trader terminates and establishes plans serially.

***Can a Rule 10b5-1 plan provide for automatic suspension or termination?***

To allow individuals to make decisions in connection with major corporate transactions and to avoid potential problems under other provisions of the federal securities laws, Rule 10b5-1 plans often include a provision that automatically terminates or suspends trading under the plan upon, among other occurrences, the issuer's announcement (or notice from an issuer's general counsel or compliance officer) of a merger or

acquisition transaction or an underwritten public offering.

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**Interaction between Rule 10b5-1 Plans  
and Other Federal Securities Laws**

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***How does a Rule 10b5-1 plan relate to other SEC rules?***

A person trading pursuant to a Rule 10b5-1 plan still must comply with other regulatory reporting requirements.

***Does Rule 144 apply to trades made pursuant to a Rule 10b5-1 plan?***

Yes. If a person is selling plan securities without registration under the Securities Act of 1933, the person may need to file a Form 144. The seller should indicate on the Form 144 that the sale is being made pursuant to a Rule 10b5-1 plan. In addition, the seller may need to comply with the aggregation and volume restrictions of Rule 144.

***Do the Forms 4 and 5 filing requirements apply to trades made pursuant to a Rule 10b5-1 plan?***

Yes. The Forms 4 and 5 filing requirements apply to trades made pursuant to a Rule 10b5-1 plan. It is advisable to specifically note on the Form 4 or 5 that the trades were made pursuant to a Rule 10b5-1 plan to ensure that investors or analysts monitoring sales by insiders will know that the trades do not represent a current investment decision by the insider.



*Do the filing requirements for Schedule 13D and Schedule 13G apply to trades made pursuant to a Rule 10b5-1 plan?*

Yes. Trades made pursuant to a Rule 10b5-1 plan must be reported under the applicable requirements of Schedule 13D and/or Schedule 13G.

*Does Section 16(b) of the Exchange Act apply to trades made pursuant to a Rule 10b5-1 plan?*

Yes. Officers, directors, and 10% shareholders utilizing Rule 10b5-1 plans should be careful about trading in violation of Section 16(b) of the Exchange Act. If such a person conducts a purchase and sale, in any order, within a six-month time frame and realizes a profit, then the profits must be disgorged to the issuer.

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**Interaction between Rule 10b5-1 Plans  
and Company Insider Trading Policies**

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*Will a Rule 10b5-1 plan conflict with a company's trading policy?*

Trades made pursuant to Rule 10b5-1 plans are subject to company-specific trading restrictions and may not be permitted under a company's trading policy. Typically, a company's insider trading policy indicates whether an employee or director may establish a Rule 10b5-1 plan.

*Does the company need to approve an employee's or director's Rule 10b5-1 plan?*

This depends on the company's insider trading policy. At a minimum, most companies require notice that a plan has been established for its securities. It may also be possible that a company could require notice if an

employee or director establishes a plan to trade securities of a significant customer or supplier.

*Can a Rule 10b5-1 plan be established during, or designed to permit transactions during, a company blackout period?*

An employee or director should review the company's insider trading policy to determine whether the company permits establishment of a plan during a blackout period or permits trades during a blackout period pursuant to a plan.

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**Abuses of Rule 10b5-1 Plans  
and SEC Enforcement Concerns**

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*Is there evidence of abusive practices involving Rule 10b5-1 plans?*

Yes. A study conducted by Alan D. Jagolinzer, an assistant professor at Stanford University Graduate School of Business, revealed that transactions conducted by executives pursuant to Rule 10b5-1 plans generated abnormally high returns compared to the returns of their colleagues trading without Rule 10b5-1 plans. Jagolinzer found that the initiations of Rule 10b5-1 plans often are associated with adverse news disclosure and early terminations are associated with pending positive performance. This suggests that certain traders may be using Rule 10b5-1 plans strategically as a cover for insider trading.

In November and December 2012 and then in April 2013, *The Wall Street Journal* reported several examples of executives using their Rule 10b5-1 plans to trade at a profit before their companies disclosed material information and that the use of Rule 10b5-1

plans by non-executive directors has increased 55% since 2008, as compared to 36% by all other corporate insiders.

***Has the SEC's Division of Enforcement been investigating trades made pursuant to Rule 10b5-1 plans?***

Yes. In a speech in October 2007, Linda Chatman Thomsen, the Director of the Division of Enforcement, referred to several academic studies, including the one noted above, and expressed concern that the results of those studies suggest that there may be some abuse of Rule 10b5-1 plans. As a result, she noted that the SEC is examining Rule 10b5-1 plans, and specifically looking at the disclosures surrounding Rule 10b5-1 plans, multiple and seemingly overlapping Rules 10b5-1 plans, and asymmetrical disclosure around Rule 10b5-1 plans. Following *The Wall Street Journal* articles (see "*Is there evidence of abusive practices involving Rule 10b5-1 plans?*" above), there is some indication that the SEC is investigating more trades but since this new scrutiny there has not yet been any notable public SEC or federal prosecutorial action.

***Have there been lawsuits alleging violations of Rule 10b5-1?***

There have been a limited number of cases in which the issue of whether insiders sold shares based on material non-public information has implicated the availability of the affirmative defense of Rule 10b5-1. See, e.g., *In Re Countrywide Financial Corp.*, 554 F. Supp. 2d 1044, 1068-69 (C.D.Cal. 2008). Several cases have held, *inter alia*, that trades under Rule 10b5-1 plans "do not raise a strong inference of scienter." See, e.g., *In re IAC/InterActiveCorp Sec. Litig.*, 478 F.Supp.2d 574, 604 (S.D.N.Y.2007), and *Elam v. Neidorff*, 544 F.3d 921, 928

(8th Cir.2008). However, a "Rule 10b5-1 trading plan may give rise to an inference of scienter because "a clever insider might 'maximize' their gain from knowledge of an impending price drop over an extended amount of time, and seek to disguise their conduct with a 10b5-1 plan. *Freudenberg v. E Trade Financial Corp.*, 712 F. Supp. 2d 171, 200 (S.D.N.Y. 2010) (internal citation omitted). These cases demonstrate that analysis of the availability of the affirmative defense is fact-intensive. There have been no definitive legal precedents to date.

***Will Rule 10b5-1 be amended by the SEC?***

There are currently no specific plans to amend the rule, but the SEC may eventually require insiders to keep documentation that their Rule 10b5-1 plans are entered into at a time when the insiders are not aware of material non-public information. It could also potentially require issuers to announce when Rule 10b5-1 plans are adopted, whether by the issuer or its executive officers and directors.

In November 2012, with a follow-up request in May 2013, the Council of Institutional Investors ("CII"), an association of public, corporate and union pension funds and other employee benefit plans, submitted a letter to the SEC requesting that the SEC consider pursuing interpretive guidance or amendments to Rule 10b5-1 that would require inclusion of the following protocols:

- Companies and company insiders should only be permitted to adopt Rule 10b5-1 plans during open trading windows.
- Companies and company insiders should be prohibited from adopting multiple, overlapping plans.

- Plans should be subject to a mandatory delay, preferably of at least three months, between the adoption of a plan and the execution of the first trade pursuant to such plan.
- Companies and company insiders should not be allowed to make frequent modifications or cancellations of plans.
- Companies and company insiders should disclose adoptions, amendments, and terminations of and transactions under any plans.
- Boards of companies that have adopted plans should:
  - adopt policies covering plan practices;
  - periodically monitor plan transactions; and
  - ensure that company policies discuss plan use in the context of guidelines or requirements on equity hedging, holding and ownership.

The SEC has not responded to the CII letters publicly.

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#### Best Practices to Consider for Rule 10b5-1 Plans

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To avoid the appearance that insiders are engaging in abusive practices, companies should consider the following requirements for Rule 10b5-1 plans to be adopted by their directors, officers, and other employees:

- Establishment of a Plan: Require company approval of any Rule 10b5-1 plan and permit plans to be established only during an open trading window to avoid the appearance of

establishing a plan while in possession of material non-public information and to bolster the good faith element.

- Waiting Period: Impose a mandatory waiting period between the establishment of a plan and the date the initial trade is made.
- Term of Plan: Consider minimum and maximum terms for plans, such as a minimum of six or 12 months and a maximum of two years. This will enable users to establish new plans over time while preventing the need for any voluntary modifications, terminations, or suspensions.
- Form of Plan: Consider adopting a pre-approved form of plan.
- One Broker: Consider requiring all insiders to use a pre-selected broker.
- Trading Parameters: Consider prohibiting large sales at initiation of the plan or plans that give the implementing broker discretion on sales.
- Modifications, Terminations, Suspensions: Disallow any modification, termination, or suspension other than during open trading windows. In the event of any modification, termination, or suspension, companies should impose a waiting period before trades can be reinstated under a plan.
- Disclosure: Disclose all events in the lifecycle of a Rule 10b5-1 plan: adoption, modification, termination, or suspension, either through a press release or by a Form 8-K.

- Multiple Plans: Prohibit insiders from adopting multiple overlapping Rule 10b5-1 plans.
- Trades Outside of the Plan: Once a plan is established, limit transactions outside of the plan.

In addition, the company should develop robust training programs regarding its insider trading and disclosure policies and the use of Rule 10b5-1 plans, and should consider periodic reviews of insiders' trading plans to ensure compliance with the securities laws and company policies.

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### The Entity Affirmative Defense of Rule 10b5-1(c)(2)

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#### *For whom is the entity defense designed?*

The entity defense is available to any entity, but it is particularly useful for broker-dealers affiliated with the issuer that trade often in the issuer's securities.

#### *What is the nature of "reasonable policies and procedures"?*

Reasonable policies and procedures include the use of robust informational barriers consisting of systematic, rather than ad hoc, procedural and structural arrangements designed to stem the flow of knowledge between, for example, different divisions or units within the issuer and its affiliated broker dealers. This use of "Chinese walls" has become more broadly accepted in the market as providing a bona fide legal defense for liability for insider trading.