

Are You Up to Speed on the New Rules Governing 10b5-1 Trading Plans?

By Bob Romanchek and Donald Kalfen

The US Securities and Exchange Commission (SEC) has dramatically changed the legal landscape governing Rule 10b5-1 trading plans. Late last year, the SEC adopted new rules covering the terms, operation, and disclosure of such trading plans. These new requirements are effective Feb. 27, 2023, and apply to trading plans entered into on or after the effective date and to existing trading plans modified on or after the effective date. Here's what boards and compensation committees need to know.

Rule 10b5 prohibits insiders (e.g., officers and directors) from buying or selling company securities on the basis of material non-public information, or MNPI. Rule 10b5-1 was adopted in 2000 to allow insiders to buy and sell company securities through prearranged trading plans. Rule 10b5-1 trading plans allow insiders to diversify their equity holdings while mitigating the risk of violating securities laws; a compliant plan provides an affirmative defense to insider trading allegations even when an insider buys or sells company securities when they are aware of MNPI.

CHANGES AIMED AT TRANSPARENCY

In part due to claimed abuses in the operation of some trading plans, the SEC has adopted new rules to rein in these abuses and increase the transparency of trading plans.

The table below describes these new rules along with existing

rules governing Rule 10b5-1 trading plans.

In addition, there are new public disclosure requirements for Rule 10b5-1 trading plans. Companies will be required to make the following quarterly disclosures on Form 10-Q and Form 10-K filings, as applicable, generally for filings made on or after April 1, 2023:

- Disclose whether, during the company's last fiscal quarter, any director or officer has adopted or terminated a compliant or noncompliant Rule 10b5-1(c) trading plan.
- Provide a description of the material terms of the trading plan, except for terms related to the price at which the individual executing the arrangement is authorized to trade.

Separately, Section 16 officers will be required to disclose in Forms 4 and 5 filings whether a reported transaction was made under a compliant Rule 10b5-1(c) trading plan. This requirement is applicable to filings made on or after April 1, 2023. [D](#)



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Meridian Compensation Partners is an NACD partner, providing directors with critical and timely information, and perspectives. Meridian Compensation Partners is a financial supporter of the NACD.

Provision	Requirement
Good faith*	Trading plan must be established and operated in good faith.
No knowledge of MNPI*	Trading plan must be established without knowledge of MNPI.
Trading specifications*	Trading plan must specify the number of securities, price, and date of future transactions or a formula for making such determinations.
No influence on trades*	Prohibition on exercising any subsequent influence over any person executing trades.
Cooling-off period	Directors and officers are prohibited from trading under a trading plan until the later of: <ul style="list-style-type: none"> ■ 90 days following plan adoption or modification, or ■ Two business days following the disclosure of the company's financial results in a Form 10-Q or Form 10-K for the fiscal quarter in which the plan was adopted or modified.
Prohibition on multiple overlapping trading plans	Directors and officers are prohibited from implementing multiple overlapping trading plans for any class of company securities, subject to narrow exceptions.
Restriction on single trading plans	Directors and officers are prohibited from entering into more than one trading plan that is "designed to effect" the purchase or sale of securities as a single transaction during any consecutive 12-month period.
Insider certification	Officers and directors must certify that (a) they are not aware of MNPI when they adopt a trading plan and (b) the adoption of the plan is in good faith and not as part of a plan or scheme to evade the prohibition of insider trading.

*Indicates existing requirement applicable to Rule 10b5-1 trading plans