

Rule 10b5-1 Amendments: What Executives Need to Know

The Securities & Exchange Commission introduced amendments to Rule 10b5-1*, which went into effect in phases beginning on February 27, 2023. The 2023 amendments, which are intended to enhance investor protections against insider trading, include additional requirements such as cooling-off periods, certifications of acting in good faith and restrictions on multiple, overlapping plans. After the amendments, the rule still has the same foundational purpose but with additional restrictions and requirements to increase transparency and prevent abuse of material nonpublic information (MNPI).

Amendments to Rule 10b5-1 include the following:

Section 16

Persons required to file reports under section 16(a) must:

- Indicate by checkbox on Form 4 & 5 whether a reported trade is pursuant to a plan that satisfies the conditions of Rule 10b5-1.
- Disclose plan adoption date.
- Report dispositions by a bona fide gift of equity on Form 4 within two business days.

Disclosure Requirements

Companies must:

- Disclose information regarding insider trading policies & procedures*.
- Report the adoption or termination of any 10b5-1 plan*.

* This information must be included in their quarterly (10-Q) and annual (10-K) reports.

Number & Frequency of Plans

- Only one trading plan at a time is permitted*.
- Use of single-trade plans is limited during any consecutive 12-month period.

* With limited exceptions

Mandatory Cooling-Off Period

- Cooling-off period for officers and directors that is the later of 90 days after plan adoption/certain modifications, or two business days after a company files their 10-Q, 10-K, 6-K or 20-F, up to a maximum of 120 days after plan adoption.
- Non-directors/officers are required to observe a 3-day cooling-off period after plan adoption.

Director & Officer Certifications

- Directors & officers must personally certify that they are unaware of MNPI.
- They must certify they are adopting the plan in good faith.

Extension of Good Faith

- Directors & officers must act in good faith throughout the entire duration of the plan.
- They must remain unaware of MNPI.
- They must avoid engagement in opportunistic trading practices.

* Rule 10b5-1 was created to address concerns regarding potential loopholes in insider trading practices and provides an affirmative defense against insider trading if trades are made according to a pre-set plan.

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