



# Building an **Effective** **10b5-1 Plan** That Reduces Insider Trading Risks

## Rule 10b5-1 plans provide a safe option for executives to trade shares while complying with insider trading regulations.

However, recent amendments to Rule 10b5-1 can make it challenging for companies to design an effective strategy. This executive brief outlines regulatory requirements as well as key considerations for building an effective and compliant 10b5-1 plan.

## More than 50%

of S&P 500 companies have executives who use 10b5-1 plans.



# Rule 10b5-1: What It Is and What's Changed

Introduced in 2000, the Securities and Exchange Commission (SEC) Rule 10b5-1 (an addition to Rule 10b-5, which was adopted in 1934 and addresses general securities fraud) prohibits the trading of a company's stock shares on the basis of material insider information. Under the rule, any directors, officers or other insiders who possess material, non-public information (MNPI) face severe restrictions to their ability to sell or purchase securities issued by their companies. The rule also establishes the 10b5-1 plan as a safe harbor from potential insider trading accusations.

**These amendments, which rolled out in phases starting on February 27, 2023, added new requirements for 10b5-1 plans:**



01

New disclosure rules for those required to file reports under section 16(a)

02

Additional disclosure requirements for companies in their quarterly (10-Q) and annual (10-K) reports

03

Rules governing the number and frequency of plans, allowing only one active plan at a time with limited exceptions

04

A mandatory cooling-off period for officers and directors, as well as other insiders

05

Director and officer certifications that they are unaware of MNPI and adopting the plan in good faith

06

An extension of good faith throughout the duration of the plan where directors and officers must remain unaware of MNPI and avoid engagement in opportunistic trading practices

Get the full details [in this infographic](#).



## How Does a 10b5-1 Plan Work?

A 10b5-1 plan is a written plan that offers protections to executives and employees. Without this plan, the SEC views any trade made while someone has MNPI to be a violation. However, trades made within a 10b5-1 plan provide insiders with an affirmative defense that their trade was not made on the basis of MNPI.

The right 10b5-1 plan can help diversify a portfolio that's concentrated in a company's stock and serve as a safe, expedient way to pay off a tax bill or debt repayment.

A compliant 10b5-1 plan can do one of two things:

- Specify the number of shares to be traded, along with the price and date of purchase. It must include a written formula, algorithm or computer program for determining this information.
- Transfer trading authority to a third party who doesn't possess MNPI and prohibits the insider from exercising any subsequent influence over how, when or whether to buy or sell equities.

### **Top Tip:**

An insider may not possess MNPI when they adopt a plan. Once the plan is in place and they certify that they are not aware of MNPI about the issuer or its securities, they can make trades through the plan safely.

# Customizing Your 10b5-1 Plan

While all 10b5-1 plans follow certain requirements, companies can impose additional restrictions. A few customizations to consider:

- **Mandate that all employee-adopted plans** be administered through a designated broker and pre-approved by the issuer.
- **Prescribe the type of plan** your company will adopt.
- **Place limits** on the number of shares eligible to buy or sell, trade frequency or maximum or minimum terms.
- **Choose whether to allow trading** outside the plan or plan modifications.

## Top Tip:

Employees must double-check that they comply with federal regulations and company policies when setting up a plan.

## 5-Step Plan Implementation Strategy

- 01 Check with your company to see which policies or rules executives must follow.
- 02 Consult with your broker or company-designated broker (if required) to set up a plan during an open window when you don't possess MNPI.
- 03 Ask your legal team to draft the written plan — or adapt the company-prescribed plan — to meet the parameters of the proposed trade.
- 04 Submit the plan for approval from you, your broker and the issuer.
- 05 Once approved, your broker will execute the equity transaction(s) at the appointed date(s).



## Choose the Right Broker for Your Plan

If your company is ready to develop a 10b5-1 plan, choose a broker you can trust. Select an executive services team that will get to know the nuances of your company's stock offerings, including liquidity levels and optimal trading time frames.

By choosing one company to manage all your plans, you'll gain a single trading team that's dedicated to achieving optimal outcomes while keeping your organization compliant.

At EQ, we provide individualized support for your executives, including modeling of transactions and managing large block orders to prevent market disruption.

Our team has extensive knowledge in all types of equity plans transactions, assists with timely order entry and efficient execution of trades, while ensuring delivery of post-transaction assets to the account of choice.

[Learn more](#)

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