

SEC Adopts Amendments to Modernize Rule 10b5-1 Insider Trading Plans and Related Disclosures

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The Securities and Exchange Commission (the “SEC”) recently approved final rules introducing new amendments and disclosure requirements under Rule 10b5-1 of the Securities Exchange Act of 1934 (the “Exchange Act”). The final rules, which begin to take effect today, include updates that significantly tighten access to the Rule 10b5-1(c)(1) affirmative defense to insider trading liability for those insiders in possession of material nonpublic information.

Rule 10b5-1 was initially adopted in August 2000, implementing an affirmative defense to insider trading liability in circumstances where trading was made pursuant to a contract, trading instructions to a third party, or a written plan adopted when the trader was unaware of material nonpublic information. The current amendments to Rule 10b5-1 and related disclosure requirements were adopted by the SEC in an effort to expand investor protections concerning insider trading. Highlights from the amendments include:

- New conditions for the availability of the Rule 10b5-1(c)(1) affirmative defense, including cooling-off periods for directors, officers, and persons other than issuers;
- New requirements for issuers to disclose insider trading policies and procedures, and the adoption, termination, and modification of Rule 10b5-1 and certain other trading arrangements made by directors and officers;
- New issuer disclosure requirements of executive and director compensation regarding equity compensation awards made close in time to the issuer’s disclosure of material nonpublic information; and
- Updates to Forms 4 and 5 requiring filers to (1) identify transactions made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c)(1), and (2) disclose all bona fide gifts of securities on Form 4.

Companies must comply with the new Rule 10b5-1 disclosure requirements in Forms 10-Q, 10-K, 20-F and in proxy and information statements in the first filing that covers the first full fiscal period that begins on or after April 1, 2023. Smaller reporting companies must report the new disclosures in the first filing that covers the first full fiscal period that begins on or after October 1, 2023. Section 16 reporting persons must comply with changes to Forms 4 and 5 beginning on April 1, 2023, except that reporting of gifts on Form 4 begins on February 27, 2023.

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