

FREQUENTLY ASKED QUESTIONS ABOUT 10b5-1 PLANS

Once I establish the plan, can it be modified?

A plan can be modified if the plan participant is not aware of material non-public information at the time such action is taken. However, frequent modifications of the plan may create the impression that the seller is not acting in good faith, which is a requirement in adopting a plan.

Can I engage in transactions outside the plan at the same time as transactions are taking place in the plan?

Yes. However, the transactions that take place outside the plan will not be eligible for protection under Rule 10b5-1.

Can I adopt a 10b5-1 plan to exercise my options?

Yes. Plans can be used in connection with "cashless" exercises or immediate sale upon exercises and can be put in place prior to vesting of the options.

Would hedging transactions affect my 10b5-1 plan?

The affirmative defense is not available if the insider has entered into a hedging or corresponding transaction or position, for instance buying 10,000 shares on the same day the plan calls for selling 10,000 shares.

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10b5-1 Plans

SEC RULE 10b5-1

The rule permits officers and directors of public companies to adopt predetermined written plans for selling or purchasing specified amounts of stocks as long as the person adopting the plan is not in possession of material nonpublic information when the plan is adopted.

10b5-1 plans are an affirmative defense to allegations of insider trading, and the party claiming the defense must demonstrate that the plan, contract, or instructions either:

- Specified the amounts, prices, and dates for sales in question or
- Used a written formula or algorithm, or computer program, for determining the amounts, prices, and dates or
- Provided instruction to another person to execute purchases and sales without exercising any subsequent influence over how, when, or whether to effect the transaction.

History

Rule 10b5 - Employment of Manipulative and Deceptive Practices

- It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:
 - To employ any device, scheme, or artifice to defraud
 - To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or
 - To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Simply stated

Rule 10b-5 can be used against any individual who knowingly misappropriates and uses material nonpublic information to trade on a security.

Examples of 10b5-1 Plans

- John Director agrees to sell 2,500 shares of company stock on March 15 at the closing market price of the previous day, provided the sales price is above \$24.50.
- Mary Executive creates a plan to sell shares one month before each date on which her son's college tuition is due, and links the amount of the trades to the cost of the tuition.
- James Insider arranges to have 10% of his compensation withheld from each pay period and applied to purchase shares in an employee stock purchase program.

Advantages of a 10b5-1 Plan

- Allow purchases and sales at a time when the insider is aware of material non-public information.
- Provide greater clarity to corporate insiders concerning a means to plan and structure securities sales.
- Permit gradual diversification of investment portfolios at a predictable rate, spreading sales over time to reduce market effect.
- Spread sales over long periods of time and avoid the bunching of sales in "window" periods.

How to Participate

1. Consult company counsel regarding trading program policies.
2. Complete necessary documents
 - a. Model Rule 10b5-1 plan.
 - b. Form of broker representation letter for removal of securities act of 1933 restrictive legend.
 - c. Form 144.
 - d. Attestation letter and stock power.
3. Set up a William Blair & Company account.
4. Submit all completed forms to your William Blair and Company investment professional for execution of the plan.