

## Client Alert

# SEC Proposes New Rules for Rule 10b5-1 Trading Plans and Share Repurchases

---

**EXEQUITY**

Independent Board and  
Management Advisors

On December 15, 2021, the SEC released proposed rules that would introduce new requirements for both insider Rule 10b5-1 trading plans as well as company share repurchases.<sup>1</sup>

### Proposed Rule 10b5-1 Amendments

The SEC released the proposed amendments to Rule 10b5-1 insider trading plans in SEC Release No. 33-11013 (December 15, 2021).<sup>2</sup> According to SEC Chair Gary Gensler, “Over the past two decades, we’ve heard concerns about and seen gaps in Rule 10b5-1—gaps that today’s proposals would help fill.”

The proposal would introduce several rule and form amendments. Specifically, the proposal would:

- Require Rule 10b5-1 trading arrangements/plans entered into by **officers** or **directors** to include a **120-day mandatory cooling-off period** before any trading could commence.
- Require Rule 10b5-1 plans entered into by **company issuers** to avail themselves of the Rule 10b5-1 protections offered when they buy-back their own securities to include a mandatory **30-day cooling-off period** before any trading could commence.
- Require officers and directors to **personally certify** that they are **not aware of material nonpublic information** about the issuer of the security when they adopt a Rule 10b5-1 plan.
- Enhance existing disclosure and require **new quarterly disclosure** by companies regarding the **adoption and termination of Rule 10b5-1 plans** by **directors, officers, and issuers**, including the terms of such plans, and require insiders to **identify** whether a reported transaction on **Forms 4 or 5** was done **pursuant to a Rule 10b5-1 plan**.
- Indicate that **Rule 10b5-1’s affirmative defenses** will **not** apply to **multiple overlapping** Rule 10b5-1 plans.

---

<sup>1</sup> See SEC [Press Release 2021-256, SEC Proposes Amendments Regarding Rule 10b5-1 Insider Trading Plans and Related Disclosures](#) (December 15, 2021), and SEC [Press Release 2021-257, SEC Proposes New Share Repurchase Disclosure Rules](#) (December 15, 2021).

<sup>2</sup> This SEC Release is available at: <https://www.sec.gov/rules/proposed/2021/33-11013.pdf>.

- **Limit** the availability of the **Rule 10b5-1 affirmative defense** for a **single-trade plan** to one single-trade plan **during any consecutive 12-month period**.
- Require companies to **disclose** in their **Form 10-Ks** or **Form 20-Fs** **whether or not** (and, if not, why not) they have **adopted insider trading policies and procedures**, and must **disclose such policies**, with such disclosures **subject to certification** by the principal executive officer and principal financial officer **under Section 302 of the Sarbanes-Oxley Act**.
- Require **new disclosure** regarding grants of **equity compensation awards** such as stock options and stock appreciation rights **close in time to a company's disclosure of material nonpublic information**.
- Require **prompt disclosure** of dispositions by **gifts** of securities by **insiders on Form 4** **within two business days** after such a gift is made.

### Proposed Share Repurchase Rule Amendments

The SEC released the proposed amendments to share repurchase rules in SEC Release No.34-93783 (December 15, 2021).<sup>3</sup> In adopting the proposed rules with respect to share buybacks, SEC Chair Gary Gensler said, "Share buybacks have become a significant component of how public issuers return capita to shareholders. I think we can lessen the information asymmetries between issuers and investors through enhanced timeliness and granularity of disclosure that today's proposal would provide."

The proposal calls for a new disclosure form, Form SR, and additional disclosure requirements about company share repurchases. Companies would be required to file new Form SR within a business day following the day on which the company executes a share repurchase. The following information would be required in the Form SR, in tabular format, by date, for each class or series of securities:

- **Identification** of the **class of securities** purchased.
- The **total number of shares purchased**, including all issuer repurchases whether or not made pursuant to publicly announced plans or programs.
- The **average price paid per share**.
- The **aggregate total number of shares purchased** on the open market.
- The **aggregate total number of shares purchased** in reliance on the **safe harbor** in 17 CFR 240.10b-18 ("Rule 10b-18").
- The **aggregate total number of shares purchased** pursuant to a **plan** that is intended to satisfy the affirmative defense conditions of **Rule 10b5-1(c)**.

---

<sup>3</sup> This SEC Release is available at: <https://www.sec.gov/rules/proposed/2021/34-93783.pdf>.

The proposal also would introduce some additional disclosures for companies. Specifically, companies would be required to disclose:

- The **objective** or **rationale** for their **share repurchases** and **process** or **criteria** used to determine the amount of repurchases.
- **Any policies and procedures** relating to purchases and sales of the company's securities by its officers and directors during a repurchase program, including any restriction on such transactions.
- **Whether** the companies made their repurchases **pursuant** to a **plan** that is intended to satisfy the affirmative defense conditions of **Rule 10b5-1(c)**, and if so, the date that the plan was adopted or terminated.
- **Whether** purchases were made in **reliance** on the **Rule 10b-18 non-exclusive safe harbor**.
- **Whether** any of a company's **officers** or **directors** subject to reporting requirements under Section 16(a) of the Exchange Act **purchased** or **sold shares** of the class of the company's equity securities that is the subject of the company's share repurchase plan or program **within 10 business days before or after the announcement** of a **company purchase plan or program** by checking a box before the tabular disclosure of company purchases of equity securities.

### **Comment Periods**

The SEC does ask for comments on both sets of proposed rules. Comments are due within 45 days after the proposed rules are published in the Federal Register.



If you have any questions about this **Client Alert**, please contact Ed Hauder ((847) 996-3990 or [Edward.Hauder@exqty.com](mailto:Edward.Hauder@exqty.com) or any of the following:

Ben Burney	(847) 996-3970	<a href="mailto:Ben.Burney@exqty.com">Ben.Burney@exqty.com</a>
Steven Dolan	(949) 748-6132	<a href="mailto:Steven.Dolan@exqty.com">Steven.Dolan@exqty.com</a>
Chris Fischer	(847) 996-3972	<a href="mailto:Chris.Fischer@exqty.com">Chris.Fischer@exqty.com</a>
Robbi Fox	(847) 996-3978	<a href="mailto:Robbi.Fox@exqty.com">Robbi.Fox@exqty.com</a>
Mark Gordon	(925) 478-8294	<a href="mailto:Mark.Gordon@exqty.com">Mark.Gordon@exqty.com</a>
Jeff Hyman	(203) 210-7046	<a href="mailto:Jeff.Hyman@exqty.com">Jeff.Hyman@exqty.com</a>
Lynn Joy	(847) 996-3963	<a href="mailto:Lynn.Joy@exqty.com">Lynn.Joy@exqty.com</a>
Stacey Joy	(847) 996-3969	<a href="mailto:Stacey.Joy@exqty.com">Stacey.Joy@exqty.com</a>
Chad Mitchell	(949) 748-6169	<a href="mailto:Chad.Mitchell@exqty.com">Chad.Mitchell@exqty.com</a>
Jeff Pullen	(847) 996-3967	<a href="mailto:Jeff.Pullen@exqty.com">Jeff.Pullen@exqty.com</a>
Dianna Purcell	(718) 273-7444	<a href="mailto:Dianna.Purcell@exqty.com">Dianna.Purcell@exqty.com</a>
Bob Reilley	(856) 206-9852	<a href="mailto:Bob.Reilley@exqty.com">Bob.Reilley@exqty.com</a>
Mike Sorensen	(847) 996-3996	<a href="mailto:Mike.Sorensen@exqty.com">Mike.Sorensen@exqty.com</a>
Ross Zimmerman	(847) 996-3999	<a href="mailto:Ross.Zimmerman@exqty.com">Ross.Zimmerman@exqty.com</a>

Headquarters • 1870 West Winchester Road, Suite 141 • Libertyville, IL 60048

East Region • 309 Fellowship Road, Suite 200 • Mt. Laurel, NJ 08054

West Region • 2 Park Plaza, Suite 820 • Irvine, CA 92614

[www.exqty.com](http://www.exqty.com)

You are receiving this **Client Alert** as a client or friend of Exequity LLP. This **Client Alert** provides general information and not legal advice or opinions on specific facts. If you did not receive this directly from us and you would like to be sure you will receive future **Client Alerts** and our other publications, please click on the following link to add yourself to our subscription list: <http://www.exqty.com/References/Subscribe.aspx>. If you want to unsubscribe from our list, please click on "Manage Subscription" at the bottom of the e-mail sent to you.

Pub/CA\_SEC R10b5-1 Plans Sh Repurch\_20211222

© 2021 Exequity LLP. All Rights Reserved.