

## *Insider Trading and Rule 10b5-1 FAQ*

### *What is Insider Trading? When is it Legal and When is it Illegal?*

Insider trading is the practice of trading stock or other securities of a public company by the “insiders” of that company. In general, an insider is anyone who is an officer, director, or substantial owner at a company.

Contrary to popular belief, in many cases insider trading is not illegal provided that the trades are disclosed on the proper SEC filings. Illegal insider trading takes place when an insider trades on **material non-public information (MNPI)**, or fails to disclose their transactions within a reasonable timeframe.

### *How are Insiders' Transactions Disclosed?*

Insiders are required to file a Form 4 with the SEC, denoting that they have made a transaction in company stock or otherwise had a material change in their holdings, generally within two business days. Failing to disclose a transaction could open an insider to the risk of penalties and litigation.

An insider is required to file a Form 144 with the SEC when they intend to sell restricted, unregistered, or control securities. An insider must file this form on paper with the SEC prior to the sale, and a Form 144 covers sales by the insider for up to the next three months. These filings provide additional information about the source of the shares that are intended to be sold, as well previous transactions in prior months. Insiders at non-US companies are often exempt from filing Form 4's, thereby making their Form 144's the only source of insider transaction information.

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### *What is a Rule 10b5-1 Plan?*

A Rule 10b5-1 plan is a written agreement entered into by an insider while they are **not** in possession of MNPI. The agreement gives an independent third party control over transactions on an insider's behalf without their input, or authorizes that party to make transactions at either a specified price or quantity at a pre-determined date. A plan provides an insider an **affirmative defense** against illegal insider trading allegations because a 10b5-1 plan should only be adopted when an insider does not possess MNPI.

### *Do Plans Have to be Publicly Disclosed with the SEC?*

A public announcement is not required but is highly encouraged. Generally, a company will disclose the existence of a plan in a press release or Form 8-K for insiders required to file Forms 3, 4, and 5. A plan may also be disclosed in a footnote on a Form 3, 4, or 5.

## *Insider Trading and Rule 10b5-1 FAQ (cont.)*

### *Do Companies Have Policies About Adopting 10b5-1 Plans?*

Each company sets their policies concerning when insiders can adopt 10b5-1 plans and if they are required to do so. Companies have been increasingly adopting policies that require their executives to trade under such plans to limit the possible liability that can arise from shareholder litigation. Some industries have a greater likelihood of insiders acquiring MNPI, especially if the company's share price is related to sporadic events, such as a mining company discovering valuable minerals. The best place to find a company's 10b5-1 policy is in their corporate documents, such as proxy filings and annual 10-K filings.

### *Can an Insider Also Trade Outside of a Plan?*

Yes. Trades may be made outside of a 10b5-1 plan. However, affirmative defense will not apply to those trades, and trading outside of a plan is discouraged because it may be seen as an improper modification of a plan. Additionally, maintaining multiple concurrent plans can raise suspicion that an insider is seeking to evade the requirements of the rule and can void affirmative defense.

### *Can You Change, Modify, or Amend a Plan?*

Amendments are permissible as long as an insider does not possess MNPI when the amendment is adopted. An insider can also choose to terminate a 10b5-1 plan before completion. Changing or terminating a plan is not recommended because it may create the appearance that an insider is manipulating the plan to benefit from MNPI, and calls into question an insider's intent.

### *Can Rule 10b5-1 apply to Form 144s or intent to sell restricted stock?*

Yes. There is a specific space on a Form 144 to indicate the date of plan adoption.

### *How Can I Find Out More About Insider Trading and 10b5-1 Plans?*

The Washington Service has been analyzing insider trading and 10b5-1 trading plans for over three decades. Our dedicated team are happy to answer any questions you might have about insider trading, and provide data about how corporate executives are utilizing 10b5-1 plans.

Reach out to us at [research@washingtonservice.com](mailto:research@washingtonservice.com) or call our office at 301.913.5100