

---

# Considerations for a 10b5-1 trading plan

Important information for executives and corporate governance professionals

Because there is significant confusion in the marketplace about 10b5-1 plans, we have compiled the following questions and answers to help you make informed decisions about creating and implementing your trading strategy.

A properly executed Rule 10b5-1 trading plan is a binding contract, instruction, or written plan between an executive and the brokerage firm that will execute trades on his or her behalf. It stipulates the number of shares, price at, and dates on which an executive may trade securities, and may include a formula for determining these specifics. Once a plan is established, an executive does not influence or make any modification to the trading instructions within that plan.

## Why consider a 10b5-1 trading plan?

Compensation packages that are designed to attract and retain the most talented executives, directors, and other key employees often include equity-based compensation, including stock options, restricted stock, performance awards, and stock appreciation awards (SARs). It can be difficult for recipients of these packages to find opportunities to trade the stock because they are often in possession of material nonpublic information, subject to their company's trading policies, and required to comply with complicated Securities and Exchange Commission (SEC) regulations. When these individuals want to sell shares of their company stock, they often may find they are hampered by limited trading opportunities as a result of trading windows.

Executives also have legitimate concerns about the negative market reaction that selling company stock often brings. As a result, selling opportunities may be so limited that an individual's portfolio becomes significantly overweighted in company stock.

SEC Rule 10b5-1 was adopted to help executives navigate this complex set of circumstances. This rule lets individuals establish a structured trading plan that can help alleviate many of the issues described above. In addition, the rule gives issuers and their executives and directors the ability to create structured selling programs that provide an affirmative defense to certain insider-trading laws and regulations.

## What is an affirmative defense?

An affirmative defense limits or excuses a defendant's liability based on facts outside those claimed by the plaintiff. In the context of 10b5-1, if an individual makes a claim that an executive traded the company's stock while in possession of material nonpublic information (thus violating insider-trading rules), the executive's having a valid 10b5-1 plan that triggered the trade would serve as a rationale that would prevent liability from attaching. The executive who claims the affirmative defense must still prove that the plan was in place before the trading occurred; that it was entered into in good faith; and that it was not part of a plan or scheme to avoid acts prohibited by Section 10(b) and Rule 10b5-1.

## What qualifies as a plan?

A properly executed plan must provide a written formula or directive that determines the number of shares, price, and dates on which the securities are to be purchased or sold, and does not permit you to exercise subsequent influence over transactions in the plan.

## How specific does the plan have to be?

The trading directions within a 10b5-1 plan should be quite specific. However, these instructions can take many forms. The plan must include information regarding the date, price, and number of shares to be transacted. For example, the plan can state "Sell 20,000 shares at \$45 per share or better." Alternatively, a formula or algorithm can be created such as "On the second trading day of every month, sell 1,000 shares at market."

## Does a plan need to be in writing?

Technically a plan can be an oral agreement, as long as it is enforceable. However, best practices suggest that all 10b5-1 plans be in writing. Wells Fargo Advisors requires all 10b5-1 plans be outlined in a formal written document.

## When can I enter into a plan?

You may enter into a plan only when you are in an open trading window and not aware of any material nonpublic information. Close coordination with corporate counsel is suggested to ensure your protection.

## How long may trading plans last?

No minimum or maximum time frames are mandated by law. However, long plan durations will limit your flexibility to consider changing price targets and financial objectives. The average duration is six to 12 months, although each individual issuer determines the allowable time frame.

## What are the benefits of a 10b5-1 trading plan for executives?

Plans can benefit corporate insiders by providing greater certainty regarding how to structure transactions in company stock. Existing stock, stock options, and restricted stock are often sold in this manner. This can make diversification, tax planning, wealth transfer, and liquidity management easier to accomplish.

## Can my trade go forward if I learn about material nonpublic information after adopting a plan but before the trade occurs?

Yes, as long as the plan was properly executed during an open window while you were not in possession of material nonpublic information.

## May I change or cancel the plan?

Although modifications or terminations are not recommended, you should always consult with your corporate counsel or appropriate designated company personnel before you alter or cancel an existing plan. Alterations to your plan could call into question the good-faith nature of the plan and may create certain risks to you and your company. You also must not be in possession of any material nonpublic information at the time you make an alteration or cancel the plan.

## May I sell stock outside the plan?

Yes, however, such stock sales would not be protected under the affirmative defense provision of Rule 10b5-1. Be aware that SEC Rule 144 volume limits apply to the total amount of stock sold, both inside and outside of a 10b5-1 plan. Also, your corporate trading policy may prohibit such activity.

## How do these trading plans affect trading windows and blackout periods?

Rule 10b5-1 does not eliminate the existence of company-specific trading restrictions. Company policy will determine trading windows and blackout periods. In addition, it is up to each company to decide whether to let employees create trading programs.

## Do I still have to complete documents such as SEC Forms 144 or 4?

Yes. Establishing a trading program does not relieve you of your normal regulatory requirements for trade disclosure.

## Are plans ever terminated?

A plan may be terminated if Wells Fargo Advisors is notified of a restriction that would prevent transactions in your account, such as a tender offer for the issuer's securities or a qualifying securities offering by your company.

## Can I enter into a hedging transaction to protect the shares under the plan?

No. Rule 10b5-1 prohibits hedging shares under a plan.

## What are the benefits to issuers?

One of the SEC's goals in creating Rule 10b5-1 was to provide clear information to market participants regarding insider transactions. A properly executed 10b5-1 plan can reduce the negative perception of insider stock sales by market participants and avoid the volatility that often results. In addition, your general counsel or other compliance officers may be relieved of the burden of having to make subjective determinations about what is considered material information.

## Glossary

**Affiliate.** An individual who is in a position to influence the actions of a corporation. This includes persons such as directors, executives, and owners.

**Blackout period.** A temporary time frame in which trading in company stock is limited or denied.

**Binding contract.** Any agreement, oral or in writing, that is enforceable, such as an offer to buy or sell when the person to whom it is made accepts it and communicates acceptance.

**Control stock.** Stock held by an officer or director of a company, or by a person or a family with controlling interest in the company. Sales of control stock in the public market must comply with requirements of SEC Rule 144.

**Corporate trading policy.** Policy established by the issuer defining the terms and conditions that must be followed when employees engage in trading the issuer's securities.

**Form 4.** A document that must be filed with the SEC whenever there is a material change in the holdings of company insiders (including shareholders owning 10% or more of the company's outstanding stock).

**Insider.** Any person who has knowledge of, or access to, valuable nonpublic information about a corporation. Examples of an insider are a company's directors and officers. Stockholders who own more than 10% of a company are also insiders.

**Insider trading.** The buying or selling of a security by someone who has access to material, nonpublic information about the security. Insider trading can be illegal, depending on when the insider makes the trade.

## You can count on us

Wells Fargo Advisors understands that the challenges and opportunities facing corporate executives are unlike those confronting the typical investor. If appropriate as part of your overall investment strategy, your financial advisor can work with you to create and implement a 10b5-1 trading plan.

**Instructions.** A person directs, orally or in writing, another person (e.g., a broker) to purchase or sell securities when the person is not aware of material nonpublic information.

**“Material” information.** Information regarding certain aspects of a company that would have at least a small impact on the company’s share price if disclosed, or that a reasonable investor would consider important in making an investment decision.

**“Nonpublic” information.** Information that has not been disseminated in a manner making it generally available to investors.

**Rule 144.** An SEC rule that sets the conditions under which restricted, unregistered and control securities can be sold.

**Securities and Exchange Commission (SEC).** A government commission created by Congress to regulate the securities markets and protect investors. In addition to regulation and protection, it also monitors corporate takeovers in the United States. The statutes administered by the SEC are designed to promote full public disclosure and to protect the investing public against fraudulent and manipulative practices in the securities markets.

**Trading window.** A time period established by an issuer when it permits discretionary trading in its securities.

## Talk to Wells Fargo Advisors

We welcome the opportunity to work with you to help you achieve your financial goals. Let us know if there are any other topics or services of interest to you.