



New SEC C&DIs Relating to Rule 10b5-1 Amendments

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As discussed in our prior publication (found [here](#)), the Securities and Exchange Commission (SEC) adopted amendments on December 14, 2022, regarding Rule 10b5-1 insider trading plans and related disclosures. On May 25, 2023, the SEC issued three new compliance and disclosure interpretations (C&DIs) relating to the Rule 10b5-1 amendments.

The new C&DIs specify the compliance dates for the new disclosure requirements in periodic reports and in proxy or information statements, and further describe the effective cooling-off period when an individual maintains two separate Rule 10b5-1 plans at the same time and then terminates the earlier-commencing plan.

According to C&DI 120.26, companies other than smaller reporting companies must comply with the new disclosure and tagging requirements in Exchange Act periodic reports in the first filing that covers the first full fiscal period that begins on or after April 1, 2023. Therefore, the following compliance dates apply:

- For companies with a December 31 fiscal year-end, quarterly disclosures must first be provided in the Form 10-Q for the period ended June 30, 2023, and annual disclosures must first be provided in the Form 10-K or 20-F for the fiscal year ended December 31, 2024.
- For companies with a June 30 fiscal year-end, quarterly disclosures must first be provided in the Form 10-K for the fiscal year ended June 30, 2023, and annual disclosures must first be provided in the Form 10-K or 20-F for the fiscal year ended June 30, 2024.

Smaller reporting companies must comply with the new disclosure and tagging requirements in Exchange Act periodic reports in the first filing that covers the first full fiscal period that begins on or after October 1, 2023. Therefore, the following compliance dates apply:

- For companies with a December 31 fiscal year-end, quarterly disclosures must first be provided in the Form 10-K for the fiscal year ended December 31, 2023, and annual disclosures must first be provided in the Form 10-K or 20-F for the fiscal year ended December 31, 2024.
- For companies with a June 30 fiscal year-end, quarterly disclosures must first be provided in the Form 10-Q for the period ended December 31, 2023, and annual disclosures must first be provided in the Form 10-K or 20-F for the fiscal year ended June 30, 2025.

According to C&DI 120.27, companies other than smaller reporting companies must first provide the new disclosure in proxy statements for the first annual meeting for the election of directors (or information statements for consent solicitations in lieu thereof) after completion of the first full fiscal year beginning on or after April 1, 2023. Smaller reporting companies must first provide the new disclosure in proxy statements for the first annual meeting for the election of directors (or information statements for consent solicitations in lieu thereof) after completion of the first full fiscal year beginning on or after October 1, 2023.

C&DI 120.28 discusses Rule 10b5-1(c)(1)(ii)(D)(2), which permits a person (other than the issuer) to maintain two separate Rule 10b5-1 plans at the same time so long as trading pursuant to the later-commencing plan is not authorized to begin until after all trades under the earlier-commencing plan are completed or have expired without execution. According to C&DI 120.28, if an individual terminates the earlier-commencing plan, the later-commencing plan will be subject to an effective cooling-off period. The effective cooling-off period will begin on the termination date of the earlier-commencing plan and will last for the time period specified in Rule 10b5-1(c)(1)(ii)(B). If the earlier-commencing plan ends by its terms without action by the individual, the cooling-off period for the later-commencing plan is not reset and trading may begin as soon as the plan's original cooling-off period is satisfied. Depending on when the later-commencing plan was adopted, this could be as soon as immediately after the earlier-commencing plan ends.

Categories

Insider Trading

Securities and Exchange Commission (SEC)

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