

# 10b5-1 Changes: A Cheat Sheet

Starting April 1, 2023, companies will begin following the SEC's largest overhaul to Rule 10b5-1 since the rule's inception in 2000. The rule changes will have meaningful impacts both on the level of disclosure around 10b5-1 plans and transactions and on insider behavior.

There are several changes around disclosure and trading rules coming. We've outlined them below in broad strokes. Our interpretation of the impact of the rule changes is based on our longstanding expertise in Rule 10b5-1 selling. But to a certain extent, we will have to wait and see how company and insider behavior changes before we understand the full impact.

## Insiders Must Indicate If a 10b5-1 Plan Is Being Used

On Form 4s, insiders must indicate if a 10b5-1 plan is being used and disclose the adoption date.

**Old Rule** Insiders did not have to indicate if a transaction was conducted via a 10b5-1 plan. Even if they did indicate 10b5-1 plan use, they did not have to disclose when the plan was adopted.

**New Rule** Insiders will be required to note if a transaction was conducted via a 10b5-1 plan and will be required to disclose the plan's adoption date.

### Impact

VerityData was already capturing 10b5-1 plan adoption dates wherever they were disclosed and databasing them. We are thus well positioned to immediately begin capturing all new data as soon as the rule change goes into effect. We already use 10b5-1 adoption dates to contextualize insider activity, and mandated disclosure of plan adoption dates will remove some of the gaps that currently exist in this data set.

## Companies Must Disclose 10b5-1 Plans Every Quarter

In 10Ks/Qs, companies will be providing a quarterly disclosure of 10b5-1 plans adopted or terminated during the quarter. The disclosure will include adoption date, termination date, and the number of shares to be sold.

**Old Rule** Disclosure of the details of a 10b5-1 plan was not required and was very rare.

**New Rule** We will be getting a snapshot of key data related to 10b5-1 plans each quarter.

### Impact

As noted above, VerityData was already capturing 10b5-1 plan adoption dates and other related data wherever it was disclosed and databasing it. This new rule will allow us to considerably expand the

number and quality of data points associated with each plan. Of particular interest will be the disclosure of each plan's duration and shares to be sold as this will give new insights into insider behavior.

## 90-Day Cooling-Off Period for Officers & Directors

**Old Rule** Insiders could adopt a 10b5-1 plan and sell via that plan effective immediately.

**New Rule** Insiders must wait 90 days from plan adoption to first sale.

### Impact

The new mandatory cooling-off period brings the rule more in line with its intended purpose as quick-triggering 10b5-1 plans afforded insiders the protections of the rule without putting enough time between the decision to trade and the trade itself. 30-day waiting periods are very common under the old rule, so we will see those pushed out to 90 days. Nonetheless, under the old rule insiders frequently embedded opportunistic selling behaviors in plans that first triggered 90 days or more after adoption, and we don't expect this to change.

## Insiders May No Longer Use Multiple Overlapping 10b5-1 Plans

**Old Rule** Insiders could have as many 10b5-1 plans running simultaneously as they wanted.

**New Rule** Insiders may only have a single 10b5-1 plan running at a time (excluding tax withholding-related transactions which can be executed via a second concurrent plan).

### Impact

In practice, it has been rare for insiders to deploy multiple concurrent trading plans, and they are most often used to manage transactions from different entities (i.e., one plan sells from direct holdings and another sells from a trust.) We do not expect a big impact on insider behavior from this change.

## Companies Must Disclose Insider Trading Policies & Procedures

**Old Rule** Because disclosure of insider trading policies and procedures was not mandated, actual disclosure of insider trading policy information was highly inconsistent.

**New Rule** Companies will now be required to annually disclose policies and procedures related to insider buying and selling.

### Impact

Due to the incomplete and haphazard nature of this information, it has previously been difficult to make clear comparisons between companies to see if their policies deviated from one another. With this new rule, we will have much greater visibility into these policies and will be able to capture them and glean insights.

## Companies Must Disclose Equity Awards Coinciding MNPI Release

**Old Rule** No rule.

**New Rule** Companies will now be required to disclose a table quarterly listing any equity awards that closely coincided with the release of material non-public information (e.g., earnings).

## Impact

The SEC has clearly been concerned that companies may be tempted to time equity awards to benefit from material announcements. In practice, we believe that this rule will likely scare companies off from doing this, resulting in the table being rarely used, though we will monitor with interest.

## Other Changes

- 10b5-1 plans must now include “a representation in the plan” certifying that the insider was not in possession of material non-public information when the plan was adopted and affirming that the plan is being entered into in good faith.
- Insiders must additionally pledge not to time the release of material non-public information in such a way that it would benefit sales or purchases under a 10b5-1 plan that has been previously adopted.
- Gifts will now be disclosed on form 4s with a deadline of the end of the second business day after the gift. Previously, gifts could in some cases be disclosed up to over a year after they occurred.

## Bottom Line

Given our longstanding expertise around 10b5-1 selling and the fact that our platform captures key information around 10b5-1 plans, including 10b5-1 plan adoption dates and algorithmically derived 10b5-1 price triggers, we will be monitoring the rollout of these changes closely and are well-positioned to continue providing the cleanest and richest 10b5-1-related data and insights available.

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