

INTERPRETIVE GUIDANCE FOR SEC'S INSIDER TRADING RULES

SEPTEMBER 2023

SUMMARY

The SEC staff released additional Compliance and Disclosure Interpretations (C&DIs) related to the SEC's recently effective insider trading rules. These C&DIs offer valuable interpretive guidance for registrants about the disclosure requirements and other aspects of the rules.

INSIDER TRADING COMPLIANCE AND DISCLOSURE INTERPRETATIONS

SUMMARY OF THE NEW INSIDER TRADING C&DIs

Regulation S-K: Item 408(a) -
Insider Trading Arrangements and
Policies
([Questions 133A.01 and 133A.02](#))

- ▶ The requirement to disclose:
 - The termination of an insider trading plan does not apply to plans that were terminated due to their expiration or completion.
 - Whether any director or officer adopted or terminated a Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement applies to trading arrangements covering securities for which the director or officer has a direct or indirect pecuniary interest.

Exchange Act Section 16 and
Related Rules and Forms: Form 4
([Question 135.04](#))

- ▶ The checkbox on Form 4 to identify any Rule 10b5-1 trading plan transactions does not apply to trading plans that were adopted before April 3, 2023, the effective date of the new checkbox.

Exchange Act Rules: Manipulative
and Deceptive Devices and
Contrivances: Rule 10b5-1
([Questions 120.29, 120.30,
and 120.31](#))

- ▶ Directors and officers are currently subject to a mandatory cooling off period that is the later of 90 days after the plan's adoption, or two business days following the disclosure of the issuer's financial results in Form 10-Q or Form 10-K for the fiscal quarter when the plan was adopted. The day that Form 10-Q or Form 10-K is filed (whether before or after trading opens) does not count as a business day. For example, if Form 10-

Copyright © 2023, BDO USA, P.C.

Material discussed in this Bulletin is meant to provide general information and should not be acted upon without first obtaining professional advice appropriately tailored to your individual facts and circumstances.

BDO is the brand name for the BDO network and for each of the BDO Member Firms. BDO USA, P.C., a Virginia professional corporation, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

SUMMARY OF THE NEW INSIDER TRADING C&DIs

- K is filed on Monday, the cooling off period applies to Tuesday and Wednesday.
- ▶ The rules contain limits on the use of multiple overlapping insider trading plans. An open-market transaction conducted at the direction of a 401(k) plan administrator to match a contribution by the participant with employer stock is **not** an overlapping plan for Rule 10b5-1.

* * * * *

BDO's SEC Bulletins:

[SEC Adopts Amendments to Rule 10b5-1 Insider Trading Plans](#)

[Effective Dates for SEC's New Insider Trading Disclosures](#)

CONTACT

Tim Kviz, Assurance Managing Partner, SEC Services

tkviz@bdo.com

Paula Hamric, Assurance Professional Practice Partner, SEC Services

phamric@bdo.com