

Buyer (and Seller) Beware: SEC Adopts Final Rules on 10b5-1 Trading Plans

December 27, 2022

The Securities and Exchange Commission has long focused on pursuing potential insider trading violations, and its recent enforcement efforts serve as a stark reminder that the Commission has made insider trading cases a priority. Consistent with these efforts, on December 14, 2022, the SEC unanimously voted at an open meeting to adopt [final rules](#) regarding Rule 10b5-1 insider trading plans and related disclosures under the Securities Exchange Act of 1934, as amended. SEC Chair Gary Gensler made clear that these rules were intended to “[close potential gaps](#)” in the insider trading regime. In light of the SEC’s continued interest in insider trading and ongoing efforts to expand insider trading liability, companies should heed his warning.

The SEC first adopted Rule 10b5-1 in 2000, in order to allow corporate insiders to sell stock—which often makes up a substantial part of their compensation—while minimizing the risk of exposure to claims that they sold while in the possession of material, nonpublic information (“MNPI”). To that end, the Rule provides an affirmative defense to insider trading liability for certain trades made pursuant to a binding contract, an instruction to another person to execute the trade for the instructing person’s account, or a written plan. To assert this affirmative defense, the insider must demonstrate, among other things, that the contract, instruction, or plan was adopted in good faith at a time when the insider was *not* aware of MNPI.

Some twenty years later, the new rules and accompanying [commentary](#) reflect the SEC’s concern that corporate insiders have abused Rule 10b5-1 trading plans to the detriment of investors and the securities markets. The SEC’s message is consistent with both its long-term focus on insider trading and its enforcement activities this past year, which included targeting potential insider trading violations involving Rule 10b5-1 plans. For example, in the [Cheetah Mobile Inc. investigation](#), two executives were charged with insider trading for selling Cheetah Mobile’s securities pursuant to a purported trading plan. That trading plan provided no defense because it was established *after* the executives became aware of MNPI related to a substantial drop-off in advertising revenue, and the executives ultimately [agreed](#) to cease-and-desist orders, undertakings relating to future securities trading, and the payment of six-figure civil penalties. In 2022, the Commission also demonstrated its resolve by broadening its enforcement of potential insider trading violations in new and novel ways, including bringing the first ever insider trading charges involving [digital assets](#) and [shadow trading](#).

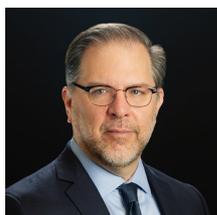
Given the SEC’s unanimous vote to tighten insider trading rules and its willingness to push the boundaries of insider trading liability, companies should take care to review and amend insider trading policies and disclosure practices to ensure conformance with the final rules, as well as update those individuals who have (or may adopt) Rule 10b5-1 trading plans.

Read more about the new rules and how to prepare for the upcoming changes [here](#).

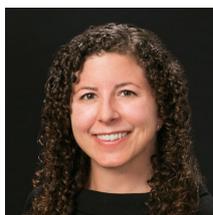
Contributors



Patrick Gibbs
[Bio](#)



John Hemann
[Bio](#)



Samantha Kirby
[Bio](#)



Elizabeth Skey
[Bio](#)

obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#). Copyright © 2026