

Regulatory and Enforcement Alert

House Passes Promoting Transparent Standards for Corporate Insiders Act, Setting Stage for Changes to Rule 10b5-1

April 26, 2021

On April 20, 2021, the House passed a bipartisan bill titled the “Promoting Transparent Standards for Corporate Insiders Act” (H.R. 1528), which would direct the SEC to study certain possible amendments to regulations covering Rule 10b5-1 trading plans, report on its findings within one year to the House Financial Services Committee and Senate Banking, Housing, and Urban Affairs Committee, and revise Rule 10b5-1 consistent with the SEC’s findings.¹ The bill is identical to one passed by the House in January 2019, though that bill was referred to the Senate Banking, Housing, and Urban Affairs Committee and went no further.

Specifically, the bill would require the SEC to study whether Rule 10b5-1 should be amended to:

- limit the timing of adoption of trading plans to coincide with issuer-adopted trading windows;
- restrict the ability of issuers and their insiders to adopt multiple trading plans;
- establish a mandatory waiting period between adoption of a trading plan and commencement of trading under such plan, and to provide that waiting periods will vary based on whether plan adoption occurs within or outside of an issuer-adopted trading window;
- limit the frequency of trading plan modifications and cancellations;
- require trading plans and any related amendments, terminations, and transactions to be filed with the SEC; and
- require boards to establish policies and procedures for implementation of trading plans and for monitoring trading plan activity.

The proposed study and possible amendments appear focused on correcting perceived issues with Rule 10b5-1 trading plans that have taken on greater significance in light of trading volatility resulting from the COVID-19 pandemic. Certain members of Congress have expressed skepticism in recent years that Rule 10b5-1 trading plans are being used as intended and have sought more stringent requirements. The bill and the areas it identifies for study reflect Congress’s interest in the possible benefits of mandatory waiting periods and in rule changes that

¹ Promoting Transparent Standards for Corporate Insiders Act, H.R. 1528, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1528/text>.

would provide for greater transparency surrounding the timing of adoption, termination and modification of trading plans.

These are not new issues for the SEC. Indeed, in a September 2020 letter to House Financial Services Committee Chairman Brad Sherman discussing “good corporate hygiene,” former SEC Chairman Jay Clayton expressed support for certain of the amendments contemplated by the bill, including, with respect to Rule 10b5-1 plans for senior executives and board members, “seasoning periods” between plan adoption and the initial trade and between any modification or termination of a plan and resumption of trading or adoption of a new plan.² Many of the proposed amendments reflect practices already being implemented by some issuers to ensure Rule 10b5-1 trading plans are used as intended and insiders are not trading, or perceived to be trading, on material, nonpublic information.³ The revival of the Promoting Transparent Standards for Corporate Insiders Act appears to be Congress’s attempt to elevate many of these practices to requirements for all market participants.

It remains unclear whether the Senate will advance the bill any further than the 2019 legislation. However, if it does, given the SEC’s attention to these issues within the past year, it appears likely that changes to Rule 10b5-1 would be on the horizon, as the bill requires the SEC to revise the rule consistent with the findings of its study.

² Letter to Chairman Brad Sherman from Chairman Jay Clayton, SEC (Sept. 14, 2020), <https://www.sec.gov/files/clayton-letter-to-chairman-sherman-20200914.pdf>.

³ See former Director of SEC Division of Corporation Finance William Hinman in his remarks at the PLI Directors’ Institute on Corporate Governance, The Regulation of Corporation Finance – A Principles-Based Approach (Nov. 18, 2020), <https://www.sec.gov/news/speech/hinman-regulation-corporation-finance-2020-11-18>.

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