BDO

BDO BULLETIN

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-

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