



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

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April 1, 2022

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re: Rule 10b5-1 and Insider Trading**  
**[Release No. 33-11013; 34-93782; File No. S7-20-21]**

Dear Ms. Countryman:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to provide comments to the U.S. Securities and Exchange Commission in response to the notice of proposed rulemaking on Rule 10b5-1 and Insider Trading [Release No. 33-11013; 34-93782; File No. S7-20-21]. The AFL-CIO is a federation of 57 national and international labor unions that represent 12.5 million working people. Union members participate in the capital markets as individual investors as well as participants in pension and employee benefit plans.

We strongly support the Commission's proposed amendments that will close longstanding loopholes in Rule 10b5-1 that have unfairly allowed corporate executives to trade based on material nonpublic information. As reported by the *Wall Street Journal* a decade ago, corporate executives are far more likely to profit from their Rule 10b5-1 plan trades than is statistically probable ("Executives' Good Luck in Trading Own Stock," November 27, 2012). Such insider trading on material nonpublic information undermines investor confidence in the honesty and integrity of our capital markets.

Improper insider trading by corporate executives is particularly concerning given that a substantial portion of their compensation is in the form of equity. In 2020, CEOs of S&P 500 companies received, on average, \$15.5 million in total compensation including \$9 million in restricted stock grants and \$1.8 million in stock options. Improper insider trading by corporate executives makes a mockery of the claim that executive pay is related to performance. Rather, it suggests that executive compensation is rigged to enrich corporate insiders at the expense of working people who are investors through their retirement savings.

Letter to the U.S. Securities and Exchange Commission

April 1, 2022

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To curb improper insider trading, we strongly support the Commission's proposed 120-day cooling-off period for directors and officers to trade after making a Rule 10b5-1 trading arrangement. According to a recent Stanford University study, the median cooling off period for Rule 10b5-1 plans is just 76 days, and Rule 10b5-1 plans with shorter cooling off periods are associated with executive stock sales that avoid significant losses from stock price declines ("Gaming The System: Three 'Red Flags' of Potential 10b5-1 Abuse," January 19, 2021). In our view, a minimum cooling-off period of at least 120 days is needed to prevent corporate insiders from trading on inside information relating to the next quarter's financial results.

We also support the Commission's proposed reforms to prevent corporate executives from using Rule 10b5-1 as a liability shield to opportunistically trade securities on the basis of material nonpublic information. The Commission's commonsense proposed safeguards against improper trading include requiring officers and executives to personally certify that they are not aware of material nonpublic information when adapting a Rule 10b5-1 trading arrangement, restricting multiple overlapping Rule 10b5-1 trading arrangements and single-trade arrangements by removing the availability of the affirmative defense under Rule 10b5-1(c)(1) for such trades, and requiring that Rule 10b5-1 trading arrangements be operated in good faith.

Finally, we favor the Commission's proposed additional disclosure requirements of insider trading arrangements. These needed disclosure requirements include the quarterly reporting of trading arrangements, disclosure and XBRL tagging of insider trading policies and procedures, enhanced beneficial ownership form disclosure, disclosure of the timing of equity compensation grants, and the disclosure of gifts. Such disclosure will provide shareholders with valuable information regarding insider stock trades to inform their own investment decisions as well as when voting proxies on executive compensation. In the words of Justice Louis Brandeis, "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

For these reasons, we are pleased to support the Commission's proposed amendments on Rule 10b5-1 and insider trading. Fairness requires that corporate insiders be prohibited from trading on material nonpublic information, and the Commission's proposed amendments will go a long way to curbing insider trading abuse. Thank you for the opportunity to share our views. If the AFL-CIO can be of further assistance, please contact me at [REDACTED] or [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "B. J. Rees", written in a cursive style.

Brandon J. Rees  
Deputy Director, Corporations and Capital Markets