



April 1, 2022

VIA EMAIL

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

**Re: File No. S7-20-21**  
Amendments Regarding Rule 10b5-1 Insider  
Trading Plans and Related Disclosures  
Release No. 33-11013; 34-93782

**File No. S7-21-21**  
New Share Repurchase Disclosure Rules  
Release No. 34-93783; IC-34440

Dear Secretary Countryman:

Dow Inc. (“Dow”)<sup>1</sup> appreciates the opportunity to comment and share its position on the adoption of rules relating to the regulation and disclosure of issuer share repurchases and the use of Rule 10b5-1 plans both in the context of issuer repurchases and in connection with sales by directors and officers of public companies.

#### Company Background

Dow combines global breadth; asset integration and scale; focused innovation and materials science expertise; leading business positions; and environmental, social and governance (ESG) leadership to achieve profitable growth and deliver a sustainable future. The Company’s ambition is to become the most innovative, customer centric, inclusive and sustainable materials science company in the world.

Dow’s portfolio of plastics, industrial intermediates, coatings and silicones businesses delivers a broad range of differentiated, science-based products and solutions for its customers in high-growth market segments, such as packaging, infrastructure, mobility and consumer applications. Dow operates 104 manufacturing sites in 31 countries and employs approximately 35,700 people. Dow delivered sales of approximately \$55 billion in 2021.

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<sup>1</sup> Dow was incorporated on August 30, 2018 to serve as a holding company for The Dow Chemical Company and its consolidated subsidiaries (collectively, “TDCC”). Dow operates all of its businesses through TDCC, a wholly owned subsidiary, which was incorporated in 1947 under Delaware law and is the successor to a Michigan corporation, of the same name, organized in 1897. Dow’s principal executive offices are located at 2211 H.H. Dow Way, Midland, Michigan 48674.

## Executive Summary

We support the Commission's objectives of improving the quality, relevance, and timeliness of information related to issuer share repurchases while also addressing concerns about potential abuse of Rule 10b5-1 trading plans. However, *we fundamentally disagree with the implication underlying the proposed rule-making that such programs are routinely designed to inflate an issuer's stock price in service of the compensation interests of management.*

In Dow's view, such activities are rare. Based on our own share repurchase activities among other factors, we strongly believe that share buybacks are undertaken for a number of legitimate reasons. Share buybacks are a valuable capital allocation tool Dow and other issuers exercise, including the following reasons:

- Share buybacks benefit both short and long-term investors in the company, allowing short-term investors to profitably exit, while maximizing long-term investors' value through share of ownership in the company and share price.
- Share buybacks allow for more efficient allocation of capital by mature companies such as Dow, which generate significant cash even after necessary capital expenditures and reinvestment.
- Overall, cash returned to shareholders in a share buyback does not disappear: it is reinvested, loaned, spent or otherwise contributed back to the economy.

The consequences of the proposed rules would impact Dow's and other issuers' ability and willingness to conduct share buybacks for the following reasons:

- The introduction of daily share repurchase reporting on Form SR would, at best, result in an overload of information that is of little use to most investors and, at worst, create significant and unwarranted volatility in trading prices and trading patterns and increased repurchase costs, which would harm the issuer and its long-term stockholders the proposed rule purportedly aims to protect.
- Daily reporting requirements would create a significant information gap and give large, sophisticated investors an unfair advantage over smaller institutional or retail investors who do not typically have the technology available to process the large volume of data such reporting would create.
- The introduction of granular disclosure requirements in Item 703 of Regulation S-K would provide little value to the investors, and the additional information called for would be exploited by the plaintiffs' bar for use in frivolous lawsuits.

We further object to the proposals that would significantly impair the use of Rule 10b5-1 trading plans by issuers and their insiders, as well as to certain incremental and unduly burdensome disclosures to be required of issuers under the proposed rules.

These include:

- Proposed tabular disclosures of option grant timing, which imply the existence of a causal link between option grants and disclosure events where there is none, and which we believe are unnecessary in light of other existing and proposed disclosures; and
- The introduction of lengthy cooling-off periods in connection with Rule 10b5-1 trading plans established by issuers and their directors and officers, when such cooling-off periods are unnecessary for issuers and may be decreased to 90 days or less for directors and officers.

We believe the cumulative impact of the proposed rule changes are so burdensome that they could cause issuers and their insiders to abandon share repurchases and Rule 10b5-1 plans altogether – an outcome which if intended, is more appropriately left to Congress rather than the Commission to implement.

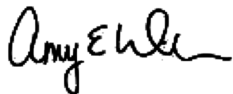
If such a blanket prohibition is not intended, we strongly urge the Commission to take the foregoing suggestions into account when further considering the proposed regulatory revisions and formulating the final rules. Otherwise, far from bolstering investor confidence in the capital markets, *the proposed rules will most detrimentally affect the very investors whom the Commission intends to protect.*

Additional Detailed Commentary

Our detailed commentary on the foregoing is respectfully submitted for the Commission's consideration in the Appendix to this letter.

We appreciate this opportunity to comment on the proposed rules referenced above and hope the Commission will find this letter helpful. If there are any questions about any of our comments, we would welcome an opportunity for further discussion. Please do not hesitate to contact Amy Wilson, General Counsel and Corporate Secretary of Dow Inc., a [REDACTED].

Sincerely,



**Amy E. Wilson**  
General Counsel and Corporate Secretary  
Dow Inc.

## APPENDIX

### Additional Detailed Commentary

#### **A. Comments relating to disclosure of issuer share repurchase program activities**

- 1. The daily reporting regime for proposed new Form SR would involve a significant burden for companies engaged in share repurchases, but the information would at best be unusable and at worst harmful for the issuer and its shareholders.***

The Commission has proposed that issuers use a new Form SR to report their share repurchase activity, including the number of shares purchased, the average price paid per share, and certain other information, on a daily basis, before the end of the first business day following the day on which the repurchase transaction has been executed.

In our view, this burdensome reporting requirement will not only have the obvious consequence of creating a significant and costly administrative obligation for issuers, but would also invite speculation and create noise in the public markets, as well as potentially allowing the most sophisticated traders to profit at the expense of issuers and non-selling public stockholders.

*At best, daily reporting on Form SR will result in information overload for most investors, while benefitting a few sophisticated market participants at the expense of the issuer and its long-term stockholders.*

We understand and support the overall goal of maximizing transparency in the capital markets. However, disclosure of information that is neither comprehensible nor usable by the vast majority of market participants does not promote transparency, but, on the contrary, makes information processing and decision-making more difficult except perhaps in the case of a small number of savvy, opportunistic traders. We believe that introduction of the Form SR would have just such an effect.

We are concerned that most public investors will have little use for or ability to interpret the deluge of information provided by Forms SR, which, by the Commission's own estimate, would number over 175,000 annually. At the same time, a handful of sophisticated market participants with extensive technology may be able to use the disclosure to their personal advantage, creating a significant informational asymmetry between themselves and the smaller institutional or retail investors whom the Commission is looking to protect with the proposed rules. Such sophisticated traders, who, unlike most, have the requisite experience and technical capabilities to analyze large volumes of complex data in real time, will likely be able to reverse-engineer an issuer's repurchase strategy or pricing grid (in the case of plan-based repurchases) and trade against it or develop algorithms to profit off the immediate disclosure of price and volume information to the detriment of the issuer and its shareholders and potentially the markets more broadly. Such opportunistic traders can simply drive up the issuer's stock price, increasing the cost of the buyback, or rely on more creative alternatives, like put options to sell or short the stock based on a strike price determined by analyzing the price of recent buybacks, to enrich themselves at the expense of the issuer and its long-term stockholders, who will bear the significant administrative cost of the extensive new disclosure regime as well as the higher cost of repurchases. Such

tactics by a small group of short-term investors would only artificially drive up the cost of buybacks and discourage the legitimate return of capital to stockholders.

*At worst, the Form SR will create a signaling risk that will increase trading volatility, hurt price discovery and decrease market quality for the issuer.*

We are additionally concerned that daily reporting of share repurchases will provide large volumes of trading activity information which will be scrutinized by market participants and the press, but for which there will be no context, leading to speculation and noise in the capital markets instead of increasing investor confidence.

An issuer may choose to stop, reduce or increase repurchases on any given day based on a number of factors, including shifting capital priorities, daily liquidity needs, modified outlook or market movements beyond the issuer's control, or the need to halt repurchases in light of pending discussions about strategic transactions or other significant corporate events. While market participants will be able to use the Form SR disclosures to track such changes in activity in virtually real time, there will be no context for the information, which is likely to lead to speculation about why trading patterns have changed, perhaps abruptly. In particular, if an issuer suddenly stops trading, investors and others will ask themselves whether there is a pending acquisition, unexpected liquidity issues, a belief by the issuer that the stock is overvalued, or perhaps just unfavorable market conditions, with each investor guessing, and trading on, their own answers to these questions in light of any other speculation that may already have been occurring. Companies, in the meanwhile, will be faced with the difficult choice between adopting a no-comment policy and letting speculation and potentially erratic trading continue, or continuously explaining reasons for confidential trading decisions, which may adversely affect the repurchase program or require revealing prematurely sensitive information about strategic developments or transactions.

*A daily reporting requirement will impose significant cost and administrative burdens on public companies.*

Issuer share repurchase programs are invariably conducted pursuant to the requirements of Rule 10b-18, which provides for a safe harbor from claims of market manipulation for issuers buying shares. Since Rule 10b-18 has volume limitations that are related to stock trading volume, it is in the interest of an issuer conducting a large public share repurchase program to maximize the number of days it can be in the market during the periods when the program is active, subject to pricing considerations. Accordingly, most public companies with well-established stock buyback programs are in the market repurchasing shares virtually every single day, making Form SR a truly *daily* reporting obligation. While we appreciate that the Form SR will be furnished and not filed, this would still impose significant costs and burdens on issuers that would need to prepare and verify reporting of share repurchase activity before close of business every single day. As discussed above, the extent of this burden will not, in our view, yield corresponding benefits and is in fact likely to have adverse consequences.

*The existing quarterly reporting of share repurchase activity is sufficient to effectively disclose an issuer's share buyback activities.*

Companies already report monthly share buyback data at the end of each quarter in their reports on Forms 10-Q or 10-K pursuant to Item 703 of Regulation S-K. We strongly believe that this is sufficient to provide investors with usable and relevant information about the structure and reasons for an issuer's share buyback activities, while avoiding the consequences described above by smoothing buyback activity data over the course of the quarter, thereby reducing the risk that such data can be manipulated by sophisticated, opportunistic traders or that fluctuations in repurchase activity lead to price and trading volatility as a result of speculation.

***2. Proposed Revisions to Item 703 of Regulation S-K are too granular and likely to provide limited benefit; they should be replaced by principles-based disclosures.***

The proposed revisions to Item 703 of Regulation S-K would require issuers, among other things, to disclose: (i) the objective or rationale for their share repurchases and the process or criteria used to determinate the amount of such repurchases; (ii) any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions; (iii) whether the issuer made its repurchases pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), and if so, the date that the plan was adopted or terminated; and (iv) whether purchases were made in reliance on the Rule 10b-18 non-exclusive safe harbor.

We view these incremental requirements as overly granular and having limited utility for the vast majority of investors, while creating a new disclosure burden for issuers and yielding a wealth of data for use and misuse by the plaintiffs' bar.

First, while the Commission indicates in the proposing release that disclosure of this additional information will be in the "public interest," we do not see the benefit from much of the foregoing disclosure to the typical *investor*. It is unlikely, for example, that specifying whether or not an issuer made share repurchases under Rule 10b-18 or a Rule 10b5-1 plan, or describing policies and procedures related to trading by directors and officers, will be useful information to the investing public as it seeks to evaluate an issuer's capital management practices. This will, however, provide useful information for securities litigation lawyers. The private litigation bar can conveniently mine extensive amounts of information, in machine-readable format, to identify issuers who legitimately choose not to avail themselves of a safe harbor or affirmative defense for lawsuits, even if such lawsuits are without merit, diverting corporate resources to defending against allegations and investigations.

Second, while we see some benefit in narrative disclosure of the rationale for an issuer's share repurchase program and the process for determining amounts subject to repurchase, as discussed previously, such programs are not established in isolation on a trade-by-trade basis, but as part of an overall strategy and in light of a company's broader capital allocation policies. Including disclosure about share repurchases as a stand-alone item will obscure the complexity of factors that drive corporate decision-making in this area. We suggest, instead, requiring that any such disclosures be folded into the existing liquidity discussion frameworks for corporate MD&As, where the disclosure would be principles-based and the relevant factors and decisions may be placed in context of other objectives, assets and obligations of each issuer.

## **B. Comments related to certain additional issuer disclosures proposed by the releases**

### ***1. Proposed disclosures of option grant timing will imply the existence of a causal link between option grants and disclosure events where there is none; we suggest instead a focus on disclosure of option-granting principles.***

The Commission proposes that an issuer's compensation disclosure include a table that would list: (i) each option award granted within 14 calendar days before or after the filing of a periodic report, an issuer share repurchase, or the filing or furnishing of a current report on Form 8-K that contains material non-public information; (ii) the market price of the underlying securities the trading day before disclosure of the material non-public information; and (iii) the market price of the underlying securities the trading day after disclosure of the material non-public information, on the theory that this would highlight option grants that occur at times when the issuer is in possession of material non-public information that may enable the grant recipient to benefit from a lower strike price.

The information called for by the proposed new disclosure is already publicly available by virtue of the compensation discussion and analysis (CD&A) required by existing Item 402(b) of Regulation S-K, the grants of plan-based awards table required by existing Item 402(d) of Regulation S-K, the ready availability of stock price data, and a company's other filings with the Commission, including on Form 4. The only purpose of the new table appears to be to present the information about option grants and stock price in a format that would encourage readers to presume that there is a causal link between the timing of option grants and public disclosures where no such links exist. The issuer would be open to allegations that grant dates were cherry-picked to coincide with the release of material information that may benefit the grant recipients even though the two events are, in the overwhelming majority of cases, completely independent. In actuality, option grant dates throughout the year are typically pre-set a long time in advance and are driven by complex logistical considerations related to scheduling board meetings, while disclosure of material information is driven by filing deadlines and important corporate events, which may or may not unintentionally coincide with pre-scheduled meetings of the board or compensation committee. Requiring issuers to package information that is already public in a way that implies that causal links exist between option grant timing and release of material information will result in either disruptive changes to board meeting schedules as companies try to manoeuvre option grant dates so that they do not fall within 14 days of information releases (an unpredictable process at best), or the preparation and release of volumes of disclosure explaining logistical and other administrative reasons for timing of each grant, its relationship to disclosure or corporate events and the stock price, which may be affected by any number of factors beyond an issuer's control.

In our view, the Commission's concern with ensuring that options are not granted in a way that permits "spring-loading" (granting options shortly before the release of positive information) or "bullet-dodging" (granting options just after the release of negative information) is sufficiently addressed by proposed new Item 402(x) of Regulation S-K, to the extent it stresses the

importance of an issuer's compensation committee considering whether the issuer has material non-public information at the time of option grant, and stating the expectation that the CD&A include information about how the compensation committee considers the impact of timing and nature of corporate disclosures, share buyback announcements and similar events on option grant timing. We believe that highlighting and shining a light on considerations that go into each compensation decision in this way is sufficiently effective in achieving the Commission's objective, without creating a burdensome process that implies a causal link exists between a disclosure or other corporate event and a compensation decision made within a certain somewhat arbitrarily selected period of time.

If the Commission does insist that the proposed tabular disclosure is necessary to achieve its objective, we ask that the adopting release and rule at the least affirmatively state that option grants made within 14 days of listed events are not by definition presumed to have been designed to benefit option grant recipients.

- 2. The description of the issuer's insider trading policy in its annual report and proxy statement is unnecessary; issuers should instead be asked to post such policies on their websites or file such policies as exhibits to their Forms 10-K.***

Proposed Item 408(b) of Regulation S-K would require the disclosure of an issuer's trading policy in annual reports and proxy statements.

We are of the view that this creates an unnecessary administrative burden on registrants, by requiring registrants to craft additional disclosure for two separate compliance documents, with a focus on determining what aspects of the policy are material to investors. We suggest, as an alternative, that issuers be asked to post their insider trading policy on their website and direct readers to the posting in their annual report on Form 10-K or file their insider trading policy as an exhibit to the annual report on Form 10-K, and that neither such filing nor a description of the policy be required in connection with proxy statements. This will provide investors access to all information they may consider material in this regard, while dramatically reducing the burden of compliance on issuers. Issuers who elect to post the insider trading policy on their website would also have more flexibility in promptly disseminating revised policies.

### **C. Comments related to regulation of issuers' Rule 10b5-1 trading plans**

- 1. The proposed 30-day cooling-off period for issuer share repurchases in Proposal S7-20-21 would significantly negatively impact the benefits Rule 10b5-1 for issuers conducting share repurchase programs and should be abandoned.***

The proposed changes to Rule 10b5-1 would impose a 30-day cooling-off period between the adoption of a 10b5-1 trading plan by an issuer and the first trade under the plan. We respectfully submit that such a cooling off period is unnecessary and unduly harmful in the context of Rule 10b5-1 trading plans established by issuers and should be eliminated.

As discussed above, the volume requirements of Rule 10b-18 lead issuers with large buyback programs to try to be in the market for as many trading days as possible in any given year. Rule 10b5-1 programs have emerged as a valuable tool for share repurchases because they permit an issuer to enter into a plan while not in possession of material non-public information shortly after



release of quarterly results and then conduct share repurchases through the trading blackout in advance of next quarter's earnings, based on pre-established trading parameters relating to price and volume. The imposition of a 30-day cooling off period on issuer share repurchase programs conducted under Rule 10b5-1 as described above would be significantly detrimental to an issuer's ability to rely on share repurchases to return value to shareholders by substantially reducing the number of trading days during which an issuer could access the market.

At the same time, such a cooling-off period is not, in our view, necessary given the safeguards that already exist to prevent issuer abuse of Rule 10b5-1 plans. First, as discussed above, issuers repurchase their shares as part of broader capital allocation programs with the goal of returning value to shareholders, and have limited incentive to manipulate trading under the plans. Second, the volume and price limitations of Rule 10-18 operate as a separate limitation on intentional manipulation or fraud. Third, the vast majority of issuers, including ourselves, have robust compliance policies and procedures governing issues related to material non-public information, share repurchases and other trading practices, which are ethically administered by knowledgeable, experienced corporate legal departments that have easy access to expert external legal advice. Issuers routinely offer securities for sale in public and private transactions without any mandatory cooling off period, and the liability and antifraud provisions of the federal securities laws have been sufficient to ensure robust compliance by the vast majority of issuers.

Given the above, we are of the view that a 30-day cooling off period for issuer Rule 10b5-1 plans is significantly detrimental to an issuer's ability to return value to shareholders, while providing little, if any, incremental protection from plan abuse.

***2. The prohibition on overlapping plans in proposed Rule 10b5-1(c)(ii)(D) and the "operated in good faith" requirement in proposed Rule 10b5-1(c)(ii)(A) should be modified or clarified to avoid unintended consequences for issuer share repurchase programs.***

Rule 10b5-1(c)(ii)(D) would prohibit the use of overlapping Rule 10b5-1 trading plans, while Rule 10b5-1(c)(ii)(A) would require that a Rule 10b5-1 trading plan be "operated" in good faith.

First, as drafted, Rule 10b5-1(c)(ii)(D) would unjustifiably negatively impact an issuer's share repurchase activity in several ways. Under the current rules, for commercial, relationship or other reasons, an issuer may enter into concurrent identical 10b5-1 plans that provide for different brokers to trade on alternating days, given that Rule 10b-18 permits repurchases through a single broker on any given day. Further, as currently operated, a new 10b5-1 plan may be put in place with a delayed effectiveness of a few days as the old 10b5-1 plan expires to provide for seamless continuity of execution of repurchases. Both of these activities are administrative and innocuous in nature, but would be prohibited under the proposed Rule 10b5-1(c)(ii)(D) for no reason that is discernable to us. In addition, proposed Rule 10b5-1(c)(ii)(D) is so broad that it would encompass nearly every open market transaction, including those not conducted under Rule 10b5-1, including, but not limited to, purchasing private blocks of securities off market or executing share purchases or sales as necessary or required to fulfill obligations under employee compensation and benefit plans. We do not see why a blanket prohibition on any purchases or sales of equity securities outside of Rule 10b5-1 is necessary to achieve the Commission's objectives under the proposed rule. In order to avoid unduly prohibiting the foregoing innocuous

activities, we suggest that the limitation on overlapping 10b5-1 plans be substantially narrowed or eliminated to address the foregoing concerns, at least insofar as it relates to issuer (as opposed to insider) Rule 10b5-1 plans.

Second, our concern with proposed rule 10b5-1(c)(ii)(A) is that it does not specify that cancellation or amendment of a Rule 10b5-1 plan that is implemented for legitimate reasons does not give rise to a presumption that the plan was not operated in good faith. Events may occur after an issuer puts a Rule 10b5-1 share repurchase program in place that may make an issuer, in the exercise of the judgment of its board or management, determine that the best course of action is to temporarily terminate the trading plan. Events such as, for example, M&A activity, significant litigation outcomes or settlements or developments relating to products or services, can be opportunistic or unexpected. Such events may be subject to difficult judgments about materiality and how they might impact the stock, and the issuer may determine that it is best to terminate an operating plan for legal, liability, reputational or other reasons. The final rule should expressly state that termination of a plan for such legitimate reasons should not give rise to a presumption that the plan was not operated in good faith.

#### **D. Comments relating to regulation of 10b5-1 Plans of directors and officers**

- 1. The proposed cooling-off period of 120 days for 10b5-1 plans established by directors and officers is unnecessarily long; the period should be reduced to 90 days or less, and 30 days for plans entered into within five trading days of an earnings release.***

The proposed changes to Rule 10b5-1 would impose a cooling-off period of 120 days for Rule 10b5-1 plans entered into by directors or officers, regardless of when the director or officer enters into the plan. It appears that the length of the cooling-off period is motivated by the desire to ensure that any material non-public information that a person had available at the time of entry into the Rule 10b5-1 plan would be released to the public by the time of the first trade, thereby ensuring that the individual is unable to benefit from trading on such information even if the entry into the plan was originally based on it.

A cooling-off period of 120 days is, in our view, excessive. In light of the availability of information exchange technology, the pace of information diffusion and the increased speed of activities such as negotiations of material transactions, we believe it is highly unlikely that material information about a company can remain non-public for 120 days. It is especially concerning that the length of the cooling-off period is not tied to the timing of entry into the 10b5-1 plan. Even if the Commission is of the view that directors and officers frequently enter into 10b5-1 plans while they have material non-public information (a view with which we strongly disagree), we see no reason why individuals who enter into a 10b5-1 plan shortly after an earnings release, and are, therefore, highly unlikely to hold any material information that had not been already disseminated in such release, must wait for 120 days to execute trades under the plan. Accordingly, we propose that the cooling-off period be generally reduced to 90 days or less, and that individuals who enter into 10b5-1 plans within five trading days after an earnings release be subject to a cooling-off period of only 30 days, which would be consistent with the cooling-off period already adopted by many issuers and imposed by many brokers.

**2. *The prohibition on overlapping Rule 10b5-1 plans in proposed Rule 10b5-1(c)(ii)(D) as it relates to plans of directors and officers is unnecessary and unjustifiably restricts the ability of 10b5-1 plan users to engage in legitimate trading activities.***

The Commission's proposal to prohibit overlapping 10b5-1 plans is intended to prevent the use of multiple 10b5-1 plans to simulate the effect of hedging securities of the issuer.

In the first instance, we do not believe that the prohibition on such overlapping plans is necessary with respect to directors and officers because (i) many issuers already prohibit such overlapping Rule 10b5-1 plans by internal policies and (ii) hedging is already prohibited by Rule 10b5-1, so the use of multiple plans for this purpose would be in violation of the rule even without further regulation. However, to the extent that the Commission finds that additional rulemaking is necessary in this area, we oppose the very broad formulation of the proposed rule, which would in practice prohibit persons who have a Rule 10b5-1 plan outstanding from engaging in *any* trading activity, including one-time discretionary transactions or entering into trading plans that are not intended to be compliant with Rule 10b5-1, even while not in possession of material non-public information. We see no reason why directors and officers should give up the ability to engage in these and other perfectly legitimate trading activities in order not to lose the affirmative defense of Rule 10b5-1 for trades under their plans. Accordingly, we respectfully request the Commission to, instead of taking the above-described broad approach, make the protections of Rule 10b5-1 contingent on the absence of cancellation or amendment of any overlapping Rule 10b5-1 plan that was intended to entirely or partially offset trades under the first plan. We believe that this would achieve the Commission's goal without undue restrictions on legitimate trading activities by plan users.