

April 4, 2022

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

Re: Proposed 10b5-1 changes (Release No. 33-11013; 34-93782; File No. S7-20-21)

Dear Ms. Countryman:

I am writing to provide comments on the Jan 13, 2022 proposed amendments to Rule 10b5-1. I am writing in my capacity as a public-company CFO and an individual investor. I'm also representing the perspective of an early-stage biotechnology company, where our material non-public information is most often data generated from experiments and clinical trials, rather than financial results reported in our latest quarterly report. This means that our open and closed trading windows do not follow a proscribed pattern and instead relate to the arrival and disclosure of results, making the opportunity to trade nearly impossible to predict in the long run.

I have provided some short comments to specific questions:

4. A 30-day cooling off period is more than adequate for directors & officers. A longer period, such as the proposed 120 days, is more likely to cross over into other periods and have tax implications, without providing any benefit.
8. Certification seems appropriate for directors and officers, and already exists in the body of current 10b5-1 plans. We represent that we do not possess any material nonpublic information and are entering into the plan in good faith. Requiring a separate certification is an unnecessary burden.
11. 10 years of retention seems unduly onerous to the individuals and issuers. I would recommend the SEC allow individuals and issuers to develop their own retention policies.
21. No, the proposed 408(a) would not provide useful information to investors and markets and in fact could be misconstrued. Plans often have very wide range of price targets and timing to address various scenarios and having the market try to draw conclusions from limited information such as names and share volume could well backfire. I believe that information may create confusion and a disincentive for directors and officers to use 10b5-1 plans. For smaller public companies, increasing the difficulty of putting 10b5-1 plans in place will create an incentive for more trading in "open windows", which will result in lumpier selling in these small windows of time, potentially hurting the stock to the detriment of investors without helping anyone.
22. Yes, I believe this might lead to front-running or other speculation in a Company's stock. Pre-disclosures of plans would open a Company's stock to manipulation as investors tried to interpret a signal in the existence of a plan, potentially leading to damage to the Company and investors. The disclosure of the 10b5-1 plan would also make it more difficult to execute on the plan.

I advocate for disclosing the Insider Trader Policy and then disclosing using Form 4 when trades are made pursuant to a 10b5-1 plan. The 10b5-1 plan would be available for audit and inspection to prevent mis-use, but public pre-disclosure would not help investors or make the market more efficient.

27. This would ensure that all companies have a reasonable and defensible insider trading plan. Given the exposure that already exists, I cannot imagine a public company that doesn't already have a solid plan. From that perspective, I don't believe the disclosure of the insider trading policy and procedures would be helpful, as I assume all public companies have these policies in place already. While filing the policy and procedures has a slight marginal cost to the company, it might be helpful if there are companies that in fact do not have a good policy or procedures.
35. The addition of a box on Forms 4 and 5 to indicate whether a reported transaction was made pursuant to a 10b5-1 plan is a good idea.

Equity is commonly used to align the incentives of management with those of shareholders. This is particularly valuable for companies that are not yet profitable. The use of equity, in option grants or other forms, allows for companies to hire experienced managers who share in the risk and reward of building long-term value. 10b5-1 plans are a valuable way for directors and officers to realize some of the value they have helped to create. Without 10b5-1 plans, the value created may always be out of reach and only exist on paper until a director or officer resigns and is no longer affiliated with the company. Creating an incentive for experienced officers to resign is not in the best interests of shareholders. I believe that some of the proposed changes would create an undue burden, and I hope my comments have explained my position.

Best regards,

A handwritten signature in blue ink that reads "William P. Quinn". The signature is fluid and cursive, with a small star-like mark above the 'i' in "Quinn".

William Quinn
Chief Financial Officer
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