DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

Wilson Sonsini Goodrich & Rosati
Professional Corporation

650 Page Mill Road
Palo Alto, California 94304-1050

O: 650.493.9300
F: 650.493.6811

April 11, 2022

Via Electronic Delivery

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

Re: File No. S7-20-21; Rule 10b5-1 and Insider Trading

Dear Ms. Countryman:

We appreciate the opportunity to comment on the U.S. Securities and Exchange Commission ("Commission") proposed amendments to the regulatory framework for Rule 10b5-1 trading arrangements (the "10b5-1 Proposal").

Our firm is the premier provider of legal services to technology, life sciences, and growth enterprises worldwide. We represent over 300 public companies and have represented over 300 issuers in initial public offerings since 1998. We regularly advise public companies, officers, directors and other insiders regarding securities trading and compliance with securities laws such as Rule 10b5-1. We generally support the Commission's efforts to address potentially abusive practices associated with Rule 10b5-1 trading arrangements; however, we believe that certain aspects of the 10b5-1 Proposal are problematic. Indeed, if all of the proposed amendments are adopted in their current form, there is a strong likelihood that many officers and directors will choose not to enter into Rule 10b5-1 trading arrangements due to the added complexity created by the myriad of requirements and the lack of certainty that the affirmative defense will even be available to them.

General Comments About the 10b5-1 Proposal

Before commenting about specific portions of the 10b5-1 Proposal, we will make some general comments and suggestions.

We suggest a subset of the rules be adopted first, deferring the broader amendments unless and until such time as there is more evidence of Rule 10b5-1 trading plan abuse.

Rule 10b5-1 has served the public markets well for over 20 years. It has allowed insiders who regularly come into possession of material nonpublic information about a company a means to trade in the company's securities in compliance with securities laws by establishing trading plans when not in possession of such information. While some have suggested that Rule 10b5-1 plans allow for insiders to abuse the insider trading rules, the evidence of such misuse appears to be only suggestive and does not justify radically

DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

changing the regulatory landscape, which the 10b5-1 Proposal would do. Accordingly, we suggest that the Commission consider adopting only the Section 16 officer and director cooling off period portion of the 10b5-1 Proposal and conduct further study regarding alleged Rule 10b5-1 abuse before making further changes.

Finally, we note that there are substantial differences between how insiders and issuers use Rule 10b5-1 plans, and that much of the potential underlying rationale for changes to the rules for insiders are not applicable to issuers, and we urge caution in simply carrying over a set of rules designed for insider Rule 10b5-1 trading plans to the use of Rule 10b5-1 plans by issuers.

Any final rules should make clear that Rule 10b5-1 plans adopted prior to the effective date of the final rules continue to benefit from the affirmative defense of Rule 10b5-1 and would not need to be amended to comply with the final rules.

The 10b5-1 Proposal does not directly address the effect of any new rules on pre-existing Rule 10b5-1 trading plans. Insiders or issuers with Rule 10b5-1 plans should be able to rely on Commission rules as they existed at the time the plan was adopted and should not be required to amend their plans in order to continue to use them after the effective date of the final rules. We ask that the Commission make clear in any final rules that existing Rule 10b5-1 plans are not subject to the new requirements and continue to benefit from the affirmative defense of Rule 10b5-1.

The administrative burden on companies and insiders from adoption of the 10b5-1 Proposal suggests that there should be a significant phase-in period between adoption and effectiveness of any final rules.

If the widespread changes included in the 10b5-1 Proposal are all adopted, issuers, insiders and other market participants will need sufficient time to comply with the new rules. Brokers will need time to update Rule 10b5-1 trading plan forms that they use with their clients. Companies will need time to educate their insiders, update their insider trading policies and practices, and update their disclosure controls and procedures. Insiders will need time to re-evaluate trading objectives and plans and adopt new plans, if desired. We urge the Commission to include an appropriate phase-in period—between nine months and one year—from adoption of a final rule and effectiveness of the rule.

Comments Regarding the Cooling-off Period Proposal

The cooling-off period proposal for Section 16 officers and directors is too long and restrictive and should be eliminated in favor of company-specified approaches.

The Commission is proposing to amend Rule 10b5-1 to add a new condition to the availability of the affirmative defense that would require a minimum 120-day cooling-off period between the date of adoption of a Rule 10b5-1 trading plan by a Section 16 officer or director and the first transaction made pursuant to such plan. The Commission has stated that it is proposing the 120-day cooling-off period in response to concerns that Section 16 officers and directors may misuse Rule 10b5-1 in order to improperly benefit from material nonpublic information prior to the disclosure of such information. Such concerns, however, appear to be premised on the erroneous assumption that Section 16 officers and directors routinely seek to engage in fraudulent conduct. In our experience, the opposite is true: the overwhelming majority of Section 16 officers and directors seek to comply with existing rules and regulations and their fiduciary duties. Indeed,

some Section 16 officers cancel 10b5-1 trading plans that are about to trade at highly advantageous times and prices in order to avoid even the appearance that the predetermined transactions yield disproportionate personal benefit or advantage, even though the plan was instituted long before the officer knew or could have known the good news that moved the company's stock price higher.

Adopting a uniform 120-day requirement for all Section 16 officers and directors would be overly restrictive and would significantly change the manner in which Rule 10b5-1 plans currently are used by such persons. As the Commission noted in its Release, the results of an industry survey in 2016 reflected that more than 75% percent of survey respondents had a cooling-off period of 60 days or less. A 120-day cooling-off period would thus significantly exceed current industry practices.

Instead of a "one-size-fits-all" approach, the Commission should permit issuers to determine the appropriate length of the Rule 10b5-1 plan cooling-off period in light of each issuer's specific circumstances. For example, one approach might be to tie the cooling-off period to an issuer's quarterly trading windows. Under such an approach, an officer or director would be permitted to adopt a Rule 10b5-1 trading plan during an open quarterly trading window, and the plan would then be subject to a cooling-off period that commences on the date of adoption and remains in effect until after the results for the quarter in which the plan was adopted have been publicly disclosed, *i.e.*, when the next quarterly trading window opens. The length of such cooling-off period would thus vary from issuer to issuer. Other circumstances might warrant the imposition of a longer cooling-off period. Under such an approach, each issuer would include its rules regarding required cooling-off periods in the company's insider trading policies, which would be publicly disclosed as part of the new insider trading policy disclosure requirements.

If a uniform 120-day cooling-off period requirement is adopted, some Section 16 officers and directors may determine that the adoption of such a deferred plan requires too much advance planning and be deterred from adopting a plan at all. Such an outcome would hinder the Commission's goal of providing greater transparency to investors.

Finally, if the Commission proceeds with adding a 120-day cooling-off period requirement for invocation of the affirmative defense, the cooling-off period requirement should be modified to allow for hardship exceptions, such as an unanticipated financial liability that is unrelated to the trading of securities, that would permit the adoption of a new Rule 10b5-1 plan providing for the sale of securities in less than 120 days. The cooling-off period requirement should also be clarified to confirm that any sales that are not modified may continue to execute while the cooling-off period for the modifications become effective.

<u>Any cooling-off period for individuals should be limited to Section 16 officers and directors</u>.

Because Section 16 officers and directors are the individuals at a company who are most likely to have possession of material nonpublic information, and whose trading activity is most likely to affect investor confidence in the integrity of public markets, any cooling-off period required by the Commission should be limited to such persons, as proposed.

<u>The cooling-off period proposal for issuers should be eliminated or shortened</u>.

The Commission has proposed, without any supporting justification or evidence of abuse, a 30-day cooling off period in order for an issuer repurchasing its own shares to obtain the benefit of the Rule 10b5-1(c)(1)

DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

affirmative defense. It unclear what improper conduct the proposed issuer cooling off period is intended to address. Unlike the potential concern with respect to the use of Rule 10b5-1 plans by insiders, Rule 10b5-1 does not provide issuers with a significant means of executing sales of their shares in light of other federal securities law requirements. Instead, we assume that the Staff's rationale for the proposed issuer cooling off period is to prevent the misuse of material non-public information when executing share buybacks. If the Staff's concern is that issuers may be intentionally withholding information that would have a positive effect on share price in order to execute repurchases at artificially low levels—which is a concern that we do not share given our client experience—we note that a cooling off period would do little to address this concern. However, the issuer cooling off requirement will have a significantly negative impact on the ability of our clients to repurchase their shares by widespread and entirely legitimate methods, including accelerated share repurchase ("ASR") programs, which are ubiquitously structured to receive the benefit of the Rule 10b5-1(c)(1) affirmative defense. As such, and as explained in more detail below, we believe this proposal should be eliminated or shortened.

In a typical ASR, an issuer agrees to purchase a fixed dollar amount of its common stock from a dealer. In contrast with more straightforward issuer open market Rule 10b-18 or 10b5-1 repurchase plans, where a dealer is engaged as agent to repurchase shares in the public market on behalf of the issuer, an ASR is a principal, forward purchase transaction between the issuer and the dealer. The aggregate number of shares repurchased in a typical ASR is determined by reference to the average price per share over the duration of the ASR, less a fixed, negotiated discount. ASRs range in duration from a few weeks to a few calendar quarters, depending principally on the relationship between the dollar amount of the repurchase and the average daily trading volume of the issuer's shares. A commonly included term in ASRs gives the dealer the sole right to accelerate the maturity of the transaction in certain circumstances.

In most ASRs, at inception the issuer prepays the full fixed dollar amount and receives a significant delivery of its shares from the dealer. From the issuer's perspective, a significant benefit on an ASR compared with other methods of share repurchases is that an ASR allows the issuer to retire a large number of shares upon its effectiveness. The dealer borrows the up-front shares delivered to the issuer from lenders in the institutional stock loan market. During the term of the ASR, the dealer engages in market activity in the shares and derivative instruments, as a principal for its own account, designed to hedge its obligations under the ASR and to manage the short position created by its initial delivery of shares to the issuer. Once the average price per share is determined at maturity of the ASR, the dealer is typically obligated to make an additional delivery of shares, though in remote circumstances the issuer may owe a payment (which may be in cash or shares) to the dealer.

For the issuer, one of the principal advantages of repurchasing shares through an ASR is the improved pricing resulting from the negotiated discount mentioned above. In many scenarios, because of this discount the issuer will be able to repurchase more shares for the same fixed dollar cost than would have been achieved through other share repurchase methods. However, the imposition of an issuer cooling off period is likely to significantly decrease the negotiated discounts received by issuers as a result of the uncertainty a delay would introduce to the dealer's costs and other pricing inputs. The cooling off requirement will likely increase the issuer's per share cost of repurchasing stock (which increase will inure in no way to the benefit of selling or remaining shareholders), lead to ASRs no longer being structured to receive the benefit of the Rule 10b5-1(c)(1) affirmative defense, or make it uneconomical to undertake ASRs compared to other issuer share repurchase alternatives. It is hard to imagine who would benefit from any of these outcomes, and impossible to evaluate whether some other, worthwhile benefit might

DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

nonetheless result since the Commission has not identified any abuse that would be prevented or mitigated by the introduction of an issuer cooling off period.

We further note that an ASR would be an exceedingly poor method for an issuer to improperly attempt to take advantage of information asymmetry to realize repurchases at artificially low prices. In particular the dealer's right to accelerate the maturity of the ASR, the separation between the issuer's share repurchase and the dealer's hedging activities (which are for the dealer's own account and over which the issuer exercises no influence or control), and, most significantly, the average pricing employed to determine the aggregate number of shares repurchased, make an ASR a profoundly inept method for an issuer to attempt to capitalize on events (or non-events) that would have a transient or contingent impact on market prices. Therefore, while we urge the Commission in the first instance to abandon or significantly shorten the duration of the proposed issuer cooling off period, as an alternative the Commission might consider creating an exception to the cooling off period for Rule 10b5-1 plans that employ average pricing over an extended period of trading days as the means for determining an issuer's cost of repurchasing its own shares.

Comments Regarding the Certification Proposal

The certification proposal and related recordkeeping proposal are both unnecessary.

The 10b5-1 Proposal would require Section 16 officers and directors to certify that they are not aware of material nonpublic information about the issuer or the security when adopting a new or modified trading arrangement. It is already a requirement of Rule 10b5-1 that the person entering into the plan not be aware of material nonpublic information in order for the affirmative defense to apply. A certification requirement is therefore superfluous. An officer who adopts a 10b5-1 plan while in possession of material nonpublic information violates the rule regardless of whether the officer signs a certification, and it is highly unlikely that the Commission would commence an enforcement action against an officer for a false certification but not for an underlying violation.

Comments Regarding the Overlapping Plans Proposal

The overlapping plans proposal is vague and needs substantial clarification.

The 10b5-1 Proposal provides that the affirmative defense would not apply to multiple overlapping trading arrangements for open market trades in the same class of securities. The Commission asked whether the proposed amendment regarding restrictions on "overlapping trading arrangements" is "sufficiently clear," and we believe that substantial clarification is needed. In particular, proposed subsection (c)(1)(ii)(D) should be revised to provide greater clarity regarding the types of transactions that are (or are not) encompassed by the language "contract, instruction, or plan for open market purchases or sales." For example, would a single open market transaction that is not made pursuant to a Rule 10b5-1 plan constitute an "overlapping trading arrangement" that would have the effect of negating the affirmative defense for other transactions executed pursuant to a Rule 10b5-1 trading plan? Similarly, would sales that are made solely for purposes of paying taxes on the vesting of restricted stock units be deemed overlapping trading arrangements? Are officers and directors allowed to adopt a Rule 10b-5 trading plan specifically to replace an existing Rule 10b5-1 plan that is nearing expiration or must they wait until after the plan has expired before replacing it? Would an issuer that has executed a Rule 10b5-1 plan with a broker-dealer to repurchase its shares lose the benefit of the affirmative defense by simultaneously engaging the same

DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

broker-dealer to repurchase additional shares in a manner compliant with Rule 10b-18? Because the language, as currently drafted, raises a number of similar questions, additional clarity is needed as to what does (or does not) constitute an overlapping trading arrangement.

Several specific examples are discussed below.

Certain sell-to-cover and net share withholding arrangements used to satisfy tax obligations in connection with issuer equity compensation plans should be exceptions to the overlapping plans proposal.

Many officers and employees of our clients receive restricted stock units, restricted stock, and similar equity awards from stockholder-approved equity incentive plans as part of their compensation. These awards generally are subject to vesting requirements over a schedule set at the time of grant of the award. The vesting schedule is set by the company at its convenience and discretion as it determines what is best for its retention and incentive needs. The insider has no control over the schedule. When restricted stock vests, and restricted stock units and similar awards vest and are settled, generally a taxable event occurs that triggers an employee tax withholding obligation, which the company must collect from the employee. The equity plans under which such awards are granted typically provide that the company may determine the manner in which the employee satisfies the tax withholding obligations. Frequently, the company requires, without the employee's ability to choose, that the employee be forced to sell on the open market through a broker a portion of the shares otherwise deliverable under the award to the employee upon the taxable event, with the proceeds automatically being sent to the company by the broker to satisfy the applicable tax withholding obligations (a "sell to cover"), or that a portion of the shares otherwise deliverable under the award to the employee upon the taxable event be withheld from issuance to the employee and that the company use an equivalent amount of cash from its balance sheet to satisfy the tax withholding obligations (a "net withhold").

Often, these tax withholding transactions, which are open market transactions in the case of sell to cover, or transactions between the company and employee and not market transactions in the case of net withholdings, do not occur at the direction of the employee or, if they do, then the employee has elected such tax withholding method during an open trading window when not in possession of material nonpublic information. These withholding methods are highly effective, and therefore market-prevalent, alternatives to forcing employees otherwise to generate the withholding amounts from cash out of pocket. Employees generally are neutral as to which of the two approaches are used by the company, due to little or no difference in the economic effect for the employee. As a result, whether a sell to cover or net withhold is implemented also is driven primarily by factors important to the company and unrelated to the employee, such as whether the company's cash position would comfortably enable net withholdings or the company's average daily trading volume is sufficient to absorb sales to cover without significant disruption to the trading price of the company's stock.

These tax withholding transactions should not be treated as overlapping plans that would cause an employee to lose the benefit of the affirmative defense under Rule 10b5-1. Sell to cover and net withhold transactions are consummated to satisfy tax withholding obligations imposed by applicable law. In the case of restricted stock, restricted stock units and similar equity awards, the timing and method of such tax withholding obligations are set by issuer companies based on their retention, incentive and business needs. Companies need the ability to impose different tax withholding methods on their employees without regard to various Rule 10b5-1 plans that employees may have in effect at any given time. Treating these withholding methods

DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

as overlapping plans likely would eviscerate the majority of insiders' ability to use Rule 10b5-1 plans. Accordingly, we urge the Commission to implement an exception to the overlapping plans proposal for sell to cover and net withhold arrangements.

Insiders who hold securities directly and indirectly should be able to use separate Rule 10b5-1 trading plans.

Many insiders hold securities directly (i.e., in their personal name) and indirectly (i.e., through a trust or other estate planning vehicle for the benefit of the insiders and their families). Typically, Rule 10b5-1 trading plans entered into with brokers require separate plans for transactions conducted in an insider's personal name and those conducted indirectly, such as by the insider's trust. Therefore, insiders who have a single trading intent but want to involve shares held in their personal account and shares held indirectly must establish separate Rule 10b5-1 trading plans. If the Commission adopts the no-overlapping plan proposal, it should permit an exception for overlapping plans that are adopted at the same time and as part of a single trading program and would have been part of the same Rule 10b5-1 trading plan were it not for broker limitations requiring separate plans.

An issuer repurchasing its own shares through ASRs should be permitted to simultaneously repurchase shares through overlapping Rule 10b5-1 or Rule 10b-18 compliant plans.

When implementing share repurchase programs, issuers often employ multiple methods of repurchases in order to achieve their buyback goals efficiently while minimizing administrative and operational burdens. An issuer that has determined a specific amount or range of cash to expend on share repurchases in a given time period might reasonably decide to allocate some portion to a Rule 10b5-1 plan in order to ensure that unexpected events will not disturb purchases during expected open windows, or to access trading volume during closed windows needed to achieve overall repurchase targets. That issuer might reserve some of the capital to be returned for repurchases during open windows in Rule 10b-18 compliant transactions in order to maintain more control over the timing and price of repurchases than is possible under a Rule 10b5-1 plan.

Similarly, issuers who choose to execute repurchases through ASRs, which are principal purchases between an issuer and a dealer structured to meet the requirements of Rule 10b5-1, often execute side-by-side agency open market repurchases through the same dealer or one of its affiliates. These side-by-side agency plans may be structured as Rule 10b-18 or Rule 10b5-1 compliant arrangements. In addition, in some instances an issuer may choose to execute less common alternating day, multiple ASR structures with multiple dealers in order to diversify credit risk or attempt to optimize pricing for the issuer.

The purpose of issuers that employ multiple, overlapping repurchase arrangements is entirely legitimate: to execute the duly authorized return of capital to shareholders in an efficient manner on favorable commercial and economic terms. In the absence of compelling evidence that restricting an issuer's ability to obtain the benefit of the Rule 10b5-1(c)(1) affirmative defense by prohibiting multiple, overlapping trading arrangements for the repurchase of their own shares would prevent or mitigate specific and commonplace abusive activity, the Commission ought not impose such restrictions. Doing so would likely have the effect of limiting issuers' use of Rule 10b5-1 compliant repurchase arrangements.

Comments Regarding the Operated in Good Faith Proposal

One of the Commission's stated concerns underlying the proposed "operated in good faith" requirement for Rule 10b5-1 trading arrangements is that insiders may seek to influence the timing of the disclosure of material nonpublic information in order to reap personal benefits from a Rule 10b5-1 trading arrangement. Like other concerns identified in the Release, however, this concern appears to rest on the erroneous assumption that insiders routinely seek to manipulate the timing of an issuer's public disclosures rather than comply with existing legal and fiduciary obligations.

The proposed addition of the two words "and operated" to subsection (ii)(A) renders the existing good faith requirement vague and ambiguous. What precisely does "operated in good faith" mean? Although the Release identifies examples of conduct that would violate the "operated in good faith" requirement, such as improper terminations and modifications, it provides no real guidance as to what officers and directors must do to ensure that a Rule 10b5-1 trading plan is "operated in good faith" throughout the term of the plan.

Adding an ongoing "operated in good faith" requirement also would undermine one of the purposes of a Rule 10b5-1 trading plan. As Commissioner Peirce noted in her "Statement on Rule 10b5-1 and Insider Trading Proposing Release," the "general idea behind a Rule 10b5-1 plan is for the director or officer to 'set it and forget it' to ensure that she is not trading on the basis of material nonpublic information." If insiders are required to continually monitor and assess whether transactions that were set months or years earlier might nevertheless somehow be viewed as suspect from a position of hindsight, it would eliminate the "set it and forget it" benefit of Rule 10b5-1 plans. Moreover, it likely would require insiders to repeatedly consult with counsel over the life of the plan. The added uncertainty, complexity, and expense from the proposed "operated in good faith" requirement may have the effect of deterring officers and directors from utilizing such plans.

Finally, to the extent that the Release focuses on the improper termination and modification of Rule 10b5-1 trading plans, it is worth noting that such changes may also stem from motivations that are the antithesis of the conduct with which the Commission is concerned. For example, insiders who adopt Rule 10b5-1 plans in good faith may, at times, consider cancelling a future plan transaction after subsequently learning of material nonpublic information in order to prevent any appearance of impropriety, despite the fact that the insider had no knowledge of the information at the time the trading plan was adopted. The Commission should clarify that terminating or modifying a Rule 10b5-1 trading plan is not per se bad faith.

Comments Regarding the Additional Disclosure Proposal

The quarterly reporting proposal should be eliminated or substantially clarified.

The proposed rule amendments that would require an issuer to provide quarterly reporting regarding the Rule 10b5-1 trading arrangements of its officers and directors are duplicative, in part, of the proposed changes to Forms 4 and 5 and also impose unnecessary burden on issuers. The proposed modifications to Forms 4 and 5 will require the individual filer to indicate whether a transaction was made pursuant to a Rule 10b5-1 trading plan and also provide the date of adoption of any such plan. Thus, the required information regarding the adoption of Rule 10b5-1 trading plans by Section 16 officers and directors will

DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

be publicly available in Forms 4 and 5 filings. The duplicative disclosure of this information in an issuer's quarterly filings is thus unnecessary.

With respect to the proposed required disclosures regarding the material terms of an officer's or director's Rule 10b5-1 trading plan, the Commission has itself identified potential problems that might arise from such disclosures, including that the disclosures might result in front-running ahead of Rule 10b5-1 transactions. The proposed amendment would require issuers to disclose, among other information, the duration of such plans and the aggregate number of shares to be sold or purchased under the plans. If, for example, an issuer disclosed that the CEO had adopted a Rule 10b5-1 plan involving a large aggregate number of shares, brokers and investors might opportunistically sell shares (or enter into short sale transactions) due to mere speculation that the CEO's future sales might trigger a stock price decline, when, in fact, the stock sales were planned to take place as part of a series of small transactions over the course of two years. If the Commission proceeds with the quarterly Rule 10b5-1 trading plan disclosure requirements, it should reconsider the types of information that must be disclosed in order to prevent front-running or other forms of market manipulation.

The proposed quarterly disclosure requirement regarding officers' or directors' "non-Rule 10b5-1(c) trading arrangements" is too vague and also appears to be duplicative of other existing disclosure requirements. In particular, it is not clear as to which types of transactions the requirement would apply. To the extent that it is meant to apply to open market transactions, sales made in connection with tax withholding transactions, or other common transactions, such information is already publicly available through multiple sources, including, among others, Forms 4 and 5 and annual proxy statements. Requiring issuers to disclose this same information in its Forms 10-Q and Forms 10-K would impose an unnecessary burden on issuers and add unnecessarily duplicative information to documents that are already lengthy.

If the Commission moves forward with some form of quarterly disclosure, we suggest that the requirements be substantially clarified, including a clear statement that no pricing term disclosure is required.

<u>The annual disclosure proposal regarding insider trading policies and procedures should be eliminated or simplified</u>.

The proposed amendment regarding the disclosure of an issuer's insider trading policies and procedures states only that "[i]f the registrant has adopted insider trading policies and procedures," the registrant should "disclose such policies and procedures." Neither the language of the proposed amendment nor the Release provides guidance as to what specific information registrants should disclose about their insider trading policies. We think this requirement is unnecessary and would not provide any material information regarding an issuer relevant to an investor's decision to purchase or sell issuer securities.[1] We also note that the proposed requirement is asymmetrical to what the Commission requires of other market participants: we are aware of no requirement that institutional investors in public companies share their policies and procedures in their trading of public company securities, even though certain of them may be aware of information (such as activist or takeover possibilities) relevant to the public markets.

---

[1] The 10b5-1 Proposal itself acknowledges this by saying "investors may find [such information] useful," but usefulness is not the guiding principle in what disclosure should be required by issuers in their current and periodic disclosures.

DocuSign Envelope ID: 74B7EEAC-C215-49B6-BF06-C3F2D24E6181

In order to avoid confusion, if the proposed amendment is adopted, it should be modified to merely require that a complete copy of the insider trading policy be disclosed, similar to existing code of ethics disclosure requirements. As with the code of ethics requirements, the proposed amendment regarding disclosure of insider trading policies and procedures should be modified to make clear that issuers may satisfy the requirement by posting a copy of the insider trading policy on the issuer's web site and cross-referencing the posting in its Form 10-K and Schedule 14A and 14C filings.

<u>The proposal regarding disclosure of the timing of option grants and similar equity instruments shortly before or after the release of material nonpublic information should be eliminated</u>.

The proposed new disclosure requirements for the tabular presentation of information regarding the timing of option grants are duplicative of other disclosure requirements and thus unnecessary. For example, the proposed requirement includes information that already is publicly disclosed by issuers, including: (1) the grant date, (2) the grant date fair value, (3) the number of securities underlying the award, and (4) the option's exercise price. Likewise, with one exception (issuer stock repurchases), the dates of the events triggering the 14-day time periods specified in the proposed amendment (including the filing dates of periodic reports and Forms 8-K), and the market price of the underlying securities on each of the identified dates are readily accessible public information.

Proxy statements and Forms 10-K are already detailed documents. Requiring issuers to provide disclosures that are duplicative of information that is readily accessible public information will only make the filings more prolix and less likely to be read.

We appreciate the opportunity to provide these comments regarding the 10b5-1 Proposal. If you have any questions or comments do not hesitate to contact Richard Blake, Jose Macias or Allison Spinner.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:
Wilson Sonsini Goodrich & Rosati, P.C.
3E31FE3AD979462...