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U. S. Securities and Exchange Commission

Comments Regarding Proposed Rule
Rule 144 Holding Period and Form 144 Filings
Release Nos. 33-10911; 34-90773; File No. S7-24-20

Dear Commissioners,

Thank you for the opportunity to comment on your proposed rule that includes proposed amendments for mandatory electronic filing of Form 144 and disclosure amendments for Rule 10b5-1 transactions in Forms 4 and 5.

I have written and published several research studies, utilizing the incomplete publicly reported data collected by the Commission, that examines corporate insiders' trading behavior. I published the first study to examine insiders' strategic use of Rule 10b5-1 trading plans, and a follow-up study that suggests insiders may exploit voluntary disclosure about these plans. I have advised economists and enforcement officials at the SEC, corporate attorneys, and other stakeholders about these plans and have testified or provided written support for shareholder cases that allege improper use of these plans. My research has been cited over nearly two decades in SEC enforcement official speeches, major business press articles, shareholder proposals, and legal best practice guidance. Therefore, I am quite familiar with the quality of the data your agency collects about these plans and insiders' trades, in general.

To help facilitate clearer inferences about corporate insiders' trading behavior and to support better enforcement of that behavior, I strongly support your initiatives to improve reporting timeliness and quality for data in Forms 144, 4, and 5.

Specifically, I fully support your proposal to mandate electronic filing of Form 144. As my colleagues and I note in our recent opinion, published in The Hill, current Form 144 paper filings are difficult to access, difficult to convert for data analysis, shroud details of a significant number of planned stock sales from public scrutiny, and disadvantages individual investors who cannot readily access the data. Timely mandatory electronic filing will offer significant advantages for equitable data access and consistency.

Your proposal, however, to provide a check box on the Form 4 to indicate Rule 10b5-1 use, is insufficient, based on the collective research, if it is optional.

The 2015 study published in the *Georgetown Law Journal* notes that "the SEC does not mandate disclosure of information regarding insiders' 10b5-1 use, which gives rise to considerable variation in whether and what information firms voluntarily disclose about their insiders' 10b5-1 trading plans." The study further suggests that insiders exploit disclosure discretion to modify litigation risk, if needed, because disclosure specificity affects the outcome probability for a motion to dismiss allegations of trading misconduct.

We note, in our opinion article, that "the Commission should require disclosure of whether a trade was made pursuant to a 10b5-1 plan…[and] should require disclosure of the plans themselves. At the very least,

information on the adoption, modification, termination, and the number of shares covered by these plans should be required to be disclosed."

In the current voluntary disclosure regime, it is very difficult to ascertain whether insiders are faithfully complying with Rule 10b5-1. I note in my research, for example, that insiders might strategically terminate sales plans based on private information about pending positive news. It is very difficult to determine whether insiders are strategically terminating their plans, absent mandatory disclosure. We discuss in the 2015 study that mandatory disclosure would allow for after-trading reconciliation of plan commitment if it provides plan details. We suspect that insiders are less likely to voluntary disclose information about their plans, in the current environment, if they want to preserve the option to strategically terminate their plans.

I recommend the Commission revisit its own prior proposal to "require companies with a class of equity securities registered under Section 12 to report on Form 8-K: …Each director's and executive officer's adoption, modification or termination of a contract, instruction or written plan for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c)." The proposal further specifies that "[w]hen the director or executive officer enters into the contract, instruction or written plan, the company would report: The name and title of the director or executive officer; The date on which the director or executive officer entered into the contract, instruction, or written plan; and A description of the contract, instruction or written plan, including its duration, the aggregate number of securities to be purchased or sold, and the name of the counterparty or agent." It also specifies that "[w]hen the director or executive officer later terminates or modifies a contract, instruction or written plan, the company would report: The date of the termination or modification; and A description of the modification, including any modification to the duration, the aggregate number of securities to be purchased or sold, the interval at which securities are to be purchased or sold, the number of securities to be purchased or sold in each interval, the price at which securities are to be purchased or sold, and the identity of the counterparty or agent."

Mandatory disclosure regarding the details of plan initiation, modification, and termination would be considerably more informative than Form 4 check boxes. The check boxes should not be optional, if the Commission is limited to the proposal as written.