



Interview: Companies May Soon Gain Better Insight Into Their Shareholder Bases, and Insiders May Face New Restrictions on Scheduled Share Sales

SEC veteran Raquel Fox explains how a bill in Congress would require investment funds to disclose their derivative holdings and what the SEC may do to address perceived abuses by directors and officers of pre-scheduled stock sales plans.

Introduction

Two proposed changes in securities regulations would have a direct impact on directors and boards.

The first involves the disclosures that asset managers must make about their holdings — crucial information for companies about who their shareholders are. A proposal would, for the first time, require the disclosures to include derivatives positions.

The other changes would involve pre-scheduled stock sales (10b5-1) plans, which allow insiders such as directors and executives to plan ahead to dispose of shares to avoid accusations that they are trading on material, non-public information.

Skadden's Ann Beth Stebbins interviews her fellow partner Raquel Fox about the changes. Before joining Skadden in January 2021, Ms. Fox held a number of leadership positions at the U.S. Securities and Exchange Commission (SEC) over the past

decade, including serving as the director of the Office of International Affairs, senior adviser to then-Chairman Jay Clayton.

A bill in the House of Representatives would provide companies with more information about large stockholders. The law would, for the first time, require investment funds with more than \$100 million in assets to disclose their derivatives positions on a quarterly basis, as well as their shareholdings. This would give companies information about their shareholder base that is not currently available from public sources.



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Many companies have 10b5-1 plans for directors and officers, allowing them to sell stock on a preset schedule. The plans can be an affirmative defense to accusations of insider trading. The SEC is weighing several

changes to the regulations governing these plans to prevent perceived abuses — changes that might include a minimum waiting (or cooling off) period between the creation of the plan and the first trade and a limit on the number of plans a single person is allowed.

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of 10b5-1 share
sale plans**

Concerns About 10b5-1 Stock Sale Plans

Insiders may be “gaming” the rules and benefitting from material, non-public information about their companies when they set up pre-scheduled stock sales under a so-called 10b5-1 plan, according to [a recent study of more than 20,000 such plans](#). Business school researchers at Stanford University, University of Washington and the University of Pennsylvania concluded that insiders use the plans “to engage in opportunistic, large-scale selling of company shares.” Key findings include:

- Share sales under 10b5-1 plans tend to “avoid significant losses and foreshadow considerable stock price declines that are well in excess of industry peers.”
- Nearly half (49%) of 20,000 plans studied covered a single trade.

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