

2025-2026 SEC Annual Reporting Workshop

January 15, 2026

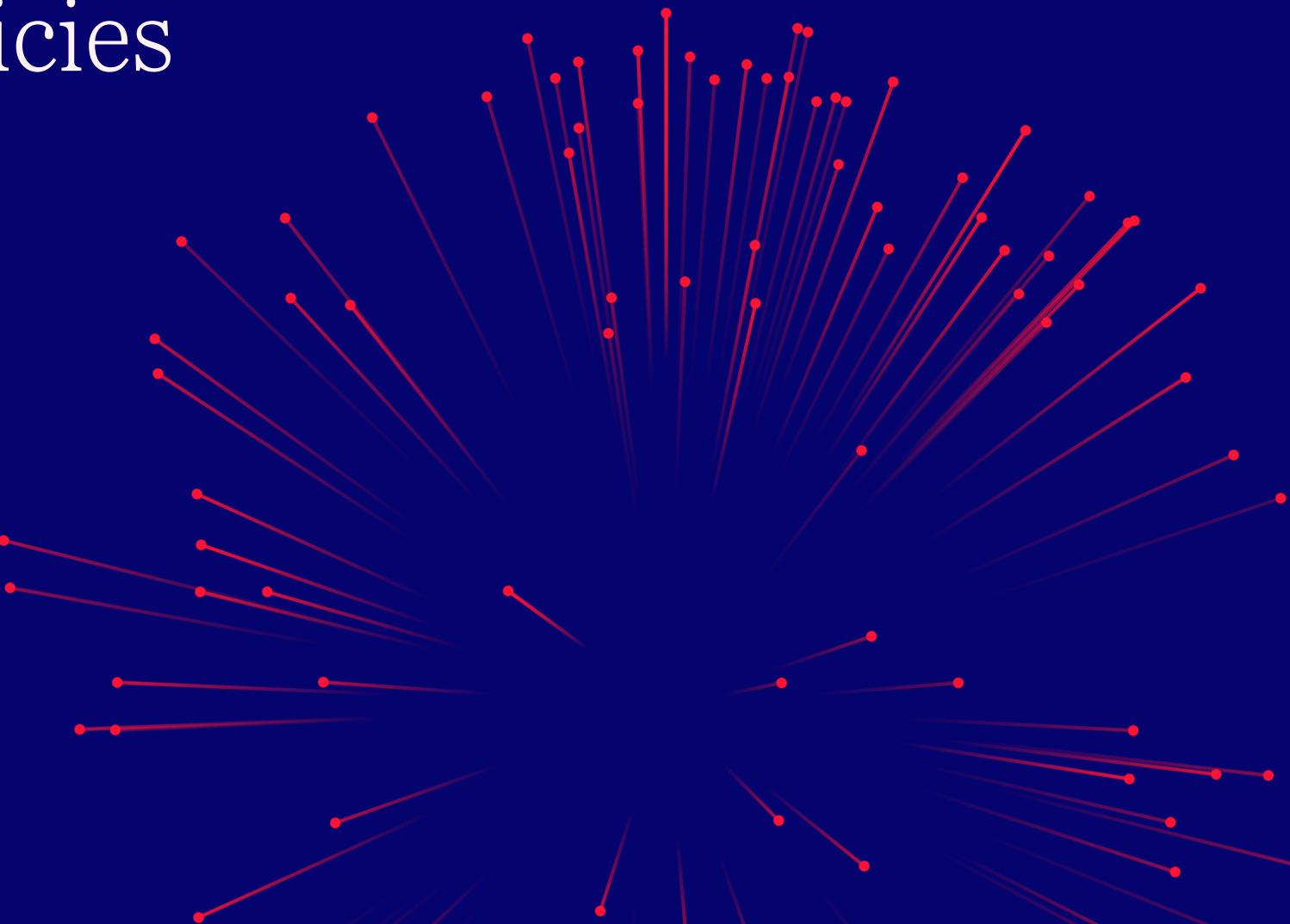
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Insider Trading Policies and Rule 10b5-1

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Introduction



Recent SEC Rulemaking

In December 2022, the SEC adopted final rules that imposed new conditions on the availability of the Rule 10b5-1 affirmative defense to insider trading and required enhanced disclosures

The amendments to Rule 10b5-1 added **five new conditions** to the availability of the affirmative defense under Rule 10b5-1, only one of which is applicable to issuers:

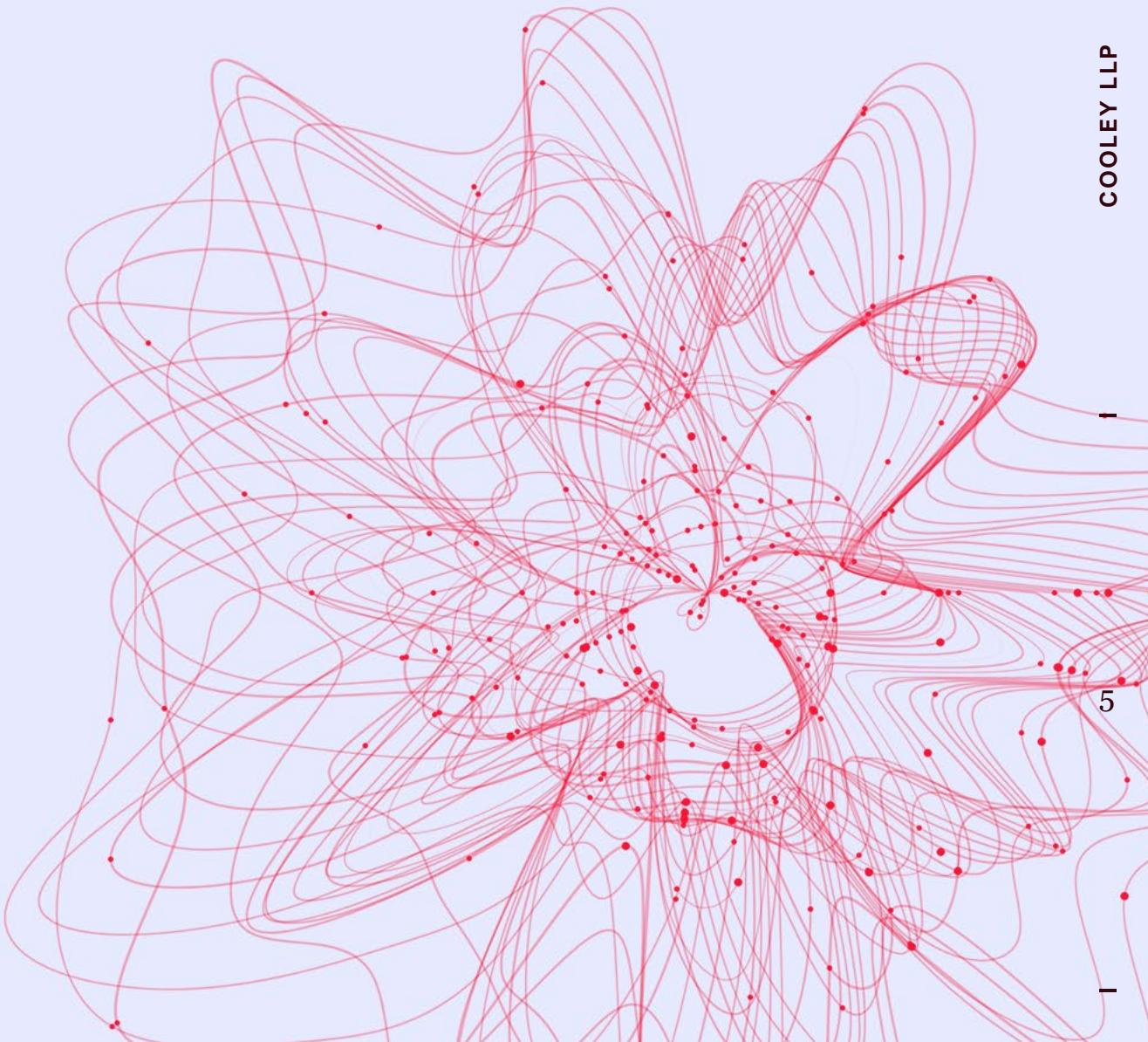
- A minimum cooling-off period (not applicable to issuers)
- Director and officer certifications (only applicable to directors and Section 16 officers)
- Prohibition on overlapping plans (not applicable to issuers)
- Limitation on single-trade arrangements (not applicable to issuers)
- Extension of the good faith requirement (applicable to issuers)

The December 2022 rulemaking also imposed **new disclosure requirements** on issuers with respect to Rule 10b5-1 plans and Insider Trading Policies:

- Quarterly disclosure requirements relating to the adoption, modification and termination of 10b5-1 plans and “non-Rule 10b5-1 trading arrangements” by directors and officers
- Annual disclosure requirements regarding insider trading policies and procedures

The December 2022 rulemaking added a **mandatory checkbox** to Forms 4 and 5 requiring a Section 16 reporting person to indicate whether a reported transaction is pursuant to a 10b5-1 plan and, if so, the adoption date of such plan

Rule 10b5-1 and Related Guidance



Rule 10b5-1 Trading Plans

Overview

Rule 10b5-1 establishes an affirmative defense from insider trading liability

- The affirmative defense **does not immunize a particular set of trades from scrutiny**, but instead **shifts the time of the inquiry** from the time of trade to the time the insider committed to the trade

A Rule 10b5-1 trading plan is a plan put in place with a broker who will sell company stock based on instructions or a formula set by the insider covering volumes, prices and/or timing of trades

Key elements of a Rule 10b5-1 trading plan:

- Establish when not in possession of material nonpublic information (MNPI)
- Enter into in “good faith” and not as part of a plan or scheme to evade Section 10(b) of the Exchange Act and act in “good faith” with respect to
- Terms set out price and dates (or formula for determining)
- No subsequent influence over trades; avoid amendments or early termination
- Trade pursuant to the plan

Rule 10b5-1 Trading Plans

Requirements

Binding contract, instruction or written plan with a broker must be entered into and/or altered at a time when the insider is not aware of any MNPI

- A person cannot enter into a Rule 10b5-1 trading plan while aware of MNPI even if the plan is structured so that the plan transactions will not begin until after the MNPI is made public

Trading plan must:

- expressly specify the amount of securities to be purchased or sold, as well as the price(s) and date(s) of the transaction(s); or
- provide a written formula or algorithm, or computer program, for determining amounts, prices and dates; or
- not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales

Purchases or sales must be executed pursuant to the trading plan

- A purchase or sale is not “pursuant to” the trading plan if the person who entered into the plan:
 - Altered or deviated from the trading plan; or
 - Entered into or altered a corresponding or hedging transaction or position with respect to the securities covered by the trading plan

The trading plan must comply with Rule 10b5-1's **five additional conditions**, to the extent applicable:

- Cooling-off period (not applicable to issuers)
- Director and officer certification (applicable only to directors and Section 16 officers)
- Prohibition on overlapping plans (not applicable to issuers)
- Limitation on single-trade plans (not applicable to issuers)
- Good faith condition (applicable to all)

Company Insider Trading Policy or Rule 10b5-1 Guidelines may impose additional conditions or restrictions

10b5-1 Trading Plans

The cooling-off period condition

Rule 10b5-1 imposes a minimum cooling-off period on all individuals (but not the issuer) between when a plan is adopted or materially modified and when trading commences

- The period for directors and officers is the later of **90 days after** the adoption or modification or **two business days following** the disclosure of the company's financial results in a periodic report for the fiscal quarter in which the 10b5-1 plan was adopted or modified, not to exceed 120 days
- The period for other individuals is **30 days after** the adoption or modification
- Modifications or changes to the amount, price, or timing of the purchase or sale of securities will be considered a termination of the original plan and adoption of a new 10b5-1 plan, triggering a new cooling-off period; administrative changes will not trigger a new cooling-off period
- The substitution of a broker-dealer or other agent acting on behalf of the person for another broker-dealer that is executing trades pursuant to a plan shall not be a modification of the plan as long as the purchase or sales instructions applicable to the substitute and substituted broker are identical with respect to the prices of securities to be purchased or sold, dates of the purchases or sales to be executed, and amount of securities to be purchased or sold

SEC Guidance – calculating the first permissible trade date

- Exchange Act Rules Compliance and Disclosure Interpretation (CDI) 120.29:

For purposes of the cooling-off period specified in Rule 10b5-1(c)(1)(ii)(B)(1), **the date of disclosure of the issuer's financial results is the filing date** of the relevant Form 10-Q or Form 10-K, and **the first business day would be the next business day that follows the filing date**. . . . For example, if the relevant form is filed on a Monday, trading may commence under the contract, instruction, or plan on Thursday (assuming no intervening Federal holidays). In addition, whether a form is filed before or after trading opens on a given day has no bearing on the calculation.

10b5-1 Trading Plans

The director and officer certification condition

Upon adoption or modification of a plan, directors and Section 16 officers must certify in the 10b5-1 plan that (1) they are unaware of MNPI about the issuer or its securities and (2) they are adopting the plan in good faith and not as part of a plan or scheme to evade the prohibitions of Section 10(b) of the Exchange Act

- The certification condition is intended to reinforce directors' and officers' cognizance of their obligation not to trade or enter into a trading plan while aware of MNPI about the issuer or its securities, that it is their responsibility to determine whether they are aware of MNPI when adopting Rule 10b5-1 plans, and that the affirmative defense under Rule 10b5-1 requires them to act in good faith and not to adopt such plans as part of a plan or scheme to evade the insider trading laws
- Subject to their confidentiality obligations, directors and officers can consult with experts to determine whether they can make this representation truthfully, however, a director or officer's completion of the certification will reflect their personal determination that they do not have MNPI at the time of adoption of a Rule 10b5-1 plan
- Certification not intended to create an independent basis of liability for insider trading

10b5-1 Trading Plans

The prohibition on overlapping plans and exceptions

The prohibition on overlapping plans

Rule 10b5-1 prohibits individuals from having multiple overlapping trading arrangements for open-market trades of issuer securities (e.g., not transactions directly with the issuer or participation in ESOPs or DRIPs), subject to three key exceptions

SEC Guidance – 401(k) plan transactions

- Exchange Act Rules CDI 120.30:

Even though participants elect how much to contribute to their individual 401(k) accounts, an open-market transaction conducted **at the direction of the plan administrator, and not at the direction of the plan participant**, to match a contribution by the participant with employer stock **would not be an overlapping plan** for purposes of Rule 10b5-1(c)(1)(ii)(D) that would disqualify a plan participant's reliance on Rule 10b5-1 for a concurrent open market trading plan.

- Exchange Act Rules CDI 120.32:

A company sponsors a 401(k) plan that permits both employer and employee contributions to be invested through a self-directed "brokerage window." Because the counterparty to the self-directed "brokerage window" transaction will be an open market participant, **the instruction for any self-directed "brokerage window" transaction will need to satisfy all conditions of Rule 10b5-1(c)(1)**, including those applicable to purchases and sales of the issuer's securities on the open market.

SEC Guidance – entity plans

- Regulation S-K CDI 133A.02:

Item 408(a) [requiring disclosure of whether any director or Section 16 officer adopted or terminated a Rule 10b5-1 trading arrangement or a non-rule 10b5-1 trading arrangement] applies to any Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement covering securities in which an officer or director has a **direct or indirect pecuniary interest that is reportable under Section 16** that the officer or director has **made the decision to adopt or terminate**.

10b5-1 Trading Plans

The prohibition on overlapping plans and exceptions

Exception: separate contracts treated as a single “plan”

- A person may enter into more than one plan with different broker-dealers or other agents, provided that, when taken together, the contracts with multiple broker-dealers or other agents collectively meet the conditions of Rule 10b5-1, including that a modification of any individual plan acts as modification of the whole plan

10b5-1 Trading Plans

The prohibition on overlapping plans and exceptions

Exception: later-commencing plan

- A person is permitted to maintain two 10b5-1 plans at the same time so long as there is no overlap in timing of trades between the two plans, and trading under the earlier-commencing 10b5-1 plan is completed or the plan expires before trading is authorized under the later-commencing plan
 - The adoption of a later-commencing plan does not change the cooling-off period for the later-commencing plan
 - The termination of the earlier-commencing 10b5-1 plan by the individual triggers the commencement of a new cooling-off period for the later-commencing plan

SEC Guidance – termination that triggers a new cooling-off period

- Exchange Act Rules CDI 120.28:

Pursuant to Rule 10b5-1(c)(1)(ii)(D)(2), if an individual terminates the earlier-commencing plan, the later-commencing plan will be subject to an “effective cooling-off period.” The effective cooling-off period will begin on the termination date of the earlier-commencing plan and will last for the time period specified in Rule 10b5-1(c)(1)(ii)(B). On the other hand, if the earlier-commencing plan ends by its terms without action by the individual, the cooling-off period for the later-commencing plan is not reset and trading may begin as soon as the plan’s original cooling-off period is satisfied. Depending on when the later-commencing plan was adopted, this could be as soon as immediately after the earlier-commencing plan ends.

10b5-1 Trading Plans

The prohibition on overlapping plans and exceptions

Exception: sell-to-cover plans

- A contract, instruction, or plan providing for an “eligible sell-to-cover transaction” is not considered an outstanding or additional contract, instruction, or plan under Rule 10b5-1, and such eligible sell-to-cover transaction is not subject to the prohibition on overlapping plans.
- A contract, instruction, or plan provides for an “eligible sell-to-cover transaction” where the contract, instruction, or plan authorizes an agent to **sell only such securities as are necessary** to satisfy tax withholding obligations **arising exclusively from the vesting of a compensatory award, such as restricted stock or stock appreciation rights**, and the insider does not otherwise exercise control over the timing of such sales

SEC Guidance – “eligible sell-to-cover transaction”

- Exchange Act Rules CDI 120.33:

For purposes of Rule 10b5-1(c)(1)(ii)(D)(3), “necessary to satisfy tax withholding obligations” refers to tax withholding payments that are calculated in good faith to satisfy the employee or director’s expected effective tax obligation solely with respect to the vesting transaction, consistent with applicable tax law and accounting rules, rather than the minimum tax withholding imposed under the applicable tax rules.

- Memorandum to Members of the ABA Subcommittee on Employee Benefits, Executive Compensation, and Section 16 re Discussion with SEC Staff on Interpretation of Exchange Act Rule 10b5-1(c)(1)(ii)(D)(3) – Scope of “eligible sell-to-cover” transactions:

A non-employee director’s contract, instruction, or plan providing only for the sale of shares in connection with the vesting of a compensatory award for the purpose of satisfying such individual’s expected effective tax rate arising from the vesting event will qualify as an “eligible sell-to-cover” transaction for purposes of Exchange Act Rule 10b5-1(c)(1)(ii)(D)(3).

- The SEC Staff have also confirmed that an “eligible sell-to-cover transaction” is interpreted to include sales to cover any reasonable and customary commissions and/or other fees incurred in connection with sales to satisfy tax withholding obligations

10b5-1 Trading Plans

The limitation on single-trade plans

Rule 10b5-1 limits individuals to one single-trade plan involving open market transactions (i.e., plan permitting only one trading event) in any 12-month period

- For this purpose, a plan is “designed to effect” the purchase or sale of securities as a single transaction when the contract, instruction, or plan has the practical effect of requiring such a result
- A plan is not designed to effect a single transaction where the plan leaves the person’s agent **discretion over whether to execute the contract, instruction, or plan as a single transaction**
- A plan is also not designed to effect the purchase or sale of securities as a single transaction when (1) the contract, instruction, or plan does not leave discretion to the agent, but instead provides that the agent’s future acts will **depend on events or data not known at the time the plan is entered into**, such as a plan providing for the agent to conduct a certain volume of sales or purchases at each of several given future stock prices; and (2) **it is reasonably foreseeable at the time the plan is entered into that the contract, plan, or instruction might result in multiple transactions**
- The limitation on single-trade plans does not apply to plans providing for “eligible sell-to-cover transactions”

10b5-1 Trading Plans

The good faith condition

In addition to the requiring that a plan be entered into in good faith, Rule 10b5-1 requires that individuals and issuers also *act in good faith* with respect to the plan

- Canceling or modifying a plan on the basis of MNPI or influencing the timing of company disclosure in favor of trades (for profit or loss avoidance) may violate the act in good faith requirement

SEC Guidance – plan terminations and the “good faith” requirement

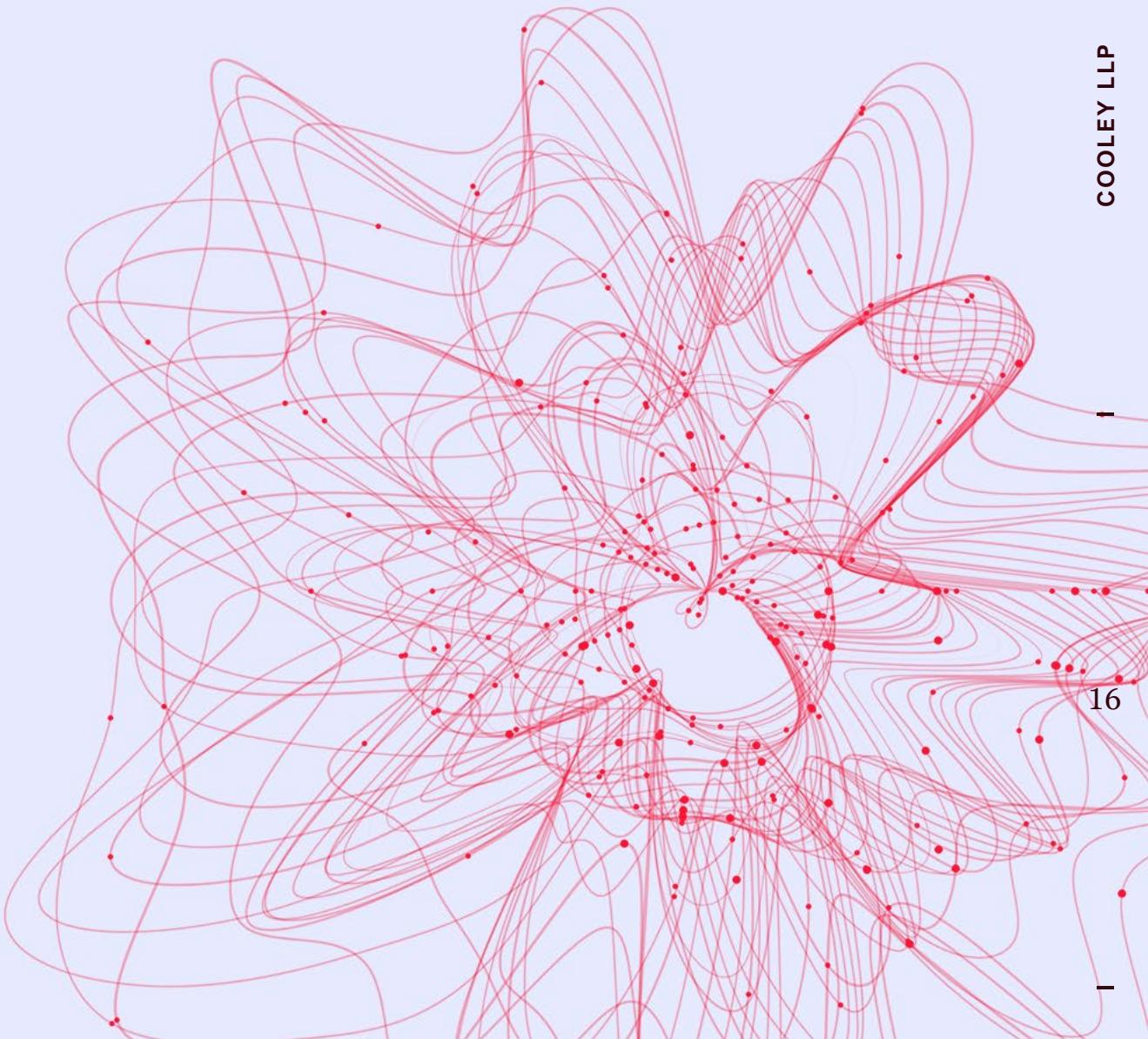
- Exchange Act Rules CDI 120.17:

Standing alone, the act of terminating a plan while aware of material nonpublic information, and thereby not engaging in the planned securities transaction, does not result in liability under Section 10(b) and Rule 10b-5. Section 10(b) and Rule 10b-5 apply to any fraudulent conduct "in connection with the purchase or sale of any security." The "in connection with" requirement is satisfied when a fraud "coincides" with a securities transaction. See, e.g., *SEC v. Zandford*, 535 U.S. 813 (2002) and *Merrill Lynch, Pierce, Fenner & Smith, Inc., v. Dabit*, 547 U.S. 71 (2006).

- Exchange Act Rules CDI 120.18:

Termination of a plan, or the cancellation of one or more plan transactions, could affect the availability of the Rule 10b5-1(c) defense for prior plan transactions if it calls into question whether the plan was entered into in good faith and not as part of a plan or scheme to evade the insider trading rules and whether the person who entered into the plan has acted in good faith with respect to the plan within the meaning of Rule 10b5-1(c)(1)(ii)(A). The absence of good faith or presence of a scheme to evade would eliminate the Rule 10b5-1(c) defense for prior transactions under the plan.

Rule 10b5-1 Plan and Insider Trading Policy Disclosure Requirements



Item 408(a) of Regulation S-K

Disclosure requirements for director and Section 16 officer adoption and termination of Rule 10b5-1 plans and “non-Rule 10b5-1 trading arrangements”

Item 408(a) of Regulation S-K requires registrants to disclose in Forms 10-K and 10-Q whether, during the last fiscal quarter, any Section 16 officer or director **adopted** or **terminated**:

- any contract, instruction or written plan to purchase or sell company securities intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) and/or
- any “non-rule 10b5-1 trading arrangement” (as defined in Item 408(c) of Regulation S-K)

Pursuant to Rule 10b5-1(c)(1)(iv), any modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a Rule 10b5-1 plan is a **termination** of such contract, instruction, or written plan, and the **adoption** of a new contract, instruction, or written plan

Disclosure must identify whether the trading arrangement is intended to satisfy the affirmative defense of Rule 10b5-1(c), and provide a description of the material terms, other than pricing terms, such as:

- the name and title of the director or officer;
- the date the trading arrangement was adopted or terminated;
- the duration of the trading arrangement; and
- the aggregate number of securities to be purchased or sold under the trading arrangement

Item 408(a) disclosure must be tagged in iXBRL

Item 408(b) of Regulation S-K

Disclosure of the registrant's insider trading policies and procedures

Item 408(b) of Regulation S-K requires registrants to disclose in Forms 10-K and proxy statements (or Forms 20-F, as applicable) whether the company has adopted insider trading policies and procedures that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any applicable listing standards

- If the company has not adopted these policies and procedures, it is required to explain why it has not done so
- This disclosure may be forward incorporated into Form 10-K from a registrant's annual meeting proxy statement

The foregoing Item 408(b) disclosure must be tagged in iXBRL

Item 408(b) also requires a registrant to file a copy of its insider trading policies and procedures as an exhibit to its Form 10-K or 20-F, as applicable

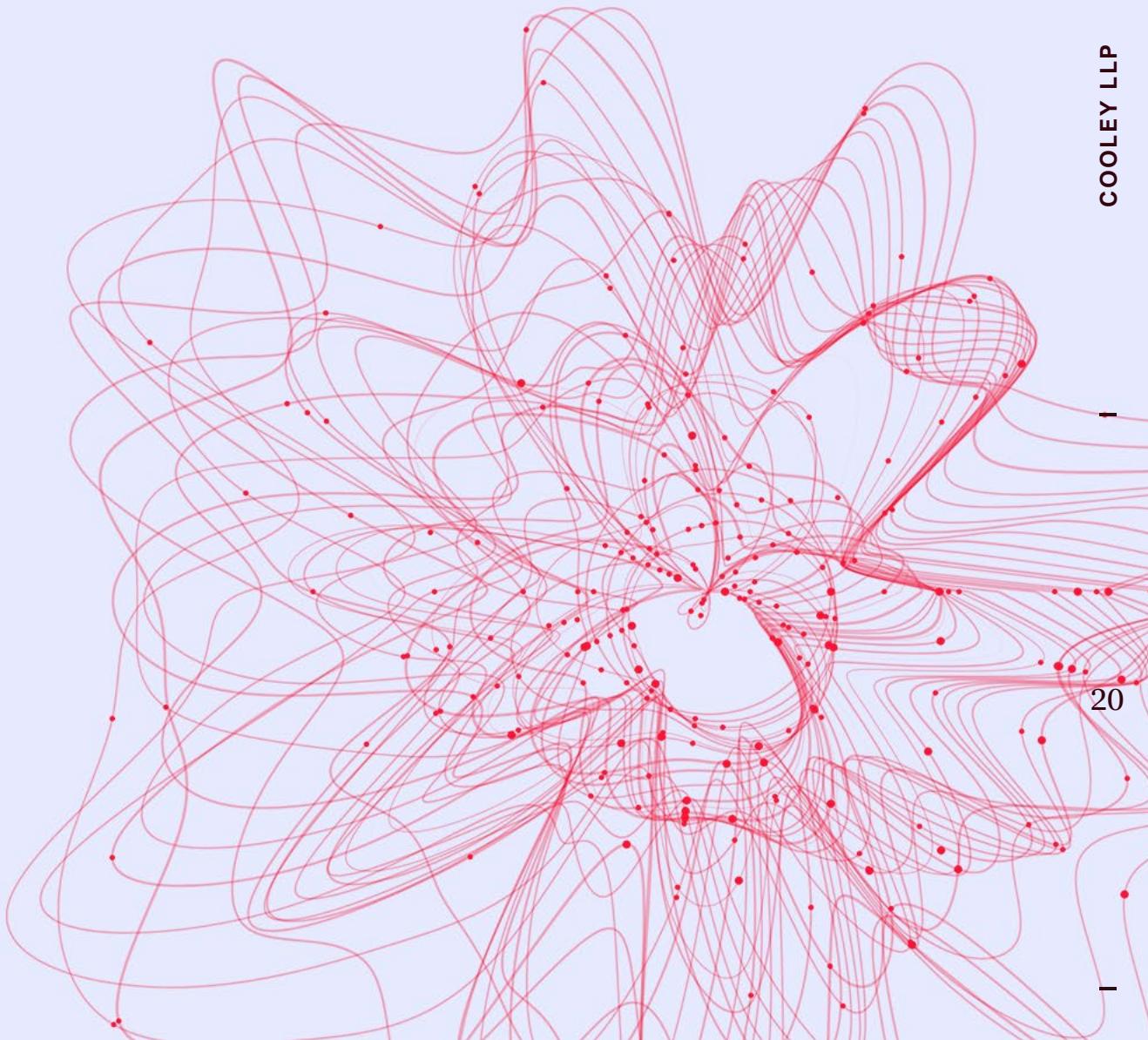
Forms 4 and 5

Rule 10b5-1 plan checkbox requirement

The December 2022 rulemaking added a mandatory checkbox to Forms 4 and 5 requiring a Section 16 reporting person to indicate whether a reported transaction is pursuant to a plan that is “intended to satisfy the affirmative defense conditions” of Rule 10b5-1(c) and to provide the date of adoption of the 10b5-1 plan

- The amended rules also require the reporting of bona fide gifts of equity securities on Form 4 within two business days, rather than Form 5

Insider Trading Policy Trends



Insider Trading Policies – Key Provisions

While statistics vary depending on the particular survey group, some broad Insider Trading Policy trends have emerged

Persons subject to policy

- Policies are commonly broadly applicable to directors, officers, employees, other service providers, family members of the foregoing, and entities controlled by the foregoing
- Some nuance with respect to which provisions of the policy apply to family members and controlled entities

Transactions in securities of other companies

- Vast majority of policies restrict trading in another company's securities while aware of MNPI about that company or its securities
- Minority prohibit "shadow trading" (i.e., trading in the securities of a public company while aware of MNPI about another company that could impact the trading price of the securities of the public company)

Gifts

- Majority of policies treat gifts the same as other trading activity
- Minority of policies provide exceptions for gifts that meet certain conditions

Quarterly Blackout Periods

- Vast majority of policies impose quarterly blackout periods and reserve the right to impose additional special blackout periods; of those:
 - Majority subject directors, officers, and designated employees to quarterly blackout periods
 - Minority subject all covered persons to quarterly blackout periods
- Quarterly blackout periods most commonly begin two weeks before quarter end
- Quarterly blackout periods most commonly end after one full trading day has elapsed after the release of quarterly earnings (a minority require two full trading days to elapse)

Preclearance Procedures

- Vast majority of policies impose preclearance procedures; of those:
 - Majority subject directors, officers, and designated employees to preclearance procedures

Insider Trading Policies – Key Provisions

While statistics vary depending on the particular survey group, some broad Insider Trading Policy trends have emerged

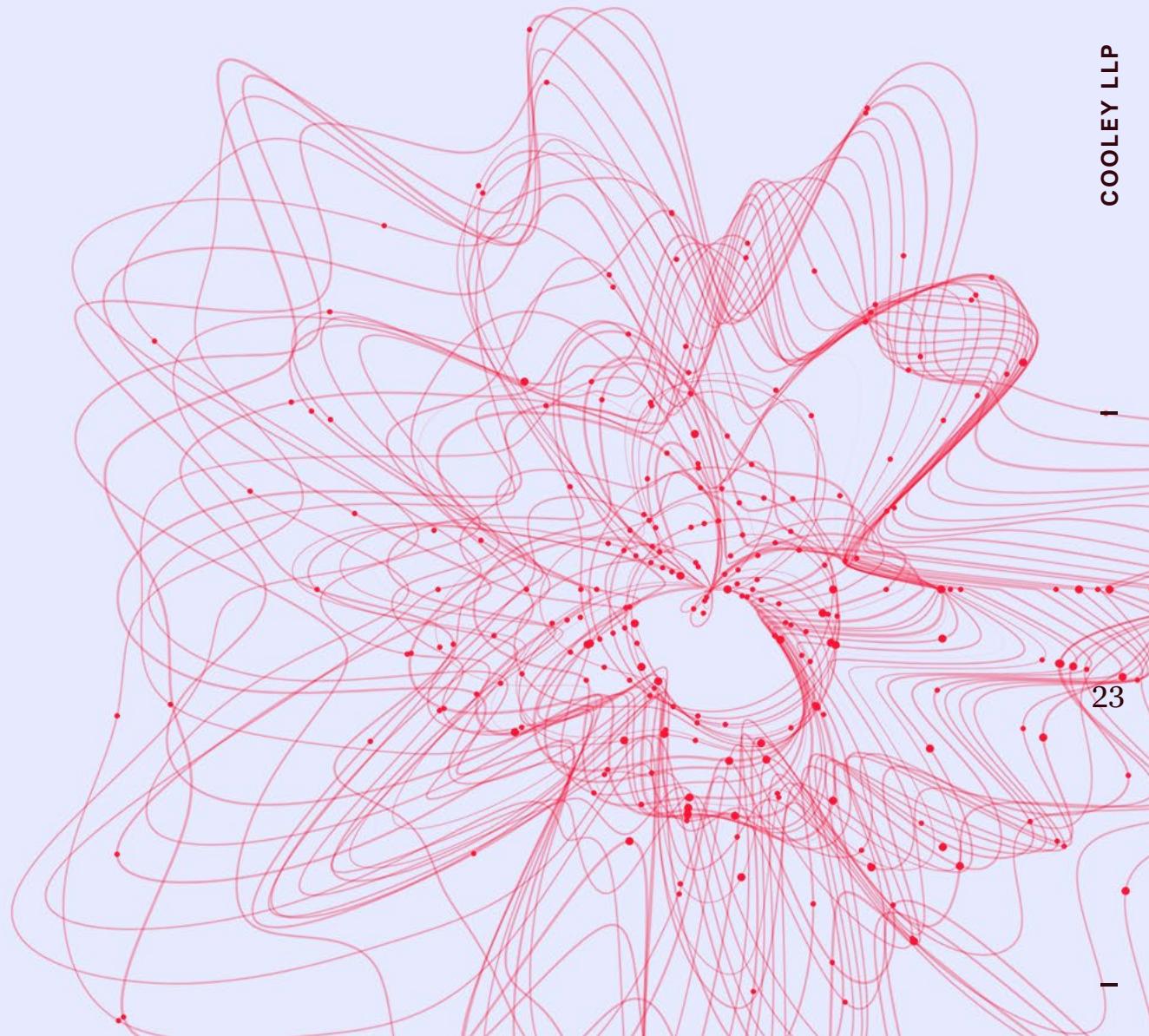
Additional Prohibited Activity

- Hedging
 - Majority apply prohibition to all covered persons
 - Minority limit prohibition to sub-categories of persons
 - Consideration should be given to whether to prohibit exchange funds
- Short Sales
 - Majority apply prohibition to all covered persons
 - Minority limit prohibition to sub-categories of persons
- Pledging and Margin Accounts
 - Majority apply prohibition to all covered persons
 - Minority limit prohibition to sub-categories of persons
 - Some allow, subject to preclearance

Common Policy Exceptions

- Option exercises
- Sales or company withholding to cover withholding taxes
- Sales in a registered public offering
- ESPP Purchases
- 401(k) Plan Purchases
- Dividend Reinvestment Plan
- Rule 10b5-1 Trading Plan sales
- Mutual Funds and Exchange-Traded Funds
- Changes in form of beneficial ownership
- Transfers pursuant to a qualified domestic relations order

Common Questions and our Analysis



Common Questions and Our Analysis

Rule 10b5-1 Trading Plans

Trust Plans/Overlapping Plans Prohibition

An individual has a Rule 10b5-1 plan in place covering sales of shares held directly; this individual now wants to enter into a Rule 10b5-1 plan on behalf of a trust – can they do so?

- Is the individual required to report the shares held by the trust on their Section 16 filings (or, would they be required to if subject to Section 16)?
- If yes to the above consider:
 - Modification of existing plan to include trust sales
 - This would require a new cooling-off period under the existing plan
 - Adoption of later-commencing plan including trust sales

Is it a single-trade plan?

An individual proposes to adopt a Rule 10b5-1 plan listing a single market order in the trading grid – is this a “single-trade plan”?

- Does the broker have discretion over the execution of the trades under the plan?

Future Awards

Can an individual’s 10b5-1 trading plan cover future awards?

Common Questions and Our Analysis

Disclosure Issues – 10b5-1 Plans

Disclosure when number of shares to be sold under the plan is not currently determinable

A Section 16 officer has adopted a Rule 10b5-1 trading plan for the sale of net shares received upon the settlement of restricted stock units or performance shares and the actual number of shares is currently determinable – what should the company disclose in its 10-Q or 10-K with respect to the aggregate number of shares to be sold under the plan?

Disclosure of plans covering gifts

A Section 16 officer has adopted a Rule 10b5-1 trading plan that includes *bona fide* gifts – does the company need to disclose the shares to be gifted under the plan in the aggregate number of shares to be sold under the plan?

Disclosure when no directors or Section 16 officers adopted or terminated a plan

What, if any, disclosure should the company include in its 10-Q or 10-K when no directors or Section 16 officers adopted or terminated trading arrangements during the quarter?

Inadvertent omission of 10b5-1 plan from disclosure

The company discovered that it inadvertently omitted a director or Section 16 officer's Rule 10b5-1 trading plan from its disclosure in its 10-Q – does the company need to amend the 10-Q?

Inadvertent omission of iXBRL

The company discovered that it inadvertently failed to include the required iXBRL tagging in its 10b5-1 plan disclosure in its 10-Q – does the company need to amend the 10-Q?

Common Questions and Our Analysis

Disclosure Issues – Insider Trading Policy

Insider Trading Policy disclosure

The company's Insider Trading Policy does not explicitly address sales by the company – how should the company approach S-K Item 408(b)'s requirement to “[d]isclose whether the registrant has adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the registrant's securities by directors, officers and employees, *or the registrant itself...*”?

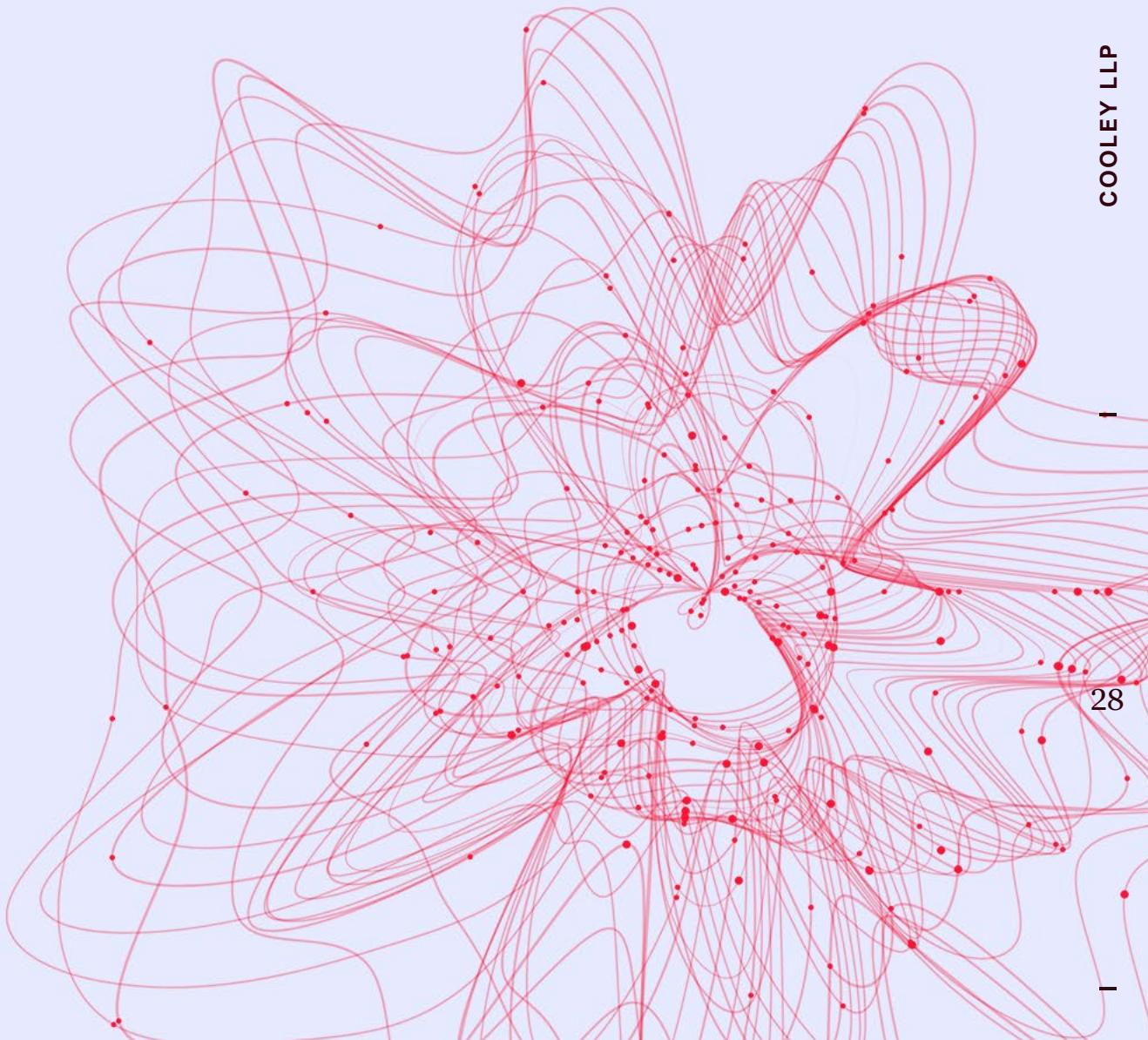
What must be filed pursuant to Item 408(b)(2) of Regulation S-K?

- Rule 10b5-1 Trading Guidelines?
- Q&A Annex to Insider Trading Policy?
- Annex listing individuals subject to trading blackouts or preclearance procedures?
- Code of Conduct section covering insider trading?
- Can individual email addresses and/or phone numbers within the policy be redacted?

Inadvertent omission of iXBRL

The company discovered that it inadvertently failed to include the required iXBRL tagging in its Insider Trading Policy disclosure in its proxy statement – does the company need to amend the proxy statement?

Takeaways and Action Items



Takeaways and Action Items

Considerations based on our observations

Ensure disclosure control checklists have been updated for the trading arrangement and insider trading policy disclosure requirements

- Should include a 10b5-1 plan check
- Should include an iXBRL tagging check

Consider annually reviewing insider trading policies of similarly-situated peers

When reviewing 10b5-1 plans, remind individuals to give consideration to including trust sales in light of the prohibition on overlapping plans

If the company has Rule 10b5-1 plan guidelines, or includes Rule 10b5-1 plan conditions in its insider trading policy, review all proposed Rule 10b5-1 plans against such guidelines or conditions as they often include additional restrictions beyond the conditions of Rule 10b5-1



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Thank You

