

10b5-1 PLANS FOR SHARE REPURCHASE PROGRAMS



Properly implemented 10b5-1 trading plans offer a variety of benefits.

Securities and Exchange Commission (SEC) Rule 10b5-1, issued in 2000, provides a safe harbor for issuing corporations and corporate insiders to engage in certain prearranged securities transactions without violating prohibitions on trading with material nonpublic information about common stocks. Much research was conducted and best practices developed to implement a successful 10b5-1 plan for issuers, corporate officers, directors and other insiders. Yet the low percentage of issuers employing 10b5-1 share repurchase plans vs. the widely adopted 10b5-1 plans for corporate insiders indicates that issuers have not taken full advantage of the 10b5-1 safe harbor for corporate share repurchase programs.

ADVANTAGE OF RULE 10b5-1 SHARE REPURCHASE PLAN

Rule 10b5-1 provides public companies a unique structure to adopt written, prearranged stock repurchase plans when they do not have material, nonpublic information in their possession. The shares are typically preauthorized by the company's board of directors for repurchase. A 10b5-1 plan lets the company repurchase shares at times when it ordinarily would not be in the market because of company trading policies or possession of material nonpublic information.

Properly implemented 10b5-1 trading plans offer a variety of benefits:

- Affirmative defense against violation of federal securities laws
- Avoids being absent from the market during company-imposed trading windows or blackout periods
- Effectively communicate to investors and shareholders the certainty of implementing authorized repurchase, which will reduce outstanding share count to enhance shareholder value
- Regular, consistent trading expected to reduce exposure to market fluctuations during limited window periods and to mitigate signaling issues generally associated with insider trading
- More certainty and discipline to a diversification program

SEC Rule 10b5-1 Share Repurchase Plan

Under Rule 10b5-1, an issuer has two ways to implement its share repurchase.¹

- First, an issuer or corporation unaware of material nonpublic information can adopt a written share repurchase plan. The plan should specify the amounts (or a formula for determining amounts), prices and dates to repurchase shares.
- Alternatively, the plan could simply delegate discretion to determine amounts, prices and dates to an independent third party who is not aware of material nonpublic information concerning the issuer, provided the plan did not permit the issuer or corporation to (and the issuer or corporation did not) exercise any subsequent influence over the purchases or sales.²

¹ Not to be construed as legal advice; potential users of 10b5-1 plans are urged to seek their own legal counsel for guidance.

² Rule 10b5-1 does not require that the delegation of trading authority be in writing for sustaining the safe harbor. However, a written delegation of authority is strongly recommended because it provides clear evidence of the delegation and the terms of the delegation, including some degree of proof that the person making the delegation did not retain any influence over how, when or whether to effect a trade. In addition, other regulations under the securities laws may require that certain grants of investment discretion be in writing.

Either a written plan or a delegation of authority should conform to SEC Rule 10b-18 regarding issuer repurchases of equity securities in order to take advantage of the safe harbor from liability for manipulation under Section 9(a)(2) of the Securities Exchange Act and Rule 10b-5.

Industry experts recommend that a corporation create its trading program with the help of legal counsel as well as an investment professional experienced in 10b5-1 trading plans, in order to reach or maintain the safe harbor, taking care that:

- The individual or agent making the investment decision for the company is independent and unaware of material, nonpublic information;
- The corporation has implemented reasonable policies and procedures so that individuals making investment decisions would not violate federal securities laws.

It should be noted that these types of plans may reduce trading flexibility.

STRUCTURING A CORPORATE 10b5-1 SHARE REPURCHASE PLAN

Companies planning share repurchases or that have announced share repurchase plans should review the benefits the 10b5-1 safe harbor brings and consider adopting a 10b5-1 plan as a tool for their share repurchase programs. 10b5-1 trading plans should take into consideration:

- Corporate trading policies
- Specific trading instructions
- Requirements of SEC Rule 144, Section 16 and Section 13(d)
- Other federal and state securities laws
- Public disclosure
- Legal counsel
- Tax implications

FOR MORE INFORMATION

To learn more about NTSI's share repurchase program, contact your Northern Trust relationship manager or NTSI institutional sales representative at 1-800-433-8320.

The preceding discussion is general in nature, is intended for informational purposes only, and is not intended to provide specific advice or recommendations for any individual or organization. Because the facts and circumstances surrounding each situation differ, you should consult your attorney, tax advisor or other professional advisor for advice on your particular situation. There are risks involved with investing, including possible loss of principal. The information in this communication has been obtained from sources considered reliable, but we do not guarantee that it is accurate or complete. Additional information is available upon request.

IRS CIRCULAR 230 NOTICE: To the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law. Please consult your tax and/or financial advisor.

Not FDIC Insured	May Lose Value	No Bank Guarantee
------------------	----------------	-------------------

Securities products and services are sold by Registered Representatives of Northern Trust Securities, Inc. (member FINRA, SIPC), a wholly owned subsidiary of Northern Trust Corporation.

