

[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— Senators urge SEC to strengthen and enforce insider trading rule, \(Feb. 12, 2021\)](#)

Securities Regulation Daily Wrap Up

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Executives may be abusing 10b5-1 plans to increase their own profits, they state.

Senators Elizabeth Warren (D-Mass), Sherrod Brown (D-Ohio), and Chris Van Hollen (D-Md) of the Senate Banking Committee sent a letter to the SEC asking it to review its policies regarding 10b5-1 plans designed to prevent insider trading. Their letter raises evidence indicating that executives are using the plans to obtain windfalls at the expense of ordinary investors. Research suggests that trades often appear to be based on material, nonpublic information, especially in the pharmaceutical industry, they argue.

Is the "safe harbor" safe? The SEC created the 10b5-1 "safe harbor" to allow corporate executives with access to material, nonpublic information to sell their holdings without engaging in insider trading. However, according to the [letter](#), the agency needs to re-examine its policies to improve transparency, enforcement, and incentives to ensure fairness,. The senators argue that Pfizer executives used 10b5-1 plans to sell shares following the announcement of COVID-19 vaccine trial results and earned millions in gains.

When Pfizer announced that its vaccine for COVID-19 was found to be more than 90 percent effective, they note that the CEO sold more than 60 percent of his personal shares in the company under his 10b5-1 plan for a total of approximately \$5.6 million.

"These abuses, and the plans' lack of transparency, damage investors and risk undermining public confidence," [wrote](#) the senators.

New approach. Although trades made under 10b5-1 plans are intended to be set in advance, it is not unusual for the plans to be modified before a major announcement. However, the senators state, these short-term trades undermine the purpose of the 10b5-1 provision. Concerns about this use of 10b5-1 plans led the former SEC head to call for a "cooling-off period" of four to six months between the adoption of a 10b5-1 plan and the execution of the first trade. The SEC has yet to take action, the senators note.

The lawmakers call on the SEC to address these "abusive" practices and argue that the content of 10b5-1 plans and related trades should be disclosed to the SEC and the public so that they can evaluate the degree to which stock prices are influenced. The SEC also should enforce existing filing deadlines to keep investors informed; the SEC has a responsibility to ensure adequate, public 10b5-1 disclosures, they explain. The agency should explore options to better align executive incentives with those of shareholders by considering enforcing penalties when executives benefit from short-term windfalls that do not translate into long-term gains.

"In addition to harming ordinary investors, the abuse of 10b5-1 plans and the short-term, windfall profits obtained by insiders through abuses of these plans undermine public confidence in open, fair markets and the products they create," the senators conclude.

The lawmakers requested that the SEC respond by February 22, 2021. Specifically, they seek information regarding the actions the agency has taken regarding 10b5-1 plan compliance with current requirements and enforcement actions. They also ask if the SEC has taken action to require a "cooling off period" and/or additional disclosure.

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