

MODEL 10B5-1 PLAN ADOPTION, MODIFICATION AND TERMINATION DISCLOSURE TO COMPLY WITH REGULATION S-K ITEM 408(a)

[Item 408\(a\)](#) of Regulation S-K is applicable to companies for their first filing that covers the first full fiscal period that begins on or after April 1, 2023. For companies with a December 31 fiscal year end, the first applicable filing will be the Form 10-Q for the second quarter of 2023.

Item 408(a) requires a company to disclose the adoption or termination by any of its directors and its “officers” (as defined under Rule 16a-1(f), which means the officers often referred to as “Section 16 officers”) of any contract, instruction or written plan for the purchase or sale of securities intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) (a “Rule 10b5-1 Trading Plan”) as well as any “non-Rule 10b5-1 trading arrangement,” as defined in Item 408(c).

Rule 10b5-1(c)(iv) provides that “[a]ny modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a contract, instruction, or written plan as described in paragraph (c)(1)(i)(A) of this section is a termination of such contract, instruction, or written plan, and the adoption of a new contract, instruction, or written plan.” As a result, any modification of an existing Rule 10b5-1 Trading Plan that does more than change an address, brokerage contact or similar administrative items is likely to be treated as the termination of the existing plan and adoption of a new one. Accordingly, disclosure should also be made of any such modification of a Rule 10b5-1 Trading Plan or non-Rule 10b5-1 trading arrangement and the material terms of such modification.

Below are sample disclosures for four different scenarios. Due to the variety of different factual scenarios in which Item 408(a) disclosure may be required, these samples are illustrative only. Evaluations about whether Item 408(a) disclosure is required, and the specific disclosure that would be required, must be made based on the facts of specific cases.

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Sample Disclosure for Adoption of a Rule 10b5-1 Trading Plan

On May 11, 2023, Ms. Jane Smith, the Chief Financial Officer of the Company, adopted a trading arrangement for the sale of securities of the Company’s common stock (a “Rule 10b5-1 Trading Plan”) that is intended to satisfy the affirmative defense conditions of Securities Exchange Act Rule 10b5-1(c). Ms. Smith’s Rule 10b5-1 Trading Plan, which has a term of one year, provides for the sale of up to 100,000 shares of common stock pursuant to [the terms of the plan][one or more market or limit orders]¹.

¹ The text of Rule 408(a) requires the company to provide a description of the material terms of the Rule 10b5-1 Trading Plan and includes examples of such terms (expressly excluding price). The list does not include the triggers for a transaction (e.g., limit order or market order). Accordingly, companies may prefer to simply state transactions will be made pursuant to the terms of the plan; others may want to provide more detail on plan mechanics.

Sample Disclosure for Modification of a Rule 10b5-1 Trading Plan

On May 11, 2023, Mr. Henry Johnson, a director of the Company, modified a trading arrangement he had previously adopted with respect to the sale of securities of the Company’s common stock (a “Rule 10b5-1 Trading Plan”) to increase the number of shares covered by the plan and to extend its duration. Mr. Johnson’s initial Rule 10b5-1 Trading Plan was adopted on August 12, 2022. Mr. Johnson’s amended Rule 10b5-1 Trading Plan is intended to satisfy the affirmative defense conditions of Securities Exchange Act Rule 10b5-1(c). It has a term of one year and provides for the sale of up to 100,000 shares of common stock pursuant to [the terms of the plan][one or more market or limit orders].

Sample language for Termination of a Rule 10b5-1 Trading Plan

On May 11, 2023, Ms. Bethany McCloud, the General Counsel of the Company, terminated a trading arrangement she had previously adopted with respect to the sale of securities of the Company’s common stock (a “Rule 10b5-1 Trading Plan”). Ms. McCloud’s Rule 10b5-1 Trading Plan was adopted on August 12, 2022, had a term of two years and provided for the sale of up to 100,000 shares of common stock pursuant to [the terms of the plan][one or more market or limit orders]. As of the date of termination of her Rule 10b5-1 Trading Plan, Ms. McCloud had sold 25,000 shares of common stock under its terms.

Sample language for Adoption of a Non-Rule 10b5-1 Trading Plan

On May 11, 2023, Ms. Jane Smith, the Chief Financial Officer of the Company, adopted a trading arrangement for the sale of securities of the Company’s common stock (a “Trading Plan”) that is not intended to satisfy the affirmative defense conditions of Securities Exchange Act Rule 10b5-1(c). Ms. Smith’s Trading Plan, which has a term of one year, provides for the sale of 100,000 shares of common stock in a single trade pursuant to [the terms of the plan][a specified limit order price].

Sample tabular disclosure for Adoption of a Rule 10b5-1 Trading Plan

Companies needing to disclose a number of transactions in one report – or even just one – may elect to use a tabular format. It is not advisable, however, to cover different types of events (e.g., terminations and modifications) in one chart as the information will differ across those events.

Name (Title)	Action Taken (Date of Action)	Type of Trading Arrangement	Nature of Trading Arrangement	Duration of Trading Arrangement	Aggregate Number of Securities
Jane Smith (Chief Financial Officer)	Adoption (May 11, 2023)	Trading plan intended to satisfy the affirmative defense conditions of Securities Exchange Act Rule 10b5-1(c).	Sale of the Company’s common stock pursuant to [the terms of the plan][one or more market or limit orders].	One year	100,000 shares

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Resources

[*Insider Trading Arrangements and Related Disclosures*](#), Release No. 333-11139 (December 14, 2022)

[Insider Trading Arrangements and Related Disclosures: A Small Entity Compliance Guide](#)

[Text of Item 408\(a\)](#):

§229.408 (Item 408) Insider trading arrangements and policies.

(a)(1) Disclose whether, during the registrant’s last fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report), any director or officer (as defined in § 240.16a-1(f) of this chapter) adopted or terminated:

(i) Any contract, instruction or written plan for the purchase or sale of securities of the registrant intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) (§ 240.10b5-1(c) of this chapter) (a “Rule 10b5-1 trading arrangement”); and/or

(ii) Any “non-Rule 10b5-1 trading arrangement” as defined in paragraph (c) of this section.

(2) 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 terms with respect to the price at which the individual executing the Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement is authorized to trade, such as:

- (A) The name and title of the director or officer;
- (B) The date on which the director or officer adopted or terminated the trading arrangement;
- (C) The duration of the trading arrangement; and
- (D) The aggregate number of securities to be purchased or sold pursuant to the trading arrangement.

(3) The disclosure provided pursuant to paragraphs (a)(1) and (2) of this section must be provided in an Interactive Data File as required by 17 CFR 232.405 (Rule 405 of Regulation S-T) in accordance with the EDGAR Filer Manual.

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Contacts

Please contact our [Public Company Advisory Practice](#) with any questions. Thank you.