

GIBSON DUNN

Survey of S&P 100 Insider Trading Policies in Year One of the SEC's Insider Trading Exhibit Requirement

October 9, 2025



I. Introduction

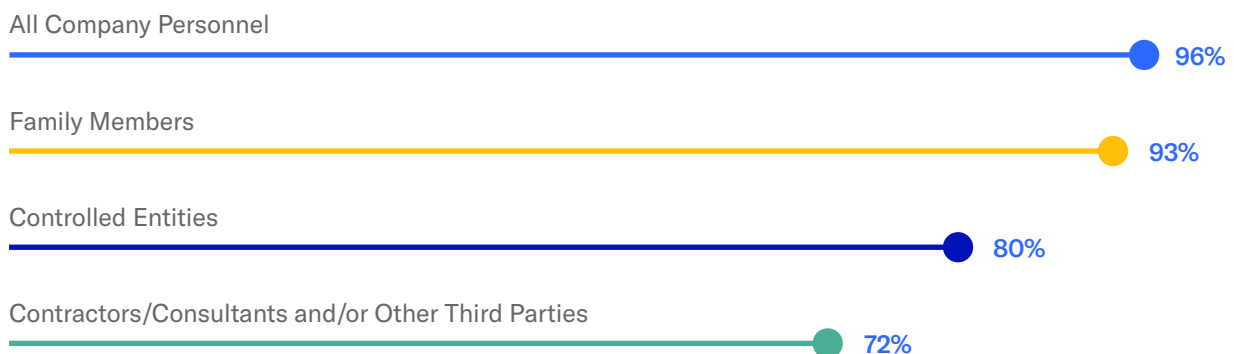
This survey of the insider trading policies filed by S&P 100 companies over the past year follows our September 10, 2024 client alert, [Early Insights from Insider Trading Policies Filed by S&P 500 Companies under the SEC's New Exhibit Requirement](#), which surveyed the policies of 49 S&P 500 companies filed as of June 30, 2024. As we [previously reported](#), calendar year companies were required to file their insider trading policies as exhibits to their annual reports on Form 10-K and comply with the related disclosure requirements in their proxy statements for the first time during the 2024-2025 annual reporting season.¹

As discussed below, while most of the trends identified in our initial review of early-filing S&P 500 companies remain consistent, we have also seen companies continue to refine their policies to address recent legal developments. Importantly, while benchmarking can be useful, insider trading policies should be tailored to each company's circumstances, so some observations may not apply to your organization. Please contact a member of the Gibson Dunn team listed below with any questions about your specific policy.

II. Persons Subject to the Insider Trading Policies

As illustrated by the graphic below, nearly all policies cover all company personnel (i.e., directors, officers and all employees of companies and their subsidiaries and, in some cases, certain affiliates). Additionally, a significant majority of surveyed policies cover company personnel's family members and also expressly state that their policies apply to certain legal entities, such as those whose transactions in securities are controlled or influenced by company personnel and, in some cases, their family members ("controlled entities"). Of the policies that cover controlled entities, a majority (78%) specifically cover trusts, including 26% that specify that the policy applies to trusts in which the covered person has a pecuniary or beneficial interest and/or trusts where the covered person is a trustee. A majority of the policies (72%) also apply insider trading restrictions to contractors and/or consultants and/or other third parties. Of these, 53% broadly cover third parties or agents (including contractors and/or consultants), while 47% are specifically limited to contractors and/or consultants. Further, of the 72% of the policies that cover contractors/consultants and/or other third parties, 38% provide that these persons are covered if they have or may have access to material nonpublic information ("MNPI") and/or otherwise may be determined by the company to be covered in the company's discretion.²

Persons Subject to the Insider Trading Policies



III. Transactions in Company Securities Subject to the Insider Trading Policies

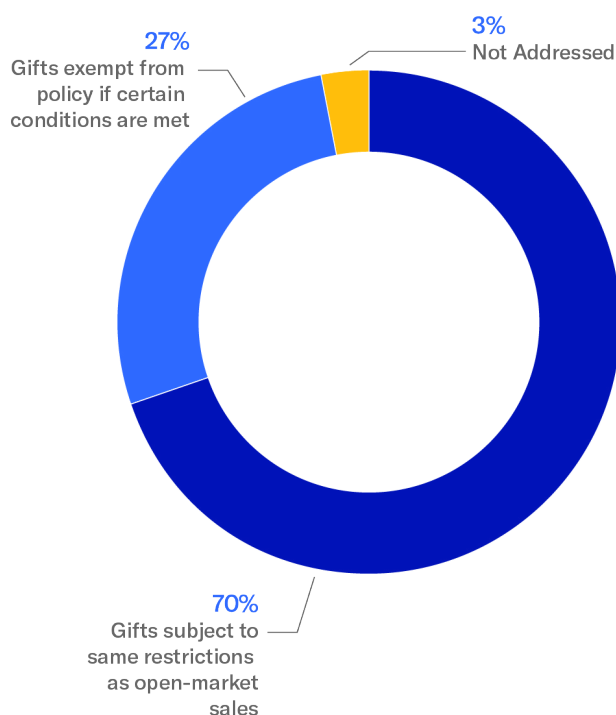
As with the early S&P 500 filers surveyed last year, all of the S&P 100 policies specify the types of transactions that are subject to, or are exempt from, the policy terms, although the scope of coverage and level of detail varies. Aside from open market sales and purchases, which are addressed in all of the policies, the most commonly addressed transactions include the following:

- **Gifts.** Virtually all of the policies (97%) address the treatment of gifts, likely in light of the SEC's position that gifts can constitute a form of insider trading.³ As illustrated by the chart below, a significant majority of surveyed companies treat gifts as any other open-market transaction subject to the policy (i.e., prohibiting the donor from making a gift while in possession of MNPI and, if applicable, during blackout periods and/or requiring pre-clearance for gifts).⁴ A minority of companies provide for unique treatment of gifts, permitting gifts to be made when open-market transactions would otherwise be prohibited, but subject to one or more specified conditions, such as: (i) the gift of shares can only be made to a family member and/or to a controlled entity already subject to the policy, typically for estate planning purposes; (ii) the gift of shares can be made unless the

donor has reason to believe the recipient will sell gifted shares while the donor has MNPI or is in a blackout period; and/or (iii) the gift of shares is pre-approved by the officer administering the insider trading policy.⁵

- **Option Exercises.** A significant majority of the policies (86%) address stock option exercises. Of these, 81% explicitly exempt option exercises when there is no associated sale on the market, with 57% exempting both cash exercises and net share settlement and 24% exempting only cash exercises. Exercises of options where there is a market sale of some shares delivered upon exercise (e.g., cashless broker exercise) are generally treated like any other sale.
- **Vesting and Settlement of Other Equity Awards.** Forty-four percent of the policies address vesting and settlement of equity awards, such as RSUs and restricted stock, and all of them exempt such events. Consistent with the treatment of net share settlement for option exercises, of the 44% of the policies that address vesting and settlement of equity awards, nearly all of the policies (98%) specifically provide that withholding of shares for tax purposes (i.e., net share settlement) in connection with vesting or settlement of equity awards is exempt as well.

Treatment of Gifts



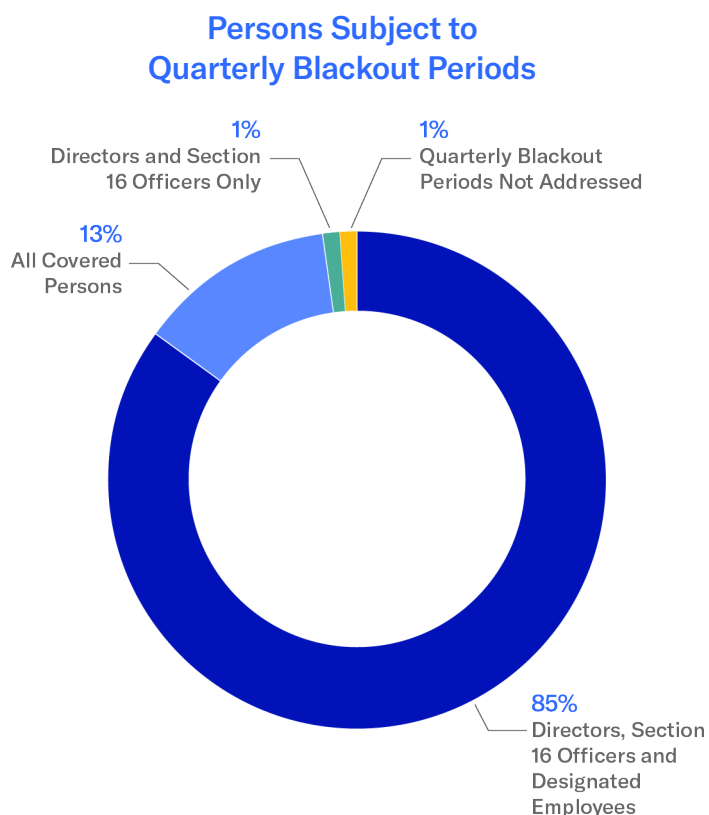
IV. Transactions in Other Company Securities

Virtually all policies (97%) restrict trading in another company's securities when the person is aware of MNPI about that company or its securities, though the specific nature of restrictions imposed differs from company to company. More specifically, of these 97%, 79% apply the prohibition to any other company when a covered person is aware of MNPI about the other company where such MNPI (i) was obtained in the course or as a result of the covered person's employment or service with the issuer and/or (ii) relates to specific companies, such as the issuer's customers, vendors, suppliers, or business and M&A partners. The remaining 21% apply the prohibition more broadly, without specifying how the information was acquired or limiting the categories of affected companies. In addition, of these 97%, 22% specifically refer to "competitors" in the prohibition, and 5% refer to "economically linked" companies or securities, with 4% citing "competitors" as examples of "economically-linked" companies.

In addition, 21% of the policies that, one way or another, restrict trading in another company's securities specifically address "shadow trading," which is trading in another company's securities on the basis of MNPI learned in the course or as a result of the covered person's employment or service with the issuer that may be relevant to that company or its securities, even if the information is not directly about that company.⁶ Again, approaches to addressing "shadow trading" differ among policies. A significant majority of these policies specifically prohibit trading in securities of another company on the basis of MNPI that could affect or impact, or could be relevant to, the stock price of such other company and/or prohibit trading on the basis of MNPI that is relevant to, or could affect, such company broadly (without specifically referring to such company's stock price), whereas a few policies instead warn that the practice may violate insider trading laws. To illustrate the concept of "shadow trading," some policies also include one or more specific examples (for instance by tracking the Panuwat fact pattern).

V. Blackout Periods and Preclearance Procedures

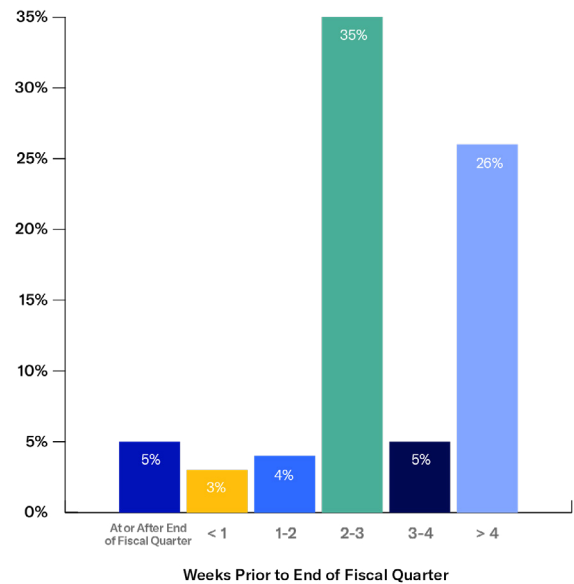
• **Persons Subject to Quarterly Blackout Periods.** As illustrated by the chart below, a significant majority of the policies subject directors, Section 16 officers⁷ and a designated subset of employees to regular quarterly blackout periods.⁸ While the specific employees subject to quarterly blackout periods (other than directors and Section 16 officers) vary by company, a majority of these policies define "restricted persons" by title (e.g., all Vice Presidents or above) and/or by department or role (e.g., all officers or employees in accounting, investor relations, legal and finance departments) as well as by identifying additional employees with access to financial data and/or systems containing MNPI. Some of these policies use a combination of these criteria, such as all Vice Presidents or higher identified as having access to nonpublic information about the company's earnings. A smaller number of these policies take a less specific approach, defining restricted persons as those designated as such by the officer administering the insider trading policy. Only a minority of the policies subject all covered persons to quarterly blackout periods.⁹



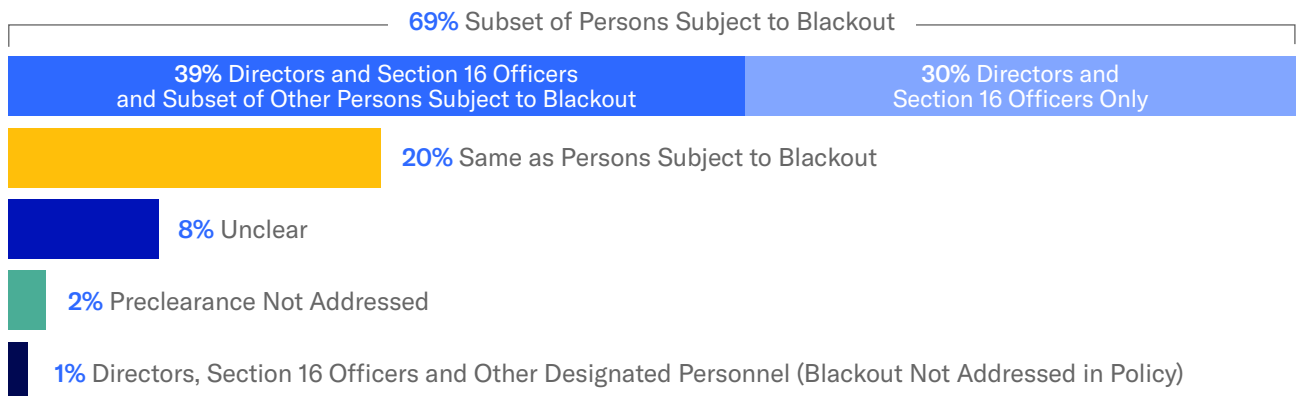
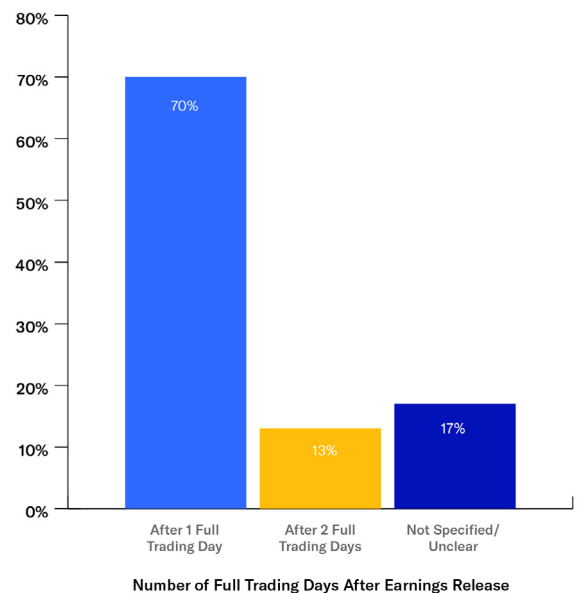
- **Start and End of Quarterly Blackout Periods.** A majority of the policies specify the start (78%) and the end (83%) of quarterly blackout periods. Additionally, 8% of the policies use a floating quarterly blackout period (i.e., one that is typically described as closing a specific number of days from the opening of window period following the quarterly earnings release). The remaining policies do not specify a start date and/or end date and instead note, in a majority of these cases, that the restricted persons will be notified separately about these dates. As depicted by the charts to the right, where addressed, quarterly blackout periods begin anywhere from quarter-end to four weeks or more prior to quarter-end¹⁰ and end one to two full trading days after the release of earnings, with more S&P 100 companies lifting the restriction after one trading day than two trading days.¹¹

- **Special Blackouts.** Nearly all policies (95%) also reserve the right for the company to implement additional special blackout periods, as needed, from time to time.
- **Preclearance Procedures.** Nearly all policies (98%) require certain covered persons to obtain preclearance from the officer administering the insider trading policy before executing any transaction subject to the policy. As depicted by the chart below, there is, however, variation in the categories of persons subject to preclearance procedures. In a majority of the policies, the preclearance persons are a subset of the persons subject to blackout periods, while for a minority of the policies, the two groups are identical. Within the 69% subset of policies where pre-clearance requirements apply to a subset of persons subject to blackout periods, almost half of the policies limit the preclearance requirement to directors and Section 16 officers only. Regardless of scope, where a policy requires preclearance, at a minimum, directors and Section 16 officers are always subject to preclearance procedures.

Start of Quarterly Blackout Period

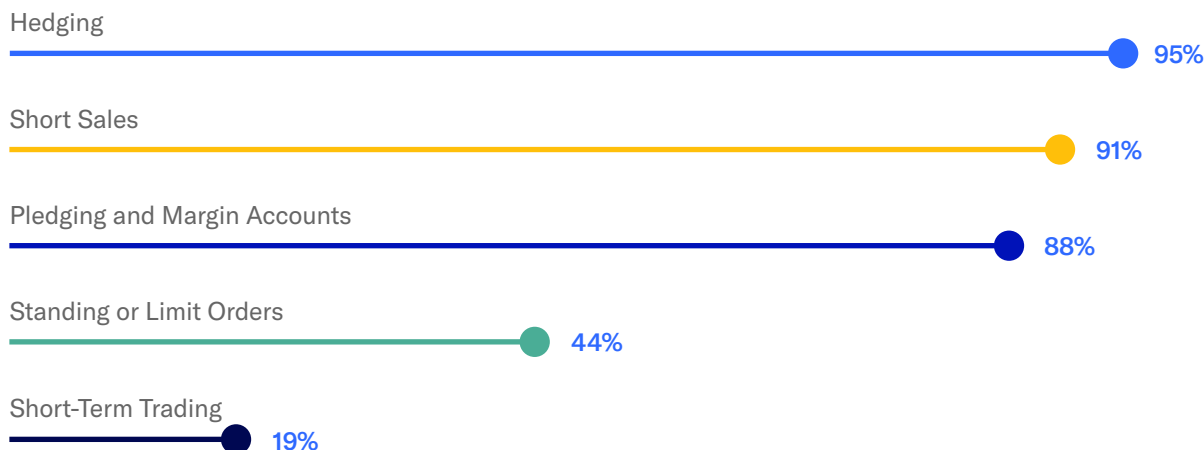


End of Quarterly Blackout Period



VI. Special Prohibitions Under the Insider Trading Policies

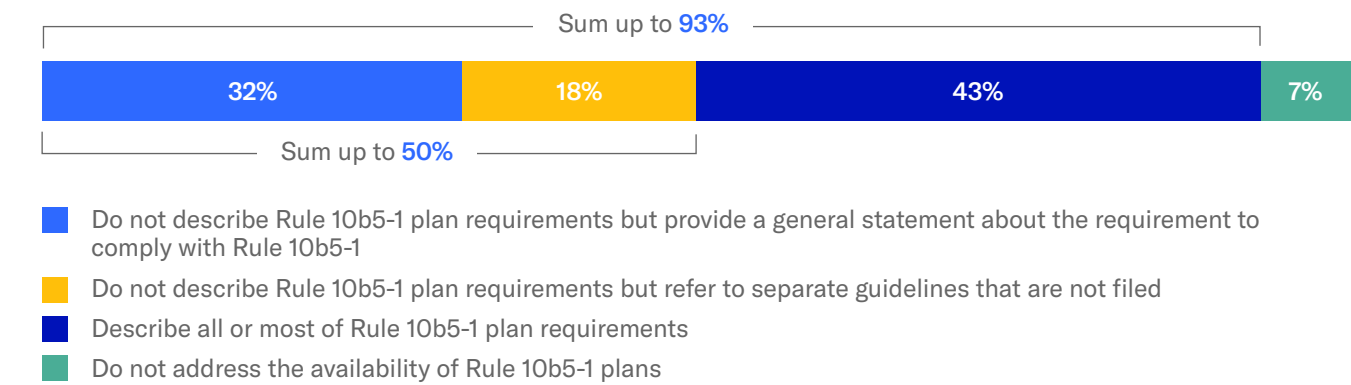
All of the policies restrict certain types of transactions, regardless of whether they involve actual insider trading, in some cases stating that such transactions heighten the risk of securities law violations or create an appearance of improper or inappropriate conduct. The most commonly addressed transactions and restrictions are described and represented by the graphics below.



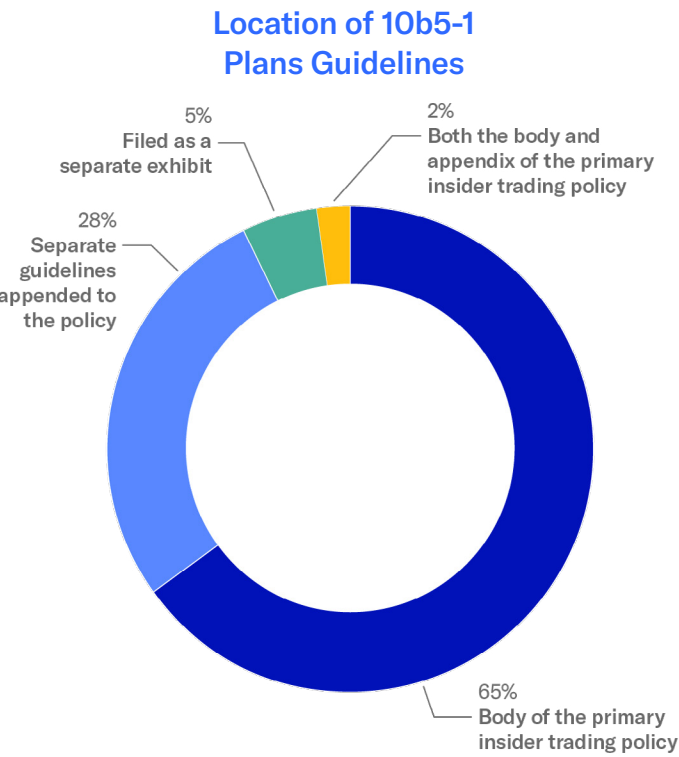
- **Hedging.** Nearly all of the policies address restrictions on hedging. Of these policies, a majority (72%) apply the prohibition to all persons subject to the policy, 26% limit the prohibition to sub-categories of persons (typically directors and Section 16 officers or persons subject to quarterly blackout periods and/or preclearance procedures), and 2% prohibit hedging for senior personnel and merely discourage it for others.¹²
- **Short Sales.** A significant majority of the policies prohibit engaging in short sales, with one policy discouraging such transactions. Of the policies that prohibit short sales, 77% apply the prohibition to all covered persons, whereas 22% limit the prohibition to sub-categories of covered persons, with 1% prohibiting short sales for senior personnel and discouraging it for all others.
- **Pledging and Margin Accounts.** A significant majority of the policies address restrictions on pledging company securities as collateral or holding company securities in margin accounts or trading them on margin.¹³ Of these policies, 41% impose a ban on all covered persons, 48% restrict only sub-categories of senior personnel, and 11% prohibit sub-categories of senior personnel and discourage other covered persons from engaging in such transactions.
- **Standing or Limit Orders.** Nearly half of the policies address the use of standing or limit orders outside of Rule 10b5-1 plans. Of the policies that mention standing or limit orders, a majority (77%)¹⁴ permit them subject to certain conditions – typically requiring cancellation upon becoming aware of MNPI or prior to the start of a blackout period, if applicable, and/or mandating that the orders remain open only for a limited duration – whereas a minority strictly prohibit (16%) or discourage (7%) such orders.
- **Short-Term Trading.** A minority of the policies (19%) address restrictions on short-term or frequent trading (defined as buying and selling securities within a six-month period).

VII. Rule 10b5-1 Plans

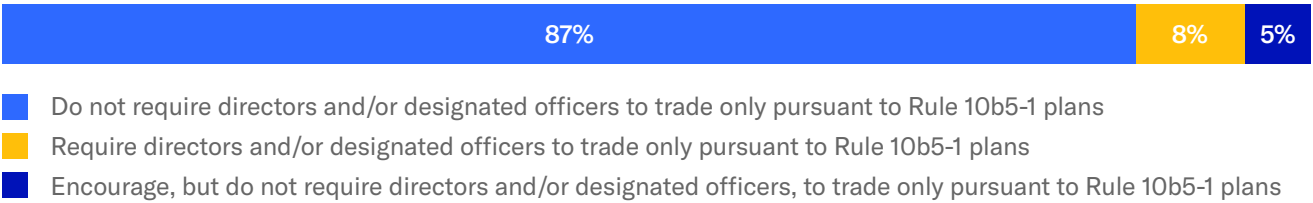
A significant majority of S&P 100 companies address the availability of Rule 10b5-1 plans¹⁵ in their insider trading policies. Although the policies generally require formal pre-approval before a Rule 10b5-1 plan can be adopted, they differ in the amount of detail with which they describe the guidelines for entering into Rule 10b5-1 plans (or modifying or terminating them). Forty-three percent describe specified conditions set forth in SEC rules for a plan to qualify as a Rule 10b5-1 plan, albeit with varying degrees of detail (either in the body of the policy and/or in a separate appendix or separate exhibit). By contrast, 50% omit a description of most of those conditions, providing instead a general statement that plans must comply with Rule 10b5-1(c) and/or identifying the categories of persons eligible to enter into Rule 10b5-1 plans and/or referring to a separate policy or guidelines for Rule 10b5-1 plans that are not filed.



As illustrated by the chart below, among the 43% that do describe specified conditions, a majority include them directly in the body of the primary insider trading policy, while a minority provides the information in separate guidelines appended to the policy or filed as a separate exhibit, and a small minority provide them in both the body of the appendix to the primary insider trading policy.



A significant majority of the policies (76%) impose no limitations on who may adopt a Rule 10b5-1 plan, provided the plan satisfies applicable pre-approval and other requirements. By contrast, a minority of the policies (17%) limit the use of 10b5-1 plans to directors and/or designated officers. As depicted by the graphic below, a significant majority of the policies do not require directors and/or designated officers to trade only pursuant to Rule 10b5-1 plans, whereas a minority of the policies either require or expressly encourage, but do not require, those insiders to do so.



A minority of the policies (28%) impose restrictions or conditions that exceed the requirements of Rule 10b5-1. These additional conditions may include prohibiting concurrent open-market trading outside the plan, requiring a cooling-off period for open market transactions after a 10b5-1 plan termination (other than pursuant to its own terms), prescribing minimum and/or maximum plan durations, mandating a minimum number of trades per plan, and/or obligating the use of a company-approved broker. Finally, 12% of the policies explicitly reserve the company’s right to suspend or terminate an existing Rule 10b5-1 plan.

A significant majority of the policies (63%) do not address non-Rule 10b5-1 trading arrangements,¹⁶ whereas 19% expressly permit non-Rule 10b5-1 trading arrangements, and 18% expressly prohibit them.

VIII. Policies Addressing Company Transactions

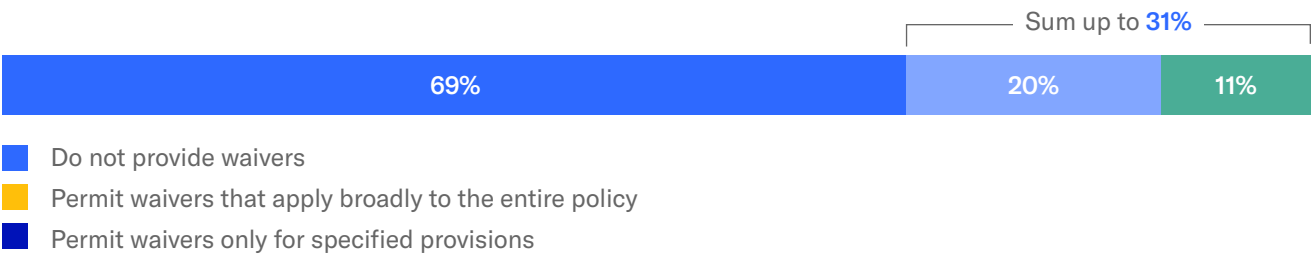
As noted above, Item 408(b) of Regulation S-K requires a public company to disclose whether it has adopted insider

trading policies and procedures governing transactions in company securities by the company itself, and, if so, to file those policies and procedures, or if not, to explain why. A majority of the S&P 100 companies’ policies reviewed (54%) sought to address this requirement within their primary insider trading policies. Among that group, a significant majority (85%) added one or two sentences about the company’s policy of complying with applicable laws when trading in its own securities directly in the body of the primary insider trading policy; a minority (11%) filed a separate policy governing company trading in its own securities; and, as noted in Section II above, a smaller minority (4%) expressly listed the company itself as a person subject to the primary policy.¹⁷ Of the 46 companies whose policies did not address company trading, 46% nevertheless indicated in their most recent Item 408(b) disclosure that they either (i) maintain a policy governing company trading, (ii) have a policy to comply with applicable laws when trading in their securities, or (iii) have implemented procedures or processes applicable to transactions by the company itself. The remaining 54% made no reference to a company trading policy in their Item 408(b) disclosures.



IX. Waivers

A majority of the policies do not provide for any kind of waivers or exceptions from the terms of the policy. Of the policies that permit waivers or exceptions, a majority permit waivers that apply broadly to the entire policy, while the remaining policies authorize waivers only for specified provisions. For example, 7% of policies with hedging restrictions, 20% of policies with pledging restrictions and 14% of policies with margin-related restrictions allow exceptions from such restrictions with prior approval.



Where waivers are available, a majority of the policies (68%) require approval from a single officer (typically the General Counsel), 19% require approval from two or more officers (typically the General Counsel in consultation with the CEO and/or CFO), and 10% require approval of the board, either alone or in conjunction with officer approval.¹⁸

X. Filing Practices Regarding Related Policies or Documents

A significant majority (90%) of S&P 100 companies filed only one insider trading policy and no additional related policies or documents, even when the policy referenced other related materials.¹⁹ In the few cases where multiple policies were filed, they generally consisted of separate company trading policies, supplemental guidelines/policies covering topics not generally applicable to all employees (e.g., trading windows, preclearance), and/or 10b5-1 plan guidelines. Only one company filed excerpts from their code of ethics as a stand-alone exhibit, although two companies attached code of ethics excerpts to their insider trading policies.

We hope that this survey offers valuable insights as companies prepare for their upcoming 2025 Form 10-K filings and consider reviewing and/or further refining their insider trading policies. In the meantime, your Gibson Dunn contacts are available to assist with any questions or provide further guidance.



The following Gibson Dunn lawyers assisted in preparing this update: Mellissa Duru, Kriti Hannon, Elizabeth Ising, Thomas Kim, David Korvin, Stella Kwak, Brian Lane, Julia Lapitskaya, Nathan Marak, Sheldon Nagesh, Antony Nguyen, Jill Refvem, Annie Saunders, Andrea Shen, Meghan Sherley, Sherri Starr, Jack Strachan, Michael Svedman, Michael Titera, Hong Xuan Tran, Geoffrey Walter, and Cody Wong.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more, please contact the Gibson Dunn lawyer with whom you usually work, or any leader or member of the firm's Securities Regulation and Corporate Governance or Capital Markets practice groups:

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Notes

¹ See Items 408(b) and 601(b)(19) of Regulation S-K, adopted by the SEC in connection with the Rule 10b5-1 amendments in December 2022. For fiscal years beginning on or after April 1, 2023, domestic public companies are required to disclose whether they have adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of their securities by their directors, officers and employees, or the companies themselves, and if so, to file those policies and procedures as an exhibit to their annual reports on Form 10-K. If a company has not adopted such policies and procedures, it is required to explain why it has not done so. Disclosure about the adoption (or not) of policies or procedures must appear in a company's proxy statement (and must also be included in, or incorporated by reference to, Part III of a company's Form 10-K). Similar disclosure and exhibit filing requirements apply to foreign private issuers (FPIs) in respect of their annual report on Form 20-F, although Item 16J of Form 20-F does not specifically reference trading by the "registrant itself." None of the filers covered by this client alert were FPIs.

² We observed that a few policies expressly include the company (registrant) as a covered entity, presumably to satisfy Item 408(b)'s requirement to file the policies and procedures governing trading by the registrant itself. This minority approach requires careful review of the policy terms to confirm that the registrant is then appropriately addressed/carved out throughout the policy as certain restrictions/requirements may not be applicable or appropriate.

³ See Final Rule: Insider Trading Arrangements and Related Disclosures, Release No. 33-11138 (Dec. 14, 2022). In its adopting release, the SEC stated its view that the terms "trade" and "sale" in Rule 10b5-1 include bona fide gifts of securities and that gifts can be subject to Section 10(b) liability, since the Securities Exchange Act of 1934, as amended, does not require that a "sale" be for value and instead provides that the terms "sale" or "sell" each include "any contract to sell or otherwise dispose of."

⁴ All but one of these policies apply the gift restriction(s) to all covered persons under the policy.

⁵ We note that while these represent the most common gift exceptions, the scope and specific language vary from policy to policy, and the more conservative policies require that the donor confirm the recipient will not sell the securities until the donor is permitted to sell under the policy.

⁶ See SEC v. Panuwat, 2022 WL 633306 (N.D. Cal. Jan. 14, 2022) (rejecting plaintiff's motion to dismiss and finding in favor of the SEC's theory of liability based on the argument that trading in the securities of one company based upon material nonpublic information about a separate company (in whose securities the defendant did not trade) can nevertheless violate the federal securities laws against insider trading). For more information about Panuwat, see Gibson, Dunn & Crutcher LLP's client alert, SEC Successfully Prosecutes Novel "Shadow Trading" Theory at Trial (Apr. 10, 2024), available at <https://www.gibsondunn.com/sec-successfully-prosecutes-novel-shadow-trading-theory-at-trial/>. Defendant Matthew Panuwat's appeal is currently pending before the Ninth Circuit.

⁷ While we refer to Section 16 officers, we note that policies do not universally refer to officers (as such term is defined under the Exchange Act Rule 16a-1(f), "Section 16 officers") or executive officers (as such term is defined under the Exchange Act Rule 3b-7). Although many policies refer specifically to Section 16 officers, other companies use more company-specific vernacular that, in practice, likely covers Section 16 officers as well as other lower-level officers of the company.

⁸ A small minority (7%) of these policies impose two different blackout periods for different groups of employees.

⁹ In addition, one policy subjects only directors and Section 16 officers to quarterly blackout periods, and one policy did not address quarterly blackout periods.

¹⁰ For purposes of this data analysis, with respect to the six policies that have a dual blackout period structure for different types of covered persons, we used the shorter blackout period applicable to certain employees other than directors and most senior executives.

¹¹ Some policies use business days instead of trading days, but many policies do not define either term. We treated them as the same for purposes of this data analysis. In addition, two policies included in the 83% pegged the end of the quarterly blackout periods to the filing of the Form 10-Q or Form 10-K.

¹² Item 407(i) of Regulation S-K requires companies to disclose practices or policies they have adopted regarding the ability of employees (including officers) or directors to engage in certain hedging transactions.

¹³ One policy prohibits holding company securities in margin accounts but does not otherwise prohibit pledging company securities as collateral for a loan. For purposes of this survey, we disregarded this difference and viewed the total of 88 policies as addressing both pledging and margin accounts/trading.

¹⁴ A minority of these policies (20%) apply the restrictions on limit orders to only certain restricted individuals (e.g., blackout persons) or impose additional conditions (e.g., mandating that the order be of a specified limited duration) for certain restricted individuals.

¹⁵ A Rule 10b5-1 plan is any contract, instruction, or written plan for the purchase or sale of securities of the registrant intended to satisfy the affirmative defense conditions of the Exchange Act Rule 10b5-1(c)(1).

¹⁶ A "non-Rule 10b5-1 trading arrangement" is a written trading arrangement adopted when the person was not aware of MNPI about the security or the issuer of the security, but that does not satisfy all of the requirements for the Rule 10b5-1(c)(1) affirmative defense.

¹⁷ As noted above, this minority approach requires careful review of the policy terms to ensure the registrant is then appropriately addressed/ carved out throughout the policy.

¹⁸ Three percent do not disclose who has the authority to approve waivers.

¹⁹ Under Regulation S-K Item 408(b)(2), if all of a company's insider trading policies and procedures are included in its code of ethics that is filed as an exhibit to the company's Form 10-K, that satisfies the exhibit requirement. However, many companies do not file their code of ethics and instead rely on one of the alternative means of making the code of ethics available allowed under S-K Item 406(c)(2) and (3).

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