Our Update on Insider Trading and the Use of 10b5-1 Plans Today

Insider trading remains a significant and ongoing problem despite increased enforcement activity by the Securities & Exchange Commission (SEC), clarification by the U.S. Supreme Court as to what constitutes insider trading, and increased public disclosure of the bad actors that get caught. A primary reason that we continue to see charges, and often settlements, may be that the current insider trading laws are hopelessly out of date and unclear, as reported in an article in the New York Times last month.

What constitutes illegal insider trading is not specifically described in the law that is the basis for such a charge. The statute, which was adopted in the 1930s, generally prohibits “fraud” and does not even contain the words “insider trading.” It states that it is an offense “to use or employ, in connection with the purchase or sale of any security or swap agreement any manipulative or deceptive device in contravention of the rules and regulations as the SEC may prescribe”. This will lead us to SEC Rule 10b5-1 and eventually, to 10b5-1 plans.

Some of those charged with illegal insider trading within the past 14 months include:

- N.Y. Congressman who tipped his son and others that a drug company on which he was on the Board failed a crucial drug test
- N.F.L. linebacker who gave game tickets and other perks in exchange for trading tips from acquaintance
- Stock market analyst who made very small trades hoping to avoid detection

- Prominent hairstylist of movie stars who received a tip from a family friend on a pending merger
- Software manager and Chief Information Officer who learned of cybersecurity breach before made public
- Scientist after making confidential visit to company before merger announced
- VP of investments and corporate deal advisor who used wife’s account to trade two China-based companies
- CEO and President of company that traded through accounts of family members
- Senior executive who shared with his two brothers that company would miss sales forecast
- Principal investigator at biopharma company
- Spouse of lawyer at international law firm who heard talk of pending merger
- Investment banker who made trades in accounts of Korean friend
- Law firm partner who accessed private information about corporate clients and shared with a neighbor
- A company’s Director of SEC Reporting prior to company’s announcement of acquisition
- CPA on merger of potato chip manufacturers
- VP corporate sales and eight others who learned of sale of company to a private equity firm
- Two partners at hedge fund and founder of political consulting firm based on leaks they received from federal healthcare agency about future reimbursements to healthcare companies
- Executive at mortgage servicer regarding info about resolution of litigation and possible merger
- Petroleum engineer as to significant oil discovery
- Spouse who overheard wife, an HR executive at a healthcare company, on phone about a pending acquisition.
The following is intended to update similar reviews we provided periodically with regard to insider trading and the use of 10b5-1 plans by Ayco individual clients.

**Insider Trading – What Is It?**

Illegal Insider trading is a means of defrauding investors. Obviously, not all trading in company stock by insiders is illegal. Transactions in accordance with securities law rules are legal and are regularly disclosed publicly, including in the Weekly Insider Spotlight available online. §16 of the Securities Exchange Act of 1934 sets the timing for reporting most transactions and establishes a 6-month trading restriction by “insiders” (officers, directors and 10% shareholders) at public companies. Violations of the §16(b) short-swing profit rules can result in disgorgement of the “profit” and may be pursued by any shareholder or the company itself. In contrast, prosecution for insider trading is brought by the government.

As stated earlier, there is no federal law which explicitly prohibits insider trading. Rather, it is based on a rule issued by the SEC in 1942; Rule 10b-5 prohibits the purchase or sale of a public company’s stock or other securities (such as bonds or stock options) while an individual is aware of material non-public information (“MNPI”).

This rule originated based on a situation where the president of a company was telling shareholders that it was doing poorly and then buying their shares when, in fact, the company was performing quite well. Rule 10b-5 prohibits making misstatements, omitting material facts, or employing any device to defraud investors. But, enforcement has not been uniform. Many countries have similar rules (see the “Did You Know” section).

There is a second theory on which the SEC can base a charge of insider trading. Under SEC Rule 10b-5-2, a duty of trust exists whenever a person agrees to maintain MNPI in confidence, even if the individual is not a fiduciary or insider. This is often characterized as the misappropriation theory and can apply to any person who has agreed to, and is expected to, maintain MNPI in confidence. The Supreme Ct. upheld this in a case involving a lawyer who purchased call options in a company that he learned confidentially was a possible merger candidate (U.S. v. O’Hagan).

Anyone using or sharing MNPI can be charged with insider trading including any company employees, consultants, directors, family members, friends and associates, or anyone with whom they communicate. The concept of informing others of confidential information who use it as the basis for a transaction, known as “tipping”, was first held to violate insider trading rules in a 1961 case (Cody, Roberts & Co.). A company director, who was a partner in a brokerage firm, told one of his partners of a pending dividend reduction at the company and he then sold stock for clients in advance of the public announcement.

**Recent Court Decisions**

Court decisions created a requirement that a tipper who has a fiduciary duty to maintain confidentiality can be found liable for insider trading only where he or she receives a personal benefit. This was established in a 1983 U.S. Supreme Court decision (Dirks v. SEC). In 2014, the 2nd Cir. Court of Appeals overturned the conviction of two hedge fund traders who had been convicted for trading based on non-public information received through a chain of financial analysts who obtained it from someone in the Dell investor relations department. In U.S. v. Newman, the court concluded that although the tipper and tippees had a social relationship, there was no evidence of personal gain (cash or assets of value).

That concept was subsequently rejected by a unanimous Supreme Ct. decision in 2016 – Salman vs. U.S. In this case, an investment banker shared confidential information regarding mergers with his brother. The brother then provided the information to Salman, his future brother-in-law and encouraged him to trade based on the information. No specific tangible benefit was shared by the close family members, but Salman, who benefited from the trade, was found guilty of insider trading.

So, the key question was whether the investment banker who initially disclosed the MNPI had received any personal benefit. The Court rejected the Newman conclusion and ruled that the disclosure of confidential information with an expectation it would lead to the purchase or sale of stock was a sufficient personal benefit to lead to conviction. Thus, money or assets need not necessarily be exchanged.

In 2017, the 2nd Circuit further clarified that illegal insider trading does not require proof of a close personal relationship between the tipper and tippee (U.S. vs. Martoma). But, for there to be a personal benefit, there may need to be an expectation that the tippee will trade based on the non-public information.

Last week, the 2nd Cir. reversed the insider trading conviction of an investment banker accused of illegally passing tips to his father who traded on them since he did not expect his father to trade, per excluded evidence.
**Material Nonpublic Information (MNPI)**

There is no universal definition as to what constitutes “material” non-public information. Essentially, MNPI is information that would influence an investor’s decision to buy or sell the security. It can be material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding to trade the stock. This obviously is a subjective determination. It could include information that likely would have an impact on a company’s stock price, such as on mergers or acquisitions, the sale of a business unit, earnings changes, the gain or loss of a major customer, or even the pending retirement or serious health issues of a CEO.

SEC Regulation FD (Fair Disclosure) requires that if a company unintentionally discloses MNPI, it must publicly report this. In addition, ERISA requires fiduciaries who learn of negative undisclosed or inaccurate information to investigate whether it violates securities laws and then take corrective action.

**Penalties**

The SEC may seek both civil and criminal penalties for violations of the insider trading rules. These include disgorgement of all profit realized or loss avoided, civil penalties of up to three (3) times the profit/loss, a criminal fine of up to $5 million, and a jail term of up to 20 years. There are also potential monetary penalties payable by an employer of up to $25 million. These are in addition to loss of reputation due to allegations of insider trading.

The longest jail sentence handed down? Twelve years given to a lawyer in 2012 who pleaded guilty to sharing private information about his corporate clients for over a decade. Raj Rajaratnam of the Galleon Group received 11 years when convicted in 2011, while Matthew Martoma, former portfolio manager at SAC Capital, received a 9 year sentence. Meanwhile the godfather of insider trading, Ivan Boesky, served only 22 months of a 3.5 year sentence in 1987. The largest monetary penalty was the $1.2 billion that Steven Cohen’s SAC Capital Advisors agreed to pay in 2013, dwarfing the $600 million that Michael Milken agreed to pay in 1985 to settle charges against him.

However, courts can also be lenient at times. An example is an ex-Equifax software manager who was given eight months of home confinement after pleading guilty to making nearly $76,000 in profit before the company’s data breach was announced. He agreed to forfeit his profit and pay a $50,000 fine.

Largely as a result of new investigative approaches and the innovative use of data and analytics, the SEC’s enforcement activity on insider trading has expanded significantly over the past ten years. During the 2018 fiscal year, the SEC brought 841 enforcement actions for illegal activities, nearly 60% which were stand-alone ones. Disgorgements totaled just over $2.5 billion.

**Rule Change Leads to Creation of 10b5-1 Plans**

Violations of insider trading rules proved difficult for the SEC to enforce through the 1980s and 1990s due to the fact that there needed to be evidence of intent to violate the rules for a conviction. In 2000, the SEC modified its rules so that an individual could be found liable for insider trading simply by possessing MNPI when trading or passing along the information to a third party who does the same.

One of the unintended consequences of this change was that trustees of charitable organizations who possessed MNPI could be subject to severe penalties for selling stock donated or held by the entity. The best example was Bill Gates, a trustee of the Bill & Melinda Gates Foundation, with Microsoft stock as its primary assets. To alleviate this problem, the SEC created an affirmative defense to a charge of insider trading for situations in which a person could demonstrate that any MNPI known at the time of the transaction was not a factor in the trading decision. An example is a pre-planned arrangement to have a trade occur at a specified future date. These rules are described in SEC Rule 10b5-1; hence such trading plans are known as 10b5-1 plans. It should be noted that transactions made pursuant to a 10b5-1 plan are not automatically exempt from insider trading rules. Rather, an individual can use the existence of a valid plan to defend against any possible charges of illegal trading made by the SEC.

**Requirements For A Valid 10b5-1 Plan**

An individual may establish a 10b5-1 plan by doing any of the following:

- Enter into a binding contract for the future purchase or sale of company stock; or
- Give instructions (preferably in writing) to a third party to purchase or sell securities; or
- Adopt and follow a written plan for a transaction.

To be effective, a 10b5-1 plan must:

- Be established only when not aware of MNPI;
- Specify the number of shares, plus either the date or the price at which the transaction is to occur, or include a formula for making such a determination;
• Prohibit the individual from later exercising any influence over the transaction, including how or when the transaction occurs; 
• Be entered into, and acted upon, in “good faith”.

Any person can establish a plan, not only insiders. Plans typically are in writing and, in most cases, a broker’s prototype plan is utilized — although, this is not a formal requirement. An individual can create their own plan. The rules do not preclude individuals from establishing multiple plans or specify the length or term of the plan. If a valid plan is established, the transaction called for can take place even if the individual possesses MNPI at that time. Many companies that recommend the use of 10b5-1 plans request that plans be submitted to their compliance department for review prior to adoption.

In general, an individual who adopts a 10b5-1 plan is expected to carry out all transactions called for under the plan. However, the SEC staff has indicated that a person who cancels a planned trade is not necessarily engaging in insider trading even if that person was aware of MNPI when they cancelled the transaction. The reasoning is that there cannot be a securities law violation without an actual purchase or sale of securities. However, cancellation of a transaction or a modification of a plan itself could call into question whether the plan was entered into in “good faith”. This can negate the protection a plan provides. Good faith is another subjective determination.

Our Informal Survey Data
We recently updated our informal survey as to the utilization of 10b5-1 plans by Ayco financial counseling clients. We asked Ayco financial counselors to indicate how many of their §16 insider clients, and also non-insiders, have adopted a Rule 10b5-1 plan within the past two years and which individuals modified or cancelled a plan within that time frame. Ayco works with over 2,000 Section 16 insiders at public companies, including around 350 CEOs. Here is an indication of their utilization of 10b5-1 plans, including the percentage of individuals with plans currently in place (as of October 2018):

Approximately 4% of those who adopted a plan within the past two years were reported to have modified or terminated their plan prior to all transactions called for under the plan.

Transactions Where Plan May Be Utilized
A 10b5-1 plan can be used for any of the following transactions by corporate insiders or any employee or individual who could be in possession of MNPI:

• Sale of company stock either as of a specified date (market order) of when the stock price reaches a defined threshold (limit order);
• Purchase of company stock (even if to meet share ownership targets);
• Exercise of stock options;
• Sale of company stock received upon vesting of restricted stock, delivery of RSUs, performance shares or other compensation in stock;
• Sale of shares acquired through Employee Stock Purchase Plan (ESPP) or ESOP;
• Purchase or sale of company stock in a 401(k) plan, IRA or other retirement plan;
• Sale of company stock to pay required tax withholding or meet cash flow needs.

It should be noted that the hedging of company stock, pledging of stock through a margin account, or the use of puts and calls on company stock all can lead to insider trading charges if entered into when an individual has MNPI. However, a gift of shares, whether to a family member, friend or trust that are not immediately sold generally would not require a 10b5-1 plan.

Common and Best Practices
While not all companies require or even encourage executives to utilize 10b5-1 plans (in fact, several companies discourage or disallow plans), those that do allow plans generally have “rules of the road” for the design of plans. Typically, these include some or all of the following:

• Cooling Off or Waiting Period - This is the period between the adoption of a plan and when the first transaction under the plan can take place. Although there are no formal requirements, the administration of virtually all plans have a cooling off period of anywhere from two weeks to 90 days or until the next “window” period. Most prototype broker plans suggest a 60-90 day waiting period.
• **Time Limits** - While there are no specific timeframes for the length of a 10b5-1 plan, plans typically are designed for a period of 3 to 6 months and rarely more than a year. A series of short-term plans can suggest manipulation, while a lengthy plan can be inflexible when there are unexpected changes in the individual’s needs or the company’s condition.

• **Number of Plans** - Rules do not limit the number of active plans an individual can have at any one time. However, some companies require or request individuals have only one plan in operation at any time. Multiple plans can raise a suspicion of manipulating the rules or raise the possibility of bad faith.

• **Transactions In or Outside of Window Period** - §16 insiders are not required by SEC rules to have stock transactions only in window periods. However, some companies have corporate policies that mandate transactions occur only in window periods. These companies may request or require that 10b5-1 plans be adopted only in an open window. Most companies, even those with these types of restrictions, will permit a transaction pursuant to a 10b5-1 plan at any time, even during a blackout period. Thus, these plans can provide greater flexibility in some instances.

• **Trades Outside of Plan** - There is no prohibition under the rules for an individual who has adopted a plan to have other transactions – purchases or sales – outside of the plan. But an accelerated sale of securities covered by a plan is not recommended as this would be deemed a modification of the plan, would need to be done only when the individual was not aware of MNPI, and could lead to suspicions as to the “good faith” required for a valid plan. For the same reasons, a best practice is to restrict any other stock transactions during the term of the plan to avoid the appearance of hedging the plan transaction.

• **Modification, Termination or Suspension of Plan** - In most cases, companies take no position with regard to whether a plan can be modified or cancelled. Some companies indicate that any such action must occur only when the individual is not aware of MNPI. A modification can be viewed as the termination of the prior plan and adoption of a new plan – which can trigger a new waiting period for subsequent transactions. It should be noted that an individual’s termination of employment does not automatically end the plan. Plans can be designed to automatically terminate or be suspended upon stipulated events – such as the announcement of a merger or upon an individual’s termination of employment, or even upon a defined hardship.

• **Whose Plan To Use** - Many of Ayco corporate partners recommend use of an approved plan for §16 insiders or others who wish to adopt a plan. Typically, these are with the broker with which the company has a relationship. But an executive may use their own broker’s plan or make alternate arrangements. In these instances, the company compliance department may want to review and approve the terms of the plan. It will also be extremely important to confirm who is going to administer the plan to ensure that the transaction occurs as scheduled. If it does not, all protection that the plan was designed to provide can be lost. Most companies require that they be notified prior to, or immediately upon, any transaction by a §16 insider so that a timely Form 4 can be filed.

• **Identifying Those With MNPI** - Not all insiders will be in possession of MNPI, but certain non-insiders may be – such as members of the legal department and the staff to senior executives. All who may have access to MNPI should be made aware of the rules.

• **Public Disclosure** - No public disclosure is required upon the adoption of a plan. But sometimes public disclosure can make sense to give advance notice of a scheduled future transaction. Companies are more likely to pro-actively disclose a plan adopted by the company’s CEO or named executive officers rather than other individuals. In most cases, this disclosure will be made in a Form 8-K filing – although, there are instances in which brief articles will appear in a financial publication stating simply that an individual had entered into an arrangement for the orderly sale of stock. Details of a plan are rarely provided.

**Academic and Journalist Studies**

There have been a number of academic and journalist studies relating to 10b5-1 plans. A significant early one was a 2006 analysis by Alan Jagolinzer from Stanford Univ. who reviewed 100,000 transactions by 3,000 executives at over 1,200 companies. This analysis and another by Alexander Robbins of U. of Chicago found that trades under 10b5-1 plans resulted in a greater rate of return compared to returns of those who did not enter into such plans. A follow-up study by Professor Jagolinzer reported that 46% of plans that were terminated early occurred within 90
days of the company releasing positive news. Another study by two professors from NYU and one from McGill University on merger activity suggested that a quarter of all M&A deals between public companies from 1996-2012 involved some kind of insider trading.

A more recent study from Stanford and the University of Cambridge (supported by Prof. Jagolinzer) reported that well-informed insiders at major U.S. banks bolstered their profits thanks to advanced knowledge of government programs created by the financial crisis that occurred over ten years ago. Harvard Business School studies have concluded similar results – politically connected insiders have an information advantage and can benefit from this. A Wall Street Journal analysis of trades by 20,000 executives reported that 1,400 individuals made trades just before major news was made public with average gains (or avoiding losses) of at least 10%.

It has become commonplace for insiders who file a Form 4 to footnote that the transaction was pursuant to a pre-arranged plan – a 10b5-1 plan. This voluntary disclosure actually helps academics trace transactions. However, these fail to address canceled plans and trades which need not be disclosed.

**Potential Issues With 10b5-1 Plans**

10b5-1 plans do not eliminate the risk of a charge of insider trading. If the rules are not followed, including if a plan is entered into or modified when the individual is in possession of MNPI, any protection the plan might appear to provide could be lost. Plans also can deprive an individual of flexibility by requiring a transaction at a predetermined time. In many cases, at least where an individual is not regularly in possession of MNPI, there may be no real need for a plan – shares can be sold in a window period or pursuant to company compliance policy. An unexpected event – such as a sudden rise or fall in stock price, termination of employment, divorce, or similar situation can lead to preferring that the plan be cancelled (it generally can be, but protection may be lost and the matter of “good faith” can be raised).

Sometimes, proving a negative – that the individual is not aware of MNPI – can be difficult. This is the reason many companies prefer a plan to be entered into during an open window period, or have legal counsel or corporate compliance authorize entry into a plan. Plans and trades under plans also do not relieve insiders of their reporting requirements, including Form 144 and Form 4 filings. But plans can be critical in some instances. For example, if stock options will expire within a year or less and the executive is regularly in possession of MNPI, the executive should consider entering into a plan in case they are prevented from exercising the option or selling stock even in an open window due to the MNPI.

**Proposed Legislation on 10b5-1 Plans**

There have been several bills introduced in Congress over the past several years that would modify the current rules on 10b5-1 plans. The most recent was the JOBS and Investor Confidence Act of 2018 which would require the SEC to study 10b5-1 plans and review whether insiders should be able to modify an existing plan. The bill had broad bipartisan support when it passed the House several months ago. Whether the Senate will approve the bill this year remains to be seen.

Another bill introduced into the House in July (Promoting Transparency Standards for Corporate Insiders Act) would require the SEC to study whether Rule 10b5-1 should be amended to limit the adoption of plans during open window periods; prohibit multiple, overlapping plans; require a mandatory delay between the adoption of a plan and the first trade; create rules as to the frequency that insiders may adopt, modify or cancel plans; require disclosure of plans and plan changes with the SEC; and require board oversight of 10b5-1 plans, including any company policies.

**New Task Force on Insider Trading Reform**

Unless Congress acts to modify the current outdated laws regarding insider trading, we likely can expect violations to continue. What should be of interest to those monitoring this topic, including those in corporate compliance, is that the former U.S. Attorney for Manhattan, Preet Bharara, and a current SEC Commissioner, Robert Jackson, recently announced the creation of the Bharara Task Force on Insider Trading. This will be a panel of experts, including former regulators, that is expected to propose insider trading reforms intended to protect American investors. It will be interesting to see whether this group will be able to nudge Congress into taking action to help reduce illegal insider trading.

**Conclusion**

Rule 10b5-1 trading plans can be an important part of a company’s overall compliance program. It’s in the interest of the company and its shareholders, as well as executives, directors and all employees and family members to avoid insider trading. We are seeing more companies tighten corporate compliance policies in light of the risks.
Companies also now must prepare for cyber breaches and the use of MNPI by employees, as well as contractors. The SEC issued guidance on this recently which provides ways for companies experiencing a potential material undisclosed cyber event to reduce insider trading risk. We are now seeing more companies educating officers and directors about insider trading and having a policy with regard to the use and design of 10b5-1 plans. If you’d like a sanitized example of a corporate policy discussing the use of 10b5-1 plans, please contact us.

**Lawsuit Over Entitlement to LTI Following Involuntary Termination**

Corporate mergers and acquisitions can lead to downsizing or involuntary terminations, including to senior executives. Whether this event results in a full, pro-rata, or no payment of bonuses and long-term incentive awards will generally be based on the terms of written plans or agreements. Yet, there can sometimes be a disagreement between the parties in this situation which can lead to litigation. Here is a recent example.

David Sellers was the Vice President of Business Development for CETCO Energy Services Company LLC. He had an executive employment agreement executed in 2011 which provided for a potential performance based long-term incentive (LTI) payment equal to 5% of the net margin of sales under his supervision if he remained employed by CETCO on January 18, 2015 – the end-date of the agreement.

In May 2014, CETCO was purchased by Minerals Technologies Inc. (MTI). Following this event, CETCO’s President was asked to downsize and reduce headcount. Sellers informally had indicated that he did not intend to continue his employment beyond the end-date of his employment agreement. Because of this, Sellers was placed on a list of employees to be let go and he was terminated in late 2014 but prior to the end-date of his employment agreement. When MTI failed to pay commissions owed to him, as well as the LTI benefits with an estimated value of just under $430,000, Sellers sued in a federal court in Texas, the company’s location. The court ordered MTI to pay him the undisputed amount of commissions owed to him, but concluded that since he had not remained employed until the end of the term of his employment agreement, he was not entitled to a payout of the LTI benefits. Sellers appealed this decision and the U.S. Court of Appeals for the 5th Circuit recently concluded that he was entitled to the LTI benefits.

A critical factor was the language in the employment agreement. It had a provision which indicated that no payments of the LTI would be made if the executive resigned or was terminated for cause prior to January 18, 2015. A separate provision stated that the employer could terminate his employment without cause by giving him 30-days written notice of termination, or in its discretion, continue to pay his salary in lieu of the notice. In addition, if the employee signed a release of all claims, the employer would continue to pay the employee’s base salary for two years after termination or until January 17, 2015, whichever comes first. The lower court had concluded that this provision required that Sellers be employed on January 18, 2015 in order to receive the LTI benefits.

The federal appeals court agreed with the lower court that the terms of the agreement unambiguously created a condition precedent that required Sellers to be employed on January 18, 2015 to qualify for LTI benefits. But, it then went further and said it would review whether this requirement could be excused or deemed to be fulfilled. It turned out that the employer had failed to provide Sellers with 30-days written notice of termination. Sellers did receive a month’s worth of salary. However, it had not been paid until January 15, 2015. Since the terms of the agreement indicated that any payment was to cover an additional 30-days’ worth of wages, the court concluded that the effective date of Sellers’ termination of employment was February 14, 2015 – 30-days following the date that he had received the initial month’s salary. This would mean that he technically was still employed as of the key date of January 18, 2015. This meant, according to the court’s opinion, that he should be entitled to the full payment of LTI benefits.

The court also said that it found it appropriate under the circumstances to have the payment made to Sellers. Under Texas law, if one party prevents another from performing a condition precedent or renders its fulfillment impossible, then the condition may be considered fulfilled. Thus, Sellers argued that he would have remained employed until the end date of the agreement but for the involuntary termination. As a result, he was entitled to the full amount of the LTI award. *(Sellers vs. Minerals Technologies, Inc.)*
Did You Know...?

- Two sons of former Egyptian President Hosni Mubarak and 7 others were imprisoned in Egypt earlier this year in connection with alleged insider trading of Al Watany Bank of Egypt. French authorities have been looking into suspicious insider trading transactions in more than a dozen companies, including Airgas, Lafarge, Peugeot, and Publicis Group. In India, the Securities Exchange Board (SEBI) recently alleged insider trading violations by two renowned media promoters. The CEO of Deutsche Börse resigned last year amid an insider trading scandal. He had bought stock prior to the public announcement of a proposed merger between the London Stock Exchange and Deutsche Börse.

- It wasn’t until 2012 that the Stop Trading on Congressional Knowledge (STOCK) Act was enacted that makes clear that insider trading prohibitions apply to members of Congress, their staff and other federal officials.

- According to a survey conducted by Morgan Stanley and Shearman & Sterling LLP on 10b5-1 Plan Disclosure Practices, 54% of S&P 500 companies disclosed that an insider utilized a 10b5-1 plan in 2017.

- One of the top finance movies of all time, “Wall Street” involves insider trading. The movie, released in 1987, starred Michael Douglas (who won an Academy Award for his performance as Gordon Gekko) and who uttered this line: “Greed, for lack of a better word, is good.”

- Among Americans in their mid-50s, 1 in 2 women and 1 in 3 men can expect to live to at least age 90, according to the Society of Actuaries. Their Retirement Plans Experience Committee recently released an updated mortality improvement scale (MP-2018) that should slightly decrease pension plan liabilities compared to MP-2017.

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