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At a Glance

Executives and other highly paid employees very often accrue large positions of their employers' stock, causing potential diversification, tax, and liquidity risk for the shareholder. Selling stock with significant unrealized capital gains may not be a tax-efficient option.

There are several investment strategies available to address this non-diversification issue — equity collars, variable prepaid forward contracts, pooling shares into an exchange fund, rebalancing with a completion fund, margin, charitable remainder trusts, and Rule 10b5-1 plans. Please request a copy of our Concentrated Positions Strategies brochure for a more in-depth discussion of these alternatives.

The information and application form contained in the the following pages will start you on the road to implementing your 10b5-1 Plan, tailored to your requirements.

Contact Us

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"It takes less time to do a thing right than it does to explain why you did it wrong."

- Henry Wadsworth Longfellow

Rule 10b5-1 Trading Plan Overview

Best Practices

- Establish only one 10b5-1 plan
 - Adopt a plan during an open trading window
- Establish a waiting period before the first transaction (one month or next open trading window)
- Plans typically have terms ranging from 6 months to 2 years
 - Avoid multiple modifications, suspension, and termination
- Publicly disclose the plan (but not details) through a Form 8-K
- Employ a third-party administering broker to execute the trades
- Limit discretion on margin accounts
- Coordinate with trading outside of the plan
- Ensure lock-up agreements contain exceptions for plans
- Strengthen corporate insider trading policies

Strategy

Insider trading restrictions (e.g., blackout periods and exposure to material non-public information, can pose a significant challenge to directors and officers when selling corporate stock. Rule 10b5-1 of the Securities and Exchange Commission (SEC) allows for a Rule 10b5-1 plan, which is a passive investment scheme, meaning, plan holders relinquish direct control over transactions. The plan must (1) expressly specify the amount, price and date; (2) include a written formula or algorithm, or computer program, to determine the amount, price and date of securities to be purchased or sold, or, (3) not permit the person to exercise any subsequent influence over how, when or whether to effect purchases or sales, provided the person exercising such influence has no material non-public information. Rule 10b5-1 plans can provide for multiple transactions, so different amounts of shares can be designated for each purchase or sale and multiple transactions at different prices can be ordered. The company does not need to be publicly traded and non-insiders may also set up plans. Plans may include securities of key suppliers and customers.

Benefits

Trading according to the previously defined parameters of the plan provides a mechanism for companies and corporate insiders to purchase and sell securities of the company when they have material non-public information, by providing an affirmative defense to insider trading.

Establishing a plan eliminates the need to evaluate the materiality of any nonpublic information that insiders may possess at each instance a transaction is contemplated; rather, the materiality determination only needs to be made at the time of plan enactment.

When insiders adopt Rule 10b5-1 plans, companies have a reduced responsibility in scrutinizing insider transactions and they can avoid entanglement with insider trading controversies. However, corporate oversight may be useful in assuring plans follow best practices and are institutionally consistent.

Considerations

Rule 10b5-1 plans may draw scrutiny when excessive modifications are made to the plan, the plan has limited duration, or multiple plans are established. Rule 10b5-1 plans would not advance the investment objectives of investors desiring tight control over finances or seeking to execute transactions on a short timeline.

While a plan must be entered during a time when the insider does not have material non-public information, a “cooling off period” between the establishment of the plan and the first transaction execution under the plan will strengthen the defense to insider trading.

Transactions pursuant to a Rule 10b5-1 plan must still comply with (1) the volume limitations of Rule 144 (if shares are not otherwise freely tradable and Rule 144 applies), (2) short swing profit rules and filings of Section 16 ownership forms (Form 4) with each transaction, and (3) filing Schedules 13D or 13G where appropriate.

Questionnaire

(1) Company / Issuer _____

(2) Class of Securities _____

(3) Executive Covered by Plan: _____

(4) Amount

Select how the amount should be calculated:

- ☐ Number of Shares: _____
- ☐ % of Holdings: _____%
- ☐ Dollar Amount: \$ _____

Select if the amount calculation is static or changes:

- ☐ Static during the term of the plan
- ☐ Changes during the term of the plan (describe): _____

(5) Price

Select how the price should be determined:

- ☐ Prevailing Market Price
- ☐ Limit Order Price: \$ _____
- ☐ Specific Dollar Price: \$ _____
- ☐ Minimum Price: \$ _____
- ☐ Maximum Price: \$ _____
- ☐ Price: Range: \$ _____ to \$ _____

Select if the price determination is static or changes:

- ☐ Static during the term of the plan
- ☐ Changes during the term of the plan (describe): _____

(6) Timing

Select how the date should be determined:

- ☐ Set Dates: Frequency: _____ *Ex: Quarterly, Monthly*
Day: _____ *Ex: 1st of the Quarter; Last Friday of the Month*
- ☐ Index: _____ rises/falls _____% *Ex: DJIA rises 10% over 2 months*
over _____
- ☐ Industry Move: Outperforms _____ by _____% *Ex: Stock outperforms DJT by 10% over 2 months*
over _____
- ☐ Price Gap: Opens more than _____% *Ex: Stock opens more than 5% over prior day's close*
over _____
- ☐ Milestone: _____ before/after *Ex: 15 days before a college tuition payment is due;*
_____ *Sale to fund withholding for future vest at time of vest*

Select how the time should be determined:

- ☐ Market Open
- ☐ Market Close
- ☐ Specific Time: _____:_____ Eastern Time

Questionnaire (cont'd)

(7) Start Date

Enter the first trading date for the plan:

____/____/____
MM DD CCYY

Best practices recommend it be at least 30 days after the effective date of the plan.

(8) End Date

Enter the last trading date for the plan:

____/____/____
MM DD CCYY

Best practices recommend it be at least 6 months after the first trading date of the plan. Plans may be of any duration.

(9) Percentage of Holdings

Percentage of holdings is covered by the plan:

☐ % of Holdings: _____%

Trading outside of the plan is strongly discouraged.

(10) Automation Suspension or Termination the Plan

Select what triggers an automatic suspension:

- ☐ Event: _____ for _____
- ☐ Event: _____ for _____
- ☐ Event: _____ for _____

Ex: Announcement of a merger suspends the plan for 6 weeks

Select what triggers an automatic termination

- ☐ Event: _____
- ☐ Event: _____
- ☐ Event: _____

Checklist

- ☐ Establish only one 10b5-1 plan
- ☐ Adopt a plan during an open trading window
- ☐ Establish a waiting period before the first transaction (minimum of one month)
- ☐ Plans typically have terms ranging from 6 months to 2 years
- ☐ Avoid multiple modifications, suspension, and termination and only do so during open windows
- ☐ Suspended plans should have a waiting period before reinstatement
- ☐ Publicly disclose the plan (but not details) through a Form 8-K, Item 8.01 (Item 7.01 may be used under appropriate circumstances) and/or press release
- ☐ If the plan is publicly disclosed, also publicly announce modifications, suspensions, and termination of the plan
- ☐ Employ a third-party administering broker such as Rockfleet to execute trades
- ☐ Consider requiring all insiders to use a sole pre-selected broker such as Rockfleet
- ☐ Consider prohibiting large sales at initiation of the plan
- ☐ Consider limiting sales to a percentage per day for situations where multiple awards to multiple recipients are likely to vest at the same time
- ☐ Prohibit short sales
- ☐ Limit discretion on margin accounts
- ☐ Coordinate with trading outside of the plan and limit such transactions
- ☐ Ensure lock-up agreements contain exceptions for plans
- ☐ Strengthen corporate insider trading policies and ensure employees and directors may establish Rule 10b5-1 plans
- ☐ Check for aggregation and volume limitations of Rule 144 (during any three-month period, the amount of stock that can be sold is the greater of the average weekly trading volume during the prior four calendar weeks or 1% of the outstanding shares) as sales of securities outside of the plan could effectively reduce the number of shares that could be sold under the plan
- ☐ File Form 144 if applicable (required to be filed by an affiliate of the issuer as a notice of the proposed sale of securities in reliance on Rule 144 when the amount to be sold under Rule 144 by the affiliate during any three-month period exceeds 5,000 shares or units or has an aggregate sales price in excess of \$50,000) at or prior to the time an order to sell is entered
- ☐ Report plan sales on a Form 4 in compliance with Section 16 of the 1934 Act, noting the sales were made pursuant to the plan
- ☐ File Schedule 13D and/or Schedule 13G as applicable
- ☐ The issuer's board of directors should periodically monitor plan transactions
- ☐ Conduct training for employees and directors on insider trading, disclosure policies, and the use of Rule 10b5-1 plans
- ☐ Address holding periods: registered shares held by insiders do not have a holding requirement; unregistered shares owned by anyone must be beneficially owned for at least six months before they can be sold or hedged
- ☐ There must be adequate current public information available on the company

There should be no communication about the plan between the administering broker and the executive except for trade confirmations as such communications could be considered a modification of the plan.

Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and between _____, hereinafter referred to as "Client" and Rockfleet Financial Services, Inc., hereinafter referred to as "Rockfleet."

RECITALS: WHEREAS, Client desires to retain Rockfleet to develop and implement a Rule 10b5-1 Plan ("Plan") on behalf of Client.

WHEREAS, Rockfleet warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the Agreement made, and the payments to be made by Client, the parties agree to the following:

SERVICES: Rockfleet agrees to work with Client to create a Plan in compliance with all securities regulations, customized to the specific needs of Client to meet its financial objectives.

FEES: Rockfleet agrees to perform the Services for the flat fee of \$500. This fee includes the creation of the Plan only and does not include commissions associated with executing any trades pursuant to the Plan.

PAYMENT: The Fees for Services under this Agreement shall be due within ten (10) calendar days after receipt by Client of an invoice covering the services rendered.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date first written above.

(Client)

By: _____

Name: _____

Title: _____

ROCKFLEET FINANCIAL SERVICES, INC.

By: _____

Name: _____

Title: _____

Disclosures

This information is not intended as a solicitation or an offer to buy or sell any securities or related financial instruments. The information contained herein is based on sources believed to be reliable, but its accuracy is not guaranteed. Rockfleet does not provide tax, legal or accounting advice. Rockfleet may make a market in securities and actively trades securities for its customers and/or for its own account. Therefore, Rockfleet may have a position in any securities at any time.

Securities in margin accounts may be loaned to or by Rockfleet. To the extent we determine, in accordance with Federal tax regulations, that your securities have been loaned, payment received by you with respect to such securities (including payments in lieu of dividends) may be reclassified as substitute payments. Substitute payments may be reported on different tax reporting forms than payments received on the underlying securities and may be subject to different tax consequences and rates. You are advised to contact your tax advisor to discuss the tax treatment of substitute payments.

Investment and insurance products are (1) not insured by the FDIC or any federal government agency; (2) not a deposit or other obligation of, or guaranteed by, any bank; and, (3) subject to investment risks, including possible loss of the principal amount invested.

Alternative investments carry specific investor qualifications which can include high income and net worth requirements in addition to relatively high investment minimums. Alternative investments are available to pre-qualified investors only.

Rockfleet archives and monitors outgoing and incoming e-mail. The contents of emails, including any attachments, are confidential to the ordinary user of the email address to which it was addressed. Emails may be produced at the request of regulators or in connection with civil litigation. Rockfleet accepts no liability for any errors or omissions arising as a result of transmission. If you are not the addressee of an email you receive from Rockfleet, you may not copy, forward, disclose or otherwise use it or any part of it in any form whatsoever. Use by other than intended recipients is prohibited. Rockfleet cannot accept orders via email.

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About Us

Rockfleet Financial Services, Inc. (Rockfleet) is an SEC and FINRA registered broker/dealer established in 2008. It is a woman-owned and led firm. Rockfleet has 10 registered representatives and advisors located strategically around the U.S., with a concentration in the New York region.

Rockfleet provides services to issuers, institutional clients and high net worth individuals. Since its inception, the firm continues to be a very active player in the capital markets with a long history of the underwriting and sale of new issue securities.

In addition to the firm's capital markets business line, Rockfleet works with a very select group of early stage businesses, helping them secure the capital needed for their growth.

Rockfleet is an SEC- and MSRB-registered municipal advisor, with teams focused on multiple sectors, including transportation, healthcare, education, and infrastructure, assisting municipalities and other entities with their funding and financing needs.

The firm provides full wealth management services, including cash and lending, trust services, retirement accounts, and investment advisory services.