

CHRIS VAN HOLLEN

U.S. SENATOR



FOR MARYLAND

Promoting Transparent Standards for Corporate Insiders Act

This bill requires the SEC to study, report to Congress, and write rules addressing the ability of corporate insiders to take advantage of the SEC's insider trading safe harbor rule.

- SEC Rule 10b5-1 provides that a purchase or sale of securities will not be deemed to be on the basis of material nonpublic information if it is pursuant to a contract, instruction, or plan that:
 - was entered into before the person became aware of the information;
 - specifies the amounts, prices, and dates for transactions under the plan (or includes a formula for determining them); and
 - does not later allow the person to influence how, when, or whether transactions will occur.
- However, corporate insiders may be able to circumvent the intent of this provision by making changes to their trading plans. For example:
 - in 2007, the SEC's enforcement chief warned that corporate executives could be abusing their 10b5-1 trading plans.
 - in 2012, a Wall Street Journal investigation found that more than 1,400 executives made "profitable and well-timed trades."
 - Lauren Cohen, an associate professor of business administration at Harvard University, told the Wall Street Journal that "We've found a lot of evidence that these insiders do statistically much better than we'd expect. ... they not only have proximity to this private information, but they can actually affect the outcomes."
- Specifically, the bill would require the SEC to look at whether the safe harbor rule should be amended to:
 - limit the time frame during which an issuer or insider can adopt a trading plan to issuer-approved trading windows;
 - limit the ability of issuers and insiders to adopt multiple trading plans;

- establish a mandatory delay between the adoption of the trading plan and the first trade under the plan;
 - limit the frequency that issuers and insiders may modify or cancel trading plans;
 - require issuers and insiders to file with the SEC trading plan adoptions, amendments, terminations, and transactions; and
 - require corporate boards to adopt policies for trading plans and monitor trading plan transactions.
- These changes would make it significantly more difficult for well-positioned insiders to illegally profit from privileged access to forthcoming firm disclosures while ensuring honest executives and others with critical information are still able to make trades and utilize these plans the way they were intended. Recent examples of such cases include:
 - the \$39 million sale of Intel stock by its CEO in November 2017 after he learned of two security flaws in Intel processors and within days of revising his trading plan for the second time that year.
 - a reported \$200 million sale of CBS stock by several current and former senior executives ahead of the company's public disclosure that it would investigate allegations of sexual harassment against CEO Les Moonves.
 - allegations that Apple's former senior director of corporate law, Gene Daniel Levoff, repeatedly made illegal trades on non-public revenue-and-earnings filings.
- The rulemaking process will ensure that a broad swathe of people can comment on this proposal. Responsible companies will be able to share their best practices, and experts and the American people will be able to share their opinions with the SEC.