

Via Hand Delivery

January 18, 2018

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street NE.,
Washington, DC 20549

Re: Rule 10b5-1 Trading Plans

Dear Mr. Chairman:

I am writing on behalf of the Council of Institutional Investors (CII), a nonprofit, nonpartisan association of public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management exceeding \$3.5 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$25 trillion in assets under management.¹

The purpose of this letter is to reiterate the request contained in our letters of December 28, 2012, to Chairman Elisse Walter² and May 9, 2013, to Chairman Mary Jo White, regarding Rule 10b5-1 trading plans.³ Those letters respectfully requested that the U.S. Securities and Exchange Commission (Commission) should consider pursuing interpretative guidance or amendments to Rule 10b5-1 that would *require* Rule 10b5-1 plans to adopt the following protocols and guidelines:

- Companies and company insiders should only be permitted to adopt Rule 10b5-1 trading plans when they are permitted to buy or sell securities during company-adopted trading windows, which typically open after the announcement of the financial results from a recently completed fiscal quarter and close prior to the close of the next fiscal quarter;
- Companies and company insiders should be prohibited from adopting multiple, overlapping Rule 10b5-1 plans;

¹ For more information about the Council of Institutional Investors (“CII”), including its members, please visit CII’s website at <http://www.cii.org/members>.

² Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to The Honorable Elisse B. Walter, Chairman, U.S. Securities and Exchange Commission 3 (Dec. 28, 2012), http://www.cii.org/files/issues_and_advocacy/correspondence/2012/12_28_12_cii_letter_to_sec_rule%2010b5-1_trading_plans.pdf.

³ Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to The Honorable Mary Jo White, Chairman, U.S. Securities and Exchange Commission 1-2 (May 9, 2013), http://www.cii.org/files/issues_and_advocacy/correspondence/2013/05_09_13_cii_letter_to_sec_rule_10b5-1_trading_plans.pdf.

January 18, 2018

Page 2 of 2

- Rule 10b5-1 plans should be subject to mandatory delay, preferably of three months or more, between the adoption of a Rule 10b5-1 plan and the execution of the first trade pursuant to such a plan;
- Companies and company insiders should not be allowed to make frequent modifications or cancellations of Rule 10b5-1 plans;
- Companies and company insiders should disclose Rule 10b5-1 program adoptions, amendments, terminations and transactions; and
- Boards of companies that have adopted Rule 10b5-1 plans should (1) adopt policies covering plan practices, (2) periodically monitor plan transactions and (3) ensure that company policies discuss plan use in the context of guidelines or requirements on equity hedging, holding and ownership.⁴

If the above protocols had been in place, the widely reported \$39 million sale of Intel stock by CEO Brian Krzanich on November 29, 2017, within 30 days of revising his trading plan for the second time during the year, would have been a clear violation of Rule 10b5-1.⁵ We are confident that most retail investors would agree with us that Mr. Krzanich's stock sale, just weeks prior to the public announcement of a design flaw in Intel chips, was at best inherently unfair to other market participants. The Commission should promptly provide additional guidance or amendments to Rule 10b5-1 along the lines we have suggested to stop this long-running abuse of the spirit of the rule.

Thank you for consideration of our views. If we can answer any questions or provide additional information on this matter, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,



Jeffrey P. Mahoney
General Counsel

CC: Commissioner Kara M. Stein
Commissioner Michael S. Piwowar
Commissioner Robert J. Jackson, Jr.
Commissioner Hester M. Peirce

⁴ Letter to The Honorable Mary Jo White at 1; *see* CII, Policies on Corporate Governance, § 5.15b Stock Sales (updated Sept. 15, 2017) (“10b5-1 program adoptions, amendments, terminations and transactions should be disclosed immediately, and boards of companies using 10b5-1 plans should: (1) adopt policies covering plan practices, (2) periodically monitor plan transactions and (3) ensure that company policies discuss plan use in the context of guidelines or requirements on equity hedging, holding and ownership.”), http://www.cii.org/files/policies/09_15_17_corp_gov_policies.pdf.

⁵ *See, e.g.*, Stephen Gandel, SEC Needs to Quit Taking Executives' Word on Stock Sales; Gadfly, Wash. Post, Jan. 9, 2017, https://www.washingtonpost.com/business/sec-needs-to-quit-taking-executives-word-on-stock-sales-gadfly/2018/01/09/92cfc61a-f542-11e7-9af7-a50bc3300042_story.html?utm_term=.9e9842673c11.