

**BILL NUMBER: [H.R. 624](#) (Waters-CA) as introduced January 16, 2019**

**SUMMARY**

H.R. 624 directs the Securities and Exchange Commission (SEC) to carry out a study of Rule 10b5-1 and consider certain types of amendments that may clarify and enhance existing prohibitions against insider trading and the potential impacts of such amendments. The bill requires the SEC to report the findings to Congress and revise regulations consistent with the results of the study.

**BOARD POSITION**

**Support.** The board's policy is to support legislation that is consistent with the investment policy adopted by the board as presented in the CalSTRS Investment Policy and Management Plan.

**REASON FOR THE BILL**

According to the author, H.R. 624 is a meaningful effort to help the SEC better understand illicit insider trading, clamp down on fraud and abuse within our financial system, improve federal government oversight and ensure corporate insiders are unable to indirectly engage in illegal insider trading through changes to their trading plans.

**ANALYSIS**

**Existing Law:**

Rule 10b5-1 was established by the SEC to allow insiders of publicly traded corporations to set up a trading plan for selling stocks they own. The rule allows insiders to sell a predetermined number of shares at a predetermined time while following insider trading laws. Many corporations use the rule to avoid accusations of insider trading.

**This Bill:**

Specifically, H.R. 624 directs the SEC to conduct a study of whether Rule 10b5-1 should be amended to:

- Limit the ability of issuers and issuer insiders to adopt a Rule 10b5-1 trading plan to a time when the issuer or issuer insider is permitted to buy or sell securities during issuer-adopted trading windows;
- Limit the ability of issuers and issuer insiders to adopt multiple trading plans;
- Establish a mandatory delay between the adoption of a trading plan and the execution of the first trade pursuant to such a plan;
- Limit the frequency that issuers and issuer insiders may modify or cancel trading plans;
- Require issuers and issuer insiders to file trading plan adoptions, amendments, terminations and transactions with the SEC; or
- Require boards of issuers that have adopted a trading plan to adopt policies covering trading plan practices, periodically monitor trading plan transactions and ensure that issuer policies discuss trading plan use, as specified.

In carrying out the study, the SEC shall consider how such amendments clarify and enhance existing prohibitions against insider trading, the potential impacts of the amendments, and any other consideration that the SEC considers necessary and appropriate for the protection of investors.

No later than one year after the enactment of this bill, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the findings and determinations made in the study.

After the completion of the study, the SEC shall revise Rule 10b5-1 consistent with the results of the study and subject to public notice and comment.

## LEGISLATIVE HISTORY

S. 573 (Van Hollen-MD, 2019) directs the SEC to study Rule 10b5-1 and consider amendments that may clarify and enhance existing prohibitions against insider trading and the potential impacts of such amendments. Requires the SEC to report the findings to Congress and revise regulations consistent with the results of the study.

H.R. 6320 (Waters-CA, 2018) would have directed the SEC to study and report on possible revisions to regulations regarding Rule 10b5-1 trading plans. Would have required the SEC to revise regulations consistent with the results of the study. H.R. 6320 was held in the House Committee on Financial Services.

S. 488 (Toomey-PA, 2018), as part of the larger “JOBS and Investor Confidence Act of 2018,” would have directed the SEC to study and report on possible revisions to regulations regarding Rule 10b5-1 trading plans. Would have required the SEC to revise regulations consistent with the results of the study. S. 488 was held at the Senate desk.

## PROGRAM BACKGROUND

Under Rule 10b5-1, directors, large shareholders, officers and other major insiders of a company who are able to access material nonpublic information (MNPI) are able to establish a written plan that details when they will be able to buy or sell shares at a predetermined time on a scheduled basis.

To enter into this plan, the “insider” must not have access to the MNPI regarding anything about the company or the company’s securities, and in order to be valid, the plan must follow three distinct criteria:

- The price and amount must be specified and certain dates of the sales or purchases must be noted.
- The metrics behind the method of buying or the sales method must be qualified.
- The plan must allow the broker the right to determine when to make the sale or purchase as long as the broker does so without any MNPI to coincide with insider trading laws.

Currently, there is no requirement in the SEC laws that make it necessary to disclose the use of Rule 10b5-1 to the public.

Since CalSTRS is a public pension fund, Rule 10b5-1 plans are not available for use by CalSTRS staff; thus, CalSTRS is not directly impacted by this measure. However, Rule 10b5-1 plans are

available to companies in CalSTRS' investment portfolio, and as a result, abuses of the plans by issuers and issuer insiders to conduct insider trading may negatively affect other shareholders of the company, including CalSTRS. Therefore, staff considers this legislation beneficial to financial markets overall as it seeks to further eliminate possible insider trading activity.

## **FISCAL IMPACT**

Program Cost – None.

Administrative Costs/Savings – None.

## **SUPPORT**

CalSTRS  
CalPERS  
Council of Institutional Investors  
Healthy Markets  
North American Securities Administrators Association  
Public Citizen Americans for Financial Reform

## **OPPOSITION**

None known.

## **ARGUMENTS**

- Pro: Promotes fair and efficient financial markets that encourages participation of investors.  
May result in improvements that will curtail abuses that have led to insider trading.
- Con: Requires the use of limited resources for the SEC to undertake a study.

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