How the Rule 10b5-1 changes may impact you

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The Securities and Exchange Commission recently amended Rule 10b5-1 and added new disclosure requirements for use of Rule 10b5-1 trading arrangements. This document highlights these new amendments.

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Rule 10b5-1 background

When and why was Rule 10b5-1 adopted?

The SEC adopted Rule 10b5-1 in August 2000 to provide more clarity regarding the meaning of "manipulative and deceptive device[s] or contrivance[s]" prohibited under Section 10(b) and Rule 10b-5 with respect to trading on the basis of material nonpublic information. In addition, Rule 10b5-1(c) established an affirmative defense to liability under Section 10(b) and Rule 10b-5 for insider trading.

Why are changes to the rule being made now?

Since the adoption of Rule 10b5-1, academics, members of Congress and institutional investors have expressed concern that traders have sought to benefit from its liability protections while trading securities opportunistically on the basis of material nonpublic information. The amendments are intended to improve investor confidence in the securities markets by significantly reducing opportunities for corporate insiders to misuse Rule 10b5-1 to trade on material nonpublic information. Also, by adding the new disclosure requirements, the SEC hopes to increase transparency regarding the use of trading plans, issuers' insider trading policies and procedures, and policies and practices on granting equity.

Who is subject to the changes, and when will they take effect?

Changes apply to directors, officers and others entering into Rule 10b5-1 plans and took effect February 27, 2023.

Rule 10b5-1 changes

New conditions for the affirmative defense

Some of the changes to the rule update the conditions that must be met for the 10b5-1 affirmative defense.

Directors and officers

Prior version of the rule	Revised rule
No cooling-off period	• Mandatory cooling-off period that's the later of: – 90 days after the plan's adoption or modification – Two business days following the disclosure of financial results in periodic reports, such as Forms 10-Q and 10-K, for the fiscal quarter in which the plan was adopted (not to exceed 120 days)
No certification at plan adoption	• Statement certifying that they're: – Not aware of material nonpublic information about the security or issuer – Adopting the plan in good faith and not part of a plan or scheme to evade prohibitions of Rule 10b-5

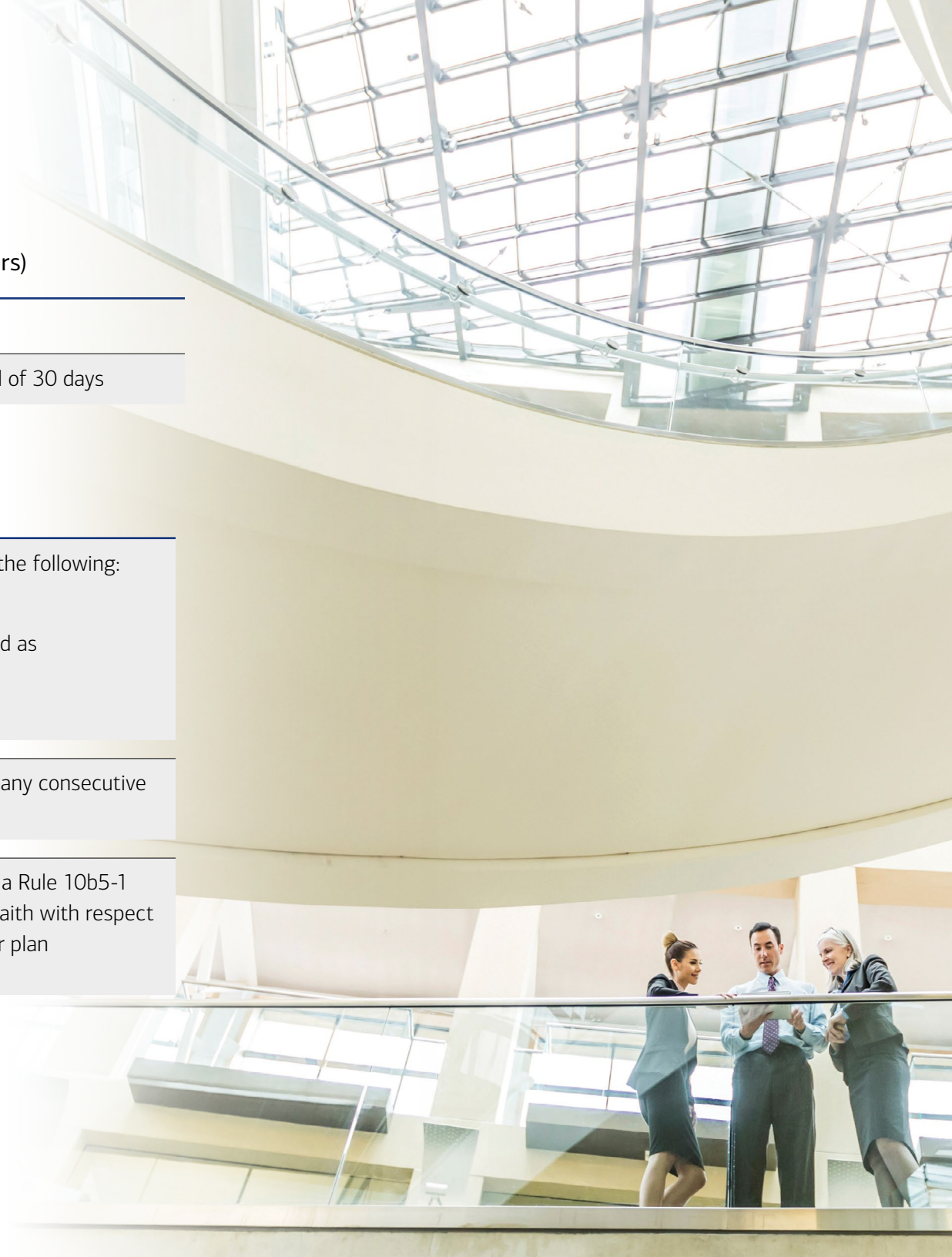
Rule 10b5-1 changes

Persons (other than the issuer, directors and officers)

Prior version of the rule	Revised rule
No cooling-off period	• Mandatory cooling-off period of 30 days

Persons (other than the issuer)

Multiple overlapping plans allowed	• No overlapping plans except the following: – Sell-to-cover plans – Multiple broker plans treated as a "single plan" – Later-commencing plans
No limit on single-trade plans	• One single-trade plan during any consecutive 12-month period
No express condition that the person who entered into the Rule 105b-1 plan "has acted in good faith with respect to the contract, instruction, or plan"	• All persons who entered into a Rule 10b5-1 plan required to act in good faith with respect to the contract, instruction or plan



New disclosures

Prior requirements	Revised requirements
No requirement for issuers to disclose the plan; optional disclosure on Form 8-K or press release	• Quarterly disclosure of plan required for directors and officers, including name and title; date of adoption, termination or modification; and number of shares to be sold for directors and officers
No insider trading policy disclosure	• Issuers required to disclose annually their insider trading policies and procedures as an exhibit to Forms 10-K and 20-F
No disclosure on Forms 4 and 5 that trades were intended to satisfy affirmative defense	• Mandatory "check the box" on Forms 4 and 5 for trades under Rule 10b5-1 plans
Gifts reported on Form 5	• Mandatory reporting of gifts on Form 4 within two business days of the transaction
Less stringent option grant policies and practices disclosure	• Issuers required to disclose policies and practices regarding the timing of awards and the release of material nonpublic information

Form 144 EDGAR filing

Will the rule changes affect the filing of Form 144?

Yes. Here are some of the ways Form 144 filings will be affected:

- As of April 13, 2023, paper filings and PDFs submitted through email **will no longer be permitted.**

- Affiliates, or designated filing agents, will be **required to file Form 144 electronically** through the Electronic Data Gathering, Analysis and Retrieval (EDGAR) system.

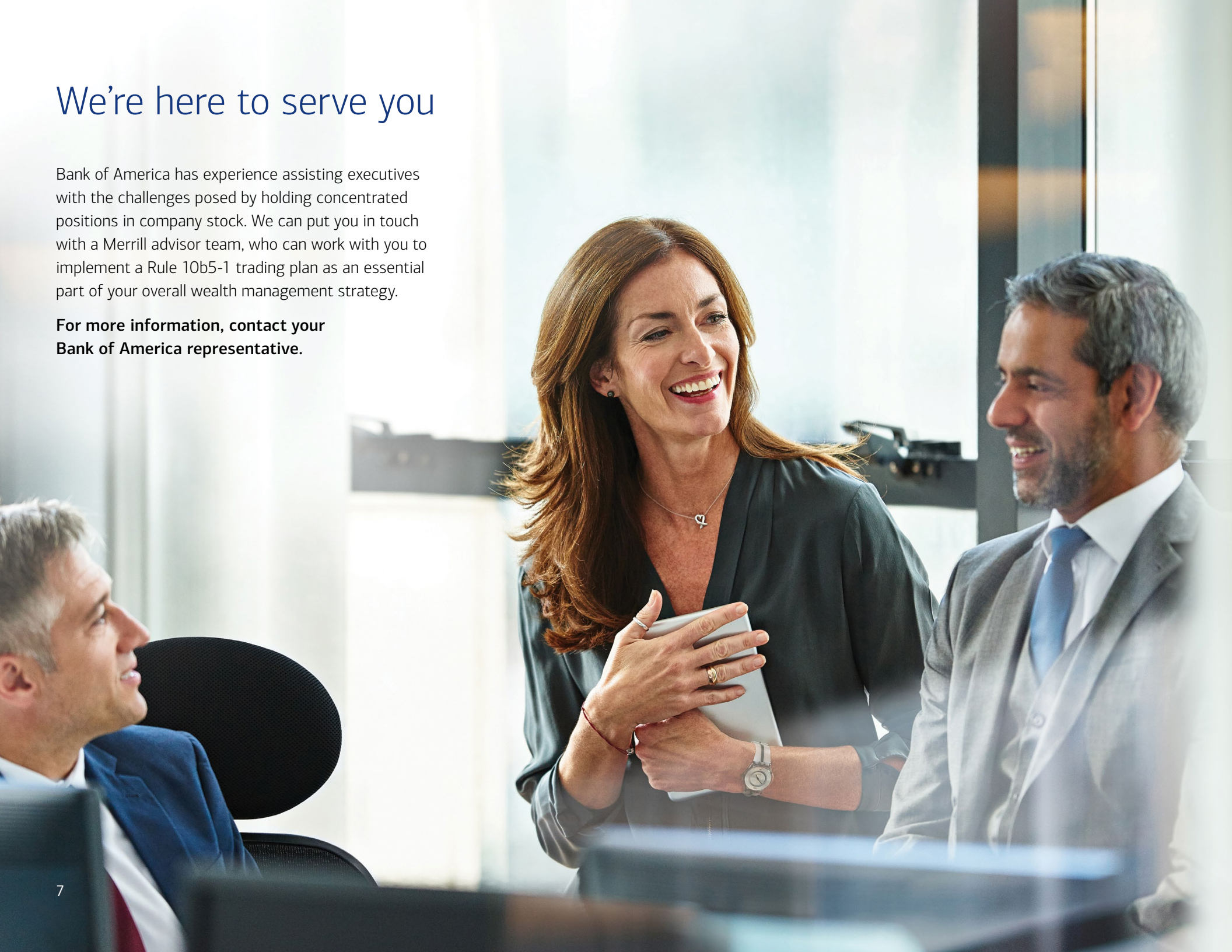
- The SEC recently extended the submission time for Form 144 from **5:30 p.m. to 10 p.m.** Eastern.

- Unless the affiliate elects to file Form 144, advisors will have the capability to file electronically. Clients will need to provide their advisor with their filing credentials.

We're here to serve you

Bank of America has experience assisting executives with the challenges posed by holding concentrated positions in company stock. We can put you in touch with a Merrill advisor team, who can work with you to implement a Rule 10b5-1 trading plan as an essential part of your overall wealth management strategy.

For more information, contact your Bank of America representative.



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