

'Bad Optics' Or Something More? Moderna Executives' Stock Sales Raise Concerns

[Tom Dreisbach](#) September 4, 2020 5:00 AM ET



Moderna, based in Cambridge, Mass., has reached phase three trials for its coronavirus vaccine. At the same time, its executives have sold tens of millions of dollars worth of stock, which has led to intense criticism of the company.

Maddie Meyer/Getty Images

Whether the coronavirus vaccine developed by Moderna succeeds or not, executives at the small biotech company have already made tens of millions of dollars by cashing in their stock. An NPR examination of official company disclosures has revealed additional irregularities and potential warning signs.

"On a scale of one to 10, one being less concerned and 10 being the

most concerned," said Daniel Taylor, an associate professor of accounting at the Wharton School, "this is an 11."

Taylor said Moderna's stock-selling practices appear well outside the norm, and raise questions about the company's internal controls to prevent insider trading.

Since January, CEO Stéphane Bancel has sold roughly \$40 million worth of Moderna stock held by himself or associated investment funds; Chief Medical Officer Tal Zaks has sold around \$60 million; and President Stephen Hoge has sold more than \$10 million.

No clear evidence has emerged indicating that executives sold stock based on confidential internal information, which would be illegal. And as long as they don't engage in insider trading, executives are typically free to sell company stock.



Stéphane Bancel, chief executive officer of Moderna, has sold roughly \$40 million worth of stock in the company since the beginning of this year.

Adam Glanzman/Bloomberg via Getty Images

The stock sales first came to widespread notice after Moderna announced positive early data from a vaccine trial in May. At that point, the company's share price jumped and official disclosures showed executives cashing in their shares for millions of dollars.

"As long as stocks are sold after public announcements - and not

before - one might conclude that for an executive with significant net worth tied up in the company, it's a prudent thing to do," said Marc Fagel, a former longtime enforcement official with the Securities And Exchange Commission (SEC). "But the optics aren't great."

The Moderna vaccine was quick to reach a [phase 3](#) trial, and is seen as a promising contender. But, in some ways, the executives' stock sales have overshadowed the company's progress.

Advocates have questioned whether it's appropriate for executives to privately profit before bringing the vaccine to market, especially when American taxpayers have committed roughly \$2.5 billion to the company's vaccine development and manufacture.

Here's what NPR's examination found:

- **Stock Sales Worth Tens Of Millions:** Since June 1, NPR has found, company executives have sold roughly \$90 million worth of Moderna stock. Rather than put a hold on the trades after facing intense criticism in May, company executives continued to sell.
- **Questionable Modifications To Stock Sale Plans:** Moderna says its executives pre-scheduled their stock sales long in advance. Those schedules - known as 10b5-1 plans - can act as a defense to charges of insider trading. But the plans have to be put in place when executives do not have confidential inside information. NPR has found multiple executives adopted or modified their plans just before key announcements about the company's vaccine. That has raised questions about whether they were aware of nonpublic information when they planned their stock trades.

- **Selling To Zero:** Generally, corporate best practices suggest that a company's leadership should hold on to at least some stock in their company to have "[skin in the game](#)." That way, the thinking goes, an executive has an incentive to improve the company's performance. As Moderna has been developing its coronavirus vaccine, two executives, including the Chief Medical Officer, have sold all their stock holdings in the company. The General Counsel has sold nearly all of her holdings.

In an interview with NPR, Ray Jordan, Moderna's Chief Corporate Affairs Officer, said the company has strict internal policies in place to prevent illegal insider trading. For example, Jordan said, the company only allows employees to make changes to their stock sale schedules when they don't have confidential inside information that could affect the company's share price.

At all other times, Jordan said, the company imposes a blackout period, and employees are no longer allowed to change those schedules. (The company declined to provide dates of those blackout periods.)

NPR asked Jordan why Moderna executives modified their 10b5-1 plans just before major announcements. Initially, Jordan said by email, "I believe you must have your dates wrong."

NPR then provided documentation of those dates from the company's official disclosures to the government, which Jordan did not dispute.

Jordan then said that even though multiple Moderna executives changed their 10b5-1 plans within one business day of announcements, the company had determined that those executives

did not have "material nonpublic information" - a key term for insider trading - when they made those changes.

"The dates that these 10b5-1 plans were entered into or amended represented open trading windows," Jordan later said in a statement, "meaning the individuals entering into these plans and the Company were not in possession of material, nonpublic information, based on an assessment by legal counsel of the facts available at that time."

A spokesperson for the SEC declined to comment for this story.

From a relative unknown, to a key player in the vaccine race

Moderna [launched](#) in 2010 with a headquarters based in Cambridge, Mass., focused on using a technology called messenger RNA (or mRNA) to develop vaccines and therapeutics. The mRNA technology has been widely considered innovative, but remains largely unproven. The company has never brought a product to market. In early January, Moderna was [trading](#) for under \$20 per share, and was valued at around six billion dollars.

Then Moderna announced that it had started collaborating on a coronavirus vaccine with scientists from the National Institute of Allergy and Infectious Diseases, which is led by Dr. Anthony Fauci.

By April, the government had [committed](#) half a billion dollars to the Moderna vaccine project as part of Operation Warp Speed.

Since then, the company's stock price has exploded. Press releases suggesting positive news from the scientific trials, or announcing additional commitments of taxpayer funding sent the [share price](#) to a peak of around \$95, before dropping to between \$60-\$70 in recent

months. The company is now valued at [around](#) \$25 billion.

As a result, shares owned by Moderna executives suddenly became much more valuable. And those executives have cashed in tens of millions of dollars worth of stock, according to filings with the SEC.

In May, those sales led to a wave of critical press, and even led to some questions from Wall Street's top regulator. "Why would you want to even raise the question that you were doing something that was inappropriate?" SEC Chairman Clayton [asked](#) in response to a question from CNBC.

The bad press and critical comments did not deter continued sales. Since June 1, NPR found, executives sold around \$90 million worth of stock.

Public money, private gain

The U.S. government is making massive financial bets on several vaccine candidates. In all likelihood, only some of those vaccine candidates will prove sufficiently safe and effective.

"If the vaccine doesn't work, you lost a lot of money," Fauci has [said](#). "But we feel this is serious enough that it's worth the financial risk."

But even if taxpayers lose money betting on Moderna, the company's executives have already made millions.

"The insiders are making plenty of profit and they're mostly doing it with our money," said Margarida Jorge, a campaign director with the group [Lower Drug Prices Now](#). "I'm absolutely for deploying public money in the interests of public health and the public good. But we don't have any commitment from the administration that any of this

investment is ultimately going to benefit real people."

Moderna has argued that the company was only in a position to work with the government on a coronavirus vaccine, because it had spent a decade developing its mRNA technology with the support of private investors.

"The company has been funded over the years by billions of dollars of private investment," Zaks [told](#) the *Freakonomics* podcast in August. "Those billions created the opportunity for the U.S. government to come in earlier this year and say, 'I'm going to add some money to the pot to make sure that you get the development for this vaccine right.'"

"Set it and forget it" stock plans

Moderna has offered another defense of those stock sales: the sales, representatives and executives say, were scheduled well in advance, and were unrelated to the market-moving announcements about the coronavirus vaccine. An NPR examination of the company's financial filings tells a more complicated story.

The schedules are known as 10b5-1 plans. If your stock trades are on autopilot, the idea goes, then you can't be accused of insider trading. But these "set it and forget it" plans have to be adopted when executives do not have "material nonpublic information," to use the legal term.

In 2000, for example, Kenneth Lay, had a 10b5-1 plan. Lay was a central figure in one of the biggest corporate scandals in American history, the financial collapse of Enron. But he established his plan, the SEC [alleged](#), knowing that the company was in deep trouble. And

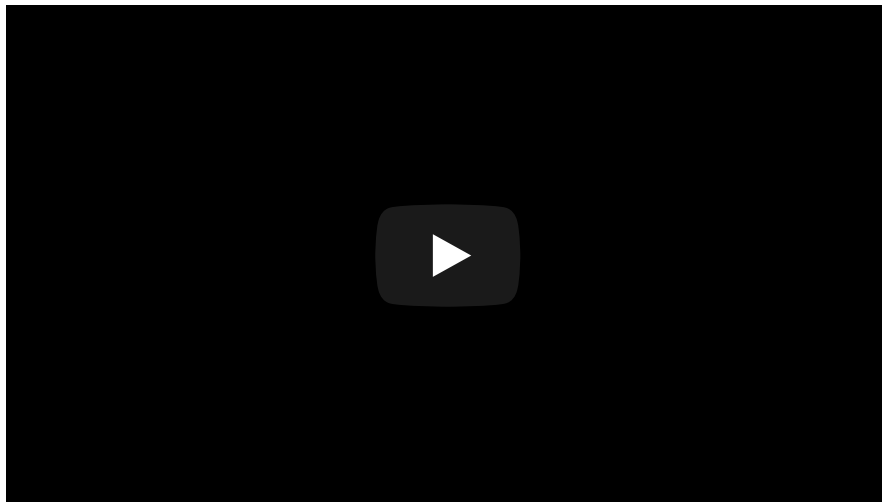
the plan did not protect him from prosecution.

Nothing has emerged suggesting that Moderna's representations about its vaccine development or internal finances are inaccurate.

But the company's statements have raised questions.

In an [interview with CNBC](#) in July, CEO Bancel said he and other executives set up their 10b5-1 plans "a long time ago" - in December 2018 - and "obviously, when we set up those plans, none of us had any idea what was going to happen in 2020."

In fact, NPR has found, Moderna executives, including Bancel himself, implemented new plans or modified older plans at multiple points in 2020, and right around key announcements related to the company's vaccine.



Moderna CEO Stéphane Bancel spoke to CNBC in July. He claimed that executives' sale of stock in the company was scheduled "a long time ago." But he did not mention that he and other executives had modified those schedules (known as 10b5-1 plans), or adopted new schedules at the same time the company has been developing a coronavirus vaccine.

YouTube

On Jan. 21, 2020, for example, Chief Medical Officer Dr. Tal Zaks [amended](#) his 10b5-1 plan. (It's unclear what changes he made.)

Then, on Jan. 22, Moderna first widely [confirmed](#) that it was working with the government on a coronavirus vaccine. The following day, Jan. 23, the company [announced](#) it had received additional funding to support its coronavirus vaccine development.

NPR asked Moderna whether Zaks might have been aware of the collaboration with the government when he changed his stock trading plan.

"What was known on that particular day or not known, I couldn't specifically talk to," Moderna's Jordan told NPR. But he said that the Moderna legal team only allows employees to change their 10b5-1 plans if they do not possess inside information that could affect the company's share price.

Later, on Friday, March 13, three Moderna executives adopted new 10b5-1 plans, according to records reviewed by NPR: [Zaks](#), Chief Technical Operations and Quality Officer [Juan Andres](#), and then-Chief Financial Officer [Lorence H. Kim](#). (Kim [left](#) the company in August 2020.)

On Monday, March 16 - one business day later - the company [announced](#) that it had given a participant the first dose of their vaccine as part of its phase 1 trial. The stock ended that day up 24% compared to the previous day's close. Moderna was "bucking the trend" of the broader market, which was panicking over coronavirus fears, one [CNBC](#) host said at the time.

Timing Of Changes To Pre-Scheduled Stock Sales Raises Questions

Jan. 21 - Chief Medical Officer Dr. Tal Zaks [amends](#) his schedule of stock sales, known as a 10b5-1 plan.

Jan. 22 - Moderna widely [confirms](#) that it is working on a coronavirus vaccine with the National Institutes of Health. The company's share price rises nearly 5% over the previous day's close.

Jan. 23 - Moderna [announces](#) new funding from the Coalition for Epidemic Preparedness Innovations.

Mar. 13 - Chief Technical Operations Officer [Juan Andres](#), Chief Financial Officer [Lorence Kim](#), and [Zaks](#) adopt new 10b5-1 trading plans.

Mar. 16 - Moderna [announces](#) that it provided the first dose of its coronavirus vaccine to a participant in a phase 1 trial. Moderna stock climbs 24% over the previous day's close.

May 18 - Moderna [reports](#) early positive data from its phase 1 trial. The company's stock ends the day up 20% over the previous day's close.

May 21 - CEO Stéphane Bancel [adopts and amends](#) multiple 10b5-1 trading plans.

May 29 - Moderna [announces](#) another milestone in its phase 2 coronavirus vaccine trial.

June 1 - President Stephen Hoge [amends](#) his 10b5-1 plan.

Despite the close timing, Jordan told NPR, "by the judgment of the legal team, there would not have been material, nonpublic information known" when executives entered into the new plans.

"Every company and individual is entitled to the presumption of innocence. That said, from the public's perspective, this trading behavior looks very problematic," said Taylor of the Wharton School, who first pointed out the timing of these changes to NPR.

"If I put on my SEC enforcement hat, I would certainly be asking, 'What caused you to change the plan on a Friday?'" said Kurt Wolfe, who works as a defense attorney in securities cases for the firm Troutman Pepper. "I don't think it's a good fact pattern."

On May 21 - in between announcements of major vaccine trial milestones on [May 18](#) and [May 29](#) - CEO Bancel [amended](#) and adopted 10b5-1 plans. And on June 1, President Hoge [amended](#) his trading plan.

"Amending a trading plan after a positive announcement, like trading after a positive announcement, is only problematic if the executive possesses material, nonpublic information at the time," said Fagel. "Though repeated or questionably-timed changes to a trading plan will reduce its value as a defense to insider trading."

In August, Moderna appeared to recognize that its executives' changes to 10b5-1 plans had created a bad impression.

The company announced in a [filing](#) with the SEC that "to avoid any distraction as we pursue our mission, all members of our executive team and board of directors have agreed not to enter into new 10b5-1 trading plans, nor add new shares to existing trading plans, nor

engage in additional unscheduled sales of Moderna stock in the open market," until the company either submitted its vaccine to the FDA for approval, or discontinued the project altogether.

"We do not undertake any obligation to update or otherwise comment further on this matter," the filing stated.

Selling to zero

Using these 10b5-1 plans, two Moderna executives - [Zaks](#) and [Andres](#) - have sold all of their shares in the company. General Counsel [Lori Henderson](#) has sold nearly all of her shares.

In fact, roughly every week since June, Zaks has exercised stock options (meaning, he bought stock at a price set by the company as part of his compensation), and then immediately sold all of his shares for a significant profit. On Aug. 24, for example, Zaks [exercised](#) stock options and bought 25,000 shares at bargain prices of between \$12 to \$21. He then immediately sold all of those shares for around \$65 per share. Zaks ended up with a profit of nearly \$1.2 million.

SEC filings indicate these trades are made under the 10b5-1 plan he adopted in March.

Selling so much stock can also raise concerns for investors - and the public - about why company leaders would sell now if they expected their vaccine to succeed later. After all, a safe and effective vaccine could send Moderna's stock to even greater heights.

"It perhaps draws questions about how much they believe in it," said Wolfe.

Many corporations encourage their employees to hold on to some

amount of equity in a company, to have "skin in the game."

Of course, there are other incentives for employees to succeed. "They clearly have their salary. They clearly have the reputation. They clearly have lots of human capital invested," said Taylor. And their vaccine could save countless lives.

If the company does develop a safe and effective coronavirus vaccine, and its stock keeps rising, then "these trades will be water under the bridge," said Fagel, the former SEC enforcement official.

But, Fagel warns, if the vaccine fails, then SEC regulators and angry investors may come looking for answers. In that case, he said, "both class action litigation and an SEC investigation would seem inevitable."