

Three Things About SEC Chair Gensler's Rule 10b5-1 Speech

SEC Chair Gary Gensler gave a [speech](#) yesterday in which he talked about his request to the Staff that they make recommendations to the Commissioners regarding "freshening up" Rule 10b5-1. Gensler enumerated several "loopholes" in current Rule 10b5-1: no required cooling-off period before trades can be made under plans; no limitations on cancelling 10b5-1 plans (an executive could theoretically cancel a plan while in possession of MNPI); no mandatory disclosure requirements regarding adoption, modification and terms of 10b5-1 plans; and no limits on the number of 10b5-1 plans an insider can adopt. Here are three things you should know about these loopholes and the potential for rulemaking:

1. Cooling-off periods, limits on cancelling plans when in possession of MNPI, and limiting insiders to enter into only one 10b5-1 plan at a time are all consensus practices that many companies have already instituted through insider trading policies and other corporate compliance procedures.
2. Chair Gensler specifically referred to mandating a four- to six-month cooling-off period. Query whether such a long cooling-off period is truly necessary to demonstrate that an insider has adopted a plan in good faith. If an executive adopts a 10b5-1 plan two days after the company releases its Q1 results - say, on May 8th - is there a need to mandate that the plan cannot trade until September or October? Or would something more in line with common practices used by many companies today – such as 30-60 days, or following the next earnings release – also demonstrate good faith?
3. We do not yet know what type of disclosure might be mandated – a press release or Form 8-K disclosure at the time of adoption, amendment and termination; specifics regarding terms of a plan; proxy statement disclosure of company policies and procedures with respect to 10b5-1 plans; or something else. Many company insiders already disclose 10b5-1 plans in Section 16 filings, to provide context to those who track such filings for transactions made at times that an insider might be in possession of MNPI.

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