

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.

Explore more in

[Corporate Law](#)

Blog series

Public Chatter

Public Chatter provides practical guidance—and the latest developments—to those grappling with public company securities law and corporate governance issues, through content developed from an in-house perspective.

[View the blog](#)