

NEW SEC CHAIR DIRECTS STAFF TO PROPOSE REFORMS FOR RULE 10B5-1 PLANS

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Today SEC Chair Gensler announced that he has directed the staff to make recommendations on “how we might freshen up Rule 10b5-1” in order to address “real cracks in our insider trading regime.” As discussed in our [March 11, 2021 post](#), “Wait Continues for Any SEC Public Response to Senators’ Urgent Call for Rule 10b5-1 Reform,” earlier this year several Democratic members of the Senate Committee on Banking, Housing, and Urban Affairs submitted a letter urging the SEC to consider 10b5-1 plan reforms. That wait ended with Gensler’s announcement.

Gensler identified four key areas of concern:

- **No cooling off period before the first trade.** Gensler supports consideration of proposals to mandate four- to six-month cooling off periods, citing research showing 14% of sales of restricted stock occur within 30 days of plan adoption and approximately 40% within the first two months.
- **No limits on termination of plans.** Gensler believes that termination of plans while insiders are aware of material nonpublic information may be “as economically significant as carrying out an actual transaction” and “undermines investor confidence.”
 - Consistent with [Exchange Act Rule CDI 120.18](#), Gensler noted that “cancelling or amending any 10b5-1 plans calls into question whether they were entered into in good faith. If insiders don’t act in good faith when using 10b5-1 plans, those plans will not offer them an affirmative defense.”
- **No mandatory disclosure requirements.** Gensler believes “more disclosure regarding the adoption, modification, and terms of Rule 10b5-1 plans by individuals and companies could enhance confidence in our markets.”
- **No limits on the number of plans adopted.** Gensler believes some insiders “might mistakenly believe they have a ‘free option’ to pick amongst favorable plans as they please.” He asked the staff to consider whether there should be a limit on the number of plans an insider can adopt.

He also asked for consideration of other potential reforms, including “the intersection with share buybacks.”

Gensler signaled that in addition to potential amendments to the rule, the SEC will focus enforcement efforts on the area, stating the “staff will use all of the tools in our toolbox to ensure we are identifying and punishing abuses of 10b5-1 plans.” Accordingly, companies and their insiders should exercise care and consider best practices when adopting, executing or changing 10b5-1 plans.

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R. Randall Wang

St. Louis

randy.wang@bclplaw.com

[+1 314 259 2149](tel:+13142592149)

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