Statement on Rule 10b5-1 and Insider Trading

Chair Gary Gensler

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First, the Commission is considering proposed amendments to Rule 10b5-1, as well as proposed new disclosure requirements. I support these amendments because, if adopted, they would help close potential gaps in our insider trading regime.

Today's proposal addresses the means by which companies and company insiders — chief executive officers, chief financial officers, other executives, directors, and senior officers — trade in company shares.

The core issue is that these insiders regularly have material information that the public doesn't have. So how can they sell and buy stock in a way that's fair to the marketplace?

About 20 years ago, Exchange Act Rule 10b5-1 was established. This rule provided affirmative defenses for corporate insiders and companies to buy and sell company stock as long as they adopted their trading plans in good faith — before becoming aware of material nonpublic information.

Over the past two decades, we've heard concerns about and seen gaps in Rule 10b5-1 — gaps that today's proposals would help fill.

Today's proposals would add new conditions to the existing affirmative defense under Rule 10b5-1(c)(1), to help address concerns about potentially abusive practices associated with the use of that defense.

First, the proposal would establish a 120-day cooling off period for officers and directors for any new or changed plan. For companies trading in their own securities, the proposal would establish a 30-day cooling off period. Such a cooling-off period would more distinctly separate establishing a trading plan from the actual trades.

Second, today's proposals would prohibit overlapping plans and limit single-trade plans to one every 12 months. Currently, with the ability to enter into multiple plans, insiders might seek to pick amongst favorable plans as they please.

Third, today's proposal would add a condition that officers and directors certify they're not in possession of material non-public information when adopting or amending plans.

Fourth, all plans must be entered into *and* operated in good faith.

Additionally, today's proposals would establish a number of new disclosure requirements for issuers about (a) any trading plans adopted during the reporting quarter; (b) insider trading policies and procedures; and (c) the granting of spring-loaded options to executives. Such disclosures would enable shareholders to assess issuers' insider trading policies.

Finally, a word about insider gifting. I'd like to note that charitable gifts of securities are subject to insider trading laws. I'm glad for the improved visibility that this proposal would provide into those gifts (via Form 4).

These issues speak to the confidence that investors have in the markets. Anytime we can increase investor confidence in the markets, that's a good thing. It helps investors deciding where to put their money. It lowers the cost of capital for businesses seeking to raise capital, grow, and innovate, and thus facilitates capital formation. I'm pleased to support today's proposal and, subject to Commission approval, look forward to the public's feedback.

I appreciate my fellow Commissioners' time and collaboration on this proposal. I'd like to extend my gratitude to the members of the SEC staff who worked on this rule, including:

- Renee Jones, Erik Gerding, David Fredrickson, Adam Turk, Anne Krauskopf, Todd Hardiman, Lindsay McCord, Felicia Kung, and Sean Harrison in the Division of Corporate Finance.
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- Laurita Finch in the Edgar Business Office; and
- Last but not least I'd like to thank the counsels to my fellow Commissioners who helped us get here – Robbie Cobbs, Katherine Kelly, Coy Garrison, and Thaya Knight. Your collaboration and commitment is much appreciated.