

Meridian Client Update

SEC Chair Signals Potential Modification of Rules on 10b5-1 Plans

SEC Chair Gensler's recent remarks suggest that the SEC may modify Rule 10b5-1 to address perceived trading abuses under 10b5-1 Plans.

Rule 10b5-1 allows insiders (including executive officers) to establish a plan under which an insider may buy and sell company stock, generally in accordance with pre-set trading instructions. A 10b5-1 plan provides an executive officer with an affirmative defense to claims of insider trading provided that the executive officer adopts the plan in good faith, before becoming aware of material nonpublic information. Critics of 10b5-1 plans claim that such plans may facilitate abusive trading schemes for the benefit of the executive. Rule 10b5-1 has not been substantially revised since its adoption in August 2000.

On June 7, 2021, SEC Chair Gensler voiced significant concerns about 10b5-1 plans in prepared remarks before The Wall Street Journal's CFO Network Summit. He noted that 10b5-1 plans "have led to real cracks in our insider trading regime." To seal these cracks and modernize Rule 10b5-1, Mr. Gensler has asked the SEC staff "to make recommendations for the Commission's consideration on how we might freshen up Rule 10b5-1." In particular, Mr. Gensler suggested that the staff consider the following amendments to Rule 10b5-1:

- Prohibit trading under a 10b5-1 plan for a specified or "cooling off" period following its adoption (e.g., Mr. Gensler has suggested the cooling off period range of between 4 to 6 months).
- Limit when and how 10b5-1 plans may be cancelled.
- Limit the number of 10b5-1 plans that an insider may adopt.
- Require disclosure regarding the adoption, modification and terms of 10b5-1 plans by individuals and companies.

In addition to the foregoing reforms, Mr. Gensler has asked the staff to consider other potential reforms to the Rule 10b5-1, including the intersection with share buybacks.

Meridian Comment. Chair Gensler's believes these reforms will enhance investor confidence in the capital markets. In addition, Mr. Gensler's comments reflect increasing sentiment from some institutional investors and politicians on Capitol Hill to enhance regulation of 10b5-1 plans. In fact, some constituencies view the proposed reforms as best practices. Hence, a good number of public companies already require inclusion of all or some of these features in company or insider adopted 10b5-1 plans. In its recently released Flex Agenda, the SEC has targeted October 2021 for issuing proposed amendments to Rule 10b5-1.

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