



Former CEO Sentenced to Prison in First-Of-Its-Kind Prosecution Based Exclusively on Rule 10b5-1 Plans

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On June 23, 2025, the former chief executive officer (CEO) and executive chairman of the board of directors of Ontrak, Inc. (Ontrak), Terren Scott Peizer (Peizer), was sentenced by the United States District Court for the Central District of California to 42 months in prison and ordered to pay a combined \$17.9 million in fines and forfeiture of gains in the first-ever prosecution and criminal conviction based exclusively on the abuse of Rule 10b5-1 plans. Peizer was convicted in 2024 of securities fraud and insider trading related to his misuse of Rule 10b5-1 plans to avoid more than \$12.5 million in losses related to the termination of a large customer contract.

Rule 10b5-1 Plans

Rule 10b5-1 under the Securities Exchange Act of 1934 (Rule 10b5-1) provides an affirmative defense against allegations of insider trading when sales or purchases of stock are made pursuant to a Rule 10b5-1-compliant trading plan. Under Rule 10b5-1, anyone who has access to material nonpublic information (MNPI) about a company can adopt a written, pre-established trading plan at a time when they do not have MNPI to facilitate future trades in company stock. By doing so, they create a strong defense that any future trade that occurs when the individual does (or might) have MNPI is not in fact insider trading, since the sale was initiated at a time when the individual did not have MNPI. Rule 10b5-1 plans are popular for directors and officers seeking to monetize equity awards, which often comprise a substantial portion of their compensation.

In 2022, Rule 10b5-1 was amended to introduce mandatory “cooling-off” periods, requiring that insiders wait a set amount of time after establishing the plan before initiating trades. For officers and directors, the cooling-off period ends on the later of: (1) 90 days following plan adoption or modification; or (2) two business days following the disclosure in certain periodic reports of the issuer’s financial results for the fiscal period in which the plan was adopted or modified. For non-officer employees, the cooling-off period is 30 days.

The 2022 amendments expanded existing requirements that trading plans be entered into in good faith. Directors and officers must now attest that, at the time they are entering into a Rule 10b5-1 plan, they are not aware of MNPI about the issuer or its securities and that they are adopting the plan in good faith and not as part of a scheme to evade the prohibitions of Rule 10b-5. Further, individuals must act in good faith with respect to the plan for its duration (e.g., not timing the release of MNPI to influence trades under a Rule 10b5-1 plan).

Conviction and Sentence

Peizer was prosecuted after using two Rule 10b5-1 plans to engage in insider trading. After losing more than \$265 million of his personal wealth in March 2021 due to a drop in Ontrak's stock price following the loss of its then-largest customer, Peizer stepped down as CEO but remained executive chairman of the board of directors. Peizer then learned that there were concerns about the future of Ontrak's next-largest customer contract. Text chains between Peizer and other Ontrak officials demonstrate his anxieties around losing another large customer. Shortly thereafter, Peizer began looking for ways to sell his equity holdings in Ontrak.

While the mandatory cooling-off periods established under the 2022 amendments did not apply to Peizer, who made his trades in 2021, it was industry best practice at the time to wait 30 days after establishing a Rule 10b5-1 plan before initiating trades, and many brokerages imposed such cooling-off periods on executives using their services. Despite this, and after having been warned by multiple parties about the optics, Peizer refused to utilize a cooling-off period and contacted multiple brokers before finding one that did not require a cooling-off period. He created two Rule 10b5-1 plans while in possession of MNPI—the first in May 2021, which he established after learning of Ontrak's strained relationship with its customer, and the second in August 2021, which he established the day he learned that the customer was likely to formally terminate its contract with Ontrak. He began trading under each plan the trading day after it was established.

Six days after the second plan was established, Ontrak publicly announced that the customer had terminated its relationship with Ontrak, and Ontrak's stock price declined by more than 44%. Had he not been able to sell his shares, Peizer would have lost \$12.5 million. Peizer was convicted of securities fraud and insider trading on June 21, 2024. For more information on the conviction, please see our previous blog post [here](#).

According to the government's [sentencing memorandum](#), Peizer lied many times in order to execute his insider trading scheme: by signing false preclearance forms under Ontrak's insider trading policy; by falsely signing a representation to his broker that he was not in possession of MNPI; by filing false Form 144s with the Securities and Exchange Commission, despite the form containing a prominent warning that intentional misstatements or omissions of fact constitute federal crimes; and by filing false and misleading Rule 10b5-1 plans with his Schedule 13D filings. The [indictment](#) stated that Peizer's Rule 10b5-1 plans were false and misleading because he falsely certified within each plan that he did not possess MNPI at the time they were entered into.

In arguing for a 97-month sentence, a \$10.25 million fine, and an over \$12.7 million forfeiture judgment, the government emphasized the importance of deterrence in a first-of-its-kind case, stating that “[c]orporate executives should be on notice that efforts to conceal misconduct through the tools created to protect them (and the markets) will come at a significant cost and with severe consequences. . . . Rule 10b5-1 trading plans are not a protective blanket that corporate executives can use to evade accountability.” The court ultimately sentenced Peizer to 42 months in prison, with a \$5.25 million fine and over \$12.7 million in forfeiture. Peizer plans to appeal the conviction.

Key Takeaways

- **The “good faith” requirement is subjective and must be thoroughly evaluated when taking any actions with respect to a trading plan:** As discussed above, the 2022 amendments expanded existing requirements that trading plans be entered into in good faith, leading to heightened scrutiny of compliance with, and additional avenues for enforcement of, insider trading rules. It's important that those considering entering into a plan – or taking any action with respect to a plan – remember that good faith is evaluated on a facts-and-circumstances and insider-by-insider basis. At the center of the Peizer case was an evaluation of his motivations and reasons for not just entering into the trading plan, but pursuing the stock sales at the time and in the magnitude in which he did. Additionally, it is essential that individuals are not in possession of MNPI when entering into a plan.
- **Counsel should review 10b5-1 plans and policies:** Before entering into a Rule 10b5-1 plan, individuals should engage legal counsel to review the plan in light of all the conditions of Rule 10b5-1 and discuss whether there are any risks involved in entering into the plan. Issuers should also engage legal counsel prior to making changes to their insider trading policies.
- **The government has made clear that it plans to continue to investigate and pursue insiders that effectuate suspicious trades through Rule 10b5-1 plans, which could chill the use of such plans:** In its sentencing memorandum, the government emphasized that misuse of Rule 10b5-1 plans will not be tolerated, and it argued

for stiff penalties and significant prison time. The DOJ has stated that the Peizer case is part of a data-driven initiative led by its Criminal Division's Fraud Section to identify executive abuses of Rule 10b5-1 plans. Corporate insiders who use these plans, even if in good faith and without MNPI, may hesitate to enter into Rule 10b5-1 plans out of fear that their trades could be investigated. After Peizer was sentenced, Matthew R. Galeotti, Head of the Justice Department's Criminal Division, stated, "[t]oday's just sentence reflects the Criminal Division's hard work and commitment to prosecuting frauds that harm American investors. The Criminal Division will use the tools at its disposal to combat sophisticated frauds that exploit our securities markets."

Winston's Capital Markets & Securities Law Watch will continue to monitor developments related to Rule 10b5-1 plans, and we will provide our readers with additional updates as they become available.

For more information, or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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