

April 2025 10b5-1 C&DI Updates

1. NEW C&DIs

Question 120.32

Question: A company sponsors a 401(k) plan that permits both employer and employee contributions to be invested through a self-directed “brokerage window.” How are purchases and sales of issuer securities through the 401(k) plan pursuant to such a self-directed “brokerage window” treated for purposes of Rule 10b5-1(c)(1)?

Answer: Because the counterparty to the self-directed “brokerage window” transaction will be an open market participant, the instruction for any self-directed “brokerage window” transaction will need to satisfy all conditions of Rule 10b5-1(c)(1), including those applicable to purchases and sales of the issuer’s securities on the open market. [Apr. 25, 2025]

Question 120.33

Question: Rule 10b5-1(c)(1)(ii)(D) provides that an individual claiming the Rule 10b5-1(c) affirmative defense to insider trading may not have multiple Rule 10b5-1 plans that provide for purchases or sales of issuer securities on the open market. Rule 10b5-1(c)(1)(ii)(D)(3) provides an exception for an eligible sell-to-cover transaction. An eligible sell-to-cover transaction is a contract, instruction, or plan that authorizes an agent to sell only such securities as are necessary to satisfy tax withholding obligations arising exclusively from the vesting of a compensatory award, such as restricted stock or stock appreciation rights, where the insider does not otherwise exercise control over the timing of such sales. Does “necessary to satisfy tax withholding obligations” refer to the minimum tax withholding obligation imposed under the applicable tax rules, or to tax withholding payments calculated to satisfy the employee or director’s expected effective tax obligation with respect to the vesting transaction?

Answer: For purposes of Rule 10b5-1(c)(1)(ii)(D)(3), “necessary to satisfy tax withholding obligations” refers to tax withholding payments that are calculated in good faith to satisfy the employee or director’s expected effective tax obligation solely with respect to the vesting transaction, consistent with applicable tax law and accounting rules. [Apr. 25, 2025]

2. WITHDRAWN C&DIs

Question 120.02

Question: ~~A person who has adopted a written trading plan or given trading instructions to satisfy Rule 10b5-1(c) plans to sell the securities in reliance on Rule 144. Can the person modify the Form 144 to state that the representation regarding the seller’s knowledge of material information regarding the issuer is as of the date the Rule 10b5-1 plan was adopted or instructions given, rather than the date the person signs the Form 144?~~

Answer: ~~The form already includes the representation, so modification is unnecessary.~~ [\[Withdrawn Apr. 2425, 20092025\]](#)

Question 120.19

Question: ~~Does canceling one or more plan transactions affect the availability of the Rule 10b5-1(c) defense for future plan transactions?~~

Answer: The cancellation of one or more plan transactions would be [a modification of](#) an alteration or deviation from the plan, which would terminate that plan. [See Rule 10b5-1\(c\)\(1\)\(iv\)](#). The Rule 10b5-1(c) defense would be available for transactions following the alteration [such termination](#) only if the transactions were pursuant to a new contract, instruction or plan that satisfies the requirements of Rule 10b5-1(c). See [Securities Act Release No. 7881](#) (Aug. 15, 2000), at fn. 111 and Question 120.16. Moreover, if a person established a new contract, instruction or plan after terminating a prior plan, then all the surrounding facts and circumstances, including the period of time between the cancellation of the old plan and the creation of the new plan, would be relevant to a determination whether the person had established the contract, instruction or plan “in good faith and not as part of a plan or scheme to evade” the prohibitions of Rule 10b5-1(c). [[Mar](#)[Withdrawn Apr. 25, 2009](#)[2025](#)]

220.01 After the written trading plan described in Q&A 120.11 has been in effect for several months, the broker that has been executing plan sales goes out of business at a time when the person is aware of material nonpublic information. The person wishes to continue sales under the plan pursuant to its original terms. The person may transfer plan transactions to a different broker without being deemed to have cancelled the original plan and adopted a new plan if the transfer to the new broker is timed so that there is no cancellation of any transaction scheduled in the original plan, and the new broker effects sales in accordance with the original plan’s terms in compliance with Rule 10b5-1(c). [[Mar](#)[Withdrawn Apr. 25, 2009](#)[2025](#)]

3. REVISED CD&Is

Question 120.01

Question: On January 1, a person adopts a written plan for selling securities that satisfies [the all applicable](#) affirmative defense conditions of Rule 10b5-1(c)(1). The first sale of securities under the plan will take place on [March 1](#)[April 15](#) in reliance on Rule 144. The person will need to file a Form 144. Does adoption of the Rule 10b5-1 plan change the due date for the Form 144?

Answer: No. The Form 144 must be transmitted for filing concurrently with either the placement of a sell order for a brokerage transaction, or the execution of such sale directly with a market maker, as provided in Rule 144(h). The adoption of the plan itself may not be the same as placement of a sell order. The notice on Form 144 is effective for a maximum of three months, so that sales over longer periods will involve multiple requirements of notice under Rule 144(h). [[Mar](#)[Apr. 25, 2009](#)[2025](#)]

Question 120.03

Question: At a time when she is not aware of material nonpublic information [and satisfies all applicable conditions of Rule 10b5-1\(c\)\(1\)\(ii\)](#), a person establishes a trust. In establishing the trust, she specifies that the trust shall sell 1,000 shares of issuer stock each quarter. Apart from this specification, she does not have or share any control over the trust’s assets. Is a defense available under Rule 10b5-1(c)(1)(i)(B)(3) for the quarterly sales by the trust?

Answer: Yes. Rule 10b5-1(c)(1)(i)(B)(3) contemplates that a person, while not aware of material nonpublic information, may delegate to a third party under a contract, instruction or written trading plan, all subsequent influence over how, when or whether to effect purchases or sales. Reliance on this affirmative defense does not prevent the person from setting some of the terms of the purchases or sales at the creation of the contract, instruction or plan so that no one has subsequent discretion as to those terms. For example, this defense would be available if, in creating the contract, instruction or plan, the person specifies one or two of the amount, price or date of transactions. Whether or not any terms are set at creation, for a Rule 10b5-1(c)(1)(i)(B)(3) defense to be available, the person is not permitted to exercise any subsequent influence over how, when, or whether a transaction occurs. The third party who has been granted discretion must not be aware of material nonpublic information when exercising that discretion. [[Mar](#)[Apr. 25, 2009](#)[2025](#)]

Question 120.04

Question: At a time when he is not aware of material nonpublic information [and satisfies all applicable conditions of Rule 10b5-1\(c\)\(1\)\(ii\)](#), a person will establish a blind trust to which he will contribute some, but not all, of the issuer securities that he owns. The person intends to delegate investment control over trust assets to the trustee so as to establish a defense under Rule 10b5-1(c)(1)(i)(B)(3) for trust transactions. Within the meaning of Rule 144(a)(2), the person and the trust will be a single person. During any three-month period, sales of issuer securities by the trust will share the Rule 144(e) volume limitation with the person's sales of other issuer securities he owns. Does the manner of allocating the Rule 144(e) volume limitation between sales by the trust and the person's other sales of issuer securities affect whether the person is permitted to exercise any subsequent influence over how, when, or whether to effect purchases or sales under the trust within the meaning of Rule 10b5-1(c)(1)(i)(B)(3)?

Answer: Yes. If during the term of the trust the person can control what portion of the Rule 144(e) volume limitation is available for trust sales, the person would be permitted to exercise subsequent influence over trust sales within the meaning of Rule 10b5-1(c)(1)(i)(B)(3). As a result, the Rule 10b5-1(c)(1)(i)(B)(3) defense would be unavailable.

However, the person would not be permitted to exercise subsequent influence over trust sales if the instrument creating the trust specified either (1) the percentage of the volume limit to be allocated to sales by the trust and other sales by the person, or (2) that the trustee would determine that allocation for each applicable three-month period without consulting the person. [~~Mar~~~~Apr~~. 25, ~~2009~~2025]

Question 120.05

Question: At a time when he is not aware of material nonpublic information [and satisfies all applicable conditions of Rule 10b5-1\(c\)\(1\)\(ii\)](#), a person buys a put option, giving him the right at any time during the 12-month term of the option to sell 10,000 shares at a fixed exercise price. Two months later, he wishes to exercise the option. If he is aware of material nonpublic information at the time of exercise, can he rely on a Rule 10b5-1(c)(1) defense in exercising the option?

Answer: No. The exercise of the option is a separate investment decision from the purchase of the option. See [Securities Act Release No. 7881](#) (Aug. 15, 2000) at fn. 115. For a defense to be available under Rule 10b5-1(c)(1), each of the amount, price and date of the transaction must be specified or determined by formula, or all subsequent discretion over purchases and sales must be delegated to a third party who must not be aware of material nonpublic information when exercising that discretion. The person must make this specification or delegation in good faith before becoming aware of material nonpublic information.

In this example, the person has retained discretion over the timing of the option exercise. Consequently, if he is aware of material nonpublic information at the time of exercise, no defense will be available under Rule 10b5-1(c)(1). The same analysis applies whether the option is a put or a call. [~~Mar~~~~Apr~~. 25, ~~2009~~2025]

Question 120.06

Question: At a time when he is not aware of material nonpublic information [and satisfies all applicable conditions of Rule 10b5-1\(c\)\(1\)\(ii\)](#), a person purchases a put option. At the same time, the person instructs his broker to exercise the option on its expiration date, June 30, ~~2001~~2025, if the option is in-the-money on that date. Is the exercise of the option covered by a Rule 10b5-1(c)(1)(i)(B)(1) defense despite the fact that the amount, price and date are not specified by the same method?

Answer: Yes. The terms of the option, which is a binding contract within the meaning of Rule 10b5-1(c)(1)(i)(A)(1), specify the amount of shares to be sold and the price at which they will be sold under the option. The instruction to the broker, which is an instruction to another person within the meaning of Rule 10b5-1(c)(1)(i)(A)(2), specifies the date of the transaction and imposes a limit on the price, within the meaning of Rule 10b5-1(c)(1)(iii)(B). Viewed together, the option and the instruction specify the amount of securities, the price and the date of the transaction for purposes of Rule 10b5-1(c)(1)(i)(B)(1). The same analysis applies whether the option is a put or a call. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.07

Question: At a time when she is not aware of material nonpublic information [and satisfies all applicable conditions of Rule 10b5-1\(c\)\(1\)\(ii\)](#), a person writes a call option, giving the option purchaser the right at any time during the life of the option to buy 10,000 shares from her at a fixed exercise price. Two months later, the option writer receives an exercise notice, requiring her to sell the shares to the counterparty at the exercise price. Is the sale pursuant to the option exercise covered by an affirmative defense under Rule 10b5-1(c)(1)?

Answer: Yes. As long as the terms of the option contract do not permit the person to exercise any subsequent influence over how, when or whether she sells the shares covered by the option, and she does not in fact influence the timing of the option exercise, a defense would be available under Rule 10b5-1(c)(1)(i)(B)(3). [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.08

Question: At a time when she is not aware of material nonpublic information [and satisfies all applicable conditions of Rule 10b5-1\(c\)\(1\)\(ii\)](#), a person obtains a bank loan to invest in real estate, and pledges securities as collateral. She fails to pay the loan as due. The bank proceeds against the stock that was posted as collateral and sells it in the open market. Is the Rule 10b5-1(c)(1)(i)(B)(3) defense available to the person when the bank sells the stock?

Answer: No. The sale was not pursuant to a contract, instruction or plan that did not permit the person to exercise any subsequent discretion over how, when, or whether to effect purchases or sales. First, the person could have exercised discretion not to pay the loan, resulting in default and the transfer of the securities. Also, she may have had the discretion to substitute collateral or provide additional collateral or cash to prevent foreclosure and sale of the stock. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.09

Question: At a time when he is not aware of material nonpublic information [and satisfies all applicable conditions of Rule 10b5-1\(c\)\(1\)\(ii\)](#), a person obtains a \$1 million loan from a brokerage firm and places \$2 million of stock in a margin account with the broker. The stock price falls and the broker issues a margin call. The person does not deposit additional securities in the margin account (although he could have), so the broker sells sufficient margined securities to satisfy the margin call. Is the Rule 10b5-1(c)(1)(i)(B)(3) defense available to the person for the broker's sales?

Answer: No. Where the person retains any discretion to substitute or provide additional collateral, or to repay the loan before the pledged securities may be sold, Rule 10b5-1(c)(1)(i)(B)(3) does not provide a defense. This is because the terms of the margin account contract would permit him to exercise subsequent influence over how, when, or whether to effect purchases or sales.

If the margin account contract did not permit the insider to exercise any subsequent influence over how, when, or whether to effect purchases or sales, and the broker did not in fact give the person the opportunity to substitute or provide additional collateral or cash, a defense would be available under

Rule 10b5-1(c)(1)(i)(B)(3) if the broker is not aware of material nonpublic information in selling the margined securities. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.10

Question: At a time when she is not aware of material nonpublic information and satisfies all applicable conditions of Rule 10b5-1(c)(1)(ii), a person establishes a written trading plan to sell 5,000 shares each month, on a date to be selected by her broker during the second or third week of each month, at or above \$20 per share. The person does not communicate any information to the broker that could influence when sales would occur. Does Rule 10b5-1(c)(1)(i)(B)(3) provide a defense for sales under this plan?

Answer: Yes, assuming two additional facts are present: (1) the terms of the plan do not permit her to exercise any subsequent influence over the timing of sales under the plan; and (2) the broker is not aware of material nonpublic information when selling securities under the plan. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.11

Question: At a time when she is not aware of material nonpublic information and satisfies all applicable conditions of Rule 10b5-1(c)(1)(ii), a person establishes a written trading plan to sell 10,000 shares each month, at or above \$20 per share. To implement the sales, the plan provides that on the last day of each month the person will place a limit order with a broker, valid until the last day of the next month, to sell 10,000 shares at or above \$20 per share. The person may be aware of material nonpublic information when she places the limit order. Do Rules 10b5-1(c)(1)(i)(A)(3) and (B)(1) provide a defense for sales under this plan if the limit order is non-discretionary (requiring the broker to execute a sale as soon as a buyer is available at or above \$20 per share)?

Answer: Rules 10b5-1(c)(1)(i)(A)(3) and (B)(1) could provide a defense if the limit order is non-discretionary. The written trading plan would need to specify the amount, price and dates of the sales. As defined in Rule 10b5-1(c)(1)(iii)(C), in the case of a limit order, "date" means a day of the year on which the limit order is in force. For Rules 10b5-1(c)(1)(i)(A)(3) and (B)(1) to provide a defense, the terms of the plan must specify the dates on which the monthly non-discretionary limit orders will be in force. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.12

Question: How does the analysis in Question 120.11 change if the written trading plan doesn't specify when the non-discretionary limit order will be in force?

Answer: If the written trading plan by its terms doesn't specify these dates, ~~the analysis would focus on each transaction, and depend on whether the person is aware of material nonpublic information at each time she places a non-discretionary limit order.~~ A defense would be available under Rule 10b5-1(c)(1)(i)(A)(2) and (B)(1) if: (1) ~~she acts in good faith and~~ the person is not aware of material nonpublic information at the time she instructs the broker and satisfies all other applicable conditions of Rule 10b5-1(c)(1)(ii); and (2) in placing a non-discretionary limit order, she specifies the dates on which that limit order will be in force. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.14

Question: Assume that the written trading plan described in Question 120.11 also includes a provision requiring the number of securities to be sold during each month to be reduced, if necessary,

to comply with [the](#) applicable volume limitation under Rule 144(e). What effect does this have on the availability of a Rule 10b5-1(c)(1) defense?

Answer: The analysis depends on the manner in which the adjustment is effected: (a) First, the written plan could provide for adjustment of the amount of securities to be sold each month based on a written formula specified in the plan within the meaning of Rule 10b5-1(c)(1)(i)(B)(2). Where a written formula specifies one or more of the price, amount and dates of transactions that are all specified in a contract, instruction or written plan, the Rule 10b5-1(c)(1)(i)(B)(2) defense would apply.

(b) Alternatively, the written plan could provide for adjustment of the amount of securities to be sold each month based on a delegation of discretion to the broker. In this case, where one or more of the price, amount and dates of transactions under a contract, instruction or written plan are to be determined based on a delegation of discretion to another person, the availability of a defense depends upon satisfaction of the conditions of Rule 10b5-1(c)(1)(i)(B)(3). [~~Mar~~[Apr. 25, 2009](#)[2025](#)]

Question 120.15

Question: During a month when the written trading plan described in Question 120.11 is in effect, the person calls the broker to place an order to sell an additional 15,000 shares at the market ~~How is this transaction analyzed for purposes of Rule 10b5-1(c) where the market order is not provided for by the written trading plan in 120.11 and the person does not intend that the market order qualify for the affirmative defense of Rule 10b5-1(c)(1). How would the market order transaction affect the availability of the affirmative defense for the plan described in Question 120.11?~~

Answer: ~~(a) The written trading plan defense is not available for the market order to sell the 15,000 additional shares. Instead, the analysis would focus on whether the person was aware of material nonpublic information at the time she places the market order. (b) The market order transaction would not affect the availability of the written trading described in Question 120.11 plan defense for the limit order sales under the written trading plan described in Question 120.11. The market order does not effect an alteration or deviation of a plan transaction within the meaning of Rule 10b5-1(c)(1)(i)(C) because the 10,000 share limit order under the plan will continue to be executed when the price limit is met. The market order is not a corresponding or hedging transaction within the meaning of Rule 10b5-1(c)(1)(i)(C) because it does not reduce or eliminate the economic consequences of the limit order sales under the written trading plan. ~~Mar~~Further, the market order would not be an additional contract, instruction, or plan that would qualify for the affirmative defense under Rule 10b5-1(c)(1) for purchases or sales of the issuer's securities on the open market within the meaning of Rule 10b5-1(c)(1)(ii)(D). Apr. 25, 2009~~[2025](#)]

Question 120.16

Question: During a month when the written trading plan described in Question 120.11 is in effect, the person calls the broker to increase the non-discretionary limit order currently in force from 10,000 shares to 15,000 shares. How is this analyzed for purposes of Rule 10b5-1(c)(1)?

Answer: ~~Changing the amount to be sold under a Rule 10b5-1(c)(1)(iv) provides in relevant part that "Any modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a contract, instruction, or written limit order trading plan currently in force effects an alteration or deviation within~~as described in paragraph (c)(1)(i)(A) of this section is a termination of such contract, instruction, or written plan, and the ~~meaning~~[adoption](#) of ~~Rule 10b5-1(c)(1)(i)(C) a new contract, instruction, or written plan.~~ Consequently, sales pursuant to the altered limit order would not be pursuant to the existing plan. ~~Securities Act Release No. 7881 (Aug. 15, 2000) at fn. 111 provides that "a person acting in good faith may modify a prior contract, instruction, or plan before becoming aware of material nonpublic information. In that case, a~~

A purchase or sale that complies with ~~the~~a modified contract, instruction, or written plan will be considered pursuant to a new contract, instruction, or written plan, and the person will need to comply with Rule 10b5-1(c)(1) with respect to that new contract, instruction, or written plan." [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.18

Question: Does termination of a plan affect the availability of the Rule 10b5-1(c) defense for prior plan transactions? Does canceling one or more plan transactions affect the availability of the Rule 10b5-1(c) defense for prior plan transactions?

Answer: Termination of a plan, or the cancellation of one or more plan transactions, could affect the availability of the Rule 10b5-1(c) defense for prior plan transactions if it calls into question whether the plan was "entered into in good faith and not as part of a plan or scheme to evade" the insider trading rules and whether the person who entered into the plan has acted in good faith with respect to the plan within the meaning of Rule 10b5-1(c)(1)(ii)(A). The absence of good faith or presence of a scheme to evade would eliminate the Rule 10b5-1(c) defense for prior transactions under the plan. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.21

Question: A person purchases employer stock through her participation in the employer's 401(k) plan. ~~These~~The purchases are made pursuant to bi-weekly payroll deductions invested in the plan's employer stock fund. The 401(k) plan also allows employees to transfer the assets in their accounts among funds within the plan (including the employer stock fund) through fund-switching transactions. Is a Rule 10b5-1(c)(1) defense available for payroll deduction purchases made under the 401(k) plan pursuant to the employer stock fund?

Answer: ~~If an~~Assuming the employee's enrollment in ~~good faith and is not aware of material nonpublic information at the time she provides written or oral instructions as to payroll deduction purchase~~the 401(k) plan satisfies the conditions of Rule 10b5-1(c)(1)(i), Rule 10b5-1(c)(1)(ii)(A) and all conditions of Rule 10b5-1(c)(1)(ii)(B)-(C) applicable to the employee, a Rule 10b5-1(c)(1) defense would be available for ~~those payroll deduction~~ purchases under ~~Rule 10b5-1(c) the plan~~. See ~~Securities Act Release No. 7881~~Securities Act Release No. 11138 (~~Aug~~Dec. ~~15~~14, ~~2000~~, ~~text~~2022) at fn. ~~117-121~~120. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.22

Question: Under the 401(k) plan described in Question 120.21, is a Rule 10b5-1(c)(1) defense available for fund-switching transactions that result in purchases or sales of employer stock?

Answer: ~~If an employee acts in good faith and is not aware of material nonpublic information at the time she provides~~A fund-switching transaction in a 401(k) plan requires an analysis of the written or oral ~~instructions as to a fund-switching~~instruction for the transaction ~~under the 401(k) plan, a defense would be available for that~~that is independent of the Question 120.21 analysis of the employee's enrollment in the plan. Specifically, the instruction for the fund-switching transaction ~~under~~must satisfy the conditions of Rule 10b5-1(c)(1)(i), Rule 10b5-1(c)(1)(ii)(A) and all conditions of Rule 10b5-1(c)(1)(ii)(B)-(C) applicable to the person. See ~~Securities Act Release No. 7881~~Securities Act Release No. 11138 (~~Aug~~Dec. ~~15~~14, ~~2000~~, ~~text~~2022) at fn. ~~117-121~~120. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.23

Question: Could fund-switching transactions under the 401(k) plan described in Question 120.21 be considered "corresponding or hedging transactions" within the meaning of Rule 10b5-1(c)(1)(i)(C) with respect to payroll deduction purchases under the 401(k) plan?

Answer: Possibly, depending upon the facts and circumstances. Rule 10b5-1(c)(1)(i)(C) requires, as a condition to the exemption, that the purchase or sale be pursuant to the contract, instruction, or plan. The rule provides that a purchase or sale is not "pursuant to a contract, instruction, or plan" if, among other things, the person entered into or altered a corresponding or hedging transaction or position with respect to those securities.

As a general matter, a fund-switching transaction that effects a sale could be a corresponding or hedging transaction under Rule 10b5-1(c)(1)(i)(C) with respect to a payroll deduction purchase under the 401(k) plan. If, however, the ~~person is acting in good faith and provides instructions~~ instruction for the fund-switching transaction ~~at a time when she is not aware of material nonpublic information~~ satisfies the conditions of Rule 10b5-1(c)(1)(i), Rule 10b5-1(c)(1)(ii)(A), and all conditions of Rule 10b5-1(c)(1)(B)-(C) applicable to the person, the fund-switching transaction would not disturb the Rule 10b5-1(c)(1) defense for a payroll deduction purchase under the 401(k) plan. [~~Mar~~Apr. 25, ~~2009~~2025]

Question 120.24

Question: Under applicable state law, an oral agreement would be considered a binding contract. Does the contract nevertheless need to be written to establish a defense under Rule 10b5-1(c)(1)?

Answer: No. The rule specifies when a writing is necessary to establish a defense. The rule does not require a binding contract (Rule 10b5-1(c)(1)(i)(A)(1)) or an instruction to another person (Rule 10b5-1(c)(1)(i)(A)(2)) to be written. In contrast, the rule requires a plan for trading securities (Rule 10b5-1(c)(1)(i)(A)(3)) and a formula, algorithm or computer program for determining amounts, prices and dates of transactions (Rule 10b5-1(c)(1)(i)(B)(2)) to be written. [~~Mar~~Apr. 25, ~~2009~~2025]

220.02 A company sought to establish a stock repurchase plan that would comply with Rules 10b5-1(c)(1) and 10b-18. Most shares would be repurchased through open market transactions, but the company intended to negotiate repurchase of at least one large block of stock through a privately negotiated transaction. The company proposed that the plan provide for an automatic reduction in the aggregate number of shares authorized for repurchase under the plan equal to the number of shares, if any, that the company discloses in Form 10-Q, Part II, Item 2 that it has repurchased in privately negotiated transactions. The broker executing plan repurchases would review company filings to determine the amount of any such repurchases that had been disclosed. Because this would give the issuer the potential to effectively modify the plan by doing the block trades while aware of material nonpublic information, the Division staff took the view that the Rule 10b5-1(c)(1) affirmative defense would not be available. Question 120.14, which provides that delegation of discretion to a broker to reduce the number of shares to be sold under a trading plan to comply with the Rule 144(e) volume limitations, was distinguished because the reductions in Question 120.14 reflect limitations imposed by law rather than an exercise of discretion by the seller. [~~Mar~~Apr. 25, ~~2009~~2025]