

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 ~~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]