

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]