

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 [~~Mar~~ Withdrawn Apr. 25, 2009 2025]