

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 (AugDec. 1514, 2000), text2022) at fn. 117-121120. [MarApr. 25, 20092025]