

**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]