

225.10 An acquiring company may seek a commitment from management and principal security holders of a target company to vote in favor of a ~~business combination~~ Rule 145(a) transaction, frequently referred to as a “lock-up agreement.” The execution of a lock-up agreement may constitute an investment decision under the Securities Act. If so, the offer and sale of the ~~acquirer’s~~ acquiring company’s securities would be made to persons who entered into those agreements before the ~~business combination~~ Rule 145(a) transaction is presented to non-affiliated security holders for their vote.

Recognizing the legitimate business reasons for seeking lock-up agreements in the course of ~~business combination transactions~~ a Rule 145(a) transaction, the staff has not objected to the registration of offers and sales where lock-up agreements have been signed in the following circumstances:

- the lock-up agreements involve only executive officers, directors, affiliates, founders and their family members, and holders of 5% or more of the voting equity securities of the ~~company being acquired~~ target company (“target company insiders”);
- the persons signing the lock-up agreements collectively own less than 100% of the voting equity securities of the target company; ~~and~~
- votes will be solicited from ~~shareholders~~ security holders of the target company ~~being acquired~~ who have not signed the agreements ~~and would be ineligible to purchase in a private offering~~ if such votes are needed to approve the Rule 145(a) transaction under state or foreign law; and
- the acquiring company delivers a prospectus to all security holders of the target company entitled to vote on the Rule 145(a) transaction in accordance with its obligations under the Securities Act.

Where, ~~however, the persons entering into the lock-up agreements also~~ the target company insiders in the above circumstances deliver written consents approving the ~~business combination~~ Rule 145(a) transaction before the Form S-4 (or Form F-4) is filed, the staff ~~has objected~~ will not object to the subsequent registration of ~~the exchange on Form S-4 for any of the shareholders because~~ offers and sales ~~have already been made and completed privately, and once begun privately, the transaction must end privately.~~ of the acquiring company’s securities on Form S-4 (or Form F-4) as long as:

- target company insiders who delivered the written consents will be offered and sold securities of the acquiring company only in an offering made pursuant to a valid Securities Act exemption; and
- the securities registered on the Form S-4 (or Form F-4) will be offered and sold only to those security holders of the target company who did not deliver written consents approving the Rule 145(a) transaction. [March 6, 2025] [~~Nov. 26, 2008~~]