

239.13 An acquiring company may seek a commitment from management and principal security holders of a target company to vote in favor of a 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 acquiring company's securities would be made to persons who entered into those agreements before the 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 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 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;
- votes will be solicited from security holders of the target company who have not signed the agreements 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~~When lock-up agreements are executed before the filing of a registration statement and the conditions listed above are not satisfied, the subsequent registration of the Rule 145(a) transaction on Form S-4 (or Form F-4) is generally not permitted. However, the staff will not object to the subsequent registration of offers and sales of the acquiring company's securities on Form S-4 (or Form F-4) where the target company insiders ~~in~~either (1) execute lock-up agreements and the conditions listed above ~~circumstances are not satisfied or (2) deliver written~~ consents approving the Rule 145(a) transaction, in each case, before the Form S-4 (or Form F-4) is filed, ~~the staff will not object to the subsequent registration of offers and sales of the acquiring company's securities on Form S-4 (or Form F-4)~~ as long as:

- target company insiders who executed lock-up agreements or 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 execute lock-up agreements or deliver written consents approving the Rule 145(a) transaction.

[~~March 6, 2025~~January 23, 2026]