

## APPENDIX A

### § 240.10b5-1 Trading “on the basis of” material nonpublic information in insider trading cases.

~~Preliminary Note to § 240.10b5-1: This provision defines when a purchase or sale constitutes trading “on the basis of” material nonpublic information in insider trading cases brought under Section 10(b) of the Act and Rule 10b-5 thereunder. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b-5, and Rule 10b5-1 does not modify the scope of insider trading law in any other respect.~~

(a) ~~General~~Manipulative or deceptive devices. The “manipulative ~~and~~or deceptive device[s] or contrivance[s]” prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b-5 (Rule 10b-5) thereunder include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) ~~Definition~~Awareness of “~~on the basis of~~material nonpublic information.” Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is “on the basis of” material nonpublic information ~~about that security or issuer~~for purposes of Section 10(b) and Rule 10b-5 if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b-5, and Rule 10b5-1 does not modify the scope of insider trading law in any other respect.

(c) *Affirmative defenses.*

(1)

(i) Subject to paragraph (c)(1)(ii) of this section, a person’s purchase or sale is not “on the basis of” material nonpublic information if the person making the purchase or sale demonstrates that:

(A) Before becoming aware of the information, the person had:

- (1) Entered into a binding contract to purchase or sell the security,
- (2) Instructed another person to purchase or sell the security for the instructing person’s account, or
- (3) Adopted a written plan for trading securities;

(B) The contract, instruction, or plan described in paragraph (c)(1)(i)(A) of this Section:

- (1) Specified the amount of securities to be purchased or sold and the

price at which and the date on which the securities were to be purchased or sold;

(2) Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or

(3) Did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the contract, instruction, or plan, did exercise such influence must not have been aware of the material nonpublic information when doing so; and

(C) The purchase or sale that occurred was pursuant to the contract, instruction, or plan. A purchase or sale is not “pursuant to a contract, instruction, or plan” if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to those securities.

(ii) Paragraph (c)(1)(i) of this section is applicable only when ~~the~~:

(A) The contract, instruction, or plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the prohibitions of this section, and the person who entered into the contract, instruction, or plan has acted in good faith with respect to the contract, instruction or plan;

(B) If the person who entered into the contract, instruction, or plan is:

(1) A director or officer (as defined in § 240.16a-1(f) (Rule 16a-1(f)) of the issuer, no purchases or sales occur until expiration of a cooling-off period consisting of the later of:

(i) Ninety days after the adoption of the contract, instruction, or plan or

(ii) Two business days following the disclosure of the issuer’s financial results in a Form 10-Q (§ 249.308a of this chapter) or Form 10-K (§ 249.310 of this chapter) for the completed fiscal quarter in which the plan was adopted or, for foreign private issuers, in a Form 20-F (§ 249.220f of this chapter) or Form 6-K (§ 249.306 of this chapter) that discloses the issuer’s financial results (but, in any event, this required cooling-off period is subject to a maximum of 120 days after adoption of the contract, instruction, or plan); or

(2) Not the issuer and not a director or officer (as defined in § 240.16a-1(f) (Rule 16a-1(f)) of the issuer, no purchases or sales occur until the expiration of a cooling-off period that is 30 days after the adoption of the contract, instruction or plan;

(C) If the person who entered into a plan as described in paragraph (c)(1)(i)(A)(3) of this section is a director or officer (as defined in Rule 16a-1(f) (§ 240.16a-1(f)) of the issuer of the securities, such director or officer included a representation in the plan certifying that, on the date of adoption of the plan:

(1) The individual director or officer is not aware of any material nonpublic information about the security or issuer; and

(2) The individual director or officer is adopting the plan in good faith and not as part of a plan or scheme to evade the prohibitions of this section;

(D) The person (other than the issuer) who entered into the contract, instruction, or plan has no outstanding (and does not subsequently enter into any additional) contract, instruction, or plan that would qualify for the affirmative defense under paragraph (c)(1) of this section for purchases or sales of the issuer's securities on the open market; except that:

(1) For purposes of this paragraph (c)(1)(ii)(D), a series of separate contracts with different broker-dealers or other agents acting on behalf of the person (other than the issuer) to execute trades thereunder may be treated as a single "plan," provided that the individual constituent contracts with each broker-dealer or other agent, when taken together as a whole, meet all of the applicable conditions of and remain collectively subject to the provisions of this rule, including that a modification of any individual contract acts as modification of the whole contract, instruction of plan, as defined in paragraph (c)(1)(iv) of this section. The substitution of a broker-dealer or other agent acting on behalf of the person (other than the issuer) for another broker-dealer that is executing trades pursuant to a contract, instruction or plan shall not be a modification of the contract, instruction, or plan (as defined in paragraph (c)(1)(iv) of this section) as long as the purchase or sales instructions applicable to the substitute and substituted broker are identical with respect to the prices of securities to be purchased or sold, dates of the purchases or sales to be executed, and amount of securities to be purchased or sold; and

(2) The person (other than the issuer) may have one later-commencing contract, instruction, or plan for purchases or sales of any securities of the issuer on the open market under which trading is not authorized to begin until after all trades under the earlier-commencing contract,

instruction, or plan are completed or expired without execution; provided, however, that if the first trade under the later-commencing contract, instruction, or plan is scheduled during the Effective Cooling-Off Period, the later-commencing contract, instruction, or plan may not rely on this paragraph (c)(1)(ii)(D)(2). For purposes of this paragraph (c)(1)(ii)(D)(2), "Effective Cooling-Off Period" means the cooling-off period that would be applicable under paragraph (c)(1)(ii)(B) of this section with respect to the later-commencing contract, instruction, or plan if the date of adoption of the later-commencing contract, instruction, or plan were deemed to be the date of termination of the earlier-commencing contract, instruction, or plan; and

(3) A contract, instruction, or plan providing for an eligible sell-to-cover transaction shall not be considered an outstanding or additional contract, instruction, or plan under paragraph (c)(1)(ii)(D) of this section, and such eligible sell-to-cover transaction shall not be subject to the limitation under paragraph (c)(1)(ii)(D) of this section. A contract, instruction, or plan provides for an eligible sell-to-cover transaction where the contract, instruction, or plan authorizes an agent to sell only such securities as are necessary to satisfy tax withholding obligations arising exclusively from the vesting of a compensatory award, such as restricted stock or stock appreciation rights, and the insider does not otherwise exercise control over the timing of such sales; and

(E) With respect to persons (other than the issuer), if the contract, instruction, or plan does not provide for an eligible sell-to-cover transaction as described in paragraph (c)(1)(ii)(D)(3) of this section and is designed to effect the open-market purchase or sale of the total amount of securities as a single transaction, the person who entered into the contract, instruction, or plan has not during the prior 12-month period adopted a contract, instruction, or plan that:

(1) was designed to effect the open-market purchase or sale of all of the securities covered by such prior contract, instruction or plan, in a single transaction; and

(2) Would otherwise qualify for the affirmative defense under paragraph (c)(1) of this section.

(iii) This paragraph (c)(1)(iii) defines certain terms as used in paragraph (c) of this Section.

(A) *Amount*. "Amount" means either a specified number of shares or other securities or a specified dollar value of securities.

(B) *Price*. "Price" means the market price on a particular date or a limit price, or a particular dollar price.

(C) *Date*. “Date” means, in the case of a market order, the specific day of the year on which the order is to be executed (or as soon thereafter as is practicable under ordinary principles of best execution). “Date” means, in the case of a limit order, a day of the year on which the limit order is in force.

(iv) Any modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a contract, instruction, or written plan as described in paragraph (c)(1)(i)(A) of this section is a termination of such contract, instruction, or written plan, and the adoption of a new contract, instruction, or written plan. A plan modification, such as the substitution or removal of a broker that is executing trades pursuant to a Rule 10b5-1 arrangement on behalf of the person, that changes the price or date on which purchases or sales are to be executed, is a termination of such plan and the adoption of a new plan.

(2) A person other than a natural person also may demonstrate that a purchase or sale of securities is not “on the basis of” material nonpublic information if the person demonstrates that:

- (i) The individual making the investment decision on behalf of the person to purchase or sell the securities was not aware of the information; and
- (ii) The person had implemented reasonable policies and procedures, taking into consideration the nature of the person’s business, to ensure that individuals making investment decisions would not violate the laws prohibiting trading on the basis of material nonpublic information. These policies and procedures may include those that restrict any purchase, sale, and causing any purchase or sale of any security as to which the person has material nonpublic information, or those that prevent such individuals from becoming aware of such information.

**§ 229.402 (Item 402) Executive compensation.**

\* \* \* \* \*

(x) Disclosure of the registrant's policies and practices related to the grant of certain equity awards close in time to the release of material nonpublic information.

(1) Discuss the registrant's policies and practices on the timing of awards of options in relation to the disclosure of material nonpublic information by the registrant, including how the board determines when to grant such awards (for example, whether such awards are granted on a predetermined schedule); whether the board or compensation committee takes material nonpublic information into account when determining the timing and terms of such an award, and, if so, how the board or compensation committee takes material nonpublic information into account when determining the timing and terms of such an award; and whether the registrant has timed the disclosure of material nonpublic information for the purpose of affecting the value of executive compensation.

(2)

(i) If, during the last completed fiscal year, the registrant awarded options to a named executive officer in the period beginning four business days before the filing of a periodic report on Form 10-Q (§ 249.308a of this chapter) or Form 10-K (§ 249.310 of this chapter), or the filing or furnishing of a current report on Form 8-K (§ 249.308 of this chapter) that discloses material nonpublic information (other than a current report on Form 8-K disclosing a material new option award grant under Item 5.02(e) of that form), and ending one business day after the filing or furnishing of such report provide the information specified in paragraph (x)(2)(ii) of this section, concerning each such award for each of the named executive officers in the following tabular format:

<u>Name</u>	<u>Grant date</u>	<u>Number of securities underlying the award</u>	<u>Exercise price of the award (\$/Sh)</u>	<u>Grant date fair value of the award</u>	<u>Percentage change in the closing market price of the securities underlying the award between the trading day ending immediately prior to the disclosure of material nonpublic information and the trading day beginning immediately following the disclosure of material nonpublic information</u>
<u>(a)</u>	<u>(b)</u>	<u>(c)</u>	<u>(d)</u>	<u>(e)</u>	<u>(f)</u>
<u>PEO</u>					
<u>PFO</u>					
<u>A</u>					
<u>B</u>					
<u>C</u>					

(ii) The Table shall include:

(A) The name of the named executive officer (column (a)):

(B) On an award-by-award basis, the grant date of the option award reported in the table (column (b)):

(C) On an award-by-award basis, the number of securities underlying the options, (column (c)):

(D) On an award-by-award basis, the per-share exercise price of the options (column (d)):

(E) On an award-by-award basis, the grant date fair value of each award computed using the same methodology as used for the registrant's financial statements under generally accepted accounting principles (column (e)).

(F) For each instrument reported in column (b), disclose the percentage change in the market price of the underlying securities between the closing market price of the security one trading day prior to and the trading day beginning immediately following the disclosure of material nonpublic information (column (f)).

*Instruction to paragraph (x)(2).* A registrant that is a smaller reporting company or emerging growth company may limit the disclosures in the table to its PEO, the two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year, and up to two additional individuals who would have been the most highly compensated but for the fact that the individual was not serving as an executive officer at the end of the last completed fiscal year.

(3) The disclosure provided pursuant to this paragraph (x) must be provided in an Interactive Data File as required by 17 CFR 232.405 (Rule 405 of Regulation S-T) in accordance with the EDGAR Filer Manual.

**§ 229.408 (Item 408) Insider trading arrangements and policies.**

(a)

- (1) Disclose whether, during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report), any director or officer (as defined in § 240.16a-1(f) of this chapter) adopted or terminated:
  - (i) Any contract, instruction or written plan for the purchase or sale of securities of the registrant intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) (§ 240.10b5- 1(c) of this chapter) (a "Rule 10b5-1 trading arrangement"); and/or
  - (ii) Any "non-Rule 10b5-1 trading arrangement" as defined in paragraph (c) of this section.
- (2) Identify whether the trading arrangement is intended to satisfy the affirmative defense of Rule 10b5-1(c), and provide a description of the material terms, other than terms with respect to the price at which the individual executing the Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement is authorized to trade, such as:
  - (i) The name and title of the director or officer;
  - (ii) The date on which the director or officer adopted or terminated the trading arrangement;
  - (iii) The duration of the trading arrangement; and
  - (iv) The aggregate number of securities to be purchased or sold pursuant to the trading arrangement.
- (3) The disclosure provided pursuant to paragraphs (a)(1) and (2) of this section must be provided in an Interactive Data File as required by 17 CFR 232.405 (Rule 405 of Regulation S-T) in accordance with the EDGAR Filer Manual.

(b)

- (1) Disclose whether the registrant has adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the registrant's securities by directors, officers and employees, or the registrant itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the registrant. If the registrant has not adopted such policies and procedures, explain why it has not done so.
- (2) If the registrant has adopted insider trading policies and procedures, the registrant must file such policies and procedures as an exhibit. If all of the

registrant's insider trading policies and procedures are included in its code of ethics (as defined in 17 CFR 229.406(b)) and the code of ethics is filed as an exhibit pursuant to 17 CFR 229.406(c)(1), that would satisfy the exhibit requirement of this paragraph.

- (3) The disclosure provided pursuant to paragraph (b)(1) of this section must be provided in an Interactive Data File as required by 17 CFR 232.405 in accordance with the EDGAR Filer Manual.
- (c) For purposes of this Item 408, a director or officer (as defined in § 240.16a-1(f) of this chapter) (each a "covered person") has entered into a non-Rule 10b5-1 trading arrangement where:
- (1) The covered person asserts that at a time when they were not aware of material nonpublic information about the security or the issuer of the security they had adopted a written arrangement for trading the securities; and
  - (2) The trading arrangement:
    - (i) Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;
    - (ii) Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or
    - (iii) Did not permit the covered person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the trading arrangement, did exercise such influence must not have been aware of material nonpublic information when doing so.

**FORM 4**

**FORM 5**

\* \* \* \* \* General Instructions

\* \* \* \* \*

**10. Rule 10b5-1(c) Transaction Indication**

Indicate by check mark whether a transaction was made pursuant to a contract, instruction or written plan for the purchase or sale of equity securities of the issuer that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act [§ 240.10b5-1(c) of this chapter]. Provide the date of adoption of the Rule 10b5-1(c) plan in the "Explanation of Responses" portion of the Form.

\* \* \* \* \*

Check this box to indicate that a transaction was made pursuant to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). See Instruction 10.

**§ 240.16a-3 Reporting transactions and holdings.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) Exercises and conversions of derivative securities exempt under either § 240.16b-3 or § 240.16b-6(b), [dispositions by bona fide gifts exempt under § 240.16b-5](#), and any transaction exempt under § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f) (these are required to be reported on Form 4);

\* \* \* \* \*

(g)

(1) A Form 4 must be filed to report: all transactions not exempt from Section 16(b) of the Exchange Act; all transactions exempt from Section 16(b) of the Exchange Act pursuant to § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f); and [dispositions by bona fide gifts and](#) all exercises and conversions of derivative securities, regardless of whether exempt from Section 16(b) of the Exchange Act. Form 4 must be filed before the end of the second business day following the day on which the subject transaction has been executed.