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Practice Update

First-Ever Prosecution for Sales Under Rule 10b5-1 Trading Plan

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Executive Sentenced to 42 Months in Prison

Company insiders rely upon Rule 10b5-1 trading plans to sell stock pursuant to predetermined trades, allowing them to later trade securities even though they may be in possession of material nonpublic information at the time of such trades. Because the trading plans are predetermined, Rule 10b5-1 prevents the insider from changing or adopting a plan if they are in possession of material nonpublic information.

Pursuant to 17 CFR § 240.10b5-1(c), it is an affirmative defense to a charge of insider trading if the person adopts a written plan for trading securities and the plan is adopted when the person is not in possession of material nonpublic information. That plan can either specify 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*** it can include a written formula, algorithm, or computer program for determining the amount, price, and date of the securities to be purchased or sold.

Akin to a blind trust, the insider cannot make changes to the predetermined plan once he or she is in possession of material nonpublic information.

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On June 23, 2025, the former CEO and Chairman of Ontrak Inc., a publicly traded healthcare company based in Miami, was sentenced to 42 months in federal prison for insider trading despite the fact that he used a Rule 10b5-1 trading plan. In addition to the sentence of incarceration, Terren Scott Peizer was ordered to pay a $5.2 million fine and disgorge $12.7 million in ill-gotten gains. According to the Department of Justice, Peizer's case marks the first instance where an executive was convicted of insider trading based solely on the abuse of a trading plan.

In this instance, the prosecution argued that Peizer was in possession of material nonpublic information at the time that he entered into the trading plan, and, therefore, the plan was not entered into in good faith. Rule 10b5-1 explicitly provides that the trading plan must have been entered into in good faith and not as a scheme to evade the insider trading rules.

Specifically, the prosecution argued that Peizer entered into his first trading plan after he learned that a relationship between Ontrak and a key customer was deteriorating and that the customer had serious reservations about continuing its contract. Peizer was alleged to have entered into a second trading plan just an hour after he learned that the contract was likely to be terminated.

Peizer also ignored warnings from brokers, attorneys, and another company executive who urged him to allow time to pass between entering into the trading plans and selling stock — a "cooling off" period. Instead, Peizer began selling stock just one day after entering into each of the two plans, and when the cancellation of the customer's contract was announced publicly, the stock price declined by more than 44%.

While the case may have reverberations for the many executives who rely on Rule 10b5-1 trading plans, the specific facts of the case suggest that the plans are still a viable tool when used in good faith and when they are established at a time when the insider is not in possession of material nonpublic information.

The best practices for relying upon such a plan include entering into the plan when the insider does not possess material nonpublic information, allowing a “cooling off” period of at least 30 days from when the plan is established until the first transaction, making sure that there are clearly defined parameters within the plan as to the price and/or timing of the trades, and avoiding making any amendments or terminating the plan when the insider remains in possession of material nonpublic information.

While Rule 10b5-1 trading plans do not provide immunity from prosecution — particularly where they are being used in bad faith to avoid losses — they still represent a strong defense when used properly.
