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March 31, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Proposed Rule: Rule 10b5-1 and Insider Trading (Release No. 33-11013; 34-93782;
File No. S7-20-21)**

Dear Ms. Countryman:

The undersigned, each an attorney with the firm of K&L Gates LLP ("K&L Gates"), appreciate this opportunity to provide comments on the above-referenced proposed rule issued by the Securities and Exchange Commission on January 13, 2022 (the "Proposal") related to proposed amendments to Rule 10b5-1 (the "Rule"). This letter states our views as individual legal professionals and advisors to public companies, but it does not reflect the opinion of K&L Gates as a firm.

Our comment on the Proposal relates to the requirement that, to be afforded the protection of the Rule, a trader must not have more than one overlapping Rule 10b5-1 trading plan (a "Plan") in place at a particular time. Specifically we are concerned that any such prohibition should exclude "sell-to-cover" Plans which in our experience are commonly entered into as a tax planning technique and do not implicate the abuse of inside information.

Generally, when shares are delivered to an employee on settlement of a restricted stock unit award (or when shares of restricted stock vest), the employee recognizes income equal to the value of the shares on the settlement (or vesting) date, and corresponding withholding tax payments are required to be paid to tax authorities.¹ To cover these tax withholding payments,

¹ Under Section 83(b) of the Internal Revenue Code, an employee may elect (an "83(b) Election") to include the value of shares of restricted stock in income when the shares are granted, but, because the shares are not vested at that time, sell-to-cover Plans generally are not useful for restricted stock for which an employee has made an 83(b) Election.

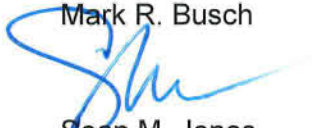
employees sometimes enter into "sell-to-cover" Plans under which they specify that upon settlement of an RSU (or vesting of restricted stock) they will sell into the market a portion of the shares they receive (or that vest) sufficient to generate the cash needed to make the withholding payments. The general effect is that on settlement (or vesting) the employee receives (or retains) a net amount of the shares settled (or vested)--with the number of shares actually received (or retained) being reduced by the amount of shares needed to cover the withholding taxes. There should not be any particular concern with these types of Plans implicating the abuse of inside information since the price at which the shares are sold does not change the end result for the grantee. This is because the tax liability is based on the share price on the date of settlement (in the case of an RSU) or on the date of vesting (in the case of restricted stock) which will typically be very close to the price at which shares are sold pursuant to a "sell-to-cover" Plan. As a result, regardless of the price at which the shares are sold, the employee ends up with the same number of net shares and the employee does not stand to benefit from having material non-public information.

As long as a "sell-to-cover" Plan is entered into in accordance with the requirements of the Rule, we do not think it should preclude a person from entering into another conventional Plan pursuant to the Rule. Accordingly, we suggest that the amendments to the Rule prohibiting no more than one overlapping Plan at a time contain an exception for "sell-to-cover" Plans.

Very truly yours,



Mark R. Busch



Sean M. Jones

MRB