

## Question 120.11

**Question:** At a time when she is not aware of material nonpublic information and satisfies all applicable conditions of Rule 10b5-1(c)(1)(ii), a person establishes a written trading plan to sell 10,000 shares each month, at or above \$20 per share. To implement the sales, the plan provides that on the last day of each month the person will place a limit order with a broker, valid until the last day of the next month, to sell 10,000 shares at or above \$20 per share. The person may be aware of material nonpublic information when she places the limit order. Do Rules 10b5-1(c)(1)(i)(A)(3) and (B)(1) provide a defense for sales under this plan if the limit order is non-discretionary (requiring the broker to execute a sale as soon as a buyer is available at or above \$20 per share)?

**Answer:** Rules 10b5-1(c)(1)(i)(A)(3) and (B)(1) could provide a defense if the limit order is non-discretionary. The written trading plan would need to specify the amount, price and dates of the sales. As defined in Rule 10b5-1(c)(1)(iii)(C), in the case of a limit order, "date" means a day of the year on which the limit order is in force. For Rules 10b5-1(c)(1)(i)(A)(3) and (B)(1) to provide a defense, the terms of the plan must specify the dates on which the monthly non-discretionary limit orders will be in force. [~~Mar~~Apr. 25, ~~2009~~2025]