

Question 120.12

Question: How does the analysis in Question 120.11 change if the written trading plan doesn't specify when the non-discretionary limit order will be in force?

Answer: If the written trading plan by its terms doesn't specify these dates, ~~the analysis would focus on each transaction, and depend on whether the person is aware of material nonpublic information at each time she places a non-discretionary limit order. A~~ defense would be available under Rule 10b5-1(c)(1)(i)(A)(2) and (B)(1) if: (1) ~~she acts in good faith~~ and the person is not aware of material nonpublic information at the time she instructs the broker and satisfies all other applicable conditions of Rule 10b5-1(c)(1)(ii); and (2) in placing a non-discretionary limit order, she specifies the dates on which that limit order will be in force. [~~Mar~~Apr. 25, ~~2009~~2025]