

## Question 120.15

**Question:** During a month when the written trading plan described in Question 120.11 is in effect, the person calls the broker to place an order to sell an additional 15,000 shares at the market. ~~How is this transaction analyzed for purposes of Rule 10b5-1(c) where the market order is not provided for by the written trading plan in 120.11 and the person does not intend that the market order qualify for the affirmative defense of Rule 10b5-1(c)(1).~~ How would the market order transaction affect the availability of the affirmative defense for the plan described in Question 120.11?

**Answer:** ~~(a) The written trading plan defense is not available for the market order to sell the 15,000 additional shares. Instead, the analysis would focus on whether the person was aware of material nonpublic information at the time she places the market order.~~

~~(b)~~ The market order transaction would not affect the availability of the written trading plan defense for the limit order sales under the written trading plan described in Question 120.11. The market order does not effect an alteration or deviation of a plan transaction within the meaning of Rule 10b5-1(c)(1)(i)(C) because the 10,000 share limit order under the plan will continue to be executed when the price limit is met. The market order is not a corresponding or hedging transaction within the meaning of Rule 10b5-1(c)(1)(i)(C) because it does not reduce or eliminate the economic consequences of the limit order sales under the written trading plan. ~~Mar~~Further, the market order would not be an additional contract, instruction, or plan that would qualify for the affirmative defense under Rule 10b5-1(c)(1) for purchases or sales of the issuer's securities on the open market within the meaning of Rule 10b5-1(c)(1)(ii)(D). [Apr. 25, ~~2009~~2025]