

#### Question 120.24

**Question:** Under applicable state law, an oral agreement would be considered a binding contract. Does the contract nevertheless need to be written to establish a defense under Rule 10b5-1(c)(1)?

**Answer:** No. The rule specifies when a writing is necessary to establish a defense. The rule does not require a binding contract (Rule 10b5-1(c)(1)(i)(A)(1)) or an instruction to another person (Rule 10b5-1(c)(1)(i)(A)(2)) to be written. In contrast, the rule requires a plan for trading securities (Rule 10b5-1(c)(1)(i)(A)(3)) and a formula, algorithm or computer program for determining amounts, prices and dates of transactions (Rule 10b5-1(c)(1)(i)(B)(2)) to be written. [~~Mar~~Apr. 25, 2009] 2025]