

Question 120.07

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 writes a call option, giving the option purchaser the right at any time during the life of the option to buy 10,000 shares from her at a fixed exercise price. Two months later, the option writer receives an exercise notice, requiring her to sell the shares to the counterparty at the exercise price. Is the sale pursuant to the option exercise covered by an affirmative defense under Rule 10b5-1(c)(1)?

Answer: Yes. As long as the terms of the option contract do not permit the person to exercise any subsequent influence over how, when or whether she sells the shares covered by the option, and she does not in fact influence the timing of the option exercise, a defense would be available under Rule 10b5-1(c)(1)(i)(B)(3). [~~Mar~~Apr. 25, ~~2009~~2025]