

Question 120.06

Question: At a time when he is not aware of material nonpublic information and satisfies all applicable conditions of Rule 10b5-1(c)(1)(ii), a person purchases a put option. At the same time, the person instructs his broker to exercise the option on its expiration date, June 30, 20042025, if the option is in-the-money on that date. Is the exercise of the option covered by a Rule 10b5-1(c)(1)(i)(B)(1) defense despite the fact that the amount, price and date are not specified by the same method?

Answer: Yes. The terms of the option, which is a binding contract within the meaning of Rule 10b5-1(c)(1)(i)(A)(1), specify the amount of shares to be sold and the price at which they will be sold under the option. The instruction to the broker, which is an instruction to another person within the meaning of Rule 10b5-1(c)(1)(i)(A)(2), specifies the date of the transaction and imposes a limit on the price, within the meaning of Rule 10b5-1(c)(1)(iii)(B). Viewed together, the option and the instruction specify the amount of securities, the price and the date of the transaction for purposes of Rule 10b5-1(c)(1)(i)(B)(1). The same analysis applies whether the option is a put or a call. [MarApr.
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