



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

October 12, 2006

Steven Lofchie, Esq.
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281

Dear Mr. Lofchie:

In your letter dated October 11, 2006, on behalf of the American Stock Exchange LLC ("Amex"), Amex requests assurances that the staff of the Division of Market Regulation ("Staff") would not recommend enforcement action under Rule 10b-10(a) and Rule 203(b)(1) of Regulation SHO¹ under the Securities Exchange Act of 1934 ("Exchange Act"), Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T"),² and Section 15(b)(8) of the Exchange Act with respect to certain activities involving Amex's proposed outbound routing arrangement and associated execution and settlement services arrangement instituted to comply with Rule 611 of Regulation NMS (the "Outbound Routing Arrangement"). In particular, Amex seeks assurances that the Staff would not recommend enforcement action if the Dual Member (as defined in your letter) does not send a trade confirmation to Amex containing all of the information as provided under Rule 10b-10(a) for Outbound Trades (as defined in your letter), and if the Dual Member does not comply with the locate requirement of Rule 203(b)(1) of Regulation SHO when accepting short sale Outbound Trades from Amex under the Outbound Routing Arrangement. Amex also seeks assurances that the Staff would not recommend enforcement action if the Dual Member treats Amex's account opened with it in connection with the Outbound Routing Arrangement as a "broker-dealer credit account" for purposes of Regulation T. In addition, Amex seeks assurances that the Staff would not recommend enforcement action to the Commission under Section 15(b)(8) if a broker-dealer that is only a member of Amex ("Amex-only Member") treats income derived from transactions through the Outbound Routing Arrangement as "income derived from transactions . . . through the Intermarket Trading System" for purposes of the exemption provided in Rule 15b9-1.

1. Rule 10b-10

Based on the facts and representations set forth in your letter, but without necessarily agreeing with your analysis, the Staff will not recommend enforcement action to the Commission under Rule 10b-10(a) against the Dual Member if the Dual Member does not give or send written

¹ 17 CFR 242.203(b)(1).

² 12 CFR 220.

notification to Amex disclosing all of the information required by Rule 10b-10(a) for Outbound Trades.³

2. Regulation SHO's Locate Requirement

Rule 203(b)(1) of Regulation SHO provides that a broker-dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has borrowed the security, or entered into a bona-fide arrangement to borrow the security, or has reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due, and documented compliance with the above. Rule 203(b)(2)(i) excepts a broker-dealer from the locate requirement if, among other things, the short sale order is from another registered broker-dealer required to comply with the rule. Accordingly, the Originating Broker-Dealer is obligated to comply with the locate requirement prior to transmitting the order to Amex, and, absent relief, the Dual Member is obligated to comply with the locate obligation prior to accepting a short sale order routed from Amex under the Outbound Trading Arrangement. Based on the facts and representations set forth in your letter, the Staff will not recommend enforcement action to the Commission under Rule 203(b)(1) of Regulation SHO if the Dual Member does not perform the locate when accepting short sale Outbound Trades from Amex under the Outbound Routing Arrangement provided the following conditions are met:

1. In no event shall either Amex or the Dual Member change the Originating Broker-Dealer's marking of an order "long," "short," or "short-exempt."
2. Except as otherwise stated herein, all parties to the Outbound Routing Arrangement shall comply with Regulation SHO.
3. All parties to the Outbound Routing Arrangement shall maintain an audit trail of all trades effected under the Outbound Routing Arrangement, which is capable of being produced promptly upon request to Commission staff and other appropriate self-regulatory organizations.
4. Amex shall monitor transactions effected under the Outbound Routing Arrangement for compliance with Regulation SHO, including the "marking" requirement of Rule 200(g) and the locate requirement of Rule 203(b), and either take action with regard to entities where Amex is the appropriate self-regulatory organization or refer actions to the appropriate self-regulatory organization as necessary.

3. Regulation T

Based on the facts and representations set forth in your letter, the Staff will not recommend enforcement action to the Commission under Regulation T if the Dual Member

³ In taking this position, the Staff notes in particular that customers of the Originating Broker-Dealer (as defined in your letter) will receive confirmations in compliance with Rule 10b-10 from the Originating Broker-Dealer for Outbound Trades.

treats Amex's account opened with it in connection with the Outbound Routing Arrangement as a "broker-dealer credit account" for purposes of Regulation T.

4. Section 15(b)(8) and Rule 15b9-1


Based on the facts and representations set forth in your letter, the Staff will not recommend enforcement action to the Commission under Section 15(b)(8) against an Amex-only Member if the Amex-only Member treats income derived from transactions through the Outbound Routing Arrangement as "income derived from transactions . . . through the Intermarket Trading System" for purposes of the exemption provided in Exchange Act Rule 15b9-1.⁴

* * *

These positions concern enforcement action only, are based solely upon the representations you have made, and are limited strictly to the facts and circumstances described in your letter. Any different facts or circumstances, including any change to the operation of the Outbound Routing Arrangement, may require a different response. These positions are subject to modification or revocation if at any time the Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with Amex, the Dual Member, and the Originating Broker-Dealers. Finally, the Staff expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, or the applicability of any federal or state laws or self-regulatory organization rules to, the proposed transactions.

Sincerely,



James A. Brigagliano
Acting Associate Director

⁴ In taking this position, the Staff notes in particular that the Outbound Routing Arrangement has been established by Amex pursuant to a proposed rule change filed with, and approved by, the Commission in order to comply with Rule 611 of Regulation NMS. See 71 FR 59546 (Oct. 10, 2006).

C A D W A L A D E R

Cadwalader, Wickersham & Taft LLP
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October 11, 2006

Re: **Request for No-Action Relief on American Stock Exchange's
Outbound Routing Arrangement**

James A. Brigagliano
Acting Associate Director
Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Mr. Brigagliano:

On behalf of the American Stock Exchange LLC (“**Amex**”), we respectfully request that the staff of the Division of Market Regulation (the “**Staff**”) of the Securities Exchange Commission (“**SEC**” or “**Commission**”) not recommend enforcement action to the Commission under Rule 10b-10(a) and Rule 203(b) under the Securities Exchange Act of 1934 (the “**Exchange Act**”), Regulation T or Section 15(b)(8) of the Exchange Act if the Amex implements an outbound routing arrangement and the associated execution and settlement services arrangement, as described herein, in order to comply with Rule 611 of Regulation NMS (the “**Outbound Routing Arrangement**”).¹

A. Description of Outbound Routing Arrangement

Regulation NMS requires a trading center, such as the Amex, to establish procedures reasonably designed to prevent the execution of trades on that trading center at prices inferior to protected quotations displayed by other trading centers.² A trading center may comply with Rule 611 of Regulation NMS in one of three ways: (1) canceling any order the execution of which would result in an impermissible trade-through; (2) matching the prices of the automated NBBO; or (3) routing a member’s order to another trading center that is displaying a better-priced protected quotation. To comply with Regulation NMS, the Amex is

¹ See 71 FR 59546 (October 10, 2006).

² See 70 FR 37496 (June 29, 2005) and Rule 611 of Regulation NMS.

choosing the third option and instituting an Outbound Routing Arrangement, as described below.³

When an Amex member broker-dealer (the “**Originating Broker-Dealer**”) sends a buy or sell order to the Amex in an NMS stock as to which there is a better protected offer or protected bid available at another trading center (the “**Away Market Center**”), the Amex will route the order to the Away Market Center through an account at a broker-dealer that is a member of both the Amex and the Away Market Center (the “**Dual Member**”). Currently, the Amex proposes to use Citigroup Global Markets Inc. (“**CGMI**”) as the Dual Member. CGMI will be responsible for transmitting the order for execution on the Away Market Center (any such executed trade, an “**Outbound Trade**”) and for clearing and settling the Outbound Trade with the relevant broker-dealer at the Away Market Center. As soon as a trade has been executed, the Amex will receive a trade notification containing the price and quantity, and the Amex will inform the Originating Broker-Dealer.

Amex will establish a dedicated account at the National Securities Clearing Corporation (“**NSCC**”) solely for the purposes of facilitating clearance and settlement of Outbound Trades executed by the Dual Member (the “**NMS Facilitation Account**”). At the end of each business day, the Dual Member will “summarize” all locked in Outbound Trades executed by it on behalf of the Amex in respect of any NMS stock and will submit to NSCC an entry for the NMS Facilitation Account reflecting the summarized amount of sales and purchases in respect of any NMS stock under the Outbound Trades.

Amex will authorize NSCC to make available to the Dual Member records of Outbound Trades submitted to the NMS Facilitation Account by the Originating Broker-Dealer. At the end of each business day, the balance of the NMS Facilitation Account will be reconciled. Furthermore, the Dual Member will provide the Amex with information showing balances, positions and transaction activity each business day as well as a daily settlement statement at the end of each month.

B. Discussion

Generally, an SEC registered broker-dealer has certain obligations with respect to its customer’s trades, including the issuance of confirmations pursuant to Rule 10b-10 under the Exchange Act,⁴ locate requirements under Regulation SHO⁵ and the collection of margin or full cash payment under Regulation T.⁶

³ See 70 FR 37496 (June 29, 2005) and Rule 611 of Regulation NMS

⁴ See Rule 10b-10 under the Exchange Act.

⁵ See Rule 203(b) under the Exchange Act.

Although many of these obligations do not apply when the party sending a bid or offer that results in a trade is another SEC registered broker-dealer, these exceptions are not explicitly available when the party transmitting the order is a national securities exchange such as Amex acting in accordance with Regulation NMS.

1. Rule 10b-10(a)

Rule 10b-10(a) under the Exchange Act requires a broker-dealer to send a trade confirmation to its customer at or before completion of each transaction. Although Rule 10b-10(d)(1) explicitly excludes a broker-dealer from the definition of “customer” for purposes of Rule 10b-10, a national securities exchange, such as Amex, is not excluded from the definition of “customer.”⁷ Absent relief, Dual Member in the Outbound Trading Arrangement must send a trade confirmation to the Amex as if it were a customer.

The purpose of Rule 10b-10(a) is to ensure full disclosure to investors of the terms of the transactions that they conduct with their broker-dealers. Amex has no interest in receiving Rule 10b-10(a) confirmations because it does not need the particular information from such confirmations. Fees charged by Dual Member will be set forth in a written agreement between Amex and Dual Member. Furthermore, the execution price of the trades will be available to the Amex through the trade reporting done by Dual Member. The investor in the Outbound Trade, that is, the customer submitting the order to the Originating Broker-Dealer, will be receiving trade confirmations in compliance with Rule 10b-10(a) from the Originating Broker-Dealer; this fulfills the policy concerns of Rule 10b-10.

The Amex respectfully requests that the Staff not recommend enforcement action to the Commission under Rule 10b-10(a) of the Exchange Act if the Dual Member does not send a trade confirmation to the Amex containing all information as provided under 10b-10(a) for Outbound Trades.

2. Regulation SHO

Rule 203(b)(1) of Regulation SHO requires that a broker-dealer “locate” the underlying equity security prior to accepting a short sale from another person. Rule 203(b)(2) exempts a broker-dealer from the locate requirement if, among other things, the short sale order is from another registered broker-dealer. Absent relief, Dual Member arguably must perform the locate obligation prior to

⁶ See e.g., Regulation T Sections 220.4 and 220.8.

⁷ See Rule 10b-10(d)(1) under the Exchange Act; Sections 220.2 and 220.7 of Regulation T; and Rule 203(b)(2) under the Exchange Act.

accepting a short sale order routed from the Amex under the Outbound Trading Arrangement. This would be the case even though the Originating Broker-Dealer would have already been obligated to perform the locate requirement prior to transmitting the order to the Amex. We believe such duplicative locate obligation is unnecessary.

Based on the foregoing, the Amex respectfully requests that the Staff not recommend enforcement action to the Commission under Rule 203(b)(1) of Regulation SHO if the Dual Member does not perform a locate when accepting short sale Outbound Trades under the Outbound Routing Arrangement, subject to the following conditions:

1. In no event shall either Amex or the Dual Member change the Originating Broker-Dealer's marking of an order "long," "short," or "short-exempt."
2. Except as otherwise stated herein, all parties to the Outbound Routing Arrangement shall comply with Regulation SHO.
3. All parties to the Outbound Routing Arrangement shall maintain an audit trail of all trades effected under the Outbound Routing Arrangement, which is capable of being produced promptly upon request to Commission staff and other appropriate self-regulatory organizations.
4. Amex shall monitor transactions effected under the Outbound Routing Arrangement for compliance with Regulation SHO, including the "marking" requirement of Rule 200(g) and the locate requirement of Rule 203(b), and either take action with regard to entities where the Amex is the appropriate self-regulatory organization or refer actions to the appropriate self-regulatory organization as necessary.

3. Regulation T

Generally under Regulation T, a customer that buys securities on a cash basis through one broker-dealer and settles them through another broker-dealer is required to obtain a so-called "letter of free funds" in connection with each transaction.⁸ This requirement would obviously be impractical under this Outbound Routing Arrangement.

By contrast, a broker-dealer (referred to as a "creditor" in Regulation T) can buy securities in an account with one broker-dealer (*e.g.*, the Dual Member) and settle with another broker-dealer (*e.g.*, the "Originating Broker-Dealer") in a "broker-dealer credit account" without the need for a letter of free funds. Although Amex is not a broker-dealer, we believe that the Dual Member should

⁸ See Regulation T Section 220.8(c)(2)(ii).

be able to treat Amex's account with it as a "broker-dealer credit account" given that the only purpose of the account is to achieve compliance with Regulation NMS.

Accordingly the Amex respectfully requests the Staff not recommend enforcement action to the Commission under Regulation T if the Dual Member treats Amex's account opened with it in connection with the arrangement discussed above as a "broker-dealer credit account" for purposes of Regulation T.

4. Section 15(b)(8) and Rule 15b9-1

Under Section 15(b)(8) of the Exchange Act, an SEC-registered broker-dealer has to be a member of a securities association registered pursuant to Section 15A of the Exchange Act unless it effects transactions solely on a national securities exchange of which it is a member. Rule 15b9-1 under the Exchange Act provides a conditional exemption from this membership requirement. A broker-dealer relying on this rule may not have annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount greater than \$1,000. The annual gross income limitation does not apply to "income derived from transactions . . . through the Intermarket Trading System." Rule 15b9-1 defines the Intermarket Trading System ("ITS") as "the intermarket communications linkage operated jointly by certain self-regulatory organizations pursuant to a plan filed with, and approved by, the Commission." Although this exception is not explicitly available for income derived from transactions through the Outbound Routing Arrangement, we believe that it would be consistent with the intent of the ITS exception in Rule 15b9-1 to exclude income derived from transactions through the Outbound Routing Arrangement.

Accordingly, the Amex respectfully requests that the Staff not recommend enforcement action to the Commission under Section 15(b)(8) if a broker-dealer that is only a member of Amex treats income derived from transactions through the Outbound Routing Arrangement as "income derived from transactions . . . through the Intermarket Trading System" for purposes of the exemption provided in Exchange Act Rule 15b9-1.

October 11, 2006

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In light of the foregoing, we believe that the SEC-registered broker-dealers should be able to, for purposes of the cited securities rules and regulations implicated by the Outbound Routing Arrangement, look through the Amex to the Originating Broker-Dealer or Dual Member, as the case may be. Please do not hesitate to contact the undersigned at 212-504-6700 or Susan Ameel at 212-504-5665 regarding this request.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'S Lofchie', with a long horizontal flourish extending to the right.

Steven Lofchie

cc: Brian A. Bussey, Assistant Chief
Counsel
Norman M. Reed, Special Counsel
Jeffrey Burns
Oscar Onyema