

Information Memo



Number 12-22
September 18, 2012

TO: CHIEF EXECUTIVE OFFICER, MANAGING PARTNER, CHIEF OPERATIONS OFFICER,
OPERATIONS PARTNER AND LEGAL AND COMPLIANCE DEPARTMENTS

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: QUARTERLY EXPIRATION DAY – September 21, 2012

I. Purpose

Friday, September 21, 2012, will be a quarterly Expiration Day for stock and index options and futures products whose settlement pricing is based upon New York Stock Exchange LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Exchanges”) opening or closing prices on that day. This Information Memorandum reminds members and member organizations of certain NYSE and NYSE MKT rules and policies regarding opening imbalance publications, entry and cancellation of market-on-close/limit-on-close (“MOC/LOC”) and closing offset (“CO”) orders, publication of on-the-close imbalances, and printing the closing transaction.

II. Expiration Day Opening Imbalance Publication

Members and member organizations are reminded that the regular pre-opening procedures outlined in Rules 15 (Pre-Opening Indications) and 123D (Openings and Halts in Trading) apply on the September 21 Expiration Day. Accordingly, Designated Market Makers (“DMMs”) should publish indications as promptly as practicable and are reminded of their additional obligations under Rule 123D to publish one or more indications, under the supervision of a Floor Official, in situations where the opening price would be affected by an imbalance of market and limit buy and sell orders in a security.

In the event that one or both of the Exchanges invokes its exemptive powers under Rule 48 (Exemptive Relief – Extreme Market Volatility Condition), the terms of that rule would govern the obligation to publish pre-opening indications.

III. Rules and Policies Relating to the Close

A. MOC/LOC and CO Order Entry and Cancellation

Members and member organizations are reminded that the provisions of Rule 123C (Closing Procedures) apply to the Close on the September 21 Expiration Day. While the Exchanges expect systems to operate normally on September 21, in the unlikely event of a systems interruption leading into or at the Close, the Closing Procedures set out in Rule 123C would operate as if the Exchanges had declared a regulatory halt in one or more securities.

In the event that one or both of the Exchanges invoke its exemptive powers under Rule 123C(9) (Closing Procedures - Extreme Order Imbalances at or Near the Close), the terms of that rule would govern the handling of orders at the Close. See Section III. D, below.

In connection with the entry of MOC/LOC and CO orders, members should pay particular attention to the following:

- A “published imbalance” is an imbalance that has been disseminated to the Tape. An imbalance announced verbally or physically posted at the panel is not considered to be a published imbalance. See Section III. B, below. The Exchanges’ Order Imbalance Information product, a data feed of real-time order imbalances that accumulate prior to the opening and the closing of trading on the Exchanges, does not constitute a “published imbalance.”
- Brokers and traders are reminded that, while they should enter orders as early in the day as possible, all MOC/LOC orders (unless entered to offset a published imbalance) must be entered electronically by 3:45 p.m. Entering MOC/LOC orders early provides DMMs with the opportunity to more quickly identify and disseminate potential order imbalances that might exist at the Close. This, in turn, enables brokers and traders to more effectively identify potential offsetting customer interest that could mitigate any imbalance. MOC/LOC and CO orders entered prior to 3:45 p.m. may be canceled or reduced prior to that time for any reason.
- After 3:45 p.m. Exchange systems will accept only MOC/LOC orders that offset a published imbalance and CO orders may be entered in any amount on either side of the market.
- Between 3:45 p.m. and 3:58 p.m., MOC/LOC and CO orders may be canceled or reduced in size only to correct a legitimate error.¹ This also applies to instances where cancel/replace functionality is used.
- FINRA will continue to closely monitor the cancellation of MOC/LOC and CO orders.
- After 3:58 p.m., MOC/LOC and CO orders may not be cancelled or reduced in size for any reason except in accordance with Rule 123C(9). See Section III. D, below.
- In the event of a trading halt effective at 3:45 p.m. or later, MOC/LOC orders may be entered only to offset a published imbalance. CO orders, however, may be entered in any amount on either side of the market. See Rule 123C(2)(c).

B. Imbalance Publications²

Rule 123C(5) provides for the publication of order imbalances as described below. In addition, members and member organizations may refer to the attached quick-reference page for a summary of the times and requirements for imbalance publications. DMMs are reminded that erroneous imbalance publications must be corrected as soon as practicable.

¹ A “legitimate error” is an error in any term of a MOC/LOC order, such as price, number of shares, buy/sell, or identification of the security. See Rule 123C(1)(c).

² Imbalance publications include both MOC and marketable LOC orders (based on the last sale price at the time the publication is made). See Rule 123C(1)(b) & (d), defining “Informational Imbalance Publications” and “Mandatory MOC/LOC Imbalance Publications.” For more information on how imbalance publications are calculated, see Rule 123C(4).

1. Informational Imbalance Publications between 3:00 p.m. and 3:45 p.m.

Between 3:00 p.m. and 3:45 p.m., DMMs are encouraged to issue Informational Imbalance Publications of any size if they believe that there could be significant price dislocation at the Close. These publications are informational only and do not limit MOC/LOC or CO order entry or cancellation before 3:45 p.m. DMMs who wish to issue an Informational Imbalance Publication must obtain prior approval from a Floor Official or qualified Exchange employee (see Rule 46.10) prior to issuance. Floor Official approvals to issue Informational Imbalance Publications must be recorded in the Floor Official Request Tracking Engine (“FORTÉ”). Members must state the proposed imbalance information and note any other relevant information (e.g., average daily trading volume (“ADTV”), size, or degree of impact) in connection with the request.

2. Mandatory MOC/LOC Imbalance Publications at 3:45 p.m.

As soon as practicable after 3:45 p.m., any MOC/LOC imbalance of 50,000 shares or more for NYSE-listed securities, and 25,000 shares or more for NYSE MKT-listed securities, will be published by the Exchange. Other significant imbalances of lesser size (i.e., less than 50,000/25,000 shares but significant relative to the ADTV of a particular security) may be published by the DMM with Floor Official or qualified Exchange employee approval. As with Informational Imbalance Publications, Floor Official approvals to issue certain Mandatory MOC/LOC Imbalance Publications must be recorded in FORTÉ and members should state the proposed imbalance information and note any other relevant information (e.g., ADTV, size, or degree of impact) in connection with the request.

In addition, any Informational Imbalance Publication issued prior to 3:45 p.m. must be updated. An imbalance of 50,000 shares (NYSE)/25,000 shares (NYSE MKT), or more will be published. If there is an imbalance of any lesser size that is significant relative to the ADTV of the stock, it may be published by the DMM with Floor Official or qualified Exchange employee approval. If there is no such imbalance, a “no imbalance” indication must be issued by the DMM.

3. Mandatory MOC/LOC Imbalance Publications after a Trading Halt

If a trading halt is in effect at 3:45 p.m. but is lifted prior to the Close, any MOC/LOC imbalance of 50,000 shares (NYSE)/25,000 shares (NYSE MKT), or more will be published by the DMM as soon as possible after the resumption of trading. Additionally, any imbalance of lesser size if significant relative to the ADTV may be published by the DMM as soon as possible after trading reopens, subject to prior Floor Official or qualified Exchange employee approval. If the trading halt is not lifted before the Close, there will not be any imbalance publications.

4. Exchange Publication of Order Imbalance Information

In addition to the Informational Imbalance and Mandatory MOC/LOC Imbalance Publications described above, the Exchanges also make available real-time Order Imbalance Information prior to the Close in accordance with Rule 123C(6). These publications take place approximately every five (5) seconds between 3:45 p.m. and 4:00 p.m. The Order Imbalance Information publications use a reference price in order to indicate how many shares would be needed to close the security at that price, including MOC, marketable LOC and CO orders. (For more information on how the reference price is determined, see Rule 123C(6)(a)(iii)). Beginning at 3:55 p.m., the Order Imbalance Information publications also include stop orders, d-Quotes and all other e-Quotes containing pegging instructions eligible to participate in

the closing transaction.³

As noted above, Order Imbalance Information publications are solely for informational purposes and off-setting MOC/LOC interest must not be submitted in response to Order Imbalance Information publications. Off-setting MOC/LOC interest may be submitted only as described in this memo in response to a Mandatory MOC/LOC Imbalance Publication issued at 3:45 p.m. or after a trading halt in accordance with Rule 123C(2).

C. Printing the Closing Transaction

1. Rules 116.40 and 123C(8)

DMMs are reminded that the closing transaction must be printed consistent with Rules 116.40 and 123C(8) and must accurately reflect both the closing price and closing volume when printing the closing transaction.⁴ Additionally, DMMs are reminded of their obligation to maintain a fair and orderly market pursuant to Rule 104.

2. Verbal Interest and e-Quotes at the Close

DMMs should take all interest, including verbal, e-Quoted and Display Book interest, into account when formulating the Close. Depending on whether it is marketable or not, verbal interest may be handled differently than e-Quoted interest at the Close. Marketable verbal interest is included with all market and MOC interest at the Close, while limited verbal interest and e-Quotes are on parity with limit orders. DMMs are reminded that verbal interest from a Floor broker should be handled one of two ways: entered into GTM by NYSE Floor Operations staff or into the crowd field of the Closing template by the DMM.

Pursuant to Rule 342, members and member organizations must ensure that they have adequate written policies, procedures and controls in place to detect, deter and prevent conduct inconsistent with the guidance set forth above. Any member who believes that the above procedures have not been adhered to should report their concern to the FINRA On-Floor Surveillance Unit.

3. Orders to Offset MOC/LOC Imbalances at the Close to Mitigate Price Disparity

Rule 902 (Off Hours Trading Orders) provides for entry of orders after the Close. Rule 902(a)(ii)(B) permits DMMs to include in the calculation of the Close legitimate market interest that has agreed to offset all or part of any MOC imbalance that existed prior to the Close at 4:00 p.m. The DMM's use of this offsetting interest to minimize significant price dislocation on the Close will result in a closing-price coupled order between the DMM and member, member organization or customer. If the member, member organization or customer agrees, the DMM may include this interest in offsetting an imbalance when setting the closing price and increase DMM participation in the closing print to the extent of the new contra interest. In this way the DMM will liquidate or cover the related dealer position, and the member, member organization or customer will acquire the position. Such closing-price coupled orders are executed at the Ramp.

³ On a day that trading on the Exchange is scheduled to close earlier than 4:00 p.m., the Exchange will disseminate Order Imbalance Information every five (5) seconds starting at ten (10) minutes prior to the Close. See Rule 123C(6)(a)(v).

⁴ For more information on the execution of orders at the Close, see Rule 123C(7). Members and member organizations are reminded that, when arranging the Close, they may not use the Display Book system in an inappropriate manner designed to discover information about unelected stop orders.

It is important to note that Rule 902 may not be relied on for the entry of an order after the Close when there is no MOC/LOC imbalance or when the imbalance would not result in significant volatility and/or price dislocation. In addition, it cannot be used if the Close has already been printed.

D. Extreme Order Imbalances at or Near the Close

In order to avoid significant dislocation in the closing price that may result from an order entered or represented at or near the Close, Rule 123C(9) permits the Exchanges, on a security-by-security basis, to temporarily suspend the hours of operation under Rule 52 so that offsetting interest may be solicited from both on-Floor and off-Floor participants and entered to reduce the size of the imbalance. Extensions of trading under Rule 123C(9) may be designated by the Exchange for a specific time period up to 30 minutes after the scheduled close. Off-setting interest is solicited using Exchange Trader Updates as well as messages sent directly to Floor broker hand-held devices. These Exchange-issued solicitation requests include information regarding security symbol, the imbalance amount and side, the last sale price, and a designated order acceptance cutoff time (generally five minutes from the issuance of the solicitation request). Offsetting interest submitted in response to an Exchange-issued solicitation request must be a limit order priced no worse than the last sale, irrevocable and entered no later than the order acceptance cut-off time indicated in the solicitation request. Exchange systems will accept interest entered electronically in the named security after 4:00 p.m. only if Rule 123C(9)(a)(1) is invoked.

Exchange systems will not verify side or price, and will not block post-4:00 p.m. cancellation of interest submitted under this rule. Therefore, member and member organizations entering such interest are responsible for ensuring compliance with the rule, such that the only interest that may be entered in response to such a solicitation request is: (i) offsetting; (ii) a limit order priced no worse than the last sale price; and (iii) not cancelled.

Rule 123C(9) also permits temporary suspension of the prohibition on the cancellation or reduction of a MOC/LOC order after 3:58 p.m. where there is a legitimate error in such an order *and* the execution of the order would cause significant price dislocation at the Close.

Only the DMM assigned to a particular affected security may request relief under Rule 123C(9). A request for relief under Rule 123C(9) must be approved and supervised by an Executive Floor Governor or qualified NYSE Euronext employee and supervised by a qualified Exchange officer, as defined in Rule 48(d). All Rule 123C(9)-related approvals must be recorded in FORTÉ.

Failure to comply with these requirements for entering interest in response to a solicitation request is a violation of Exchange rules and may result in disciplinary action. See Information Memoranda 09-20 (May 5, 2009) and 10-52 (December 22, 2010).

IV. **Adequacy of Operations and Supervisory Staff**

All members and member organizations, including DMMs, should ensure that both operational and supervisory staffing on and around the September 21 Expiration Day will be sufficient to monitor and process all orders, regardless of the form in which they are received, as well as to handle the anticipated increased workload. All members and member organizations should also review their systems to ensure that they have adequate capacity to handle the expected increase in volume. For example, DMM firms should review their DMM Unit algorithm to ensure that they meet their obligations to maintain a fair and orderly market. DMMs are reminded to seek the advice of a Floor Official regarding any unusual situations as quickly as possible.

V. Supervision

A. Review of Policies and Procedures

In view of increased automated order delivery, e-Quoting and automatic execution, members and member organizations should carefully review their procedures as well as their supervisory systems for handling orders in connection with the September 21 Expiration Day. Specifically, members and member organizations should review their practices for handling orders at or near the Close. Reviews should include both manual orders and those handled systemically, such as orders that are handled by a computer algorithm. In addition, members and member organizations should take all necessary steps to ensure that the relevant trading and back-office staffs are familiar with firm procedures for handling orders at or near the Close. Members and member organizations should also be mindful of the guidance issued in Information Memo 09-22 (May 28, 2009) (attached) regarding procedures for escalating and addressing inquiries arising from real-time regulatory or trading issues.

In addition, members and member organizations are reminded of their obligation to have adequate systems and controls relating to the use of firm systems by correspondents or others. Please consult Information Memo 11-13 (May 16, 2011) (attached) for more information.

B. Adequacy of Compliance Program

Members and member organizations are also reminded to ensure that they have a robust compliance program that includes adequate written policies, procedures and supervisory controls to monitor for compliance with Rule 123C and the guidance contained in this Information Memo. Policies and procedures must be adequate to ensure that all procedures related to MOC/LOC orders and orders entered at or near the Close, are appropriately followed, and to detect and deter any actions that may violate NYSE, NYSE MKT and/or SEC rules.

C. Due Diligence Requirements

Consistent with the requirements of Rule 405, before any order with instructions to participate at the Close is transmitted to the Floor the member or member organization accepting the order must exercise due diligence to learn the essential facts relative to the order, including the purpose and propriety of the at-the-close instruction. In addition, an imbalance of orders at or near the Close, caused in part by the entry of such orders, could lead to trading being halted in the security and such orders not receiving an execution.

D. Supervision to Prevent Improperly Affecting the Close

Members and member organizations must also ensure that their activity does not have the effect of artificially impacting the closing price. Firms should review procedures utilized in connection with orders to be executed at or near the Close with their traders and other order-entry personnel. Firms should also review systemic order-entry functions (e.g., algorithms or “smart servers”) for compliance with the NYSE and NYSE MKT rules and the provisions of this Information Memorandum. Firms should also review the provisions of Information Memo 95-28 (July 10, 1995) (attached), which discusses trading near the Close and activity that would constitute violations of NYSE and NYSE MKT rules, as well as federal securities laws.

In that connection, members and member organizations are reminded that, where a firm has committed to purchase from (sell to) a customer at a price that is derived from the closing price (MOC orders) while also reserving a significant position of its hedging or covering transaction to be executed at or near the Close, they must operate with substantial care. If the transaction is completed in a manner that does

not effectively place the firm at market risk or if the transaction does not provide an opportunity for possible contra side interest to develop and/or react to the activity, it would raise manipulative concerns and would operate as conduct inconsistent with just and equitable principles of trade.

E. Compliance with Federal Securities Laws and Rules

In addition to complying with NYSE and NYSE MKT rules and policies, members and member organizations should review all other applicable federal securities laws and regulations, including Section 9(a)(2) of the Securities Exchange Act, Regulation SHO and Rule 10b-5, as well as the margin and capital rules. Firms must ensure that they have written policies, procedures, and supervisory controls reasonably designed to detect and deter potentially violative conduct.

VI. Staff Contacts

Regulatory questions relating to this Information Memo should be addressed to:

- Patricia Bergholc, Director, FINRA Market Regulation, 917.281.3054; or
- Thomas C. Bruno, Director, FINRA Market Regulation, 917.281.3081, or
- Michael Fryer, Director, FINRA Market Regulation, 917.281.3071; or
- John C. Saxton, Jr., Director, FINRA Market Regulation, 917.281.3114.

Questions regarding the NYSE and NYSE MKT Rules cited in this notice should be addressed to:

- Clare Saperstein, Vice President, NYSE Regulation, Inc., 212.656.2355; or
- David De Gregorio, Chief Counsel, NYSE Regulation, Inc., 212.656.4166.

Operations questions concerning this memorandum should be addressed to:

- Paul Bauccio, Senior Vice President, Operations, 212.656.2929; or
- Dennis Pallotta, Director, Operations, 212.656.5236; or
- Sonia Rosa, Managing Director, Operations, 212.656.2899.

Questions may also be directed to the FINRA On-Floor Surveillance Unit via the White Phone or in person at the Unit's Booth on the Floor.

NYSE/NYSE MKT Close

- ***MOC/LOC entry***

- Must be entered by **3:45 pm**, unless offsetting a published imbalance.
- Must be entered electronically.

- ***Cancellation of MOC/LOCs***

- Can be cancelled after **3:45 pm** only in cases of legitimate error.
- Cannot be cancelled after **3:58 pm**, even if legitimate error.*

- ***MOC/LOC Publication***

- One Regulatory MOC/LOC publication at 3:45 pm, done systemically

- ***Closing Offset ("CO") Order***

- Can be entered on either side of the market, at any time during the day.
- Can be used to offset any imbalance at the Close.
- Not guaranteed to participate; may participate only to offset imbalance if no other interest is remaining to trade at the closing price on the same side of the CO order.
- Cannot swing balance to other side.
- Time priority basis with other CO orders on the same side of the market.
- Not included in the mandatory MOC/LOC imbalance publication.
- Subject to the same restrictions on cancelling as MOC/LOC orders, i.e., cannot be cancelled after 3:58 pm, even if legitimate error*

- ***Order Imbalance Data feeds (Proprietary Data product) to all customers (upstairs and Floor)***

- Every 5 seconds beginning at 3:45 pm
- Compiled using:
 - Reference price
 - MOC/LOC imbalance and the side of the market
 - At 3:55 pm, d-Quotes and all other e-Quotes containing pegging instructions eligible to participate on the Close
 - MOC/LOC paired quantity at reference price
 - CO orders on the opposite side
 - At-price LOC interest eligible to offset the imbalance.
 - Price at which closing-only interest (MOC orders, marketable LOC orders and CO orders on the opposite side of the imbalance) will execute in full

- Price where all orders eligible to trade on the Close would execute against themselves ***and*** orders on DBK.
- ***d-Quote entry for closing transactions must be entered by 3:59:50 pm.***

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Except as provided in Rule 123C(9)(a)