



Number 09-26  
June 18, 2009

**TO:** MEMBERS AND MEMBER ORGANIZATIONS

**SUBJECT:** TRADING NEAR OR ON THE CLOSE - FREQUENTLY ASKED QUESTIONS

**IMPORTANT – READ IN ENTIRETY**  
[PLEASE SHOW TO YOUR COMPLIANCE OFFICER](#)  
[AND HEAD OF TRADING OPERATIONS](#)

## I. Purpose

This Information Memo is being issued to address frequently asked questions concerning trading near or on the Close on any trading day. All members and member organizations are strongly urged to read this Bulletin as part of their preparation for trading on June 26, 2009, in relation to the Russell rebalancing.

## II. Frequently Asked Questions

### A. General

Q1: How is verbal and e-Quoted interest handled at the Close?

A1: All interest, including verbal, e-Quoted and Display Book interest, should be taken into account by the Designated Market Maker (“DMM”) when formulating the Close. Unless market conditions dictate otherwise, interest priced better than the Close must be executed on the Close. Interest limited to the closing price will be executed depending on the availability of contra side interest.

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 “AT priced” 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: limited “AT priced” verbal interest should be entered into the system as a manual e-Quote via GTM and DMMs may require a written order from the broker; marketable verbal interest should be entered into DBK as Crowd interest.

Pursuant to NYSE Rule 342, members and member organizations are required to ensure that they have adequate policies and written procedures in place to detect, deter and prevent conduct inconsistent with the guidance set out above. Any member who believes that the above procedures have not been adhered to should report his or her concern to the On-Floor Surveillance Unit in person or via the White Phone.

Q2: What are the considerations a broker/customer must keep in mind when handling block-sized interest at the Close?

A2: Although orders entered at or near the Close (either verbally or electronically) are eligible to be executed either prior to the Close or as part of the Close, members and member firms should be aware such orders can result in price dislocation in the stock, particularly if the size of the order is unusual in relation to the average daily volume of the stock or otherwise cannot easily be absorbed because of prevailing market conditions. As a result, members and member organizations should not hold back large interest until at or near the Close, and are advised that, if they do, they may face regulatory exposure for potentially affecting the Close inappropriately (see Info Memos 06-81 and 07-26, and Hearing Panel Decision No. 05-108, for more information on what type of conduct is and is not permitted). Where a large order (or series of orders) is entered at or near the Close that may cause significant price dislocation, the DMM should immediately seek guidance from a Floor Governor or Executive Floor Governor, and from NYSE Regulation. Members should be aware that they may get executions at multiple prices and through multiple LRPs in a series of transactions that are distinct from the Close.

#### B. Cancellation of e-Quotes

Q3: At any time during the trading day, must a DMM enter or cancel a Floor broker's e-Quote if requested to do so by the broker?

A3: Generally, Floor brokers must enter and cancel their own e-Quotes during the trading day. However, if a Floor broker's handheld device is not functioning properly (e.g., outright failure or significant latency), the DMM should, on a best efforts basis, assist the broker by entering or canceling e-Quotes on the broker's behalf. For more information please review Member Education Bulletin 2005-24 (December 9, 2005)(attached).

Q4: If a Floor broker e-Quotes an order and, based upon its limit price, knows that the e-Quote will not participate on the Close, can the broker verbally represent the order at a different price?

A4: Yes, provided that the Floor broker first cancels the e-Quote and receives a systemic acknowledgement of the cancellation prior to his or her representing the order in the Crowd so as to avoid a duplicate execution.

#### C. Holding the Close Prohibited

Q5: Are DMMs allowed to "hold the Close" at a Floor broker's request so that the broker can consult with his/her customer?

A5: No. DMMs may not delay the closing transaction unless directed to do so by NYSE senior management for operational or regulatory reasons.

Q6: How should a Floor broker who is holding multiple orders trading at different posts participate in the Close?

A6: A Floor broker holding multiple orders in stocks trading at different posts must have an actual order for each stock. Such orders must be entered into an NYSE system and recorded in FESC prior to 4:00PM. A Floor broker holding multiple orders who wishes to represent two or more of those orders manually (as opposed to electronically) should adequately communicate the customer's closing interest to the DMM prior to the Close, including his or her intent to buy or sell, the quantity and a price. The broker should return to any panel(s) that he or she is trading at manually as promptly as possible after the Closing Bell, subject to market conditions.

When arranging the close of stocks at the post, the DMM should reasonably attempt to accommodate a broker who is working orders at multiple posts, assuming that the Floor broker has an order and has adequately communicated with the DMM regarding his customer's interest. Floor brokers should be aware that, although they may represent multiple orders in the manner described above, a DMM is not obliged to hold the Close to accommodate the broker. As a result, if a broker is not at the point of sale at the time the DMM closes that security, the broker's order may be excluded from the Closing transaction.

#### D. Market-on-Close and Limit-on-Close Policy

Q7: What does "published imbalance" mean?

A7: A "published imbalance" is an MOC/LOC imbalance that has been disseminated to the Tape pursuant to Rule 123C. An imbalance that is announced verbally, physically posted at the panel or displayed in a hand-held device – but not disseminated to the Tape – is not considered to be a published imbalance. The NYSE Order Imbalance Information product, a data feed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange, does not constitute a "published imbalance."<sup>1</sup> A non-published imbalance may not be accurate or consistent with a published imbalance. The MOC/LOC imbalance published to the Tape is the only imbalance that can be relied upon by a Floor broker when determining whether it is permissible under Rule 123C to enter an offsetting order.

Q8: Are "beat the Close" orders a valid NYSE order type?

A8: An order to "beat the Close" is not a valid order type on the Exchange. Should a Floor broker receive a not-held order with instructions to try to do better than the closing price, the broker is not entitled to preferential treatment by the DMM. As with any Floor broker seeking information as to where a stock may close, the DMM may disclose only the best bid and offer, the depth of the Book and the MOC imbalance and paired amount, if any.

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<sup>1</sup> See Securities Exchange Act Release No. 57861 (May 23, 2008), 73 FR 31905 (June 4, 2008)(SR-NYSE-2008-42). See also Securities Exchange Act Release No. 57862 (May 23, 2008), 73 FR 31174 (May 30, 2008)(SR-NYSE-2008-41).

Q9: May a Floor broker at the point of sale participate with or add to the same side of an MOC/LOC imbalance, published or unpublished?

A9: The Floor broker may not enter a MOC/LOC order on the same side as the published imbalance, but may enter a customer's order for execution before 4:00 p.m. regardless of whether that order is on the same side as, or opposite to, the published imbalance. If there is any residual balance that is marketable or eligible to trade on the Close, the balance of the customer's order may participate in the Close.

Q10: May a Floor broker hold his or her contra side interest to a published imbalance until right before 4:00 p.m.?

A10: While Rule 123C does not specifically prohibit a broker holding entry of offsetting interest until shortly before 4:00 p.m., such conduct would be considered violative if it is subsequently established that the broker acted with manipulative intent, or his or her conduct had a manipulative effect on the price of the security. Even absent price manipulation, such conduct may also be inconsistent with good business practice and just and equitable principles of trade. As noted in Q&A 2 above, brokers engaging in such conduct may face a review by NYSE Regulation and potential regulatory action if warranted by the facts.

#### E. Treatment of Bids and Offers At or Near the Close

Q11: A Floor broker announces at the point of sale that he has 20,000 to sell but does not state a limit price or that he is trading at the market. Is the Floor broker entitled to participate in the Close?

A11: No, non-firm bids or offers are not permissible. The Floor broker's statement is not a firm offer since it does not specify a limit price or that it is at the market.

Q12: How should a DMM handle a large order that triggers a Liquidity Replenishment Point (LRP) just before or at the Closing Bell?

A12: If the market hits an LRP prior to the Close with sufficient time to resolve it before the Close, the DMM should print the trade as the last trade prior to the Close, then price the Close. If the LRP trade does not exhaust the customer's order, the DMM should include any residual interest in the closing transaction. Members and member organizations should be aware that if they represent large orders shortly before the Close and trigger an LRP at or near the Closing Bell, the order may receive two or more execution prices.

Q13: The market is 10 to 10.01, 10,000 by 20,000. Below the displayed bid there a 9.95 bid for 50,000 shares. There are 40,000 shares to sell MOC with 50,000 paired. Shortly before 4:00 p.m. a Floor broker enters the Crowd with a verbal offer to sell 20,000 shares at the market. If the Floor broker's order is not executed before 4:00 p.m., how should the sell order be executed and the Close printed?

A13: The Floor broker order will partially execute, 10,000 shares at 10, and the residual amount will be added to the closing transaction, which will be 100,000 shares at 9.95. The DMM should print the Close immediately after the sale of 10,000 at 10 is reported.

Q14: What happens when a Floor broker does not communicate his or her interest before 4:00 pm?

A14: Any interest not communicated to the DMM by 4:00 p.m. will not participate in the Close. If the Floor broker electronically enters an order at the market before 4:00 p.m. but the order is not received by the DMM until after 4:00 p.m. because of system processing time, the DMM must include the broker's interest in the Close.

Q15: Just before the closing bell stops ringing a Floor broker at the point of sale represents an offer at 10.02. The DMM calculates the Close and announces that the stock is closing at 10.00. It is now past 4:00 p.m. May the Floor broker now change the offer to 9.99?

A15: No. New bids and offers may not be entered after 4:00 p.m.

Q16: Under what circumstances may a DMM request that additional interest be solicited after 4:00 p.m.?

A16: Pursuant to Rule 123C(8), a DMM may request additional interest after 4:00 p.m. to offset an order or verbal interest entered or represented at or near the Close that may cause significant price dislocation. See Information Memo No. 09-20 (May 5, 2009) for an explanation of the provisions of Rule 123C(8).

### **III. Staff Contacts**

Regulatory questions concerning this memorandum may be addressed to the following:

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Questions may also be directed to OFSU via the White Phone or in person at their booth off the main Floor. Questions that are not time sensitive may also be submitted to Ask Market Surveillance. For information about the Ask Market Surveillance system, refer to Member Education Bulletin 2006-3 (January 30, 2006) (attached), if you or your firm is not already a subscriber.