Information Memo
Nyse Regulation, Inc

NYSE Regulation

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Number 09-27
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ATTENTION: CHIEF EXECUTIVE OFFICER, CHIEF OPERATIONS OFFICER, LEGAL AND COMPLIANCE DEPARTMENTS

TO: MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: RUSSELL REBALANCING - JUNE 26, 2009

IMPORTANT – READ IN ENTIRETY
AND SHOW THIS TO YOUR COMPLIANCE OFFICER

I. Purpose of this Information Memo

Following the close of trading on June 26, 2009, the Russell Investment Group will reconstitute certain of its indices, including the Russell 3000® Index and the Russell Microcap® Index. This reconstitution may significantly affect the volume of trading on the NYSE, particularly leading into the close on June 26.

The NYSE is issuing this Information Memorandum to remind members and member organizations of:

- Certain NYSE and NYSE AMEX rules and policies regarding entry and cancellation of market-on-close/limit-on-close ("MOC/LOC") and other order types;
- Procedures for publishing MOC/LOC imbalances; and
- Procedures for printing the closing transaction.

In the interest of preparedness, this memorandum also provides guidance on possible system interruption scenarios and the operation of certain NYSE and NYSE AMEX rules and policies in the event that such a scenario occurs.

II. Background

Reconstitution of certain Russell Indexes will take effect after the close of U.S. equity markets on June 26, 2009. On June 12, the Russell Investment Group published a preliminary list of additions and deletions to the Russell 3000 and Microcap Indices. The NYSE expects that during the trading day on June 26, and especially at and near the Close, significant trading volume associated with portfolio rebalancing will be initiated based upon those lists. Based on the preliminary list, 167 NYSE-listed stocks and 141 NYSE Amex listed stocks will be added to or deleted from the indices, though more stocks could be impacted by the reconstitution.

III. NYSE Rules and Policies Relating to the Close[1]

A. Market-On-Close/Limit-On-Close Order Entry and Cancellation

Members and member organizations are reminded that the provisions of Rule 123C will apply to the close on June 26, subject to the temporary modifications outlined in this memorandum. In addition, although certain categories of imbalance publications, such as informational imbalances, require Floor Official approval, due to the number of imbalance publications expected and sensitivity surrounding the Close on June 26, DMMs are encouraged to consult with and receive approval of a *Senior Floor Official or higher* . Please note that, while the NYSE expects its systems to operate normally on June 26, in the unlikely event of a systems interruption leading into or at the Close, the MOC Policy set out in Rule 123C would operate as if the NYSE had declared a regulatory halt in one or more securities (discussed in detail in Section IV below).

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

- 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 at the panel 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."[2]

- Brokers and traders are reminded that, while they should enter orders as early in the day as possible, all MOC/LOC orders (unless to offset an imbalance) must be entered with the DMM by 3:40 p.m. Entering MOC/LOC orders early provides DMMs with the opportunity to more quickly identify potential order imbalances that might exist at the Close and to disseminate that information. This, in turn, enables brokers and traders to more effectively identify potential offsetting customer interest that could mitigate any imbalance. MOC/LOC orders entered prior to 3:40 p.m. may be canceled prior to that time for any reason.

- Between 3:40 p.m. and 3:50 p.m., MOC/LOC orders may be entered only to offset any published imbalances. During this time period, MOC/LOC orders may be canceled or reduced in size only to correct a legitimate

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[1] This memorandum applies to trading on the NYSE and NYSE AMEX. Rule 123C in both markets governs the entry and execution of MOC/LOC orders. The sole difference is each market's rule is the size of the imbalance at 3:40 pm that would trigger the publication of an imbalance to the Consolidated Tape. On the NYSE, the size is 50,000 shares. On the NYSE AMEX, it is 25,000 shares. The reference in the memo to NYSE and/or Rule 123C refers to both NYSE and NYSE AMEX Rule 123C.

[2] 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).

order entry error.[3] Please note that Market Surveillance will continue to closely monitor the cancellation of MOC/LOC orders pursuant to NYSE Rules.

- After 3:50 p.m., MOC/LOC orders may be entered only to offset any published imbalances. After 3:50 p.m., MOC/LOC orders may not be cancelled or reduced in size for any reason, except as provided in Rule 123C(8)(a)(2).

B. Market-On-Close/Limit-On-Close Imbalance Publication

Rule 123C provides for the publication of order imbalances as described below. In addition, members may refer to the attached quick-reference page for a summary of the times and requirements for imbalance publications. As described in Section IV, in the event of a system interruption, the times and requirements listed here and on the quick-reference attachment may change.

DMMs are reminded that erroneous imbalance publications must be corrected as soon as practicable.

1. Informational MOC/LOC imbalance publications between 3:00 p.m. and 3:40 p.m.

Between 3:00 p.m. and 3:40 p.m., DMMs are permitted to publish informational MOC/LOC imbalances 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 order entry or cancellation before 3:40 p.m. DMMs who wish to publish informational imbalances must obtain Floor Official approval[4] (or more senior) prior to publication. As volume may be greater than normal on June 26, 2009, DMMs should publish informational MOC/LOC imbalances as early as possible.

2. Required MOC/LOC imbalance publications at 3:40 p.m. and 3:50 p.m.

As soon as practicable after 3:40 p.m., the DMM must publish any MOC/LOC imbalance of 50,000 shares or more (25,000 for NYSE Amex-listed throughout this Memo). In addition, the DMM must update any informational imbalance published prior to 3:40 p.m., indicating either the current imbalance or "no imbalance".

Similarly, as soon as practicable after 3:50 p.m., DMMs must update any MOC/LOC imbalances published at 3:40 p.m. – imbalances of 50,000 shares or more, or other significant imbalances, must be published; if there is no such imbalance, the DMM must publish a "no imbalance" indication. Where there was no publication for a stock at 3:40 p.m., but an MOC/LOC imbalance occurred after 3:40 p.m., the DMM should publish the imbalance at 3:50 p.m. with prior Floor Official (or more senior) approval.

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[3] In the event of a regulatory halt, MOC/LOC orders may be entered or canceled up to 3:50 p.m. or until the stock reopens, whichever occurs first. See Rule 123C(1) and (2).

[4] Floor Official approvals to publish informational imbalances should be recorded on the Floor Official Approval form under Item 12 ("Consultation/Other"). Members should state the proposed imbalance information and note any other relevant information (e.g. ADTV, size, degree of impact) in connection with the request.

3. Recommended MOC/LOC imbalance publications at 3:40 p.m. and 3:50 p.m.

Notwithstanding the required imbalance publications (as described above), DMMs are permitted to publish MOC/LOC imbalances of any size, including amounts less than 50,000 shares, if the imbalance could cause significant price dislocation at the close (e.g. an imbalance that is large in comparison to the average daily volume or regular trading patterns for the stock). DMMs who wish to publish such imbalances must obtain Floor Official (or more senior) approval prior to publication.

4. MOC/LOC imbalances greater than 100 million shares

As a result of the Russell Rebalancing, there is a possibility that certain high-volume stocks could have MOC/LOC order imbalances of greater than 100 million shares. Due to systemic limitations of the Display Book®, imbalances of greater than 100 million shares will be calculated by NYSE systems, but will not automatically populate in the MOC/LOC imbalance or closing templates in the Display Book.[5] If that happens, DMMs should immediately alert a Floor Supervisor for assistance in determining the MOC/LOC imbalance amount. The Floor Supervisor will work with the DMM and Operations to determine the size of the MOC imbalance and the size of marketable LOCs.

C. Printing the Closing Transaction

1. Rules 116.40 and 123C(3)

DMMs are reminded that the closing transaction must be printed consistent with Rules 116.40 and 123C(3).[6] DMMs are advised that they must accurately reflect both the closing price and closing volume when printing the closing transaction.

Due to possible system latency, marketable orders entered into Exchange systems immediately before 4:00 p.m. might not be received at the post until after 4:00 p.m. These orders should be incorporated into the closing process, just as non-MOC/LOC interest that is known at the post is factored in.

2. Verbal Interest and e-Quotes at the Close

All interest, including verbal, e-Quotes and Display Book interest, should be taken into account by the DMM when formulating the Close. Unless market conditions dictate otherwise, interest priced better than the Close must be executed on the Close as that interest is considered marketable. Interest limited to the closing price will be executed depending on the availability of contra side interest.

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5 DMMs in stocks that might post a 100 million+ share MOC/LOC imbalance should monitor their MOC/LOC positions closely as they approach the Close. If the MOC/LOC imbalance at the Close is greater than 100 million shares, the closing template will show the last imbalance amount less than 100 million shares. As a result, if the closing template shows an amount near 100 million shares, DMMs should confirm the actual imbalance amount with Floor Operations prior to calculating the Close.

6 See Securities Exchange Act Release No. 34-59345, (February 3, 2009) 74 FR 6444 (February 9, 2009)(SR-NYSE-2009-10 amending NYSE Rules 116 and 123C creating a single closing print. See also NYSE Information Memo 2009-05 (February 4, 2009)

DMMs are reminded that verbal interest from a Floor broker should be handled one of two ways: limited verbal interest should be entered into the system as a manual e-Quote and DMMs may require a written order from the broker; marketable verbal interest should be entered into the Closing template.

3. Orders to offset MOC/LOC imbalances at the Close to mitigate price disparity

NYSE and NYSE Amex Equities Rule 902 (Off Hours Trading Orders) provide 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 is willing to participate in the Close but was not entered as an order into an Exchange system before the close of the regular trading session 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 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 coupled orders are executed at the Ramp.

It is important to note that Rule 902(a)(ii)(B) 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 volatility and/or price dislocation. In addition, it cannot be used if the Close has already been printed.

Pursuant to Rule 123C(8)(a)(1),[7] to ensure a fair and orderly close, on a security-by-security basis, the Exchanges may temporarily suspend Rule 52 so that interest may be solicited – including interest that may not have been present prior to 4:00 p.m. – to offset any imbalance that may exist as of 4:00 p.m. (or earlier, in the case of an earlier scheduled close). In connection with such solicitation requests:

- Interest must be solicited solely to offset any imbalance in a security that may exist as of 4:00 p.m.;
- The Exchanges will solicit such offsetting interest from both on-Floor and off-Floor participants using NYSE Trader Updates and messages directly to a Floor broker's hand-held device;
- Exchange-issued solicitation requests will include information regarding security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time designated by the Exchange. The order acceptance cut-off time will generally be five minutes from the issuance of the solicitation request. In no event will the Exchanges accept offsetting interest after 4:30 p.m.; and
- Offsetting interest submitted to the Exchange in response to a solicitation request must be a limit order priced no worse than the last sale, irrevocable,

7 See Securities and Exchange Release No. 34-59755 (April 13, 2009) 74 FR 18009 (April 20, 2009) (SR-NYSE -2009-18).

and represented by a Floor broker by no later than the order acceptance cut-off time indicated in the solicitation request.[8]

IV. Contingencies in the Event of a System Interruption

A. Contingency Scenarios

NYSE Operations has notified all members and member organizations as to how to proceed in the event of a systems outage on June 26, 2009. There are five contingency scenarios, each of which is described below for convenience. Members and member organizations should refer to the Market Operations memorandum published June 5, 2009, for further details.[9] In addition, members and member organizations are advised that in Contingency Scenarios 2 and 3, the MOC Policy (Rule 123C) will operate as if a regulatory halt were in place.

1. Contingency Scenario I

In the event of a NYSE system interruption that occurs intraday whereby normal trading is resumed prior to 3:40 p.m., the regular MOC Policy will be adhered to. There will be the normal 4:00 p.m. market close.

2. Contingency Scenario 2

In the event of a NYSE system interruption that occurs intraday whereby normal trading is resumed between 3:40 p.m. and 3:49 p.m., the MOC Policy will operate as if there is a regulatory halt during this time period. Accordingly, there should be an imbalance publication as soon as practicable after 3:40 p.m. and also at 3:50 p.m. MOC and LOC orders may be entered or cancelled for any reason until 3:49:59 p.m. Beginning at 3:50 p.m., cancellations or reductions in size of MOC/LOC orders will not be permitted for any reason, except as provided in Rule 123C(8)(a)(2). There will be the normal 4:00 p.m. market close.

3. Contingency Scenario 3

In the event of a NYSE system interruption that occurs intraday whereby normal trading is resumed between 3:50 and 3:59 p.m., the normal 3:40 p.m. imbalance publication will be bypassed and there will be a single publication before 4:00 p.m., if practicable. Order delivery will cease at 4:00 p.m., but the closing of stocks may extend later than that. MOC/LOC orders may be entered to offset any published imbalance and such orders may not be cancelled or reduced in size for any reason. However, due to systems limitations at some member firms, those firms may not be able to enter orders, cancel orders or reduce them in size after 3:50 p.m.

4. Contingency Scenario 4

In the event of a NYSE system interruption that occurs intraday whereby service is restored after 4:00 p.m., there will be no imbalance publications at 3:40 or 3:50 p.m.

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8 See Information Memo No. 2009-20 (May 5, 2009) for a complete discussion of the provisions of Rule 123C(8).

9 Available on the NYSE website at: http://traderupdates.nyse.com/2009/06/russell_reconstitution_062609.html

The NYSE will notify market participants of the new close time and will price the close at or around that time. The NYSE will also notify market participants of the status of the 4:45 pm NYSE MatchPoint^{sm} cross.[10]

5. Contingency Scenario 5

In the unlikely event of a NYSE system interruption that occurs intraday whereby service will not be restored for a closing print on the NYSE, the NYSE closing price on June 26 will be the last regular way trade at the NYSE.

B. Contingency Preparedness

Members are reminded that they should have Floor stationery supplies on hand in the event they are unable to enter or cancel orders through the system.

Should a system interruption affect electronic time-stamping functionality, members and member organizations may manually write down required time information. If the Broker Booth Support System (BBSS) is functioning, but the broker handheld is not, Floor brokers must carry the BBSS time onto their paper orders. Under all other circumstances, the time of order entry must by recorded by hand in the Booth, by the Floor broker and at the post.

V. Adequacy of Operations and Supervisory Staff

All members and member organizations, including DMMs, should ensure that both operational and supervisory staffing on and around June 26 will be sufficient to monitor and process all orders, regardless of the form in which they are received, as well as to handle the increased workload anticipated as a result of the Russell Rebalancing. 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 algorithms/API 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.

VI. Supervision

A. Review of Policies and Procedures

In view of increased automated order delivery, d-Quoting, e-Quoting and automatic execution, NYSE Regulation is advising members and member organizations to carefully review their procedures as well as their supervisory systems for handling orders in connection with the Russell Rebalancing on June 26. NYSE Regulation expects members and member organizations to review their practices for handling orders at or near the Close, particularly with respect to any orders where there is an on-close or other price guarantee for those securities that are part of the rebalancing. Reviews should include both orders that are handled manually as well as those orders that are handled systemically, such as orders that are handled by a computer algorithm. In addition, members and member organizations should take all necessary steps to

[10] Single-sided and coupled trades that were previously executed through Crossing Session I at the NYSE's official closing price can be submitted for execution through NYSE MatchPoint. See SEC Release 34-59570, SR- NYSE-2009-28 (March 12, 2009).

ensure that the relevant trading, compliance 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) 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, including usage of the NYSE odd-lot system. Please consult Information Memos 02-48 (November 7, 2002) and 07-60 (June 29, 2007) (both 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 supervisory policies and procedures to monitor for compliance with Rule 123C and the guidance contained in this Information Memo. Those policies and procedures must be adequate to ensure that all procedures related to MOC and LOC orders and orders entered at or near the close are appropriately followed, and to detect and deter any actions that may violate NYSE or SEC rules.

C. Due Diligence Requirements

Consistent with the requirements of Rule 405, before any at-the-close order 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. As such, members, member organizations and compliance staff should be mindful of the guidance issued in Information Memo 05-52 (August 1, 2005) (attached) regarding VWAP trading at or near the Close, which addresses the responsibility for ensuring that trading strategies engaged in to facilitate or hedge VWAP orders have an economic basis and do not have the effect of marking the close or marking the value of a position. Member organizations should also be aware that certain orders and order entry practices may have the potential to cause price dislocation before the Close or distort the closing price due to prevailing market conditions at the time the order is entered. This could include the use of discretionary e-Quotes (also known as d-Quotes) and interest that is aggressively priced with respect to current market conditions.

Similarly, trading at or near the Close is of particular concern due to the condensed time frame for execution, where the resultant closing price is used to set benchmarks, such as index rebalancing. As a result, manipulation concerns may be heightened when trading occurs at or near the close.

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 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 Exchange 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 an order at a price that is derived from the closing price (e.g., VWAP and MOC orders) while also reserving a significant portion 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. Members and member organizations should consult Information Memo 05-52 for further guidance.

E. Compliance with Federal Securities Laws and Rules

In addition to complying with NYSE rules and policies, members and member organizations should review other applicable federal securities laws and regulations, including Section 9(a)(2) of the Securities Exchange Act and Rules 10a-1, 10b-5, as well as the margin and capital rules. Firms must ensure that they have adequate policies and procedures to detect, deter and prevent such potentially violative conduct.

VII. Staff Contacts

In order to facilitate proper communication with respect to this reconstitution, the NYSE is requesting that all Members & Member Organizations submit the name and contact information of a designated compliance person so that any issues related to the reconstitution may be addressed in an efficient and timely manner on June 26, 2009. This contact information should be submitted via email to ofsu@nyx.com.

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

Patricia Bergholc, Director, On Floor Surveillance, at (212) 656-4948
Gordon Brown, Manager, On Floor Surveillance, at (212) 656-5321
Michael Fryer, Director, Member Trading, at (212) 656-4656
John Saxton, Director, Member Trading, at (212) 656-2324
John S. Macken, Senior Special Counsel, Market Surveillance, at (212) 656-2453.

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

Robert Airo, Senior Vice President, NYSE Operations, at (212) 656-5663
Paul Bauccio, Senior Vice President, Operations, at (212) 656-2929
Todd Abrahall, Vice President, NYSE Operations, at (212) 656-4966
Michael J. Rutigliano, Vice President NYSE Operations, at (212) 656-4679
Dennis Pallotta, Director, Operations, at (212) 656-5236.

Questions may also be directed to OFSU via the White Phone or in person at their booth in the Garage. 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.)

NYSE Regulation, Inc.

Attachments