Information Memo

NYSE Number 16-06
NYSE MKT Number 16-06

Regulatory Bulletin

NYSE Amex RB-16-07
NYSE Arca Equities RB-16-69
NYSE Arca Options RB-16-09

May 16, 2016 (as amended, May 19, 2016)

To: ALL NEW YORK STOCK EXCHANGE LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT") MEMBERS and MEMBER ORGANIZATIONS
ALL NYSE ARCA, INC. ("NYSE ARCA") OTP HOLDERS and OTP FIRMS
ALL NYSE AMEX OPTIONS LLC ATP HOLDERS
ALL NYSE ARCA EQUITIES, INC. ETP HOLDERS
(collectively, "Members")

From: NYSE REGULATION

Subject: **DISRUPTIVE ACTIVITIES VIOLATIVE OF THE FEDERAL SECURITIES LAWS AND RULES OF THE NYSE, NYSE MKT AND NYSE ARCA (COLLECTIVELY, "NYSE EXCHANGES")**

Introduction

Critical responsibilities of each of the NYSE Exchanges include promoting just and equitable principles of trade, preventing fraudulent and manipulative acts and practices, and promoting free and open markets.[1] Our Members are important partners in fulfilling these missions and in preserving the safety and integrity of our markets. The purpose of this bulletin is to assist our Members in identifying activity that may disrupt our markets and undermine investor confidence.

In keeping with these obligations, we remind Members that they should not engage in or effect trading or quoting activity that improperly disrupts the trading of securities on any of the NYSE Exchanges ("Disruptive Activity"). Members who participate in or enable such conduct may be in violation of the federal securities laws and/or the rules of the NYSE Exchanges, including but not limited to:

- Exchange Act Section 10(b) and Rule 10b-5 thereunder (fraudulent and deceptive practices)

1 *See* Securities Exchange Act of 1934 ("Exchange Act"), Section 6(b)(5).

- Exchange Act Section 9(a), NYSE and MKT Rules 6140(b) and MKT Rule 995NY (wash trade prohibitions)

- Exchange Act Rule 15c3-5 (market access requirements)

- NYSE, MKT and Arca Equities Conduct Rules 2010, MKT Rules 3 and 16 and Arca Options Rule 11.1 (commercial honor, good business practice and just and equitable principles of trade)

- NYSE, MKT and Arca Equities Conduct Rules 2020, MKT Rules 3 and 995NY and Arca Options Rule 11.5 (manipulative, deceptive or other fraudulent devices)

- NYSE and Arca Equities Conduct Rules 5210 (bona fide transactions and quotations)

- NYSE and MKT Conduct Rules 6140 (other trading practices)

- NYSE and MKT Rules 3110, 3120 and 3130, MKT Rule 320, Arca Equities Rule 6.18 and Arca Options Rule 11.18 (failure to reasonably supervise and failure to keep current a system of controls reasonably designed to achieve compliance)

The NYSE Exchanges will vigorously enforce these and other provisions and rules, and will take appropriate disciplinary action against Members when warranted.

<u>Disruptive Activity Generally</u>

A great deal of attention has been focused on such practices as "spoofing" and "layering," including discussion as to what these terms specifically mean. It is important to remember, however, that there are countless ways in which firms may engage in Disruptive Activity (regardless of what labels are used to describe it). As technology advances and markets change, new trading strategies may evolve that compromise and undermine the fairness and safety of our markets. Accordingly, Members should continuously consider whether their trading--or that of their customers to whom they provide market access--constitutes Disruptive Activity or otherwise violates the federal securities laws or rules of the NYSE Exchanges.

The NYSE Exchanges will consider numerous factors (taken alone or in combination) when considering whether or not trading constitutes Disruptive Activity. Such factors may include:

- Harm to investors
- Harm to the market
- Interruption of orderly trading
- Disruption of fair execution of transactions
- Distortion in the price discovery process
- Effects on other market participants
- Misleading orders or other behavior
- Hidden orders as part of a scheme
- Creation of false appearance in the market for a security
- Establishment of unequal markets
- Creation of artificial pressure or artificially high or low prices
- Comparison of other contemporaneous orders, bids, offers and trades

- Change in best offer price, best bid price, last sale price or other price that results from the entry of the order
- Interjection of volatility
- Size and number of orders
- Unnecessary cumulative orders
- Ability to manage risk if orders executed
- Length of time orders are in the market
- Repeated instances of canceling orders
- Incidences of messages not acted upon
- Past and current pattern and practice of activity by member in related markets

This list is by no means exhaustive.[2] Nor does the absence of any factor or factors from activity indicate that it is not disruptive. By the same token, presence of one or more of the factors does not necessarily mean activity is disruptive and actionable.

Disruptive Activity can result from conduct that is intentional, reckless or negligent. When a Member engages in Disruptive Activity, NYSE Exchanges will consider a Member's state of mind in deciding whether and how to pursue disciplinary action.[3]

Discussed below are certain situations that can constitute Disruptive Activity, including: (1) non-bona fide trading; (2) other manipulative activity; and (3) non-manipulative activity. However, as discussed above, whether NYSE Exchanges will consider a trade or a pattern of trading to be Disruptive Activity will depend on the specific facts and circumstances of the situation.

<u>Non-Bona Fide Trading as Disruptive Activity</u>

A long-standing principle in the equity and options markets is that Members should only enter bona fide orders. In addition, Members have an obligation to prevent the customers, to whom they provide access from engaging in improper conduct, including the entry of non-bona fide orders. Quoting should be done to enable trading. Orders should be entered to be filled. Placing quotes or entering orders should be done to change positions, not to induce another participant to trade, affect a price or create misleading conditions. Non-bona fide trading has generally been considered to be potentially disruptive and violative.

The NYSE Exchanges understand that some orders do not get filled or are modified or cancelled in light of a perceived or real change in circumstances. Though such activity may not necessarily and inherently be problematic, if a trader is entering non-bona fide orders, this could constitute Disruptive Activity and may violate the federal securities laws and/or the rules of the NYSE Exchanges.

---

[2] *See, e.g.*, Nasdaq Business Conduct Rules: Frequently Asked Questions, *available at* http://www.nasdaqtrader.com/Content/FAQBusinessConductGuidelines.pdf.

[3] In addition, some rules explicitly prohibit certain activities or transactions. Pursuant to those rules, the NYSE Exchanges may bring disciplinary action, regardless of a Member's state of mind.

Other Manipulative Disruptive Activity

The entry of non-bona fide orders is just one class of Disruptive Activity. The NYSE Exchanges also consider manipulative activity to be disruptive to our markets. Examples of other kinds of manipulative activity may include situations where:

- A party attempts to influence the closing price of a security by executing purchases or sales just prior to the close of trading in order to artificially inflate or depress the closing price.

- A party initiates a series of orders and trades in an attempt to ignite a rapid price move up or down and encourage others to exacerbate price volatility in order to create an opportunity to unwind/open a position at a favorable price.

- One or more parties arrange to be contra parties to a transaction at pre-determined prices without exposure to market risks.

These examples are only illustrative and by no means exhaustive of activity that is manipulative and disruptive, and therefore potentially violative.

Non-Manipulative Disruptive Activity

Trading activity does not have to be manipulative in order to be disruptive. Indeed, even non-manipulative activity can disrupt our markets and harm market participants. One such example can be where:

- A party unnecessarily enters a large number of messages, orders, and/or cancellations or updates to orders, which may create uncertainty for other participants or slow down their processes.

As trading gets faster and algorithms grow more complicated, even unintentional mistakes (such as not catching an error in code) can result in disruptions to our markets.[4]

Conclusion

The promotion of fair and orderly markets is critical to Members, listed companies and investors alike. The disruption of our markets, in violation of the federal securities laws and rules of the NYSE Exchanges, not only harms our exchanges and their participants, but also tarnishes the public's faith in our financial system. The NYSE Exchanges are committed to working with our Members to promote just and equitable principles of trade. But, when warranted, the NYSE Exchanges will pursue appropriate actions necessary to stop and address Disruptive Activity.

Should you have any questions about this memorandum, please contact NYSE Regulation at NYSERegulation@theice.com.

---

[4] *See* Exchange Act Rule 15c3-5 (the market access rule).