

Regulatory Circular RG 00-27

Date: January 27, 2000

To: Members and Associated Persons

From: Legal Services Division
Regulatory Services Division

Re: Access to Retail Automatic Execution Systems ("RAES")

SUMMARY

- It is a violation of Exchange rules to enter, at or about the same time and for the same account (or for accounts with any common ownership), multiple RAES orders in the same or similar options series for the purpose of circumventing the limitation on RAES order size.
- It is a violation of Exchange rules to enter a limit order for placement on the Exchange's limit order book, or on the book of a competing exchange, for the purpose of effecting execution price of a RAES transaction.
- If a member grants a non-member direct access to the Exchange's limit order book or to RAES through the member's order routing systems, it is a violation for such member either to knowingly facilitate the non-member's violation of Exchange rules through such systems and/or to fail to establish procedures reasonably designed to prevent the non-member's access to such systems from being used to effect such violations.
- Violations of these rules are subject to serious disciplinary action, and may in some instances also violate federal criminal statutes. Such violations may be referred to the Exchange's Business Conduct Committee, to the regulatory offices of other exchanges, to the Division of Enforcement of the Securities and Exchange Commission, and/or to federal prosecutors as warranted.

UNBUNDLING OF ORDERS

Members are reminded that it is a violation of Exchange rules for a member or an associated person to “unbundle” or split a customer order in an attempt to make the parts of the order eligible for execution via RAES, or to facilitate such activity by its customers (See Rule 4.1--Just and Equitable Principles of Trade; Rule 6.8(a)(i)—RAES Operations in Equity Options; Rule 7.4(a)—Obligations for Orders; and Rule 24.15(a)(i)—RAES Operations in SPX/NDX). Any violations of the unbundling prohibition by members may subject members to serious disciplinary action.

Aggregate RAES Trades in Excess of RAES Size Limitations--

It is ***not*** a violation of the unbundling prohibition to enter a RAES order of a permissible size for an eligible account and then to follow that order with the entry of a separate and independent RAES order for that account. However, a market participant will be deemed to have violated the unbundling prohibition if it enters multiple RAES orders, even though each order is individually within the RAES order size limitation, if the market participant enters such orders for the purpose of circumventing the RAES order size limitation. This purpose may be inferred from the fact that the market participant has made a practice of frequently trading large numbers of contracts through individual small lot RAES orders entered at or about the same time, where the aggregate contract size of such trades is larger than the order size permitted for entry to RAES.

Accounts with any Common Beneficial Ownership--

It is a violation of the unbundling prohibition for a market participant to use multiple accounts with any common beneficial ownership for the purpose of breaking down an order that would exceed the maximum RAES order size into smaller orders that individually are within that limit. This purpose may be inferred from a practice of using accounts with some common beneficial ownership to enter RAES trades at or about the same time that in the aggregate exceed the maximum RAES order size. Under those circumstances, the accounts will be aggregated and treated as a single customer for RAES orders that are entered at or about the same time.

RAES Orders for Similar Options Series--

In general, orders at or within the maximum eligible order size which are for different options series within the same options class are considered as individually eligible for entry to RAES. However, entering multiple orders at or about the same time in substantially similar options series for the purpose of circumventing the RAES order size limitations is deemed a violation of the unbundling prohibition. This wrongful purpose may be inferred from a pattern or practice of entering multiple RAES orders in related options series at or about the same time.

MANIPULATIVE PRACTICES

Members are also advised that it is a violation of Exchange rules and of various provisions of the federal Securities Exchange Act of 1934 for a member – whether for its own account or for its customer’s account – or for the customer directly to enter an order on the Exchange’s limit order book (or on the limit order book of a competing exchange) for the purpose of influencing the prices at which RAES orders would be executed. Such activity constitutes manipulative conduct and is an egregious violation of both Exchange rules and federal law. This is the case whether or not the limit order is actually executed in whole or in part or instead is cancelled, and regardless of whether a RAES trade actually is executed at a price influenced by the limit order. Any single instance of such conduct may be referred to the Exchange’s Business Conduct Committee, to other self-regulatory organization, to the Securities and Exchange Commission, and/or to federal prosecutors where warranted.

MEMBER ACCESS OBLIGATIONS

If a member grants a non-member direct access to the Exchange’s limit order book, or to RAES, through the member’s order routing systems and if the non-member uses that access to violate Exchange rules or other applicable regulations, including the unbundling prohibition, the member is in violation of Exchange rules if it has either knowingly facilitated that violation or has failed to establish procedures reasonably designed to prevent access to the member’s order routing systems from being used to effect such violations.

EXCHANGE CONTACTS

Questions concerning this Regulatory Circular should be directed to Timothy Thompson in the Legal Services Division (312-786-7070) or to Mary Bender in the Regulatory Services Division (312-786-7923).