



Regulatory Circular RG07-75

To: Members
From: Legal Division
Date: July 18, 2007
Re: Rule Change Regarding Open Outcry Priority for Non-Crossing Transactions

A rule change that amends the open outcry priority provisions for non-crossing transactions contained in Rules 6.45A(b) and 6.45B(b) has become effective (see Release 34-55971; SR-CBOE-2007-66). The rule change eliminated the “book market participant” share allocation for broker-dealer orders resting in the book. Under the revised priority provisions, the allocation of an order represented in open outcry for a non-crossing transaction shall be such that, *at the same price*:

- public customer orders resting in the book have first priority to trade against the order;
- the balance of the order, if any, will be allocated among bids and offers of in-crowd market participants;¹ then
- the balance of the order, if any, will be allocated among broker-dealer orders resting in the book and electronic quotes have third priority.

Members are reminded that they must ensure compliance with Section 11(a) of the Securities Exchange Act of 1934 (the “Act”). In that regard, notwithstanding the priority provisions described above, members relying on Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder (commonly known as the “G order exemption”)² must yield priority to any bid (offer) at the same price of public customer orders and broker-dealer orders (whether member or non-member) resting in the book, as well as any other bids and offers of in-crowd market participants that have priority over broker-dealer orders resting in the book.³

Members seeking further information regarding the open outcry priority procedures for non-crossing transactions should refer to the rule change, which is available on CBOE’s website at www.cboe.org/Legal. It should be noted that this rule change now makes consistent that the in-crowd market participants have priority over broker-dealer orders resting in the book on both crossing and non-crossing transactions. For additional information on the open outcry priority rules applicable to crossing transactions, refer to Rule 6.74 and Regulatory Circular RG06-118. For additional information on Section 11(a)(1) requirements, please refer to Regulatory Circular RG05-102. For any other questions, please contact Jennifer Lamie, Legal Division, at (312) 786-7576.

¹ Multiple bids and offers of in-crowd market participants shall be prioritized based on the allocation algorithm provided in Rule 6.45(a) and (b), which generally provide that priority is afforded to bids (offers) in the sequence in which they are made or, if the bids were made at the same time or in the event the sequence cannot be reasonably determined, priority is apportioned equally.

² A member relying on the G order exemption must, among other requirements, yield priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member (a “non-member”), irrespective of the size of any such bid or offer or the time when it is entered.

³ For example, if a Floor Broker is relying on the G order exemption the priority sequence described above is modified so that, at the same price, public customer orders resting in the book would have first priority, then in-crowd market participants, then broker-dealer orders resting in the book, then the Floor Broker’s G order (along with any other in-crowd market participants also relying on the G order exemption). To the extent there may be any further remaining balance, same priced electronic quotes would have priority to trade next.