



## Regulatory Circular RG10-13

Date: January 15, 2010

To: Members, Member Firms and Clearing Firms

From: Member and Regulatory Services Division

Re: Qualified Contingent Trades – Rule 611(d) of REG NMS Exemptions

This circular is being issued to remind the membership of the conditions that must be met to qualify a contingent trade for an exemption from the trade-through provisions of Rule 611 of REG NMS under the Securities Exchange Act of 1934 (hereinafter referred to as “qualified contingent trades”) on the CBOE Stock Exchange (CBSX). A “qualified contingent trade” is defined as a transaction consisting of two or more component orders, executed as agent or principal where:

- (a) at least one component order is in an NMS stock;<sup>1</sup>
- (b) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker dealer as principal or agent;
- (c) the execution of one component is contingent upon the execution of all other components at or near the same time;
- (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed;
- (e) the component orders either bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled;
- (f) the Exempted NMS Stock transaction is fully hedged (without regard to any prior existing position) as a result of the other component of the contingent trade.

Examples of the types of transactions that would qualify for an exemption, provided all elements described in (a) through (f) above are met, are risk or merger arbitrage transactions, convertible security transactions and stock option transactions. To help satisfy that the requirements of the “qualified contingent trade” exemption are being met, members must insure:

- (a) all components of the trade are **executed at or near the same time**; the party responsible for entering the trade as well as the executing broker both must insure all components are trade reported in a timely manner, and
- (b) the non-stock component of the order is properly documented on the stock component order ticket(s) or blotter and shall include, at a minimum, the quantity, series and Exchange where the non-stock component was executed.

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<sup>1</sup> “NMS Stock” means any security or class of securities, other than an option, for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

Members relying on the exemption are also reminded that they must establish, maintain and enforce written policies and procedures that are reasonably designed to assure compliance with the conditions of the exception, and to regularly surveil to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy deficiencies.

Questions concerning this circular can be addressed to Steve Slawinski at (312) 786-7744 or Dan Czajka at (312) 786-7785.