



Regulatory Circular RG10-90

Date: August 13, 2010

To: Trading Permit Holders and TPH Organizations

From: Member and Regulatory Services Division

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

Regulatory Circular RG10-13 set forth the requirements 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). This circular replaces RG10-13 and is being issued to update and clarify the books and records requirements related to the non-stock component of a “qualified contingent trade”.

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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, Trading Permit Holders and TPH Organizations must insure:

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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.

- (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, price and time of execution and Exchange where the non-stock component was executed; the expectation is that, in receiving such information, the executing broker makes a judgment that it can reasonably rely on the representation of the “qualified contingent trade” criteria being met (such as the two components are executed at or near the same time and the exempted stock transaction is fully hedged).

Trading Permit Holders and TPH Organizations 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 the Department of Regulated Entities at (312) 786-7315.

(RG10-13, revised)