



DIVISION OF  
MARKET REGULATION

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

January 30, 2007

Mr. H. Edward McConnell III  
Chief Compliance Officer  
FSC Securities Corporation  
2300 Windy Ridge Parkway  
Suite 1100  
Atlanta, GA 30339

**Re: Request for Exemption from Rule 10b-10(a) for Vision2020 Advisor Program**

Dear Mr. McConnell:

Based on the facts and representations set forth in your letter of January 30, 2007, we find that it is appropriate in the public interest and consistent with the protection of investors to grant, and hereby grant, FSC Securities Corporation ("FSC") an exemption, pursuant to Rule 10-10(f) under the Securities Exchange Act of 1934 ("Exchange Act"), from the trade-by-trade confirmation delivery requirements of Rule 10b-10(a) so that FSC may send those FSC clients that have granted FSC investment discretion in its capacity as an investment adviser for their wrap accounts ("Discretionary Clients"), who have requested them, periodic statements not less often than monthly, in lieu of trade-by-trade confirmations. The periodic statements will contain all of the information required by Rule 10b-10 for transactions in securities, including options, effected by FSC for Discretionary Clients in their accounts during the applicable period.

In particular, we note the following:

1. FSC will develop a form of written or electronic consent for Discretionary Clients to elect not to receive trade-by-trade confirmations and, in lieu - thereof, receive a periodic statement that contains the same information that would have been in the trade-by-trade confirmation for each transaction. Discretionary Clients will be able to elect to receive a periodic statement in lieu of trade-by-trade confirmations by executing a separate signature line, specifically providing for such consent, either contained in the client's account opening documentation or in a separate authorization form solely created for obtaining such consent.

2. Discretionary Clients electing not to receive trade-by-trade confirmations will be able to later change their minds and request, for no additional cost, trade-by-trade confirmations for any transaction since the date of the last periodic statement, as well as for all subsequent transactions. FSC will also inform Discretionary Clients that they are able to request, for no additional fee, trade-by-trade confirmations for previous transactions effected for up to a one-year period preceding the last periodic statement.
3. FSC will send all information required by Rule 10b-10 to Discretionary Clients in a periodic statement on at least a monthly basis.
4. FSC will inform Discretionary Clients that they are able to receive an interim update and further details concerning any transaction effected between periodic statements without charge by contacting their FSC representative or by checking on FSC's client website. Discretionary Clients accessing FSC's website will be able to view, no later than the next business day after trade date (T+1), all information required by Rule 10b-10. Discretionary Clients will also be able to obtain the same information either by telephoning their representative or by requesting the trade-by-trade confirmation for the particular transaction.
5. FSC will continue to generate and send trade-by-trade confirmations to those Discretionary Clients who do not elect to receive periodic statements in lieu of trade-by-trade confirmations.
6. FSC will also continue to generate and retain, in accordance with Exchange Act Rules 17a-3 and 17a-4, trade-by-trade confirmations for Discretionary Clients who elect to receive periodic statements in lieu of trade-by-trade confirmations.
7. FSC will not require or request that Discretionary Clients elect not to receive trade-by-trade confirmations, but will make information available on how such clients are able to make such an election. FSC client communications will inform existing and new Discretionary Clients about their ability to receive confirmations on a trade-by-trade basis or in periodic statements, but will not suggest which choice is better. Such client communications also will inform Discretionary Clients that, if interested, they should contact an FSC representative to obtain more information or to obtain a copy of a written or electronic form to request a periodic statement in lieu of trade-by-trade confirmations. These client communications will not suggest that such an election is required for FSC discretionary client accounts or that clients will incur additional costs if they did not elect to receive periodic statements in lieu of trade-by-trade confirmations.

Mr. H. Edward McConnell III  
January 30, 2007  
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This exemption from Rule 10b-10 is based solely upon the representations you have made and is limited strictly to the facts and conditions described in your letter. In the event that a material change occurs with respect to any of the facts or representations presented, periodic statements should be discontinued and the use of trade-by-trade confirmations should be reinstated for the transactions described above pending presentation of the facts for our consideration. The staff of the Division of Market Regulation expresses no view with respect to other questions that FSC's activities may raise, including the applicability of any other federal or state laws or the applicability of self-regulatory organization rules concerning customer account statements or confirmations.

For the Commission, by the  
Division of Market Regulation  
Pursuant to delegated authority,<sup>1</sup>



Brian A. Bussey  
Assistant Chief Counsel

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<sup>1</sup> 17 CFR 200.30-3(a)(32).

January 30, 2007

Ms. Catherine McGuire, Chief Counsel  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

Re: **FSC Securities Corporation**  
Request for Exemption from Rule 10b-10 for Vision2020 Advisor Program

Ms. McGuire:

FSC Securities Corporation (“FSC”) requests an exemption, pursuant to Rule 10b-10(f) of the Securities Exchange Act of 1934 (“Exchange Act”), from the trade-by-trade confirmation delivery requirements in Rule 10b-10(a) of the Exchange Act for transactions in securities, including options, in wrap accounts for which FSC exercises investment discretion in its capacity as an investment adviser.<sup>1</sup> FSC requests this relief to permit it to send requesting clients, instead of trade-by-trade confirmations, a periodic statement not less often than monthly<sup>2</sup>, that contains all of the information required by Rule 10b-10(a), for discretionary transactions, effected in their account during the applicable period.<sup>3</sup>

## INTRODUCTION

FSC is a broker-dealer registered with the Securities and Exchange Commission (“Commission”) pursuant to Section 15(b) of the Exchange Act and is a member of the National Association of Securities Dealers, Inc. (“NASD”). FSC is also an investment adviser registered with the Commission pursuant to Section 203(c) of the Investment Advisers Act of 1940 (“Advisers Act”). FSC, as a broker-dealer/investment adviser sponsor of the Vision2020 Advisor Program (“Vision2020”), provides management of investment advisory accounts and effects transactions as the broker-dealer for resulting securities transactions.

All Vision2020 clients open and maintain a securities brokerage account at FSC and are subject to FSC’s account opening procedures. Also, all Vision2020 clients also execute advisory agreements as well as a risk tolerance questionnaire. Investment goals and objectives are established and appropriate disclosures regarding fees and services made. Currently, clients are sent a confirmation for each security transaction in their Vision 2020 account.

Vision2020 clients who have granted FSC discretionary authority (“discretionary clients”) in its capacity as a registered investment adviser have chosen to rely on FSC to provide ongoing oversight and to make and effect related investment decisions for their accounts. Some of these discretionary clients have asked FSC to suppress *trade-by-trade confirmations* because they prefer to monitor

their accounts only periodically through their account statements or through other information FSC makes available to its clients.

## PROPOSAL

FSC proposes to provide discretionary clients in wrap accounts the ability to receive, in lieu of trade-by-trade confirmations, a periodic statement, not less often than monthly, containing the information that would have been required to be disclosed in trade-by-trade confirmations pursuant to Rule 10b-10 absent the requested relief. Implementation of this proposal would include:

- FSC would develop a form of written or electronic consent for discretionary clients to elect not to receive trade-by-trade confirmations and, in lieu thereof, receive a periodic statement that contains the same information that would have been in the trade-by-trade confirmation for each transaction.<sup>4</sup>
- Clients electing not to receive trade-by-trade confirmations could later change their minds and request, for no additional cost, trade-by-trade confirmations for any transaction since the date of the last periodic statement, as well as for all subsequent transactions. FSC would also inform clients that they could request, for no additional fee, trade-by-trade confirmations for previous transactions effected for up to a one-year period preceding the last periodic statement.
- FSC would send all information required by Rule 10b-10 to discretionary clients in a periodic statement on at least a monthly basis.
- FSC would inform discretionary clients that they could receive an interim update and further details concerning any transaction effected between periodic statements without charge by contacting their FSC representative or by checking on FSC's client website. Clients accessing FSC's website would be able to view, no later than the next business day after trade date (T+1), all information required by Rule 10b-10. Clients would also be able to obtain the same information either by telephoning their representative or by requesting the trade-by-trade confirmation for the particular transaction.
- FSC would continue to generate and send trade-by-trade confirmations to those discretionary clients who do not elect to receive periodic statements in lieu of trade-by-trade confirmations.
- FSC would also continue to generate and retain, in accordance with Exchange Act Rules 17a-3 and 17a-4, trade-by-trade confirmations for discretionary clients who elect to receive periodic statements in lieu of trade-by-trade confirmations.
- FSC would not require or request that discretionary clients elect not to receive trade-by-trade confirmations, but would make information available on how such clients could make such an election. FSC client communications would inform existing and new discretionary clients about their ability to receive confirmations on a trade-by-trade basis or in periodic statements, but would not suggest which choice is best. Such client communications also would inform discretionary clients that, if interested, they should contact a FSC representative to obtain more information or to obtain a copy of a written or electronic

form to request a periodic statement in lieu of trade-by-trade confirmations. These client communications would not suggest that such an election is required for FSC discretionary accounts or that clients would incur additional costs if they did not elect to receive periodic statements in lieu of trade-by-trade confirmations.

#### PRIOR COMMISSION ACTION

Rule 10b-10(a) under the Exchange Act requires a broker-dealer to send a trade-by-trade confirmation to its client at or before completion of each transaction. The Commission staff has permitted certain broker-dealers to send to clients a periodic statement in lieu of trade-by-trade confirmations, where the broker-dealer was dually registered as an investment adviser and was exercising investment discretion in such capacity, or where investment discretion was being exercised by a broker-dealer's investment adviser affiliate.<sup>5</sup> The Commission staff has also granted an exemption on behalf of certain broker-dealer sponsors of wrap fee programs, permitting such broker-dealers to confirm transactions in wrap fee programs through periodic statements in lieu of trade-by-trade confirmations.<sup>6</sup> The relief requested by FSC is consistent with a line of letters permitting broker-dealers to send periodic statements in lieu of trade-by-trade confirmations where the broker-dealer or its affiliate exercises investment discretion over the account.

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FSC believes that, under the terms of the proposed exemption, discretionary wrap clients will be provided the investor protections contemplated by Rule 10b-10 without obligating such clients to receive trade-by-trade confirmations they do not want and have requested not to receive. The proposal will not diminish FSC's clients' right to receive confirmations on request, if desired, and it will give clients the option to rely on a periodic statement instead. Moreover, FSC believes that the requested relief is consistent with the procedures authorized for other investment advisory programs.

Should you have further questions or require additional information regarding this request, please do not hesitate to call me at 770.690.3666. Thank you for your consideration of this request.

Sincerely,



H. Edward McConnell III  
Chief Compliance Officer

cc: Thomas M. Wells, Chief Legal Officer – FSC Securities Corporation

Brian A. Bussey, Assistant Chief Counsel – U.S. Securities and Exchange Commission

Norman M. Reed, Special Counsel – U.S. Securities and Exchange Commission

## Endnotes

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<sup>1</sup> FSC will continue to send a trade-by-trade confirmation consistent with Rule 10b-10 where FSC clients exercise trading discretion. FSC is only requesting relief from Rule 10b-10 for trades entered subject to FSC's investment discretion. FSC does not effect transactions for discretionary private clients pursuant to hold-in-custody repurchase agreements. If this becomes the circumstance, FSC would send trade-by-trade confirmations pursuant to Rule 15c3-3(b)(4) of the Exchange Act.

<sup>2</sup> FSC is not seeking relief to allow it to send periodic statements on a quarterly basis even though it will not act as principal in transactions with discretionary clients and will not charge its discretionary clients transaction fees such as mark-ups, mark-downs or commissions. See Letter re: *Morgan Keegan & Co., Inc.* (April 21, 2005).

<sup>3</sup> Because FSC acts as both the investment adviser and the executing broker for its Vision2020 Advisor Program, FSC cannot rely on the class relief from the requirements of Rule 10b-10(a) granted to broker-dealer sponsors of wrap fee programs in Letter re: *Money Management Institute, Securities Industry Association* (Aug. 23, 1999). The conditions upon which that relief was granted make it clear that it is available only to broker-dealer sponsors that do not also serve as investment adviser for the wrap fee program.

<sup>4</sup> Discretionary wrap clients will be able to elect to receive a periodic statement in lieu of trade-by-trade confirmations by executing a separate signature line, specifically providing for such consent, either contained in the client's account opening documentation or in a separate authorization form solely created for obtaining such consent.

<sup>5</sup> See *Donaldson, Lofkin & Jenrette Securities Corporation* (August 21, 1997); *Scudder Investment Services, Inc.* (February 11, 1998); *Advest, Inc.* (July 19, 1999); *Sanford C. Bernstein & Co, LLC* (April 18, 2005); and *William Blair & Co. LLC* (June 10, 2005).

<sup>6</sup> See *Money Management Institute, Securities Industry Association* (August 23, 1999) and *Morgan Keegan & Co., Inc.* (April 21, 2005).