



March 3, 2005

Ms. Catherine McGuire, Esq.
Associate Director and Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: Rule 10b-10 - Request for No-Action Relief

Dear Ms. McGuire:

We are writing to request assurance that the staff of the Division of Market Regulation (“Staff”) will not recommend enforcement action under Rule 10b-10 under the Securities Exchange Act of 1934 (“Exchange Act”) to the Securities and Exchange Commission (“Commission”) if members or member organizations of the New York Stock Exchange, Inc. (“NYSE”) effect transactions in NYSE-listed equity securities and give or send a single confirmation that (1) reflects the average price and/or multiple capacities of multiple executions undertaken to fill a single customer order, and (2) provides other information related to such transactions as described more fully below.

The requirements of best execution, together with the advent of decimal trading and the May 2000 rescission of NYSE Rule 390 (which generally had prohibited NYSE members and their affiliates from effecting certain transactions in NYSE-listed securities away from the NYSE), raise a strong possibility that a single customer order received by an NYSE member organization may be executed at multiple prices, in multiple capacities, and/or on multiple markets. The following are examples of each scenario:

Example 1: A 1000 share limit order to buy XYZ at \$50 is executed on the floor of the NYSE as follows: 500 shares at \$50, 300 shares at \$49.99, and 200 shares at \$49.98.

Example 2: A 1000 share limit order to buy XYZ at \$50 is executed on multiple venues as follows: 500 shares at \$50 on the NYSE and 500 shares at an ECN for \$50.

Example 3: A 1000 share limit order to buy XYZ at \$50 is partially internalized and partially executed on the floor of the NYSE as follows: 500 shares internalized at the broker-dealer at \$50 and 500 shares executed on the floor of the NYSE at \$50.

In such situations, member organizations have stated that they are concerned that a series of confirmations for each piece of the trade may result in higher costs. Specifically, in certain situations when a firm uses a service bureau, multiple confirmations for each part of the execution of the order could result in a separate fee for each confirmation. In addition, some customers could find multiple confirmations confusing. Accordingly, members and member organizations may prefer to give or send a single confirmation at a price that is an average price derived from each individual execution and/or reflects multiple capacities.

This request for no-action relief is limited to those situations in which the member or member organization complies with the following conditions:

1. The member or member organization will average the execution prices of each individual execution that filled the market order or crossing limit order and report the average price per share on the confirmation as the unit price, with a notation that the confirmed price is an averaged price. The confirmation will note that details regarding the actual prices are available to the customer upon request.
2. The confirmation will identify the capacity in which the member or member organization acted in executing the order, whether as "principal," "agent," "agent and agent for another," "principal and agent," or "principal, agent, and agent for another," as applicable. The confirmation will note that details regarding the capacity (including, when acting as agent for another, the name or names of the person or persons from whom the security was purchased, or to

whom it was sold) with regard to each execution are available to the customer upon request.

3. The commission, markup, markdown, service fee, and any other remuneration associated with each individual execution will not be detailed separately, but rather will be stated in a single amount. The confirmation will note that details regarding each separate element comprising the total amount are available to the customer upon request.
4. The confirmation will include all other information required by Rule 10b-10.

Each individual execution will be reported separately under NYSE trade reporting rules. In addition, each member or member organization issuing such average price and/or multiple capacity confirmations will create and maintain records required under Exchange Act Rules 17a-3 and 17a-4, in a manner that reflects the processing and confirmation of orders as described above and the details of each underlying execution.¹

We believe that, with the requests for relief from the specific requirements of Rule 10b-10 contained herein, the confirmation as described above will continue to provide customers with the necessary information regarding the transactions that filled their orders, while also providing efficiencies in reporting that may assist in reducing a customer's execution charges. The proposed approach to confirmation reporting under Rule 10b-10 is similar to an approach for which the Staff has previously granted no-action relief.²

Accordingly, we request assurance that the Staff will not recommend to the Commission any enforcement action under Rule 10b-10 if NYSE

¹ By maintaining records that reflect the details of each underlying execution, the member or member organization will also be able to provide, at the request of NYSE and Commission examiners or at the request of a customer receiving a confirmation as described above, information regarding each separate underlying execution, including the actual price, capacity in which the member or member organization acted, market, and, when acting as agent for another, the name or names of the person or persons from whom the security was purchased, or to whom it was sold.

² See Letter re: The Nasdaq Stock Market, Inc. (May 6, 1997).

members or member organizations give or send a single confirmation reflecting the average price or multiple capacities of multiple transactions undertaken to fulfill a single customer order, as described above.

If you have any questions regarding this letter, please do not hesitate to contact me at (212) 656-5685.

Sincerely,

Michael Rufino

Michael Rufino

cc: Brian A. Bussey
Assistant Chief Counsel

Tara Prigge
Special Counsel