



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

September 5, 2018

Christopher Bok
Financial Information Forum
5 Hanover Square
New York, New York 10004

Re: Request for Exemption from Rule 10b-10


Dear Mr. Bok:

In your letter dated September 5, 2018, Financial Information Forum ("FIF"), on behalf of its registered broker-dealer members and other similarly situated registered broker-dealers, requests an exemption pursuant to Rule 10b-10(f) under the Securities Exchange Act of 1934 ("Exchange Act"), from the requirement under Rule 10b-10(a) to deliver trade-by-trade confirmations for certain transactions in fractional share liquidations where there is no associated order as described in your letter ("orphaned fractional share trades"). In lieu of trade-by-trade confirmations, firms will provide customers information concerning orphaned fractional share trades through the use of monthly account statements.

The Division pursuant to delegated authority hereby grants an exemption from the obligation to issue an immediate confirmation pursuant to Rule 10b-10(a) under the Exchange Act for orphaned fractional shares as described in your letter and subject to the facts and terms and conditions described in your letter. This exemption from Rule 10b-10(a) is based solely on the representations you have made and is limited strictly to the facts and terms and conditions described in your letter. In particular, we note your representations that: (i) firms will not charge a transaction fee for orphaned fractional share liquidations; (ii) firms will disclose to customers on the monthly account statements all transaction details and information that would, absent an exemption, be required by Rule 10b-10(a) to be contained in a separate, immediate confirmation; (iii) firms will provide to customers general disclosures explaining how orphaned fractional shares will be liquidated, including how the price of the fractional share liquidation will be determined, and a statement that the liquidation details will be provided on the monthly brokerage account statement; and (iv) firms will continue to send to customers confirmations in accordance with the requirements of Rule 10b-10 for any transaction outside of orphaned fractional share trades. After considering the impact on customers, the Commission staff believes there would be no harm, and that it is appropriate in the public interest and consistent with the protection of investors to grant this limited exemption.

In the event that a material change occurs with respect to any of the facts or representations presented, the use of trade-by-trade confirmations should be reinstated for the transactions described in the letter. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This exemption should not be considered a view with respect to other questions that the proposed transactions 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. This exemption applies only prospectively, not retroactively.

For the Commission, by Division of Trading and
Markets pursuant to delegated authority,¹



Joanne Rutkowski
Assistant Chief Counsel
Division of Trading and Markets

¹ 17 C.F.R. §200.30-3(a)(32).

FINANCIAL INFORMATION FORUM

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New York, New York 10004

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Via Electronic Delivery

September 5, 2018

Ms. Heather Seidel
Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for Exemption Pursuant to Rule 10b-10(f)

Dear Ms. Seidel,

Financial Information Forum¹ (“FIF”) on behalf of its members and other similarly situated registered broker-dealers, requests an exemption pursuant to Rule 10b-10(f)² from the Rule 10b-10 requirement to provide a confirmation at the completion of a transaction in fractional share liquidations where there is no associated order as discussed below (“orphaned fractional share trades”). FIF proposes that in lieu of sending a confirmation, firms will provide transaction information through the use of monthly account statements. Customers will be informed of the treatment of orphaned fractional share trades through general disclosures at the time of account opening.

For purposes of this request, an orphaned fractional share trade occurs when a fractional share position is executed on its own without a corresponding customer order or whole share execution in the following scenarios: (a) a pending dividend reinvestment that occurs after a customer’s position is liquidated; or (b) as a result of an ACATS transfer of whole shares, leaving a fractional share position behind in the customer’s account. In both scenarios, the orphaned fractional shares will be liquidated by the broker-dealer.

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² 17 CFR 240.10b-10 (The Commission may exempt any [Broker-Dealer] for the requirements of paragraphs (a) and (b) of the section with regard to specific transactions of specific classes of transactions for which the (Broker-Dealer] will provide alternative procedures to effect the purposes of this section; any such exemption may be granted subject to compliance with such alternative procedures and upon such other stated terms and conditions as the Commission may impose).

FIF believes that customers view this activity as an account maintenance function, and so to avoid confusion that may arise if a separate confirmation is issued in these limited circumstances FIF seeks an exemption for orphaned fraction share trades to instead provide customers with the information on monthly account statements. An exemption would be subject to the following conditions:

- (1) Firms would not charge a transaction fee for orphaned fractional share liquidations;
- (2) Customer monthly account statements will include all transaction details and information that would, absent an exemption, be required by Rule 10b-10(a) to be contained in a separate, immediate confirmation;
- (3) Firms would provide general disclosures to customers explaining how orphaned fractional shares will be liquidated, including how the price of the fractional share liquidation will be determined, and a statement that the liquidation details will be provided on the monthly brokerage account statement;
- (4) Firms would continue to send to customers confirmations in accordance with the requirements of Rule 10b-10 for any transaction outside of orphaned fractional share trades.

FIF believes that the requested exemption would be analogous to and consistent with the exemption provided to TD Ameritrade on November 30, 2006³ regarding dividend reinvestment programs (“DRIPS”), as well as the following exemptions that have been granted as they relate to Rule 10b-10 and DRIPS:

- Pershing LLC (September 10, 2008)
- Instinet Clearing Services (June 7, 2001)
- D.B. Alex. Brown LLC (July 5, 2000)
- ABN AMRO (November 5, 1998)
- Donaldson Lufkin and Jenrette (August 21, 1997)
- Pershing (May 27, 1997)
- Pershing (March 27, 1996)
- A.G Edwards & Sons, Inc. (January 24, 1996)

In the DRIP context, customers have received information about these types of transactions and DRIP accounts in general via monthly statements for over 20 years based on exemptions granted for dividend reinvest programs.

Rule 10b-10 under the Exchange Act requires a broker-dealer to send a confirmation to its customer at or before the completion of each transaction. The rule serves as an anti-fraud measure by ensuring the customer receives information relating to its investment decision at or before the completion of a securities transaction. In certain limited circumstances, the Commission and staff have permitted

³ [Letter](#) from Brian A. Bussey, Assistant Chief Counsel, SEC to John B. Ayanian, Morgan Lewis & Bockius, LLP, *Request for Exemption from Rule 10b-10(a) for TD Ameritrade, Inc. Dividend Reinvest Program*, November 30, 2006.

broker-dealers to provide this information to customers in a periodic statement in lieu of trade by trade confirmations. As noted above, this has occurred in the context of DRIP accounts where the DRIP transaction follows an agreement with the customer that dividends will be reinvested. Similarly here, orphaned fractional share transaction occurs after and incidental to a decision by the customer to liquidate a position (that then pays a dividend) or to transfer shares to another account (pursuant to ACATS, which only accepts whole share amounts) that leaves behind a fractional share position in the client's account. As noted above, FIF believes customers view this activity as an account maintenance function and so to avoid confusion that may arise if a separate confirmation is issued in limited circumstances, FIF seeks an exemption for orphaned fractional share trades from Rule 10b-10 requirements subject to the conditions outlined in this request.

Based on discussions with its members, FIF believes orphaned fractional share trades represent less than 5% of all fractional share trading, and for many firms, the volume of orphaned fractional share trades executed represents less than 1% of fractional share trading volume. Given the limited circumstances of the requested exemption and the conditions outlined above, no loss of investor protection is expected. On the contrary, the purpose for our members pursuing this exemption is for the benefit of their customers to avoid confusion that would be associated with a confirmation not tied to an actual order. Additionally, customers will continue to have access to orphaned fractional share transaction information in advance of monthly account statements upon request.

For the aforementioned reasons, FIF believes the alternate procedures set forth above satisfy the purposes of Rule 10b-10, and requests that the Commission grant an exemption from the obligation to issue an immediate 10b-10 confirmation for orphaned fractional shares under the terms and conditions described in this letter. We look forward to Commission action in this matter shortly.

Regards,



Christopher W. Bok, Esq.
Financial Information Forum

CC Brett Redfearn, Director, Division of Trading and Markets, SEC
Joanne Rutkowski, Assistant Chief Counsel, Division of Trading and Markets, SEC
Timothy White, Senior Special Counsel, Division of Trading and Markets, SEC
Geeta Dhingra, Special Counsel, Division of Trading and Markets, SEC