

Extension of Regulatory Relief

Extension of Temporary Relief from NYSE Rule 409(f) (Statements of Accounts to Customers) to January 1, 2008

PLEASE NOTE: The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated, including NYSE Rule 409. The incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as “Dual Members.” Dual Members also must comply with NASD Rules. Until the adoption of a consolidated rulebook, FINRA’s *Regulatory Notices* will address both NASD and the incorporated NYSE Rules.

Executive Summary

On March 20, 2007, NYSE granted temporary relief, until September 30, 2007, from the application of NYSE Rule 409(f) regarding the disclosure of the name of the securities market on which a transaction was effected.¹ FINRA is hereby extending such relief to January 1, 2008.²

Questions regarding this *Notice* may be directed to your Finance Coordinator, or the FINRA Office of General Counsel, at (202) 728-8071.

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Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Technology

Key Topic(s)

- Confirmations
- Statements of Account

Referenced Rules & Notices

- NYSE Rule 409
- Regulation NMS
- SEC Rule 10b-10

Background and Discussion

NYSE Rule 409(f) requires that confirmations of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the NYSE, sent by FINRA members that are also members of NYSE (Dual Members) to their customers, shall indicate the settlement date of the transaction and the name of the securities market on which the transaction was effected. This requirement also applies to confirmations or reports from a Dual Member to a correspondent, but does not apply to reports made by floor brokers to the Dual Member from which the orders were received.³

With the adoption of Regulation NMS (Reg NMS), an increasing number of orders routed to a given market for execution are rerouted to other markets which at that time display a better quotation. This process, required under the Reg NMS Order Protection Rule,⁴ may often lead to relatively small orders receiving executions in multiple market centers. This has created an operational challenge for Dual Members to capture the name of the market of execution on a timely basis for inclusion on the transaction confirmation.

As a result of these challenges, and given that Reg NMS requires Dual Members to comply with their “best execution” obligations to exercise diligence to obtain the best price when routing customer trades for execution, the relief from the application of NYSE Rule 409(f), with respect to the name of the market of execution, is extended until January 1, 2008. During this interim period, FINRA will continue to reassess the utility of NYSE Rule 409(f) in the current regulatory environment.

Endnotes

- 1 See NYSE Information Memorandum 07-28 (March 20, 2007).
- 2 See also NYSE Information Memorandum 07-84 (August 2, 2007).
- 3 See also SEC Rule 10b-10.
- 4 See Rule 611 under Reg NMS, 17 CFR 242.611. The Order Protection Rule requires trading centers, including broker-dealers that internally execute orders, to establish, maintain and enforce written policies and procedures reasonably designed to protect against “trade-throughs” of protected quotations in NMS stocks.