

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.

Amendments to NYSE Rule 409(f)

FINRA Amends NYSE Rule 409(f) (Statements of Accounts to Customers) to Eliminate the Requirement to Include the Name of the Securities Market on which a Transaction is Effected

Effective Date: January 1, 2008

Executive Summary

Effective January 1, 2008,¹ Dual Member firms will not be required to disclose the name of the securities market on which the transaction was effected on confirmations or reports as required under NYSE Rule 409(f). This change makes permanent the temporary relief that was granted in March 2007 and extended until January 1, 2008. The text of the amended rule is set forth in Attachment A to this *Notice*.

Questions concerning this *Notice* should be directed to the FINRA Office of General Counsel, at (202) 728-8071.

December 2007

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Technology

Key Topic(s)

- Confirmations
- Statements of Accounts

Referenced Rules & Notices

- NASD Rule 2320
- Notice 07-35
- NTM 01-22
- NYSE Info Memo 07-84
- NYSE Rule 409
- Regulation NMS
- SEC Rule 10b-10

Background & Discussion

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.² The temporary relief was extended by FINRA and by NYSE until January 1, 2008.³ FINRA has filed a rule amendment for immediate effectiveness to make this relief permanent as of January 1, 2008.

NYSE Rule 409(f) (Statements of Customer Accounts) 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 Dual Members to their customers, 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 an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from which the orders were received.⁴

Following the SEC's adoption of Regulation NMS (Reg NMS), an increasing number of orders, or portions of orders, routed to a given market for execution are rerouted to other markets that, at that time, display a better quotation. This process, which often is necessary due to the requirements of the Order Protection Rule under Reg NMS, may lead to relatively small orders receiving executions in multiple market centers.⁵ This creates 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 required by NYSE Rule 409(f).

Because of this challenge, both FINRA and NYSE granted temporary relief from the application of NYSE Rule 409(f) regarding the disclosure of the name of the securities market on which a transaction was effected. In granting the relief, FINRA and NYSE stated that they would continue to reassess the utility of NYSE Rule 409(f) in the current regulatory environment.

FINRA has concluded that, because of member firms' existing best execution and disclosure requirements, the usefulness of including on a confirmation or correspondent report the securities market on which a transaction in a security admitted to dealings on the NYSE was effected does not outweigh the operational difficulties of capturing the information following the adoption of Reg NMS. Specifically, the duty of best execution requires Dual Members to exercise diligence to obtain the best price when routing customer trades for execution.⁶ In this regard, NASD Rule 2320 (Best Execution and Interpositioning) requires every FINRA member to employ reasonable diligence in ascertaining best execution in the execution of a transaction.⁷ In addition to existing best execution obligations, Reg NMS imposes disclosure obligations on broker-dealers regarding the handling of customer orders.⁸ Because of these existing obligations, FINRA has eliminated from NYSE Rule 409(f)

the requirement that confirmations and correspondent reports for transactions in securities admitted to dealings on the NYSE include the securities market on which the transaction was effected. Dual Members are, however, still required to indicate the settlement date of each transaction on customer and correspondent confirmations and correspondent reports for all transactions (including those made over-the-counter and on other exchanges) in securities admitted to dealings on the NYSE.

Endnotes

1. FINRA filed this amendment with the Securities and Exchange Commission (SEC) for immediate effectiveness on December 21, 2007, with an operative date of January 1, 2008. *See* SR-FINRA-2007-037.
2. *See NYSE Information Memorandum 07-28* (March 20, 2007).
3. *See* FINRA *Regulatory Notice 07-35* (August 2007); *NYSE Information Memorandum 07-84* (August 2, 2007).
4. *See also* SEC Rule 10b-10.
5. 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. *See* Rule 611(a) under Reg NMS, 17 CFR 242.611(a).
6. *See, e.g.*, Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37537-38 (June 29, 2005) (discussing the duty of best execution in relation to Reg NMS).
7. As stated in *NASD Notice to Members 01-22*, members generally may execute such diligence on either a trade-by-trade basis or through the regular and rigorous review of the execution quality of various market centers.
8. SEC Rule 606(b) requires a broker-dealer to disclose to its customer upon request “the identity of the venue to which the customer’s orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.” *See* Rule 606(b) under Reg NMS, 17 CFR 242.606(b). SEC Rule 607 requires a broker-dealer that acts as agent for a customer to disclose, in writing, upon opening a new account and on an annual basis thereafter, the firm’s policies regarding receipt of payment for order flow and the firm’s policies for determining where to route customer orders that are the subject of payment for order flow. *See* Rule 607 under Reg NMS, 17 CFR 242.607(a).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Rule 409. Statements of Accounts to Customers

(a) through (e) No change.

(f) Confirmation of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall [indicate] clearly set forth with a suitable legend the settlement date of each transaction[and bear the name of the securities market on which the transaction was made]. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received.

[All confirmations shall contain a suitable legend clearly setting forth all required information.]