

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57045; File No. SR-FINRA-2007-037)

December 27, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to FINRA's New York Stock Exchange Rule 409(f)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 21, 2007, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend New York Stock Exchange ("NYSE") Rule 409(f), to delete the requirement that certain confirmations and reports include the name of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

securities market on which a transaction is effected. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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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.]

(g) No change.

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II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

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, and sent by FINRA members that are also members of NYSE (“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.⁵ 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.

Following the SEC’s adoption of Regulation 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 Regulation NMS, may lead to relatively small orders receiving executions in multiple market centers.⁶ 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 required by

⁵ FINRA incorporated NYSE Rule 409(f) into its interim rulebook; however, the incorporated NYSE rules, including NYSE Rule 409(f), apply solely to Dual Members. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of SR-NASD-2007-054).

⁶ 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 17 CFR 242.611(a).

NYSE Rule 409(f). As a result of this challenge, on March 20, 2007, NYSE granted its member organizations temporary relief from the requirement that confirmations and correspondent reports include the securities market on which the transaction was effected.⁷ The temporary relief, which expired on September 30, 2007, was extended by FINRA and by NYSE until January 1, 2008.⁸ In extending the relief, both FINRA and NYSE stated that they would continue to reassess the utility of NYSE Rule 409(f) in the current regulatory environment.

Under the duty of best execution, Dual Members are required to exercise diligence to obtain the best price when routing customer trades for execution,⁹ and Regulation NMS imposes disclosure obligations on broker-dealers regarding the handling of customer orders.¹⁰ In this regard, NASD Rule 2320 requires every FINRA member to employ reasonable diligence in ascertaining best execution in the execution of a transaction. As stated in NASD Notice to Members 01-22, members generally may

⁷ See NYSE Information Memo 07-28 (March 20, 2007).

⁸ See FINRA Regulatory Notice 07-35 (August 2007); NYSE Information Memo 07-84 (August 2, 2007).

⁹ 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 Regulation NMS).

¹⁰ 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 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 17 CFR 242.607(a).

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. FINRA has concluded that in light of these existing best execution and disclosure requirements, the usefulness of including on a confirmation or correspondent report the securities market on which a transaction was effected does not outweigh the operational difficulties of capturing the information following the adoption of Regulation NMS. Consequently, the proposed rule change would delete from NYSE Rule 409(f) the requirement that confirmations and correspondent reports include the securities market on which the transaction was effected. Dual Members would, however, still be 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.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be January 1, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the operational difficulties of including on a confirmation or correspondent report the securities market on which a transaction was effected

¹¹ 15 U.S.C. 78o-3(b)(6).

outweigh the benefits of including the information in light of existing best execution and disclosure requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ In accordance with Rule 19b-4,¹⁴ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

FINRA has requested that the Commission waive the 30-day operative delay

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4.

contained in Rule 19b-4(f)(6)(iii)¹⁵ under the Act based upon a representation that the temporary exemptive relief provided by FINRA and NYSE expires on January 1, 2008. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective upon filing with the Commission and operative on January 1, 2008.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2007-037 on the subject line.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2007-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).