

Information Memo

Market Surveillance



NYSE Regulation, Inc. | 11 Wall Street
New York, NY 10005
nyse.com

Number 08-55
October 31, 2008

ATTENTION: CHIEF COMPLIANCE OFFICER, CHIEF TECHNOLOGY OFFICER

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: REPORT CARD COMPLIANCE WITH NYSE RULE 123(e) and (f) - SECOND RELEASE

I. Purpose

On October 31, 2008, NYSE Regulation, Inc.'s Division of Market Surveillance of ("MKS") will implement the second release of the Front End System Capture ("FESC") Report Cards for monitoring compliance with NYSE Rule 123(e) and (f) (collectively the "Rule"). This second release of the FESC Report Cards will be available to all Member Organizations (i.e. Firms entering orders and Firms offering direct access) via NYSE's Electronic Filing Platform ("EFP"). This is a change from the initial FESC Report Card release where only Clearing Firms could access.¹

The FESC Report Cards will be available on a monthly basis and will consist of a report of potential violations related to order entries and reports of execution. MKS is making the FESC Report Cards available to Member Organizations to be used as a compliance tool to supplement the Firm's overall compliance program.

II. Background

NYSE Rule 123(e) and (f) require Floor Members to submit order information to the FESC database before the orders are represented on the Floor, and also requires all reports of executions related to such orders be reported through FESC. Additionally, the Rule requires Floor Members to submit specific data elements to be recorded when an order is entered, and the related execution is reported.

¹ Note: Only Member Organizations (i.e. Firms entering orders and Firms offering direct access) will have access to the FESC Report Cards; Clearing Members will no longer have access to the application. For more information on the initial FESC Report Card Release, please see NYSE Information Memo 08-31, dated June 25, 2008.

In March 2005, NYSE Regulation, Inc. issued Information Memo 05-13, which specified the programming requirements for all proprietary or vendor-provided order management systems.

Information Memo 05-13 details the information related to the entry of orders and reports of execution into the FESC database to ensure compliance as required by the Rule. In addition, NYSE Regulation issued Information Memo 06-67 which members should carefully review as a reminder to Information Memo 05-13.

The FESC Report Cards will contain the following five categories:²

Category 1: Reports of execution submitted without corresponding order details.

Category 2: Reports of execution submitted prior to the entry of the order details.

Category 3: Reports of execution for an order with aggregate size greater than the order's size.

Category 4: Reports of execution with missing or invalid account types.

- Member Organizations should note that orders entered via SuperDOT and then routed to the Broker-Booth Support System ("BBSS") for execution by a broker will retain the account-type information entered into SuperDOT. As a result, if the account-type field is empty in SuperDOT, it will remain empty in BBSS and FESC. Consequently, the failure to enter account type information during order entry can lead to violations of Rule 123(f) since it will result in the submission of an execution report without the required account type information.

Category 5: FESC submissions with missing or invalid order details.

III. Process Description

MKS will make the Report Cards available from the EFP Portal Authorized Applications Panel, under the name FESC Report Cards. Members can access the EFP via the following link https://efp.nyse.com/efp/efp_login.html. A username and password will be required to access the system and each Firm's authorized user will be required to authenticate their login. Member Organizations will be required to provide a list of users authorized by the Chief Compliance Officer or other authorized Officer designee of the Member Organization. Usernames and passwords can be obtained from the SIAC service desk.

Upon entering the FESC Report Cards portal, Member Organizations can access their Report Cards by selecting the specific month of interest from the drop down menu. The Report Card will contain a summary of the potential violations under each Category noted above and detailed samples of each Category as follows:

² These are the same categories contained in the initial release of the FESC Report Cards.

- *Quality Performance for March 2008*: This refers to the percentage of the aggregate orders or executions against each Category that were potentially violative (the non-compliance ratio).
- *NYSE Rule 123(e) and (f) – Summary report*: This summarizes the number of potential violations under each Category for the specific month identified.
- *Missing Order Detail, Execution Prior to Order and Execution Exceeds order – Sample Report*.
- This report provides detailed samples³ of potential violations related to categories 1, 2 and 3.
- *Missing or Invalid Account Type – Sample Report*: This report provides a detailed sample of potential violations as described above under Category 4.
- *Missing or Invalid Order Details – Sample Report*: This report provides a detailed sample of potential violations as described above under Category 5. The missing or invalid field will be identified with an asterisk.

All reports are available in the Comma Separated Value (“CSV”) format but can be converted to Excel by opening and saving the file as an Excel document. Reports will be made available on the 15th day of each month (or the next business day thereafter, if the 15th falls on a weekend or holiday), for the preceding month. In addition, each report will be maintained as a historical record for a period of three years, with the earliest report available for the month of September 2008.

The Report Cards are being provided to member organizations as a compliance tool to supplement the member organization’s overall compliance program. Under NYSE Rule 342, member organizations are required to maintain appropriate supervisory controls over its business activities. To that end, member organizations are expected to use the information in the Report Cards to assist in evaluating its compliance with NYSE Rules 123(e) and (f), and where applicable, to timely address issues identified in its Report Cards.

Member Organizations are reminded that they must have adequate policies and procedures in place to ensure all members and staff responsible for order entry and their respective executions are adequately informed of NYSE Rule 123 (e) and (f)’s requirements. In addition, Member Organizations are also reminded that they must have supervisory controls to ensure members and staff adhere to the Rule’s requirements.

IV. Staff Contacts

Questions regarding this memo may be directed to Michael Matejczyk, Director, Market Surveillance, at (212) 656-4854 or Andrew White, Director, Market Surveillance at (212) 656-4498.

³ The detailed samples provide a specific number of violations flagged under a particular Category and do not represent an aggregate report of all the potential violations that may have been flagged for the Member Organization. To determine the number of potential violations under a specific Category, refer to the Quality Performance section of the report card.

Technology related questions may be directed to SIAC service desk at (212) 383-2062.

Questions that are not time sensitive may also be submitted to Ask Market Surveillance. (For information about the Ask Market Surveillance system, refer to Member Education Bulletin 2006-3, which was issued on January 30, 2006, if you or your firm is not already a subscriber.)

John F. Malitzis
Executive Vice President
Market Surveillance