



Special Executive Report

S-6041

December 8, 2011

NYMEX AND COMEX ADOPT REVISIONS TO RULE 984 ("CLEARING MEMBER ACCEPTANCE OF EXECUTED CUSTOMER TRADES"), EFFECTIVE DECEMBER 13, 2011

Pending all relevant regulatory review periods, NYMEX and COMEX will adopt revisions to Rule 984 ("Clearing Member Acceptance of Executed Customer Trades") formerly titled "Give Up Trades" on December 13, 2011. Rule 984 generally governs the responsibilities and obligations of clearing members, executing brokers and the primary clearing members (PCM) of such executing brokers in connection with customer trades that are executed by an executing broker and given up to a clearing member (carry firm) for clearing.

The significant revisions and additions to Rule 984 include the following:

- Revised Rule 984 will continue to require executing brokers to receive authorization from the customer's clearing member prior to transacting business on behalf of a new customer, but will now also require executing brokers to obtain reauthorization from a clearing member when a previously established customer has not transacted any business within the prior 90 days. Customer trades rejected by clearing members in circumstances where brokers have failed to ensure a customer's authorized status will become the responsibility of the filling broker and his/her PCM.
- Revised Rule 984 will continue to allow a clearing member to place trading limits on the trades it will accept for a customer's account from an executing broker if the executing broker has received prior notification from the clearing member, but will now also allow a clearing member to impose a complete cessation on accepting such trades provided that the executing broker and his primary clearing member are given prior notice. The required notice must be given to all applicable executing brokers that within the prior 90 days have executed trades on behalf of the customer and to such brokers' primary clearing member.
- Current Rule 984 requires clearing firms to accept all broker-executed orders for authorized customers until the firm notifies the broker that a customer is no longer authorized. The revisions to Rule 984 will require executing brokers to provide current telephonic and electronic contact information to every clearing member to which he allocates trades. A clearing firm will not be obligated to accept customer trades following notification to a broker that a customer is no longer authorized provided that notification is made to the broker's current contact information.
- Revised Rule 984 clarifies that failure by an executing broker to allocate a customer trade in the time period prescribed in Rule 536.A. (30 minutes for the seller, one hour for the buyer) will be a determining factor in the ultimate disposition of a trade that is left pending or is rejected by the customer's carrying clearing firm. For example, the executing broker may

be required to book the trade into his personal or error account (depending on the circumstances) at his qualifying clearing firm.

- Revised Rule 984 requires that a clearing member must pay all brokerage fees (including but not limited to floor brokerage fees) incurred for all transactions by an executing broker that are accepted by that clearing member through the Brokerage Payment System (BPS). This language modifies the former requirement that all floor brokerage fees be paid through the now retired ATOM System.
- Language has been added to Rule 984 that requires a clearing member allocated a customer trade to accept or reject the trade within 60 minutes of receiving the allocation; however the clearing member will then have until close of business on the next business day the ability to reject a trade if it determines that the trade is an error or exceeds limits that the clearing member has placed on the customer's account.

The revisions to NYMEX and COMEX Rule 984 are set forth below, with additions underscored and deletions overstruck.

984. GIVE UP TRADES CLEARING MEMBER ACCEPTANCE OF EXECUTED CUSTOMER TRADES

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~~The following provisions define the minimum responsibilities and obligations of those parties to the clearance of a customer trade. A trade given up to another clearing member will be deemed to have been accepted by, and the financial obligations attendant to such trades will be the responsibility of, such clearing member if the trade is not rejected by the close of business on the business day following the trade date. The acceptance of a trade by a clearing member shall not relieve any member, member firm, or clearing member of the duty to act in good faith and with reasonable care and diligence.~~

~~In the absence of a give-up agreement whose terms and conditions govern the responsibilities/obligations of executing brokers, customers and Clearing Members, the following provisions shall define the respective responsibilities/obligations of those parties to an order.~~

The term "executing broker" as used in this Rule is the registered billing entity, Member Firm or Floor Broker to whom the order is transmitted.

984.A. Responsibilities and Obligations of Clearing Members

The acceptance for clearance of a trade by a Clearing Member shall not relieve any party to the solicitation, handling, execution or clearance of such trade from the duty to act in good faith and with reasonable care and diligence.

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1. Timeframe for a Carrying Clearing Member to Accept or Reject an Allocated Trade

A Clearing Member that has been allocated a customer trade must accept or reject such trade within 60 minutes of receiving the allocation. Such trades may only be rejected in accordance with the provisions of section A.3 of this Rule.

If after accepting an allocated trade a Clearing Member determines that such trade is an error or exceeds limits which have been communicated to an executing broker and his Primary Clearing Member ("PCM") in accordance with section A.3 of this Rule, the Clearing Member may reject such trade any time up to the close of business on the business day following the date of execution.

2. Limits Placed by Clearing Member

A Clearing Member may, in its discretion, place trading limits or impose a complete cessation on the trades it will accept for give-up clearance for a customer's account from an executing broker, provided, however, that both the executing broker and his respective PCM receives prior written, telephonic or electronic notice from the Clearing Member of the applicable trading limits or trading cessation imposed on that customer account. Such nNotice must be given to all applicable executing brokers that within the prior 90 days have executed trades on behalf of said customer and allocated such trades to the applicable received by the executing broker in a timely manner. A copy of such notice shall be retained by the Clearing Member, and to such executing brokers' PCMs.

A copy of any and all correspondence evidencing any notice required by section A.2 of this Rule shall be retained as part of the books and records of the Clearing Member, the executing broker and his PCM.

32. Trade Rejection

A Clearing Member may only reject ("DK") a trade that has been given up to it for clearance only if: (1) the trade exceeds the trading limits established in accordance with ~~under~~ section A.24 of this Rule for that customer and such limits ~~it~~ has been communicated to the executing broker and his PCM in accordance with as described in ~~Section A.2 of this Rule~~; or (2) the trade is an error for which the executing broker is responsible. If a rejected trade, or an unclaimed but pending trade, was allocated to the a Clearing Member by ~~has a basis for and rejects a trade, it must notify~~ the executing broker beyond the time period required under Rule 536.A, that fact shall be taken into consideration in any dispute between such Clearing Member and executing broker regarding such trade that is governed by Exchange Rules promptly.

43. Billing

A Clearing Member will pay all floor brokerage fees incurred for all transactions by the executing broker for the customer and subsequently accepted by the Clearing Member by means of the ATOM Brokerage Payment sSystem ("BPS"). Floor ~~b~~ brokerage fees will be agreed upon in advance among the Clearing Member, the customer and the executing broker.

984.B. Responsibilities and /Obligations of Executing Brokers

1. Customer Order Placement

An executing broker will be responsible for determining that all orders received on behalf of a customer's account have ~~been~~ placed or authorized by the customer. Once an order has been accepted, a broker or the broker's clerk must:

- (a) confirm the terms of the order with the customer;
- (b) accurately execute the order according to its terms;
- (c) confirm the execution of the order to the customer as soon as practicable; and,
- (d) transmit such executed order to the Clearing Member as soon as practicable in accordance with Exchange Rules and procedures.

2. Use of Other Persons

Unless otherwise agreed in writing, the executing broker is allowed to use the services of another broker in connection with the broker's obligations under these Rules. The executing broker remains responsible to the customer and Clearing Member under these Rules.

3. Executing Broker Responsibility for Verifying Clearing Member Authorization

Prior to a broker accepting and executing an initial order for any new customer account, the executing broker must confirm with the such customer's Clearing Member by telephonic, electronic or written means; that:

- (a) the customer has a valid account with the Clearing Member;
- (b) the account number; and
- (c) the brokerage rate; and
- (d) the customer is authorized by the Clearing Member to place orders with the executing broker for that specific account.

The executing broker must shall retain as part of his books and records a copy of the authorization received from the Clearing Member, or the specifics of the telephonic confirmation, which includes the name of the Clearing Member representative, opposite party, date, time and any other relevant information. The falsification of such information shall be the basis for disciplinary action.

Each executing broker shall conduct ongoing due diligence to ensure that all customer orders received are for active accounts. If a broker has neither executed trades on behalf of a particular customer nor allocated that customer's trades to a specific Clearing Member within the past 90 days, the broker shall not execute any trade for that customer for allocation to the Clearing Member without first confirming with the Clearing Member that the customer remains active and that the broker continues to be authorized to execute trades on behalf of the customer.

Each executing broker shall ensure that every Clearing Member to which he allocates trades: (1) has received current telephonic and electronic contact information for the executing broker and his PCM; and (2) is immediately informed of any change in the broker's PCM.

For purposes of providing any notice required under this Rule, a Clearing Member may rely upon the most recent telephonic and electronic contact information it received from the executing broker.

4. Rejection of Customer Order

Where an executing broker has confirmed Clearing Member authorization to execute orders on behalf of a customer in accordance with this Rule 984, the broker may, in the broker's discretion, reject an order that the customer transmits to the broker for execution. The executing broker shall promptly notify the customer and the Clearing Member(s) of any such rejection.

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Questions regarding the revisions to NYMEX Rule 984 should be directed to one of the following individuals in CME Clearing:

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For media inquiries concerning this Advisory Notice, please contact CME Group Corporate Communications at 312.930.3434 or news@cmegroup.com.