

INFORMATIONAL

Erroneous Complaint Procedures

Nasdaq Reiterates Clearly Erroneous Complaint Procedures

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Institutional
- Legal & Compliance
- Operations
- Senior Management
- Trading & Market Making

KEY TOPICS

- Clearly Erroneous Complaint Procedures
- NASD Rule 11890

Executive Summary

The purpose of this *Notice* is to reiterate the procedures for filing complaints under the National Association of Securities Dealers, Inc. (NASD[®]) Rule 11890 – the Clearly Erroneous Transaction Rule. NASD Rule 11890 (the Rule) establishes the process for The Nasdaq Stock Market, Inc. to review certain transactions in Nasdaq[®] securities and declare them null and void or otherwise modify their terms.

When filing an erroneous complaint, a member should file the complaint within a specified time period and should provide the following information about the transactions in question:

- name of security;
- number of shares;
- price;
- contra broker; and
- the executing Nasdaq system.

Questions/Further Information

Questions regarding this *Notice* should be addressed to Dan Franks, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250; or John Malitzis, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market[®], at (202) 728-8245.

Background

Under the Rule, designated officers of The Nasdaq Stock Market have the authority to review transactions arising out of the use or operation of systems owned or operated by Nasdaq (e.g., Small Order Execution SystemSM [SOESSM] and SelectNetSM) and to declare a trade “clearly erroneous.” A designated officer also may decline to act upon a request to review a transaction, or

may adjust the terms of the transaction to achieve an equitable rectification.

The Rule requires members to submit erroneous complaints in writing to Nasdaq Market Operations (Market Operations) within certain time periods, depending on when the alleged erroneous trade occurred. Specifically, for transactions executed between 9:30 a.m. Eastern Time (ET) and 10:00 a.m., the complaint must be received by 10:30 a.m., while complaints for transactions executed at all other times (i.e., outside the 9:30 a.m. to 10:00 a.m. time window) must be received by Market Operations within 30 minutes of execution.

Once a timely complaint is received, a complainant will have up to 30 minutes to submit any supporting written information concerning the complaint. Market Operations will notify the counterparty and provide 30 minutes to submit any supporting written information concerning the disputed trade. Notwithstanding the 30-minute period to submit information, once a party to a disputed trade communicates that it has no further information to provide, it may not thereafter provide additional information unless requested to do so by Nasdaq staff. After a party has applied to Nasdaq for review of a trade, the transaction will be reviewed and a determination rendered, unless both parties to the trade agree to withdraw the matter prior to the time a decision is rendered.

Complaints Must Identify The Transaction

Recently, Market Operations has received faxed “complaints” that state a member wishes to file an erroneous complaint, but which

give little or no detail to identify the transaction. This makes adjudication of a potential erroneous transaction virtually impossible. Thus, in addition to being filed timely, an erroneous complaint should identify the security, shares, price, and contra broker as well as the Nasdaq system through which the transaction was executed. In the case of SelectNet transactions, the member may identify the transactions by providing the SelectNet reference numbers. Nasdaq may reject a request if the transaction cannot be readily identified from the filed complaint.

Orders Outside Normal Market Hours Require Caution

The Market Operations Review Committee (MORC), which has jurisdiction over Nasdaq erroneous determinations, advises members to use caution when entering or executing transactions prior to market open or after market close when markets tend to be less liquid. The MORC also advises members to be cautious in using automated software to send multiple preferenced SelectNet orders. In either case it may not be obvious that a transaction is erroneous, and traders should pay particular care

to orders entered or executed outside of normal market hours, details of the order, and preventative overrides necessary to enter or execute such orders.

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