

NASD Notice to Members 99-29

SEC Approves Changes To Clearly Erroneous Trade Adjudication Procedures; Changes Effective April 26, 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

On March 17, 1999, the Securities and Exchange Commission (SEC) approved changes to National Association of Securities Dealers, Inc. (NASD®) Rule 11890 regarding the handling of clearly erroneous transactions.

NASD Rule 11890, as now amended, limits the time period to request an adjudication of an erroneous transaction to 30 minutes for transactions that occur prior to 9:30 a.m. For erroneous transactions that occur between 9:30 a.m. and 9:59 a.m., market participants will still have up to one hour – until 10:30 a.m. – to request adjudication of erroneous transactions. The NASD and The Nasdaq Stock Market® (Nasdaq®) believe that the process for resolving erroneous transaction complaints will become more fair, efficient, and timely, thereby promoting the maintenance of fair and orderly markets and exposing the parties to an allegedly erroneous transaction to less market risk. This *Notice* is being issued to alert members to the changes involved, which will become effective on April 26, 1999.¹

Questions concerning this *Notice* may be directed to Richard Bush, Associate Director, Nasdaq Market Operations, at (203) 385-6242; or John Malitzis, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8245.

Background

NASD Rule 11890 (Rule) sets forth the process through which Nasdaq may review certain transactions and declare them null and void or otherwise modify their terms. In early 1998, the SEC approved changes to the Rule to make the adjudication process more efficient and fair.² Among other things, the Rule was amended to shorten the time period

to submit erroneous transaction complaints. Under the 1998 rule changes, market participants were given 30 minutes to request adjudication of erroneous transactions occurring at or after 10:00 a.m. Because of the volume commencing at the 9:30 a.m. opening, however, Nasdaq provided additional time – up to an hour – to submit adjudication requests for trades that occurring prior to 10:00 a.m. Thus, Nasdaq market participants have until 10:30 a.m. to request adjudication for trades that occur between 9:30 a.m. and 9:59 a.m. The language of the 1998 Rule amendments, however, only made reference to trades that occur at or before 10:00 a.m., and did not separately address trades that occur before the 9:30 a.m. opening. As a consequence, a literal reading of the Rule unintentionally accords additional time to all trades that occur before 10:00 a.m., including those trades that occur prior to 9:30 a.m.

After some experience with the Rule, Nasdaq determined it would be appropriate to amend NASD Rule 11890 to limit to 30 minutes the time to request adjudication for trades occurring before 9:30 a.m., as well as those trades occurring at or after 10:00 a.m. Nasdaq is concerned that there are potential abuses and risks associated with affording market participants additional time to file a clearly erroneous appeal when there is no compelling reason (such as heavy volume) for doing so. In particular, for trades occurring prior to 9:30 a.m., market participants have the opportunity to observe the direction of the market at the opening and for an extended period of time thereafter, and then determine whether to file an erroneous trade appeal by 10:30 a.m. While Nasdaq still believes that it is appropriate to provide additional time to request an adjudication for trades that occur immediately following the opening,

based on the concerns outlined above, Nasdaq does not believe members should be provided with this additional time for pre-opening transactions.

Accordingly, on March 17, 1999, the SEC approved a proposal to limit the time period to appeal an erroneous transaction to 30 minutes for transactions that occur prior to 9:30 a.m., as well as those that occur at or after 10:00 a.m.³ Under the SEC-approved proposal, market participants will still have until 10:30 a.m. to request adjudication of trades that occur between 9:30 a.m. and 9:59 a.m.

Finally, the changes to the Rule announced in this *Notice* will become effective on April 26, 1999.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

11890. Clearly Erroneous Transactions

(a) No Change

(b) Procedures for Reviewing Transactions

(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:

(A) for transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time,

complaints must be submitted by 10:30 a.m., Eastern Time; and

(B) for transactions occurring [on] prior to 9:30 a.m., Eastern Time and those occurring at or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.

Endnotes

¹ See Exchange Act Release No. 34-41180 (Mar. 17, 1999)(Order approving SR-NASD-98-94).

² See Exchange Act Release No. 39550 (January 14, 1998)(Order approving SR-NASD-96-51).

³ See Exchange Act Release No. 34-41180 (Mar. 17, 1999)(Order approving SR-NASD-98-94).

© 1999, National Association of Securities Dealers, Inc. (NASD). All rights reserved.