



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 11890 (Clearly Erroneous Transactions) to (1) extend the time limit that FINRA has to take action on a transaction under the rule; and (2) clarify the circumstances under which FINRA initiates a review of a transaction.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**11890. Clearly Erroneous Transactions**

**(a) Procedures for Reviewing Transactions on NASD’s Own Motion**

In the event of ([i]1) a disruption or malfunction [in]related to the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and [approved]authorized by the Commission, or ([ii]2) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD’s Market Regulation Department or an Executive Vice President of NASD’s Transparency Services Department, or any officer designated by such Executive Vice President, may, on his or

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

her own motion, review any transaction arising out of or reported through any such quotation, communication, or trade reporting system. An NASD officer acting pursuant to this [subsection]paragraph may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that the officer [must]shall take action pursuant to this [subsection within thirty (30) minutes of detection]paragraph as soon as possible after becoming aware of the transaction [except in the event of extraordinary circumstances, in which event the officer must take action], but in all cases by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

**(b) and (c) No Change.**

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on December 6, 2006, the Board of Governors of FINRA (then known as NASD) authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to make the rule change operative on the date of filing.

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

(a) Purpose

NASD Rule 11890 provides that, in the event of a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by FINRA, or under extraordinary market conditions, officers of FINRA can review an over-the-counter (“OTC”) transaction arising out of or reported through any such quotation, communication, or trade reporting system, and may declare the transaction null and void or modify the terms if any such officer determines that the transaction is clearly erroneous or such action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Rule 11890 requires a FINRA officer acting pursuant to the rule to cancel or adjust an erroneous transaction to do so “within thirty (30) minutes of detection of the transaction,” except in the case of extraordinary circumstances, in which case the FINRA officer has until 3:00 p.m., Eastern Time (ET), on the next trading day after the date of the transaction at issue.

FINRA is proposing to amend Rule 11890 to replace the language that FINRA must, except in extraordinary circumstances, take action under the subsection within thirty (30) minutes of detection of an erroneous transaction, with language that FINRA shall act as soon as possible after becoming aware of the transaction, but in all cases by 3:00 p.m., Eastern Time (ET) on the next trading day after the date of the transaction at issue. Although FINRA believes that determinations under the rule should always be made in a timely manner, FINRA has found that most transactions reviewed under Rule 11890 involve coordination between multiple market centers and the time required to gather and evaluate the information necessary to make an informed determination is often

in excess of 30 minutes. Accordingly, FINRA does not believe that the rule's strict 30-minute time limit is in the best interests of the marketplace or investors.<sup>2</sup>

Also as a practical matter, because FINRA, as the regulator of the OTC market, does not operate a listed market, it generally does not "detect" erroneous transactions, particularly those involving listed securities executed OTC. Rather, in most cases, other market centers notify FINRA staff of the potential for such transactions, and FINRA staff coordinates its review with such market center(s). Similarly, for potentially erroneous transactions involving only OTC trades, the information typically comes from other sources, such as market participants, and FINRA does not "detect" potentially erroneous transactions. Accordingly, FINRA proposes to amend Rule 11890 to more accurately reflect the operation of the rule by deleting the "detection" language from the text of the rule.

Lastly, FINRA is proposing certain technical, non-substantive changes to the text of Rule 11890. Given that many clearly erroneous transactions are caused by trader errors and not disruptions or malfunctions of FINRA systems, the proposed rule change amends the rule text to reflect the manner in which FINRA applies its clearly erroneous authority. Additionally, FINRA is proposing to amend the text of Rule 11890(a) to replace the word "approved" with the word "authorized" to reflect that, technically, not all FINRA system rules are "approved" by the SEC, but, for example a system's rules

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<sup>2</sup> The SEC recently approved amendments to Nasdaq's clearly erroneous rule (Nasdaq Rule 11890). As part of those amendments, Nasdaq deleted the requirement that a Nasdaq officer must make a determination regarding whether a transaction was "clearly erroneous" under the rule within 30 minutes of detection. See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008).

may take effect upon filing with the SEC (e.g., for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act).

As noted above, FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to make the rule change operative on the date of filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>3</sup> 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 proposed rule change better reflects the application of Rule 11890 and provides additional time to resolve clearly erroneous transactions.

**4. 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.

**5. 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.

**6. Extension of Time Period for Commission Action**

Not applicable.

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<sup>3</sup> 15 U.S.C. 78o-3(b)(6).

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act<sup>4</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>5</sup> in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing (subject to waiver).

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),<sup>6</sup> in that the proposed rule change clarifies the current application of Rule 11890 and better reflects the time necessary to address potentially clearly erroneous transactions. In accordance with Rule 19b-4,<sup>7</sup> 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.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

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<sup>4</sup> 15 U.S.C. 78s(b)(3).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> 17 CFR 240.19b-4.



**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-FINRA-2008-037)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to NASD Rule 11890 (Clearly Erroneous Transactions)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , 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 prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> 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 NASD Rule 11890 (Clearly Erroneous Transactions) to (1) extend the time limit that FINRA has to take action on a transaction under the rule and (2) clarify the circumstances under which FINRA initiates a review of

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

a transaction. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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### **11890. Clearly Erroneous Transactions**

#### **(a) Procedures for Reviewing Transactions on NASD's Own Motion**

In the event of ([i]1) a disruption or malfunction [in]related to the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and [approved]authorized by the Commission, or ([ii]2) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department, or any officer designated by such Executive Vice President, may, on his or her own motion, review any transaction arising out of or reported through any such quotation, communication, or trade reporting system. An NASD officer acting pursuant to this [subsection]paragraph may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that the officer [must]shall take action pursuant to this [subsection within thirty (30) minutes of detection]paragraph as soon as possible after becoming aware of the transaction [except in the event of extraordinary circumstances, in which event the officer

must take action], but in all cases by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

**(b) and (c) 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

NASD Rule 11890 provides that, in the event of a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by FINRA, or under extraordinary market conditions, officers of FINRA can review an over-the-counter (“OTC”) transaction arising out of or reported through any such quotation, communication, or trade reporting system, and may declare the transaction null and void or modify the terms if any such officer determines that the transaction is clearly erroneous or such action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Rule 11890 requires a FINRA officer acting pursuant to the rule to cancel or adjust an erroneous transaction to do so “within thirty (30) minutes of detection of the transaction,” except in

the case of extraordinary circumstances, in which case the FINRA officer has until 3:00 p.m., Eastern Time (ET), on the next trading day after the date of the transaction at issue.

FINRA is proposing to amend Rule 11890 to replace the language that FINRA must, except in extraordinary circumstances, take action under the subsection within thirty (30) minutes of detection of an erroneous transaction, with language that FINRA shall act as soon as possible after becoming aware of the transaction, but in all cases by 3:00 p.m., Eastern Time (ET) on the next trading day after the date of the transaction at issue. Although FINRA believes that determinations under the rule should always be made in a timely manner, FINRA has found that most transactions reviewed under Rule 11890 involve coordination between multiple market centers and the time required to gather and evaluate the information necessary to make an informed determination is often in excess of 30 minutes. Accordingly, FINRA does not believe that the rule's strict 30-minute time limit is in the best interests of the marketplace or investors.<sup>4</sup>

Also as a practical matter, because FINRA, as the regulator of the OTC market, does not operate a listed market, it generally does not "detect" erroneous transactions, particularly those involving listed securities executed OTC. Rather, in most cases, other market centers notify FINRA staff of the potential for such transactions, and FINRA staff coordinates its review with such market center(s). Similarly, for potentially erroneous transactions involving only OTC trades, the information typically comes from other sources, such as market participants, and FINRA does not "detect" potentially erroneous

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<sup>4</sup> The SEC recently approved amendments to Nasdaq's clearly erroneous rule (Nasdaq Rule 11890). As part of those amendments, Nasdaq deleted the requirement that a Nasdaq officer must make a determination regarding whether a transaction was "clearly erroneous" under the rule within 30 minutes of detection. See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008).

transactions. Accordingly, FINRA proposes to amend Rule 11890 to more accurately reflect the operation of the rule by deleting the “detection” language from the text of the rule.

Lastly, FINRA is proposing certain technical, non-substantive changes to the text of Rule 11890. Given that many clearly erroneous transactions are caused by trader errors and not disruptions or malfunctions of FINRA systems, the proposed rule change amends the rule text to reflect the manner in which FINRA applies its clearly erroneous authority. Additionally, FINRA is proposing to amend the text of Rule 11890(a) to replace the word “approved” with the word “authorized” to reflect that, technically, not all FINRA system rules are “approved” by the SEC, but, for example a system’s rules may take effect upon filing with the SEC (e.g., for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act).

FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to make the rule change operative on the date of filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> 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 proposed rule change better reflects the application of Rule 11890 and provides additional time to resolve clearly erroneous transactions.

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<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

**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 Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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:

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-037 on the subject line.

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-2008-037. 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. 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-2008-037 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.<sup>8</sup>

Florence Harmon

Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).