

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * <input type="text" value="12"/> | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4 | File No.* SR - <input type="text" value="2010"/> - * <input type="text" value="038"/><br>Amendment No. (req. for Amendments *) <input type="text"/> |
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Proposed Rule Change by Financial Industry Regulatory Authority  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|  |                                      |                                     |  |   |  |
|--|--------------------------------------|-------------------------------------|--|---|--|
| Initial * <input checked="" type="checkbox"/>  | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/>  | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="text"/><br><small>☐</small> |                                      |                                     | Rule<br><input checked="" type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4)<br><input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5)<br><input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6) |   |  |

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|---|---|
| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change Relating to a Stated Interpretation of the Meaning, Administration, and Enforcement of FINRA Rule 11892 and Supplementary Material .01

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By  Senior Vice President and Director of Capital Markets Policy  
(Name \*) (Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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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 (required)**

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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”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change that constitutes a stated interpretation with respect to the meaning, administration, and enforcement of FINRA Rule 11892 and Supplementary Material .01.

(b) Not applicable.

(c) Not applicable.

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

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

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

(a) Purpose

In light of recent market events, some exchanges have adopted interpretations to their clearly erroneous rules regarding (1) the range of transactions subject to review and potential nullification and (2) the date by which clearly erroneous determinations must be made.<sup>2</sup> FINRA is filing the proposed rule change to make clear that it will defer to an exchange’s interpretation of its clearly erroneous authority in deciding which over-the-counter trades in exchange-listed securities are subject to nullification under FINRA Rule 11892.

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

<sup>2</sup> See SR-NYSE-2010-55.

FINRA Rule 11892(a)(1) provides that, in the event of a determination by a national securities exchange to nullify one or more transactions in a security traded on such national securities exchange, certain FINRA staff may review any similarly situated transaction(s) reported through a FINRA system in such security and declare the transaction(s) null and void. Supplementary Material .01 to FINRA Rule 11892 states that “FINRA will generally follow the determination of a national securities exchange to break a trade(s) when [the] national securities exchange has broken a trade(s) at or near the price range in question at or near the time in question . . . such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection.” These provisions were adopted to ensure consistent and transparent determinations of clearly erroneous transactions.<sup>3</sup> To promote consistency among self-regulatory organizations, FINRA believes it is necessary to defer to exchanges’ interpretations of their clearly erroneous rules when FINRA makes determinations of whether to cancel similarly situated over-the-counter transactions in exchange-listed securities under FINRA Rule 11892(a)(1). Consequently, when making clearly erroneous determinations under FINRA Rule 11892(a)(1) and Supplementary Material .01, FINRA will follow the interpretations of exchanges regarding the range of transactions subject to review, and potential nullification, as clearly erroneous and the date by which determinations must be made.

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<sup>3</sup> See Securities Exchange Act Release No. 61080 (December 1, 2009), 74 FR 64117 (December 7, 2009) (order approving SR-FINRA-2009-068).

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</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 stated interpretation clarifies that FINRA will exercise its authority to declare over-the-counter transactions in exchange-listed securities null and void under FINRA Rule 11892 and Supplementary Material .01 consistent with decisions made by the exchange(s) trading such securities. FINRA believes that such an interpretation promotes just and equitable principles of trade because it ensures consistent application of clearly erroneous determinations across markets.

**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>4</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>5</sup> and paragraph (f)(1) of Rule 19b-4 thereunder,<sup>6</sup> in that the proposed rule change effects a change that constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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

The proposed rule change is based on an interpretation filed by the New York Stock Exchange on July 27, 2010.<sup>7</sup>

**9. Exhibits**

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

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<sup>5</sup> 15 U.S.C. 78s(b)(3).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

<sup>7</sup> See SR-NYSE-2010-55.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2010-038)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Stated Interpretation of the Meaning, Administration, and Enforcement of FINRA Rule 11892 and Supplementary Material .01

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”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a stated interpretation of the meaning, administration, and enforcement of FINRA Rule 11892 and Supplementary Material .01.

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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> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

In light of recent market events, some exchanges have adopted interpretations to their clearly erroneous rules regarding (1) the range of transactions subject to review and potential nullification and (2) the date by which clearly erroneous determinations must be made.<sup>5</sup> FINRA is filing the proposed rule change to make clear that it will defer to an exchange's interpretation of its clearly erroneous authority in deciding which over-the-counter trades in exchange-listed securities are subject to nullification under FINRA Rule 11892.

FINRA Rule 11892(a)(1) provides that, in the event of a determination by a national securities exchange to nullify one or more transactions in a security traded on such national securities exchange, certain FINRA staff may review any similarly situated

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<sup>5</sup> See SR-NYSE-2010-55.

transaction(s) reported through a FINRA system in such security and declare the transaction(s) null and void. Supplementary Material .01 to FINRA Rule 11892 states that “FINRA will generally follow the determination of a national securities exchange to break a trade(s) when [the] national securities exchange has broken a trade(s) at or near the price range in question at or near the time in question . . . such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection.” These provisions were adopted to ensure consistent and transparent determinations of clearly erroneous transactions.<sup>6</sup> To promote consistency among self-regulatory organizations, FINRA believes it is necessary to defer to exchanges’ interpretations of their clearly erroneous rules when FINRA makes determinations of whether to cancel similarly situated over-the-counter transactions in exchange-listed securities under FINRA Rule 11892(a)(1). Consequently, when making clearly erroneous determinations under FINRA Rule 11892(a)(1) and Supplementary Material .01, FINRA will follow the interpretations of exchanges regarding the range of transactions subject to review, and potential nullification, as clearly erroneous and the date by which determinations must be made.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</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

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<sup>6</sup> See Securities Exchange Act Release No. 61080 (December 1, 2009), 74 FR 64117 (December 7, 2009) (order approving SR-FINRA-2009-068).

<sup>7</sup> 15 U.S.C. 78q-3(b)(6).

interest. FINRA believes that the proposed stated interpretation clarifies that FINRA will exercise its authority to declare over-the-counter transactions in exchange-listed securities null and void under FINRA Rule 11892 and Supplementary Material .01 consistent with decisions made by the exchange(s) trading such securities. FINRA believes that such an interpretation promotes just and equitable principles of trade because it ensures consistent application of clearly erroneous determinations across markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f)(1) of Rule 19b-4 thereunder.<sup>9</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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

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:

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-2010-038 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2010-038. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2010-038 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).