OMB APPROVAL	
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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 068
Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to move NASD Rule 11890, IM-11890-1, and IM-11890-2 into the Consolidated FINRA Rulebook as part of a new FINRA Rule 11890 Series governing clearly errorneous transactions and to amend these rules as part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions.

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: Brant
Last Name: Brown
Title: Associate General Counsel
E-mail: brant.brown@finra.org
Telephone: (202) 728-6927
Fax: (202) 728-8264

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: 10/19/2009

By: Stephanie Dumont (Name)

Senior Vice President and Director of Capital Markets Policy (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.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information Add Remove View	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 Add Remove View	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 Add Remove View 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 Add Remove View 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 Add Remove View	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 Add Remove View	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 Add Remove View	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"),[1] 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 adopt NASD Rule 11890 (Clearly Erroneous Transactions), IM-11890-1 (Refusal to Abide by Rulings), and IM-11890-2 (Review by Panels of the UPC Committee) as FINRA rules in the consolidated FINRA rulebook with the changes that are described below. The proposed rule change creates a new FINRA Rule 11890 Series (Clearly Erroneous Transactions), which consists of Rules 11891 (General), 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities), 11893 (Clearly Erroneous Transactions in OTC Equity Securities), and 11894 (Review by the Uniform Practice Code ("UPC") Committee).

The text of the proposed rule change is attached as Exhibit 5.

(b) Upon Commission approval and implementation by FINRA of the proposed rule change, the corresponding NASD rules will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meetings on December 6, 2006, and July 16, 2009, the Board of Governors of FINRA authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1).

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[2] FINRA is proposing that NASD Rule 11890, IM-11890-1, and IM-11890-2 be moved into the Consolidated FINRA Rulebook as part of a new FINRA Rule 11890 Series governing clearly erroneous transactions.[3] FINRA is also proposing to amend these rules as part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions.[4] This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors, and protecting the public interest. Unlike the

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2 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

3 FINRA will transfer the remaining rules in the Uniform Practice Code into the Consolidated FINRA Rulebook in a separate filing.

4 See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR-NYSEArca-2009-36).

rules of the U.S. equities exchanges, FINRA's rules also address clearly erroneous executions in OTC Equity Securities.[5] NASD Rule 11890 currently provides that, in the event of a disruption or malfunction related to the use or operation of any quotation, communication, or trade reporting system owned or operated by FINRA, or under extraordinary market conditions, designated 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 that such action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. IM-11890-1 and IM-11890-2 address rulings made by FINRA and the UPC Committee pursuant to NASD Rule 11890 and the review of those rulings.

NASD Rule 11890 provides important safeguards against market disruptions caused by trader errors, system malfunctions, or other extraordinary events that result in erroneous executions affecting multiple market participants and/or securities. NASD Rule 11890 has been used both with respect to events affecting a single stock, such as an extraordinary erroneous order causing a large number of trades involving multiple market participants in a single stock (single stock events), and events affecting multiple stocks, such as a system malfunction resulting in a more widespread problem (multi-stock events).

In addition to the substantive changes to the clearly erroneous provisions

5 For purposes of the proposed rule change, the term "OTC Equity Security" has the same meaning as defined in FINRA Rule 6420, except that the term does not include any equity security that is traded on any national securities exchange.

described below, the proposed rule change structurally alters the provisions as well. FINRA is proposing to create a new clearly erroneous series of rules: FINRA Rule Series 11890. Under this umbrella would be (1) a general provision (Rule 11891) with accompanying Supplementary Material; (2) a rule governing clearly erroneous determinations for transactions in exchange-listed securities (Rule 11892) with accompanying Supplementary Material; (3) a rule governing clearly erroneous determinations for transactions in OTC Equity Securities (Rule 11893) with accompanying Supplementary Material; and (4) a rule governing review of FINRA staff determinations by the UPC Committee (Rule 11894).

Definition & General Guidelines

The proposed rule change creates Rule 11891, which defines the term "clearly erroneous" for purposes of the new FINRA Rule 11890 Series. The proposed rule specifies that "the terms of a transaction are 'clearly erroneous' when there is an obvious error in any term, such as price, number of shares, or other unit of trading, or identification of the security." The language in the rule is based on the definition in the recently approved amendments to NYSE Arca Rule 7.10.[6]

The proposed rule change also includes four proposed paragraphs of Supplementary Material to Rule 11891. Proposed Supplementary Material .01 renumbers current NASD IM-11890-1 regarding a member's failure to abide by FINRA or UPC Committee rulings. Proposed Supplementary Material .02 and .03 set forth the general standards applicable to clearly erroneous determinations and clarify that FINRA

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6 See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR-NYSEArca-2009-36).

generally considers a transaction to be clearly erroneous when there is a systemic problem that involves large numbers of parties or trades, or conditions where it would be in the best interests of the market. Further, extraordinary market conditions may include situations where an extraordinary event has occurred or is ongoing that has had a material effect on the market for a security traded over-the-counter or has caused major disruption to the marketplace. Supplementary Material .02 also emphasizes that members are responsible for ensuring that the appropriate price and type of order are entered into FINRA systems.

Finally, proposed Supplementary Material .04 specifically addresses suspicious trading activities such as unauthorized trading activity or attempts to manipulate stock prices by illegally gaining access to legitimate accounts or opening new accounts using false information (often referred to as "account intrusion"). Although FINRA continues to be concerned about protecting markets from unauthorized or illegal activity like account intrusion that could disrupt a fair and orderly market, FINRA believes that its clearly erroneous authority does not extend to such suspicious trading activities. Rather, FINRA believes such activities relate to allegations of fraud and fall outside the scope of the clearly erroneous rules.[7] Consequently, FINRA is proposing the Supplementary Material to clarify this position while also noting that members should routinely review the adequacy of their internal controls and ensure that appropriate system safeguards are

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7 In approving recent amendments to Nasdaq's clearly erroneous rule, the Commission noted that, "[g]iven the fact that the Clearly Erroneous Rule is designed to address trades made in error and the more difficult factual analysis presented by expanding the rule's application beyond obvious errors," it was appropriate for Nasdaq to "retain the original scope of the [clearly erroneous] rule" rather than extend the rule to address account intrusion. See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008).

in place to minimize or eliminate the potential for account intrusion.

Review of Transactions in Exchange-Listed Securities

Proposed Rule 11892 and its Supplementary Material set forth the standards FINRA uses to determine whether a transaction in an exchange-listed security is clearly erroneous. FINRA believes that coordinating with other self-regulatory organizations with the goal of having consistency and transparency regarding the clearly erroneous process is important to the marketplace and to investors. Consequently, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA Trade Reporting Facility ("TRF") or Alternative Display Facility ("ADF"), FINRA will generally follow the determination of a national securities exchange to break a trade (or multiple trades) when that national securities exchange has broken one or more trades at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection. When multiple national securities exchanges have related trades, FINRA will leave a trade(s) unbroken when any of those national securities exchanges has left a trade(s) unbroken at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be inconsistent with market integrity and investor protection.[8]

With respect to OTC transactions in exchange-listed securities for which there is no corresponding or related on-exchange trading activity, FINRA believes that the best approach in determining whether to declare transactions clearly erroneous is to follow the

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8 See proposed Rule 11892, Supplementary Material .01.

exchanges' criteria when making a clearly erroneous determination. In this sector of the market, FINRA believes that consistency in application of clearly erroneous authority across markets is critical to ensure that one investor does not receive disparate treatment based solely on the ultimate execution or reporting venue of his or her order. Consequently, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA TRF or the ADF, but for which there is no corresponding or related on-exchange trading activity, FINRA will generally make its own clearly erroneous determination.[9] However, to ensure that transactions in exchange-listed securities are treated consistently regardless of where the trade is executed (i.e., on an exchange or OTC), proposed Rule 11892 replicates the numerical thresholds used by the exchanges to determine whether a transaction is eligible for consideration as clearly erroneous. The proposed rule also establishes provisions for the use of alternative reference prices in unusual circumstances, additional factors that FINRA may consider when making a clearly erroneous determination, and numerical guidelines applicable to volatile market opens. Each of these provisions is modeled on similar provisions in the recently approved amendments to NYSE Arca Rule 7.10.[10]

Review of Transactions in OTC Equity Securities

Currently, NASD Rule 11890 governs FINRA's clearly erroneous process for both exchange-listed securities and OTC Equity Securities. The core purpose of the

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9 Unlike the NYSE Arca rule regarding clearly erroneous determinations, the FINRA rules do not allow members to initiate reviews of transactions. All reviews conducted by FINRA are conducted on FINRA's own motion.

10 See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR-NYSEArca-2009-36).

clearly erroneous rules is to grant FINRA authority to determine that a transaction is clearly erroneous with a goal of maintaining market integrity by declaring a transaction (or multiple transactions, if necessary) to be null and void if the terms of the trade are clearly out of line with objective market conditions for the security.[11] FINRA is proposing to apply its clearly erroneous authority somewhat differently depending on whether the security is listed on a national securities exchange or is an OTC Equity Security. For that reason, FINRA is proposing to create separate rules for the treatment of exchange-listed securities, which would be governed by Rule 11892, and OTC Equity Securities, which would be governed by Rule 11893.

Proposed Rule 11893 is structured similarly to the provisions for transactions in exchange-listed securities under proposed Rule 11892, including numerical guidelines, the use of alternative reference prices in unusual circumstances, and additional factors FINRA officers may consider when making a clearly erroneous determination. However, as is the case today, the proposed numerical guidelines for transactions in OTC Equity Securities are not the same as the guidelines used for exchange-listed securities. The proposed rule change would codify the numerical guidelines currently used by FINRA to determine whether a transaction is eligible for clearly erroneous consideration. In some instances, for example, the percentage deviations set forth in the numerical guidelines are based on a sliding scale where the maximum percentage deviation applies to the lower

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[11] NASD Rule 11890 currently gives FINRA officers the authority to modify the terms of a transaction, in addition to declaring the transaction null and void. To conform FINRA's authority to the other exchanges' in the context of clearly erroneous determinations, FINRA is proposing to eliminate its ability to modify a clearly erroneous execution. See id.

execution price in the range and the minimum percentage deviation applies to the higher execution price in the range. The sliding scale is applied in a generally linear fashion (i.e., prices at the lower end of the reference price range are generally assessed at the higher percentage range) and is intended to smooth the percentage changes from tier to tier and allow for more gradual deviations. Because the sliding scale is not applied on a strictly linear basis, FINRA has more discretion in applying the guidelines for executions within the reference price range rather than being strictly a calculation of percentages.

The following chart summarizes the proposed Numerical Guidelines for clearly erroneous determinations for OTC Equity Securities:

Reference Price	**Numerical Guidelines (Subject Transaction's Percentage Difference from the Reference Price)**
$0.9999 and under	20%
$1.0000 and up to and including $4.9999	Low end of range minimum 20% - High end of range minimum 10%
$5.0000 and up to and including $74.9999	10%
$75.0000 and up to and including $199.9999	Low end of range minimum 10% - High end of range minimum 5%
$200.0000 and up to and including $499.9999	5%
$500.0000 and up to and including $999.9999	Low end of range minimum 5% - High end of range minimum 3%

$1,000.0000 and over	3%

For example, a transaction executed at $1.5000 that deviates by more than $0.30 (or 20%) from the prevailing market price may be eligible for cancellation as “clearly erroneous”; whereas a transaction executed at $4.5000 that deviates by more than $0.45 (or 10%) from the prevailing market price may be eligible for cancellation as “clearly erroneous.” The provisions in proposed Rule 11893 regarding alternative reference prices and additional factors are substantially similar to those set forth in Rule 11892 for exchange-listed securities.

FINRA is also proposing to adopt Supplementary Material to Rule 11893 to emphasize that FINRA has historically exercised its clearly erroneous authority in very limited circumstances, in particular with respect to OTC Equity Securities. This more narrow approach for OTC Equity Securities is due to the differences in the OTC equity and exchange-listed markets, including the lack of compulsory information flows in the OTC equity market that come as a result of the listing process and the fact that aberrant trading in the OTC market is often due to issues other than systems problems or extraordinary events. The Supplementary Material explains that FINRA does not expect to use its clearly erroneous authority in most situations; rather, FINRA expects the parties to settle any dispute privately.

Review Procedures

Initial Determinations

As noted above, FINRA is proposing to remove language that currently allows a FINRA officer to modify one or more of the terms of a transaction under review. Under the proposed rules, the FINRA officer will only have the authority to break the trades. This proposed change is intended to conform with the rules of other exchanges and attempts to remove the subjectivity from the rule that is necessitated by an adjustment. The proposed rule governing initial determinations remains substantially similar to that in current NASD Rule 11890. An Executive Vice President of FINRA's Market Regulation Department or 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 FINRA facility. With respect to determinations involving transactions in exchange-listed securities, absent extraordinary circumstances, the officer shall take action generally within 30 minutes after becoming aware of the transaction. When extraordinary circumstances exist, any such action of the officer must be taken no later than the start of trading on the day following the date of execution(s) under review. With respect to determinations involving transactions in OTC Equity Securities, a FINRA officer must make a determination as soon as possible after becoming aware of the transaction, but in all cases by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue. If a FINRA officer declares any transaction null and void, FINRA will notify each party involved in the transaction as soon as practicable, and any party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

<u>Appeals</u>

FINRA is proposing to codify in a separate rule (Rule 11894) the provisions governing the appeal to the UPC Committee of a FINRA officer's determination to declare an execution clearly erroneous.[12] IM-11890-2, which concerns review by panels of the UPC Committee, will be incorporated into the text of the new rule. Under the rule, an appeal must be made in writing and must be received by FINRA within thirty minutes after the person making the appeal is given the notification of the determination being appealed. With respect to appeals regarding exchange-listed securities, determinations by the UPC Committee will be rendered as soon as practicable, but generally, on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m., Eastern Time, a determination will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution(s) under review. With respect to appeals regarding OTC Equity Securities, determinations by the UPC Committee will be rendered as soon as practicable, but in no case later than two trading days following the date of the execution(s) under review.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules

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12 As the rule makes clear, a FINRA officer's determination not to break a trade is not appealable.

13 15 U.S.C. 78o–3(b)(6).

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 adopting guidelines to explain the application of the clearly erroneous process will provide clarity and consistency to the marketplace. In addition, FINRA believes if consistent standards are applied to this process across markets, then greater efficiency can be reached.

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

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[14]

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

Not applicable.

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

The provisions of the proposed rule change related to transactions in exchange-listed securities are part of a market-wide effort designed to provide transparency and

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[14] 15 U.S.C. 78s(b)(2).

finality with respect to clearly erroneous transactions and are based on recently approved NYSE Arca, Inc.'s Rule 7.10 governing clearly erroneous executions.[15]

9. Exhibits

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

Exhibit 5. Proposed changes to rule text.

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15 See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR-NYSEArca-2009-36).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-068)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Rules Governing Clearly Erroneous Executions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] 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. 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 adopt NASD Rule 11890, IM-11890-1, and IM-11890-2 into the Consolidated FINRA Rulebook as part of a new FINRA Rule 11890 Series governing clearly erroneous transactions and to amend these rules as part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions.

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.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing that NASD Rule 11890, IM-11890-1, and IM-11890-2 be moved into the Consolidated FINRA Rulebook as part of a new FINRA Rule 11890 Series governing clearly erroneous transactions.[4] FINRA is also proposing to amend these rules as part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions.[5] This effort seeks to achieve

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3 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

4 FINRA will transfer the remaining rules in the Uniform Practice Code into the Consolidated FINRA Rulebook in a separate filing.

5 See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR-NYSEArca-2009-36).

consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors, and protecting the public interest. Unlike the rules of the U.S. equities exchanges, FINRA's rules also address clearly erroneous executions in OTC Equity Securities.[6] NASD Rule 11890 currently provides that, in the event of a disruption or malfunction related to the use or operation of any quotation, communication, or trade reporting system owned or operated by FINRA, or under extraordinary market conditions, designated 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 that such action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. IM-11890-1 and IM-11890-2 address rulings made by FINRA and the UPC Committee pursuant to NASD Rule 11890 and the review of those rulings.

NASD Rule 11890 provides important safeguards against market disruptions caused by trader errors, system malfunctions, or other extraordinary events that result in erroneous executions affecting multiple market participants and/or securities. NASD Rule 11890 has been used both with respect to events affecting a single stock, such as an extraordinary erroneous order causing a large number of trades involving multiple market participants in a single stock (single stock events), and events affecting multiple stocks, such as a system malfunction resulting in a more widespread problem (multi-stock

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6 For purposes of the proposed rule change, the term "OTC Equity Security" has the same meaning as defined in FINRA Rule 6420, except that the term does not include any equity security that is traded on any national securities exchange.

events).

In addition to the substantive changes to the clearly erroneous provisions described below, the proposed rule change structurally alters the provisions as well. FINRA is proposing to create a new clearly erroneous series of rules: FINRA Rule Series 11890. Under this umbrella would be (1) a general provision (Rule 11891) with accompanying Supplementary Material; (2) a rule governing clearly erroneous determinations for transactions in exchange-listed securities (Rule 11892) with accompanying Supplementary Material; (3) a rule governing clearly erroneous determinations for transactions in OTC Equity Securities (Rule 11893) with accompanying Supplementary Material; and (4) a rule governing review of FINRA staff determinations by the UPC Committee (Rule 11894).

Definition & General Guidelines

The proposed rule change creates Rule 11891, which defines the term "clearly erroneous" for purposes of the new FINRA Rule 11890 Series. The proposed rule specifies that "the terms of a transaction are 'clearly erroneous' when there is an obvious error in any term, such as price, number of shares, or other unit of trading, or identification of the security." The language in the rule is based on the definition in the recently approved amendments to NYSE Arca Rule 7.10.[7]

The proposed rule change also includes four proposed paragraphs of Supplementary Material to Rule 11891. Proposed Supplementary Material .01 renumbers current NASD IM-11890-1 regarding a member's failure to abide by FINRA or UPC Committee rulings. Proposed Supplementary Material .02 and .03 set forth the general

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7 See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR-NYSEArca-2009-36).

standards applicable to clearly erroneous determinations and clarify that FINRA generally considers a transaction to be clearly erroneous when there is a systemic problem that involves large numbers of parties or trades, or conditions where it would be in the best interests of the market. Further, extraordinary market conditions may include situations where an extraordinary event has occurred or is ongoing that has had a material effect on the market for a security traded over-the-counter or has caused major disruption to the marketplace. Supplementary Material .02 also emphasizes that members are responsible for ensuring that the appropriate price and type of order are entered into FINRA systems.

Finally, proposed Supplementary Material .04 specifically addresses suspicious trading activities such as unauthorized trading activity or attempts to manipulate stock prices by illegally gaining access to legitimate accounts or opening new accounts using false information (often referred to as "account intrusion"). Although FINRA continues to be concerned about protecting markets from unauthorized or illegal activity like account intrusion that could disrupt a fair and orderly market, FINRA believes that its clearly erroneous authority does not extend to such suspicious trading activities. Rather, FINRA believes such activities relate to allegations of fraud and fall outside the scope of the clearly erroneous rules.[8] Consequently, FINRA is proposing the Supplementary Material to clarify this position while also noting that members should routinely review

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[8] In approving recent amendments to Nasdaq's clearly erroneous rule, the Commission noted that, "[g]iven the fact that the Clearly Erroneous Rule is designed to address trades made in error and the more difficult factual analysis presented by expanding the rule's application beyond obvious errors," it was appropriate for Nasdaq to "retain the original scope of the [clearly erroneous] rule" rather than extend the rule to address account intrusion. See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008).

the adequacy of their internal controls and ensure that appropriate system safeguards are in place to minimize or eliminate the potential for account intrusion.

Review of Transactions in Exchange-Listed Securities

Proposed Rule 11892 and its Supplementary Material set forth the standards FINRA uses to determine whether a transaction in an exchange-listed security is clearly erroneous. FINRA believes that coordinating with other self-regulatory organizations with the goal of having consistency and transparency regarding the clearly erroneous process is important to the marketplace and to investors. Consequently, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA Trade Reporting Facility ("TRF") or Alternative Display Facility ("ADF"), FINRA will generally follow the determination of a national securities exchange to break a trade (or multiple trades) when that national securities exchange has broken one or more trades at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection. When multiple national securities exchanges have related trades, FINRA will leave a trade(s) unbroken when any of those national securities exchanges has left a trade(s) unbroken at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be inconsistent with market integrity and investor protection.[9]

With respect to OTC transactions in exchange-listed securities for which there is no corresponding or related on-exchange trading activity, FINRA believes that the best

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[9] See proposed Rule 11892, Supplementary Material .01.

approach in determining whether to declare transactions clearly erroneous is to follow the exchanges' criteria when making a clearly erroneous determination. In this sector of the market, FINRA believes that consistency in application of clearly erroneous authority across markets is critical to ensure that one investor does not receive disparate treatment based solely on the ultimate execution or reporting venue of his or her order. Consequently, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA TRF or the ADF, but for which there is no corresponding or related on-exchange trading activity, FINRA will generally make its own clearly erroneous determination.[10] However, to ensure that transactions in exchange-listed securities are treated consistently regardless of where the trade is executed (i.e., on an exchange or OTC), proposed Rule 11892 replicates the numerical thresholds used by the exchanges to determine whether a transaction is eligible for consideration as clearly erroneous. The proposed rule also establishes provisions for the use of alternative reference prices in unusual circumstances, additional factors that FINRA may consider when making a clearly erroneous determination, and numerical guidelines applicable to volatile market opens. Each of these provisions is modeled on similar provisions in the recently approved amendments to NYSE Arca Rule 7.10.[11]

Review of Transactions in OTC Equity Securities

Currently, NASD Rule 11890 governs FINRA's clearly erroneous process for both exchange-listed securities and OTC Equity Securities. The core purpose of the

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10 Unlike the NYSE Arca rule regarding clearly erroneous determinations, the FINRA rules do not allow members to initiate reviews of transactions. All reviews conducted by FINRA are conducted on FINRA's own motion.

11 See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR-NYSEArca-2009-36).

clearly erroneous rules is to grant FINRA authority to determine that a transaction is clearly erroneous with a goal of maintaining market integrity by declaring a transaction (or multiple transactions, if necessary) to be null and void if the terms of the trade are clearly out of line with objective market conditions for the security.[12] FINRA is proposing to apply its clearly erroneous authority somewhat differently depending on whether the security is listed on a national securities exchange or is an OTC Equity Security. For that reason, FINRA is proposing to create separate rules for the treatment of exchange-listed securities, which would be governed by Rule 11892, and OTC Equity Securities, which would be governed by Rule 11893.

Proposed Rule 11893 is structured similarly to the provisions for transactions in exchange-listed securities under proposed Rule 11892, including numerical guidelines, the use of alternative reference prices in unusual circumstances, and additional factors FINRA officers may consider when making a clearly erroneous determination. However, as is the case today, the proposed numerical guidelines for transactions in OTC Equity Securities are not the same as the guidelines used for exchange-listed securities. The proposed rule change would codify the numerical guidelines currently used by FINRA to determine whether a transaction is eligible for clearly erroneous consideration. In some instances, for example, the percentage deviations set forth in the numerical guidelines are based on a sliding scale where the maximum percentage deviation applies to the lower execution price in the range and the minimum percentage deviation applies to the higher

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12 NASD Rule 11890 currently gives FINRA officers the authority to modify the terms of a transaction, in addition to declaring the transaction null and void. To conform FINRA's authority to the other exchanges' in the context of clearly erroneous determinations, FINRA is proposing to eliminate its ability to modify a clearly erroneous execution. See id.

execution price in the range. The sliding scale is applied in a generally linear fashion (i.e., prices at the lower end of the reference price range are generally assessed at the higher percentage range) and is intended to smooth the percentage changes from tier to tier and allow for more gradual deviations. Because the sliding scale is not applied on a strictly linear basis, FINRA has more discretion in applying the guidelines for executions within the reference price range rather than being strictly a calculation of percentages.

The following chart summarizes the proposed Numerical Guidelines for clearly erroneous determinations for OTC Equity Securities:

Reference Price	Numerical Guidelines (Subject Transaction's Percentage Difference from the Reference Price)
$0.9999 and under	20%
$1.0000 and up to and including $4.9999	Low end of range minimum 20% - High end of range minimum 10%
$5.0000 and up to and including $74.9999	10%
$75.0000 and up to and including $199.9999	Low end of range minimum 10% - High end of range minimum 5%
$200.0000 and up to and including $499.9999	5%
$500.0000 and up to and including $999.9999	Low end of range minimum 5% - High end of range minimum 3%
$1,000.0000 and over	3%

For example, a transaction executed at $1.5000 that deviates by more than $0.30 (or 20%) from the prevailing market price may be eligible for cancellation as "clearly erroneous"; whereas a transaction executed at $4.5000 that deviates by more than $0.45 (or 10%) from the prevailing market price may be eligible for cancellation as "clearly erroneous." The provisions in proposed Rule 11893 regarding alternative reference prices and additional factors are substantially similar to those set forth in Rule 11892 for exchange-listed securities.

FINRA is also proposing to adopt Supplementary Material to Rule 11893 to emphasize that FINRA has historically exercised its clearly erroneous authority in very limited circumstances, in particular with respect to OTC Equity Securities. This more narrow approach for OTC Equity Securities is due to the differences in the OTC equity and exchange-listed markets, including the lack of compulsory information flows in the OTC equity market that come as a result of the listing process and the fact that aberrant trading in the OTC market is often due to issues other than systems problems or extraordinary events. The Supplementary Material explains that FINRA does not expect to use its clearly erroneous authority in most situations; rather, FINRA expects the parties to settle any dispute privately.

Review Procedures

Initial Determinations

As noted above, FINRA is proposing to remove language that currently allows a FINRA officer to modify one or more of the terms of a transaction under review. Under the proposed rules, the FINRA officer will only have the authority to break the trades. This proposed change is intended to conform with the rules of other exchanges and attempts to remove the subjectivity from the rule that is necessitated by an adjustment. The proposed rule governing initial determinations remains substantially similar to that in current NASD Rule 11890. An Executive Vice President of FINRA's Market Regulation Department or 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 FINRA facility. With respect to determinations involving transactions in exchange-listed securities, absent extraordinary circumstances, the officer shall take action generally within 30 minutes after becoming aware of the transaction. When extraordinary circumstances exist, any such action of the officer must be taken no later than the start of trading on the day following the date of execution(s) under review. With respect to determinations involving transactions in OTC Equity Securities, a FINRA officer must make a determination as soon as possible after becoming aware of the transaction, but in all cases by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue. If a FINRA officer declares any transaction null and void, FINRA will notify each party involved in the transaction as soon as practicable, and any party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

Appeals

FINRA is proposing to codify in a separate rule (Rule 11894) the provisions governing the appeal to the UPC Committee of a FINRA officer's determination to declare an execution clearly erroneous.[13] IM-11890-2, which concerns review by panels of the UPC Committee, will be incorporated into the text of the new rule. Under the rule, an appeal must be made in writing and must be received by FINRA within thirty minutes after the person making the appeal is given the notification of the determination being appealed. With respect to appeals regarding exchange-listed securities, determinations by the UPC Committee will be rendered as soon as practicable, but generally, on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m., Eastern Time, a determination will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution(s) under review. With respect to appeals regarding OTC Equity Securities, determinations by the UPC Committee will be rendered as soon as practicable, but in no case later than two trading days following the date of the execution(s) under review.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] 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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13 As the rule makes clear, a FINRA officer's determination not to break a trade is not appealable.

14 15 U.S.C. 78o–3(b)(6).

interest. FINRA believes that adopting guidelines to explain the application of the clearly erroneous process will provide clarity and consistency to the marketplace. In addition, FINRA believes if consistent standards are applied to this process across markets, then greater efficiency can be reached.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-FINRA-2009-068 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-068. 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, 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-2009-068 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.[15]

Florence E. Harmon

Deputy Secretary

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[15] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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Text of Proposed New FINRA Rules
(Marked to Show Changes from NASD Rule 11890, IM-11890-1, and IM-11890-2;
NASD Rule 11890, IM-11890-1, and IM-11890-2 to be Deleted in their Entirety
from the Transitional Rulebook)

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11000. UNIFORM PRACTICE CODE

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11800. CLOSE-OUT PROCEDURES

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11890. CLEARLY ERRONEOUS TRANSACTIONS

11891. General

For purposes of the Rule 11890 Series, the terms of a transaction are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares, or other unit of trading, or identification of the security.

• • • Supplementary Material:------------------

[IM-11890-1.].01 Refusal to Abide by Rulings. It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a[n NASD] FINRA officer or the UPC Committee under this Rule 11890 Series.

.02 Disruptions or Malfunctions Related to the Use of a FINRA System. In making a determination regarding whether a transaction is clearly erroneous, FINRA takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. Participants in FINRA systems are responsible for ensuring that the appropriate price and type of order are entered into FINRA's systems. Simple assertion by a member that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

.03 Extraordinary Market Conditions. The Rule 11890 Series is generally focused on systemic problems that involve large numbers of parties or trades, or market conditions where it would not be in the best interests of the market for one or more transactions to stand. Additionally, the Rule 11890 Series would include situations where an extraordinary event has occurred or is ongoing that has had a material effect on the market for a security traded over-the-counter or has caused major disruption to the marketplace.

.04 Account Intrusion. FINRA's clearly erroneous authority under the Rule 11890 Series does not extend to unauthorized trading activity or attempts to manipulate stock prices by illegally gaining access to legitimate accounts or opening new accounts using false information (often referred to as "account intrusion"). Such suspicious trading activities relate to allegations of fraud and therefore are not within the scope of the Rule 11890 Series. In this regard, members should routinely review the adequacy of their internal controls and ensure that appropriate system safeguards are in place to minimize or eliminate the potential for account intrusion.

11892[11890]. Clearly Erroneous Transactions in Exchange-Listed Securities

(a) Procedures for Reviewing Transactions [on NASD's Own Motion]

(1) In the event of [(1) a disruption or malfunction related to the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and authorized by the Commission, or (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] a determination by a national securities exchange to nullify and void one or more transactions in a security traded on such national securities exchange, where a similarly situated transaction(s) in such security is also reported through a trade reporting system owned or operated by FINRA or its subsidiaries and authorized by the Commission, an Executive Vice President of [NASD's] FINRA'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. A[n NASD] FINRA officer acting pursuant to this paragraph may declare any such transaction null and void [or modify the terms of any such transaction] if the officer determines that ([i]A) the transaction is clearly erroneous, or ([ii]B) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. [; provided, however] Absent extraordinary circumstances, [that] the officer shall take action pursuant to this paragraph generally within 30 minutes [as soon as possible] after becoming aware of the transaction.[, but in] When extraordinary circumstances exist, any such action of the officer must be taken no later than the start of trading [all cases by 3:00 p.m., Eastern

Time,] on the [next trading] day following the date of execution(s) under review [the transaction at issue].

(2) An Executive Vice President of FINRA's Market Regulation Department or Transparency Services Department, or any officer designated by such Executive Vice President, may, on his or her own motion, review any over-the-counter transaction involving an exchange-listed security arising out of or reported through a trade reporting system owned or operated by FINRA or its subsidiaries and authorized by the Commission, provided that there is no similarly situated transaction in such security on a national securities exchange and the transaction meets the thresholds set forth in paragraph (b). A FINRA officer acting pursuant to this subparagraph may declare any such transaction null and void if the officer determines that (A) the transaction is clearly erroneous, or (B) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Absent extraordinary circumstances, the officer shall take action pursuant to this paragraph generally within 30 minutes after becoming aware of the transaction. When extraordinary circumstances exist, any such action of the officer must be taken no later than the start of trading on the day following the date of execution(s) under review.

(3) If a FINRA officer acting pursuant to this paragraph declares any transaction null and void, each party involved in the transaction shall be notified as soon as practicable by FINRA, and the party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

(b) Thresholds

Determinations of a clearly erroneous execution pursuant to paragraph (a)(2) will be based on all relevant factors on a case by case basis including, but not limited to, the following:

(1) Numerical Guidelines

A transaction may be found to be clearly erroneous only if the price of the transaction is away from the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for unusual circumstances as described in paragraph (b)(2) below.

Reference Price: Consolidated Last Sale	**Normal Market Hours (9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time) Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale):**	**Outside Normal Market Hours Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale):**
Greater than $0.00 up to and including $25.00	10%	20%
Greater than $25.00 up to and including $50.00	5%	10%
Greater than $50.00	3%	6%
Multi-Stock Event – Filings involving five or more securities by the same member will be aggregated into a single filing	10%	10%
Leveraged ETF/ETN securities	Normal Market Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)	Normal Market Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)

(2) Alternative Reference Prices

In unusual circumstances, which may include periods of extreme market volatility, sustained illiquidity, or widespread systems issues, FINRA may, in its discretion and with a view toward maintaining a fair and orderly market and the protection of investors and the public interest, use a Reference Price other than the consolidated last sale. Other Reference Prices may include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions. It may also be necessary to use a higher Numerical Guideline if, after market participants have been alerted to the existence of erroneous activity, the price of the security returns toward its prior trading range but continues to trade beyond the price at which the trades would normally be broken.

(3) Additional Factors

A FINRA Officer may also consider additional factors to determine whether a transaction is clearly erroneous, including but not limited to, system malfunctions or disruptions; volume and volatility for the security; derivative securities products that correspond to greater than 100% in the direction of a tracking index; news released for the security; whether trading in the security was recently halted/resumed; whether the security is an IPO; whether the security was subject to a stock-split, reorganization, or other corporate action; overall market conditions; Opening and Late Session executions; validity of the consolidated tapes' trades and quotes; consideration of primary market indications; and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(4) Numerical Guidelines Applicable to Volatile Market Opens

FINRA may expand the Numerical Guidelines applicable to transactions occurring between 9:30 a.m. and 10:00 a.m., Eastern Time, based on the disseminated value of the S&P 500 Futures at 9:15 a.m., Eastern Time.

(A) When the S&P 500 Futures are up or down 3% up to but not including 5% at 9:15 a.m., Eastern Time, the Numerical Guidelines (calculated pursuant to paragraph (b)(1) above) are doubled for executions occurring between 9:30 a.m., Eastern Time, and 10:00 a.m., Eastern Time.

(B) When the S&P 500 Futures are up or down 5% or greater at 9:15 a.m., Eastern Time, the Numerical Guidelines(calculated pursuant to paragraph (b)(1) above) are tripled for executions occurring between 9:30 a.m., Eastern Time, and 10:00 a.m., Eastern Time.

• • • Supplementary Material:------------------

.01 Determinations by a National Securities Exchange to Nullify and Void the Terms of One or More Transactions in an Exchange-Listed Security When There Are Corresponding or Related Transactions Reported Through a FINRA System.

FINRA believes that coordinating with other self-regulatory organizations with the goal of having consistency and transparency regarding the clearly erroneous process is important to the marketplace and to investors. Consequently, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA Trade Reporting Facility (“TRF”) or Alternative Display Facility (“ADF”), FINRA will generally follow the determination of a national securities exchange to break a trade(s) when that national securities exchange has broken a trade(s) at or near the price range in question at or near the time in question (in FINRA staff’s sole discretion) such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection. In such a case where multiple national securities exchanges have related trades, FINRA will leave a trade(s) unbroken when any of those national securities exchanges has left a trade(s) unbroken at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be inconsistent with market integrity and investor protection.

11893. Clearly Erroneous Transactions in OTC Equity Securities

(a) Procedures for Reviewing Transactions

An Executive Vice President of FINRA's Market Regulation Department or Transparency Services Department, or any officer designated by such Executive Vice President, may, on his or her own motion, review any transaction involving an OTC Equity Security arising out of or reported through a trade reporting system owned or operated by FINRA or its subsidiaries and authorized by the Commission. A FINRA officer acting pursuant to this paragraph may declare any such transaction null and void if the officer determines that (A) the transaction is clearly erroneous, or (B) 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 shall take action pursuant to this paragraph as soon as possible after becoming aware of the transaction, but in all cases by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction(s) at issue. If a FINRA officer acting pursuant to this paragraph declares any transaction null and void, each party involved in the transaction shall be notified as soon as practicable by FINRA, and the party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

(b) Clearly Erroneous Factors

(1) Numerical Guidelines

A transaction in an OTC Equity Security may be found to be clearly erroneous under this Rule only if the execution price of the transaction is away from the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. In some instances, the Numerical Guidelines set forth below are based on a range where the maximum percentage difference applies to the lower execution price in the range and the minimum percentage difference applies to the higher execution price in the range. The range is intended to smooth the percentage changes from tier to tier and allow for more gradual deviations. The Reference Price will generally be the prevailing market price just prior to the time of the trade.

Reference Price	**Numerical Guidelines (Subject Transaction's % Difference from the Reference Price)**
$0.9999 and under	20%
$1.0000 and up to and including $4.9999	Low end of range minimum 20% - High end of range minimum 10%
$5.0000 and up to and including $74.9999	10%
$75.0000 and up to and including $199.9999	Low end of range minimum 10% - High end of range minimum 5%
$200.0000 and up to and including $499.9999	5%
$500.0000 and up to and including	Low end of range minimum 5% -

$999.9999	High end of range minimum 3%
$1,000.0000 and over	3%

(2) Alternative Reference Prices

In unusual circumstances, which may include periods of extreme market volatility, sustained illiquidity, or widespread system issues, FINRA may, in its discretion and with a view toward maintaining a fair and orderly market and the protection of investors and the public interest, use a Reference Price other than the prevailing market price just prior to the time of the trade. Other Reference Prices may include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions.

(3) Additional Factors

A FINRA officer may also consider additional factors to determine whether a transaction is clearly erroneous, including but not limited to, system malfunctions or disruptions; volume and volatility for the security; derivative securities products that correspond to greater than 100% in the direction of a tracking index; news released for the security; whether trading in the security was recently halted/resumed; whether the security is an IPO; whether the security was subject to a stock-split, reorganization, or other corporate action; overall market conditions; Opening and Late Session executions; validity of the consolidated tapes, trades and quotes; consideration of primary market indications; and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(d) For purposes of this Rule, the term "OTC Equity Security" has the same meaning as defined in Rule 6420, except that the term shall not include any equity security that is traded on any national securities exchange.

• • • Supplementary Material:------------------

.01 Limited Application of Clearly Erroneous Authority to Transactions in OTC Equity Securities. With respect to OTC Equity Securities in particular, FINRA historically has applied its clearly erroneous authority in only very limited circumstances, for example, where there is an extraordinary event that has had a material effect on the market for the OTC Equity Security and the canceling of trades is necessary to protect investors and ensure a fair and orderly marketplace. This more narrow approach is due to differences in the OTC equity and exchange-listed markets, including the lack of compulsory information flows in the OTC equity market that come as a result of the listing process and the fact that aberrant trading in the OTC equity market is often due to issues other than systems problems or extraordinary events. As a result, in the vast majority of situations relating to OTC Equity Securities, FINRA does not expect to use its clearly erroneous authority; rather, FINRA expects the parties to settle any dispute privately.

11894.[(b)] Review by the Uniform Practice Code ("UPC") Committee

([1]a) A member or person associated with a member may appeal a determination to declare a transaction null and void made by a FINRA officer under [paragraph (a)] Rule 11892 or 11893 to the UPC Committee, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by [NASD] FINRA within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed[, except that if NASD notifies the parties of action taken pursuant to paragraph (a) after 4:00 p.m., the appeal must be received by 9:30 a.m. the next trading day]. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the UPC Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party. Once a party has appealed a determination to the UPC Committee, the determination shall be reviewed and a decision rendered, unless ([i]1) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered, or ([ii]2) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph[(b)(1)]. Upon consideration of the record, and after such hearings as it may in its discretion order, the UPC Committee, pursuant to the standards set forth in this [r]Rule, shall affirm, modify, reverse, or remand the determination.

(b)(1) With respect to appeals regarding exchange-listed securities, determinations by the UPC Committee pursuant to this Rule will be rendered as soon as practicable, but generally, on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m., Eastern Time, a determination will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution(s) under review.

(2) With respect to appeals regarding OTC Equity Securities, determinations by the UPC Committee pursuant to this Rule will be rendered as soon as practicable, but in no case later than two trading days following the date of the execution(s) under review.

([2]c) The decision of the UPC Committee pursuant to an appeal, or a determination by a[n NASD] FINRA officer that is not appealed, shall be final and binding upon all parties and shall constitute final action on the matter in issue. Any determination by a[n NASD] FINRA officer pursuant to [paragraph (a)] Rule 11892 or 11893 or any decision by the UPC Committee pursuant to this Rule [paragraph (b)] shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

([c]d) Communications

(1) All materials submitted pursuant to this Rule shall be submitted in writing within the time parameters specified herein via such telecommunications procedures as [NASD] FINRA may announce from time to time [in an NASD Notice to Members]. Materials shall be deemed received at the time indicated by the equipment (i.e., facsimile [machine] or computer) receiving the materials. [NASD] FINRA, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein.

(2) [NASD] FINRA shall provide affected parties with prompt notice of determinations under this Rule via facsimile [machine], electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to Rule 11892 or 11893, FINRA [paragraph (a), NASD] may instead provide notice to parties via a press release or any other method reasonably expected to provide rapid notice to many market participants.

(e) **[IM-11890-2. Review by Panels of the UPC Committee]** For purposes of this Rule [11890] and other [NASD] FINRA rules that permit review of [NASD] FINRA decisions by the UPC Committee, a decision of the UPC Committee may be rendered by a panel of that

Committee. The panel shall consist of three or more members of the UPC Committee, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member [firm whose] <u>with</u> revenues from market making activity <u>that</u> exceed ten percent of its total revenues.

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