

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2011 - * 039

Amendment No. (req. for Amendments *)

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) * ☐

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)

Pilot ☐ Extension of Time Period
 for Commission Action * ☐ Date Expires *

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, required when Initial is checked *).

Proposal to amend FINRA Rule 11892 to provide that securities added to the trading pause pilot continue to be resolved in the same manner as before being added to the pilot.

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 * Racquel Last Name * Russell
 Title * Assistant General Counsel
 E-mail * racquel.russell@finra.org
 Telephone * (202) 728-8363 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 08/10/2011

By Stephanie M. 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 EDFS 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”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) so that the rule will continue to operate in the same manner as it did prior to the expansion of the trading pause pilot.

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

* * * * *

11000. UNIFORM PRACTICE CODE

* * * * *

11800. CLOSE-OUT PROCEDURES

* * * * *

11890. Clearly Erroneous Transactions

* * * * *

11892. Clearly Erroneous Transactions in Exchange-Listed Securities

(a) No Change.

(b) Thresholds

Determinations of a clearly erroneous execution pursuant to paragraph (a)(1) will be made as follows:

(1) Numerical Guidelines

¹ 15 U.S.C. 78s(b)(1).

Subject to the provisions of paragraph (b)(3) below, a transaction shall be found to be clearly erroneous 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: (A) Multi-Stock Events involving twenty or more securities, as described in paragraph (b)(2) below; (B) transactions not involving a Multi-Stock Event as described in paragraph (b)(2) that trigger a trading pause in a security included in the S&P 500® Index, the Russell 1000® Index or a pilot list of Exchange Traded Products and subsequent transactions, as described in paragraph (b)(4) below, in which case the Reference Price shall be determined in accordance with that paragraph (b)(4); and (C) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest.

Reference Price: Circumstance or Product	Normal Market Hours (9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time) Numerical Guidelines (Subject transaction's %	Outside Normal Market Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):

	difference from the Reference Price):	
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 — Events involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less	10%	10%
Multi-Stock Event — Events involving twenty or more securities whose executions occurred within a period of five minutes or less	30%, subject to the terms of paragraph (b)(2) below	30%, subject to the terms of paragraph (b)(2) below
Leveraged ETF/ETN securities	Normal Market Hours Numerical Guidelines multiplied by the	Normal Market Hours Numerical Guidelines multiplied by the leverage

	leverage	multiplier (i.e. 2x)
	multiplier (i.e. 2x)	

(2) Multi-Stock Events Involving Twenty or More Securities

During Multi-Stock Events involving twenty or more securities, the number of affected transactions may be such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, FINRA may use a Reference Price other than the consolidated last sale. With the exception of those securities under review that are subject to an individual stock trading pause in a security included in the S&P 500® Index, the Russell 1000® Index or a pilot list of Exchange Traded Products as described in paragraph (b)(4) below, and to ensure consistent application across the markets when this paragraph is invoked, FINRA will promptly coordinate with the market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. FINRA will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by FINRA and the markets consistent with this paragraph.

(3) Additional Factors

Except in the context of a Multi-Stock Event involving five or more securities and an individual stock trading pause[s] in a security included in the S&P 500® Index, the Russell 1000® Index or a pilot list of Exchange Traded Products as described in paragraph (b)(4) below, 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) Individual Stock Trading Pauses in a Security Included in the S&P 500® Index, the Russell 1000® Index or a pilot list of Exchange Traded Products

(A) For purposes of this paragraph, the phrase “Trading Pause Trigger Price” shall mean the price that triggered a trading pause in a security included in the S&P 500® Index, the Russell 1000® Index or a

pilot list of Exchange Traded Products on a primary listing market under its rules. All trading pauses triggered with respect to securities not included in the S&P 500® Index, the Russell 1000® Index or a pilot list of Exchange Traded Products shall be reviewed under the same provisions of Rule 11892 as non pause triggered events. The Trading Pause Trigger Price reflects a price calculated by the primary listing market over a rolling five-minute period and may differ from the execution price of a transaction that triggered a trading pause.

(B) In the event a primary listing market issues an individual stock trading pause in a security included in the S&P 500® Index, the Russell 1000® Index or a pilot list of Exchange Traded Products, and regardless of whether the security at issue is part of a Multi-Stock Event involving five or more securities as described in paragraphs (b)(1) and (b)(2) above, FINRA shall utilize the Trading Pause Trigger Price as the Reference Price for any transactions that trigger a trading pause and subsequent transactions occurring before the trading halt is in effect for transactions otherwise than on an exchange. In connection with the review of transactions pursuant to this paragraph, FINRA will apply the Numerical Guidelines set forth in paragraph (b)(1) above, other than the Numerical Guidelines applicable to Multi-Stock Events. Where a trading pause was triggered by a price decline (rise), FINRA shall deem as clearly erroneous all such transactions that occurred at a price lower (higher) than the Trading Pause Trigger Price. FINRA will rely on the primary listing

market that issued an individual stock trading pause to determine and communicate the Trading Pause Trigger Price for such stock. Trades occurring while the trading halt is in effect are in violation of Rule 5260 and also will be deemed clearly erroneous.

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

.01 No Change.

.02 No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

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

The proposed rule change has been approved by senior management of FINRA pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

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

(a) Purpose

FINRA is proposing modifications to FINRA Rule 11892 in light of the recent expansion of the trading pause pilot² by FINRA and the other SROs to cover additional securities.³ As described in more detail below, the primary listing markets have filed rule changes to amend their clearly erroneous rules to revert back to the non-trading pause clearly erroneous framework for Phase III securities and FINRA is proposing changes to align its clearly erroneous process with the exchanges.⁴

Effective August 8, 2011, the scope of the trading pause pilot was extended beyond the securities included in the S&P 500® Index, the Russell 1000® Index and the pilot list of Exchange Traded Products (“Phase I & II securities”) to all other NMS stocks (“Phase III securities”). In addition to widening the scope of the securities included in the trading pause pilot, the Phase III amendments apply a significantly higher percentage price move to trigger a trading pause for Phase III securities than is applicable to the Phase I & II securities. Specifically, while a ten percent price move within a five-minute period continues to apply to the Phase I & II securities, the Phase III securities are subject to a thirty percent price move where the security had a closing price the previous trading

² In consultation with other self-regulatory organizations (“SROs”) and the Commission, FINRA implemented a trading pause pilot, which was approved by the Commission on June 10, 2010, as part of a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010). (“trading pause pilot”).

³ See Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (Order Approving File No. SR-FINRA-2011-023) (“Phase III”).

⁴ See e.g., SR-NASDAQ-2011-116 (August 8, 2011).

day of \$1.00 or more, and a fifty percent price move where the security had a closing price the previous trading day of less than \$1.00.⁵

Rule 11892(b)(4) (Individual Stock Trading Pauses) provides that clearly erroneous reviews of securities subject to the trading pause pilot use the “trading pause trigger price”⁶ as the reference price rather than using the consolidated last sale, which generally is applicable to clearly erroneous reviews of non-trading pause pilot securities. Because the trading pause trigger price percentages for the Phase III securities are substantially greater than the ten percent threshold applicable to the Phase I & II securities, applying paragraph (b)(4)’s requirement to use the trading pause trigger price for Phase III securities would overly limit the SROs’ abilities to deem certain trades in Phase III securities clearly erroneous.

For example, assume a Phase III security is trading at \$100.00 during a five-minute period before a \$130.00 trade triggers a trading pause. Under the regular clearly erroneous review framework of FINRA Rule 11892 (1) through (3), a clearly erroneous review of a trigger trade or latency trade⁷ would apply a clearly erroneous price of \$103.00 (at and beyond which trades may be broken).⁸ However, under the framework

⁵ If no prior day closing price is available, the last sale reported to the consolidated tape on the previous trading day is used.

⁶ Pursuant to Rule 11892, the phrase “trading pause trigger price” means the price that triggered a trading pause on a primary listing market under its rules. The trading pause trigger price reflects a price calculated by the primary listing market over a rolling five minute period and may differ from the execution price of a transaction that triggered a trading pause. See Rule 11892(b)(4).

⁷ A “latency trade” is a trade that occurs subsequent to a trigger trade but prior to the trading pause taking effect.

⁸ FINRA Rule 11892 (b)(1) provides a numerical guideline of 3% for clearly erroneous calculations where the reference price is greater than \$50.00.

set forth in paragraph (b)(4), the clearly erroneous price would jump to \$133.90 – making it impossible to deem the \$130.00 trade clearly erroneous. This result occurs under paragraph (b)(4) because the trigger trade of \$130.00, rather than the consolidated last sale of \$100.00, must be used as the reference price to determine the price at which trades are eligible to be deemed clearly erroneous. Because of the lower trigger trade threshold for Phase I & II securities, the paragraph (b)(4) framework continues to be reasonable for these securities but is less workable and reasonable for Phase III securities given the greater percentages that apply.

As a result, FINRA, along with the other SROs, is amending Rule 11892 to revert back to the regular clearly erroneous calculation standards of paragraphs (1) through (3) for the Phase III securities, which generally re-establishes the consolidated last sale as the reference price and provides further flexibility in making clearly erroneous determinations in those securities.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

⁹ 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break clearly erroneous trades, yet also ensures fair application of the process so that similarly situated members are provided the same treatment under the rule. FINRA notes that the changes proposed herein will in no way interfere with the operation of the trading pause pilot, as amended, and notes that the proposed rule change is consistent with the clearly erroneous rules of other SROs.

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.¹⁰

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

¹⁰ 15 U.S.C. 78s(b)(2).

of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.¹³

FINRA requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁴ FINRA requests this waiver because it will allow the change to be immediately operative in light of the Phase III expansion, effective August 8, 2011. FINRA also requests that the Commission waive the five-day pre-filing notice requirement specified in Rule 19b-4(f)(6)(iii) under the Act.¹⁵

FINRA believes that amending the clearly erroneous rules so that they continue operate as they previously have will ensure that the clearly erroneous process continues

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

to be applied in an equitable manner. As such, FINRA believes that implementation of proposal should not be delayed, so that it may become operative immediately.

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

The proposed rule changes are part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous transactions.

9. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2011-039)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

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”) filed with the Securities and Exchange Commission (“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 “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) so that the rule will continue to operate in the same manner as it did prior to the expansion of the trading pause pilot.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's website 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

FINRA is proposing modifications to FINRA Rule 11892 in light of the recent expansion of the trading pause pilot⁴ by FINRA and the other SROs to cover additional securities.⁵ As described in more detail below, the primary listing markets have filed rule changes to amend their clearly erroneous rules to revert back to the non-trading pause

⁴ In consultation with other self-regulatory organizations ("SROs") and the Commission, FINRA implemented a trading pause pilot, which was approved by the Commission on June 10, 2010, as part of a concerted effort to strengthen the markets after the severe market disruption that occurred on May 6, 2010. See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010). ("trading pause pilot").

⁵ See Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (Order Approving File No. SR-FINRA-2011-023) ("Phase III").

clearly erroneous framework for Phase III securities and FINRA is proposing changes to align its clearly erroneous process with the exchanges.⁶

Effective August 8, 2011, the scope of the trading pause pilot was extended beyond the securities included in the S&P 500® Index, the Russell 1000® Index and the pilot list of Exchange Traded Products (“Phase I & II securities”) to all other NMS stocks (“Phase III securities”). In addition to widening the scope of the securities included in the trading pause pilot, the Phase III amendments apply a significantly higher percentage price move to trigger a trading pause for Phase III securities than is applicable to the Phase I & II securities. Specifically, while a ten percent price move within a five-minute period continues to apply to the Phase I & II securities, the Phase III securities are subject to a thirty percent price move where the security had a closing price the previous trading day of \$1.00 or more, and a fifty percent price move where the security had a closing price the previous trading day of less than \$1.00.⁷

Rule 11892(b)(4) (Individual Stock Trading Pauses) provides that clearly erroneous reviews of securities subject to the trading pause pilot use the “trading pause trigger price”⁸ as the reference price rather than using the consolidated last sale, which generally is applicable to clearly erroneous reviews of non-trading pause pilot securities.

Because the trading pause trigger price percentages for the Phase III securities are

⁶ See e.g., SR-NASDAQ-2011-116 (August 8, 2011).

⁷ If no prior day closing price is available, the last sale reported to the consolidated tape on the previous trading day is used.

⁸ Pursuant to Rule 11892, the phrase “trading pause trigger price” means the price that triggered a trading pause on a primary listing market under its rules. The trading pause trigger price reflects a price calculated by the primary listing market over a rolling five minute period and may differ from the execution price of a transaction that triggered a trading pause. See Rule 11892(b)(4).

substantially greater than the ten percent threshold applicable to the Phase I & II securities, applying paragraph (b)(4)'s requirement to use the trading pause trigger price for Phase III securities would overly limit the SROs' abilities to deem certain trades in Phase III securities clearly erroneous.

For example, assume a Phase III security is trading at \$100.00 during a five-minute period before a \$130.00 trade triggers a trading pause. Under the regular clearly erroneous review framework of FINRA Rule 11892 (1) through (3), a clearly erroneous review of a trigger trade or latency trade⁹ would apply a clearly erroneous price of \$103.00 (at and beyond which trades may be broken).¹⁰ However, under the framework set forth in paragraph (b)(4), the clearly erroneous price would jump to \$133.90 – making it impossible to deem the \$130.00 trade clearly erroneous. This result occurs under paragraph (b)(4) because the trigger trade of \$130.00, rather than the consolidated last sale of \$100.00, must be used as the reference price to determine the price at which trades are eligible to be deemed clearly erroneous. Because of the lower trigger trade threshold for Phase I & II securities, the paragraph (b)(4) framework continues to be reasonable for these securities but is less workable and reasonable for Phase III securities given the greater percentages that apply.

As a result, FINRA, along with the other SROs, is amending Rule 11892 to revert back to the regular clearly erroneous calculation standards of paragraphs (1) through (3) for the Phase III securities, which generally re-establishes the consolidated last sale as the

⁹ A "latency trade" is a trade that occurs subsequent to a trigger trade but prior to the trading pause taking effect.

¹⁰ FINRA Rule 11892 (b)(1) provides a numerical guideline of 3% for clearly erroneous calculations where the reference price is greater than \$50.00.

reference price and provides further flexibility in making clearly erroneous determinations in those securities.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break clearly erroneous trades, yet also ensures fair application of the process so that similarly situated members are provided the same treatment under the rule. FINRA notes that the changes proposed herein will in no way interfere with the operation of the trading pause pilot, as amended, and notes that the proposed rule change is consistent with the clearly erroneous rules of other SROs.

¹¹ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

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-2011-039 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-2011-039. 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 website (<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 website 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-2011-039 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.¹⁴

Elizabeth M. Murphy

Secretary

¹⁴ 17 CFR 200.30-3(a)(12).