

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58226; File No. SR-FINRA-2008-037)

July 25, 2008

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 8, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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 designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend NASD Rule 11890 (Clearly Erroneous Transactions) to: (1) extend the time limit that FINRA has to take action on a transaction under the rule; and (2) clarify the circumstances under which FINRA initiates a review of a transaction. The text of the proposed rule change is available at FINRA, the Commission’s Public Reference Room, and www.finra.org.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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

FINRA is proposing to amend Rule 11890 to replace the language that FINRA must, except in extraordinary circumstances, take action under the subsection within thirty (30) minutes of detection of an erroneous transaction, with language that FINRA shall act as soon as

possible after becoming aware of the transaction, but in all cases by 3:00 p.m., Eastern Time (ET) on the next trading day after the date of the transaction at issue. Although FINRA believes that determinations under the rule should always be made in a timely manner, FINRA has found that most transactions reviewed under Rule 11890 involve coordination between multiple market centers and the time required to gather and evaluate the information necessary to make an informed determination is often in excess of 30 minutes. Accordingly, FINRA does not believe that the rule's strict 30-minute time limit is in the best interests of the marketplace or investors.⁵

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

Lastly, FINRA is proposing certain technical, non-substantive changes to the text of Rule 11890. Given that many clearly erroneous transactions are caused by trader errors and not disruptions or malfunctions of FINRA systems, the proposed rule change amends the rule text to

⁵ The Commission recently approved amendments to the clearly erroneous rule of The NASDAQ Stock Market LLC (“Nasdaq”) (Nasdaq Rule 11890). As part of those amendments, Nasdaq deleted the requirement that a Nasdaq officer must make a determination regarding whether a transaction was “clearly erroneous” under the rule within 30 minutes of detection. See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (“Release 34-57826”) (SR-NASDAQ-2007-001).

reflect the manner in which FINRA applies it clearly erroneous authority. Additionally, FINRA is proposing to amend the text of Rule 11890(a) to replace the word “approved” with the word “authorized” to reflect that, technically, not all FINRA system rules are “approved” by the Commission, but, for example a system’s rules may take effect upon filing with the Commission (e.g., for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act).

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

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change better reflects the application of Rule 11890 and provides additional time to resolve clearly erroneous transactions.

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 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)

⁶ 15 U.S.C. 78o-3(b)(6).

become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ As required under Rule 19b-4(f)(6)(iii),⁹ 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, prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to the 30th day after the date of filing.¹⁰ However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requested that the Commission waive the 30-day operative delay and make the proposed rule change effective and operative upon filing because the proposed rule change clarifies the current application of Rule 11890 and better reflects the time necessary to address potentially clearly erroneous transactions. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission does not believe that the rule change presents any novel issues and notes that it recently approved revisions to Nasdaq's clearly erroneous transactions rule that, among other things, revised the time frame for a Nasdaq officer to make a determination regarding whether a transaction is "clearly erroneous" under the Nasdaq rule.¹²

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ See id.

¹¹ Id.

¹² See Release 34-57826, supra note 5.

Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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-2008-037 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-FINRA-2008-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 10:00 a.m. and 3:00 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-2008-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).