

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

3312. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (b), and (c)(1) of this Rule, as amended by SR-Phlx-2010-125, shall be in effect during a pilot period set to end on December 10, 2010. If the pilot is not either extended or approved permanent by December 10, 2010, the prior versions of paragraphs (a)(2)(C), (b), and (c)(1) shall be in effect.

(a) Authority to Review Transactions Pursuant to Complaint of Market Participant

(1) No change.

(2) No change.

(A) Filing Time Periods.

(i) No change.

(ii) No change

(iii) In the case of an Outlier Transaction, an Exchange official may at its sole discretion, and on a case-by-case basis, consider requests received pursuant to this rule after 30 minutes, but not longer than 60 minutes after the transaction in question, depending on the facts and circumstances surrounding such request. "Outlier Transaction" means a transaction where:

A. the execution price of the security is greater than three times the current Numerical Guidelines set forth in paragraph (a)(2)(C), or

B. the execution price of the security in question is not within the Outlier Transaction parameters set forth in [sub] paragraph (a)(2)(A)(iii)[(A)]A. above, but the execution price breaches the 52-week high or 52-week low. In such cases, the Exchange may consider Additional Factors as outlined in paragraph (a)(2)(C)[(3)](iii), in determining if the transaction qualifies for further review or if the Exchange shall decline to act.

(B) Once a party has applied to the Exchange for review and the transaction has been determined to be eligible for review, the transaction shall be reviewed and a determination rendered, unless (i) both parties to the transaction agree to withdraw the application for review prior to the time a decision is

rendered by the Exchange official, or (ii) the complainant withdraws its application for review prior to the notification of counterparties. In the event that the Exchange official determines that the transaction in dispute is clearly erroneous, the official shall declare the transaction null and void. A determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of [Core] Regular Trading Hours (9:30:00 to 4:00:00) on the following trading day. The parties shall be promptly notified of the determination.

(C) Determinations of a clearly erroneous execution will be made as follows [based on all relevant factors on a case by case basis including, but not limited to, the following]:

(i) *Numerical Guidelines*. Subject to the provisions of paragraph (a)(2)(C)(iii) below, a [A] transaction executed shall [may] be found to be clearly erroneous only if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. The execution time of the transaction under review determines whether the [guidance] threshold is [Core] Regular Trading Hours [Session] or [Opening and Late Trading] Pre-Opening and After Hours Trading Session (which occurs before and after [the Core] Regular Trading Hours [Session]). 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, [in Unusual Circumstances] as described in [sub]paragraph (a)(2)(C)(ii) below; (B) transactions not involving a Multi-Stock Event as described in paragraph (a)(2)(C)(ii) that trigger a trading pause and subsequent transactions, as described in paragraph (a)(2)(C)(iv) below, in which case the Reference Price shall be determined in accordance with that paragraph (a)(2)(C)(iv); 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[: Consolidated Last Sale], <u>Circumstance or Product</u>	[Core Trading Session Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale):] <u>Regular Trading Hours Numerical Guidelines</u>	[Opening and Late Trading Session Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale):] <u>Pre-Opening and After</u>
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	<u>(Subject transaction's % difference from the Reference Price):</u>	<u>Hours Trading Session Numerical Guidelines (Subject transaction's % difference from the Reference Price):</u>
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%
[Filings involving five or more securities by the same participant may be considered a "Multi-Stock Event"] <u>Multi-Stock Event – Filings involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less</u>	10%	10%
<u>Multi-Stock Event – Filings involving twenty or more securities whose executions occurred within a period of five minutes or less</u>	<u>30%, subject to the terms of paragraph (a)(2)(C)(ii) below</u>	<u>30%, subject to the terms of paragraph (a)(2)(C)(ii) below</u>
Leveraged ETF/ETN securities	[Core] <u>Regular Trading [Session] Hours</u> Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)	[Core] <u>Regular Trading [Session] Hours</u> Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)

(ii) [*Unusual Circumstances and Joint Market Rulings*. In Unusual Circumstances, which may include periods of extreme market volatility, sustained illiquidity, or widespread system issues, the Exchange 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 trades would normally be broken. The Exchange also may use a different Reference Price and/or higher Numerical Guideline in events that involve other markets in an effort to coordinate a Reference Price and/or Numerical Guideline that is consistent across markets. In order to achieve consistent results across markets, when a ruling is made in conjunction with another market center it may be determined that] *Multi-Stock Events Involving Twenty or More Securities*. During Multi-Stock Events involving twenty or more securities the number of affected transactions is such that immediate finality [is] may be necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, the Exchange may use a Reference Price other than consolidated last sale. With the exception of those securities under review that are subject to an individual stock trading pause as described in paragraph (a)(2)(C)(iv) below, and to ensure consistent application across market centers when this paragraph is invoked, the Exchange will promptly coordinate with the other 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. The Exchange 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 the Exchange and other markets consistent with this paragraph.

(iii) *Additional Factors*. Except in the context of a Multi-Stock Event involving five or more securities, and individual stock trading pauses as described in paragraph (a)(2)(C)(iv) below, an [An] Exchange official may also consider additional factors to determine whether an execution 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] Pre-Opening and After Hours Trading 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.

[iv] *Numerical Guidelines Applicable to Volatile Market Opens.* The Exchange may expand the Numerical Guidelines applicable to transactions occurring between 9:30 a.m. and 10:00 a.m. based on the disseminated value of the S & P 500 Futures at 9:15 a.m.

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

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

(iv) Individual Stock Trading Pauses. For purposes of this paragraph, the phrase “Trading Pause Trigger Price” shall mean the price that triggered a trading pause pursuant to Exchange Rule 3100(a)(4). 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. In the event a primary listing market issues an individual stock trading pause in any eligible securities, and regardless of whether the security at issue is part of a Multi-Stock Event involving five or more securities as described in paragraphs (a)(2)(C)(i) and (a)(2)(C)(ii) above, the Exchange 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 pause is in effect on the Exchange. The Exchange 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. Notwithstanding the discretion otherwise provided by the first sentence of paragraph (b)(2) below, the Exchange shall review, on its own motion pursuant to paragraph (b)(2), transactions that trigger a trading pause and subsequent transactions occurring before the trading pause is in effect on the Exchange. In connection with the review of transactions pursuant to this paragraph, the Exchange will apply the Numerical Guidelines set forth in paragraph (a)(2)(C)(i) above other

than the Numerical Guidelines applicable to Multi-Stock Events. In conducting this review, and notwithstanding anything to the contrary contained in paragraph (a)(2)(C)(i), where a trading pause was triggered by a price decline (rise), the Exchange will limit its review to transactions that executed at a price lower (higher) than the Trading Pause Trigger Price.

(b) Procedures for Reviewing Transactions on the Exchange's Own Motion

[In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by the Exchange and approved by the Commission, or (ii) extraordinary market conditions or other circumstances 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, the President of the Exchange or any designated officer of the Exchange or senior level employee ("Senior Official") may, on his or her own motion, review any transaction arising out of or reported through any such quotation, execution, communication, or trade reporting system. The Senior Official acting pursuant to this subsection will rely on the provisions of (a)(2)(C)(1), (a)(2)(C)(2) and (a)(2)(C)(3) of this rule to break. The Senior Official in extraordinary circumstances may use a lower Numerical Guideline for all trades if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Senior Official shall be taken in a timely fashion, generally within 30 minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of Core Trading on trading day following the date of execution(s) under review.]

(1) System Disruption or Malfunctions. In the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Exchange in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the President of the Exchange or any designated officer or senior level employee ("Senior Official") of the Exchange, on his or her own motion, may review such transactions and declare such transactions arising out of the operation of such facilities during such period null and void. In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(i)-(iii) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Senior Official pursuant to this paragraph (b)(1) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(2) Senior Official Acting on Own Motion. A Senior Official, acting on his or her own motion, may review potentially erroneous executions and declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(i)-(iv) of this Rule. Absent extraordinary circumstances, any such action of the Senior Official shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(c) Review by the Options Trade Review Committee ("OTRC")

(1) A member organization or person associated with a member organization may appeal a determination made under paragraph (a) to the OTRC. A member organization or person associated with a member organization may appeal a determination made under paragraph (b) to the OTRC unless the Senior Official 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, and further provided that with respect to rulings made by the Exchange in conjunction with one or more additional market centers, the number of affected transactions is similarly such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and, hence, are also non-appealable. An appeal must be made in writing, and must be received by the Exchange within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. 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 OTRC. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the OTRC 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 OTRC, the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the OTRC, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties. The OTRC panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received between 3:00 ET and the close of trading in the [Late] After Hours Trading Session, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. Upon consideration of the record, and after such hearings as it may in its discretion order, the

OTRC, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) – (3) No change.

(d) No change.

(e) Fees

(1) Filing Fees

No fee shall be assessed to a member organization for filing two or fewer unsuccessful clearly erroneous complaints pursuant to paragraph (a)(2) during a calendar month. A member organization shall be assessed a fee of \$250.00 for each additional unsuccessful complaint filed thereafter during the calendar month. An unsuccessful complaint is one in which the Exchange does not break any of the trades included in the complaint. Each security filed on is considered a separate complaint. In cases where the member organization files on multiple securities at the same time, the Exchange calculates the fee separately for each security depending upon whether the Exchange breaks any trades filed on by the member organization in that security. Adjustments or voluntary breaks negotiated by the Exchange to trades executed at prices that meet the Numerical Guidelines set forth in (a)(2)(C)[(1)](i) count as breaks by the Exchange for purposes of this paragraph. A member organization for purposes of this paragraph (e)(1) is defined by each unique broker Web CRD Number. All market participant identifiers associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member organization during the calendar month. No fee pursuant to this paragraph (e)(1) shall be assessed for a complaint that is (A) successful, where the final decision by the Exchange (including after appeal, if any) is to break at least one of the trades filed on by the member organization, (B) not timely filed under the parameters in paragraph (a)(2)(A), (C) withdrawn by the complainant within five (5) minutes of filing and before the Exchange has performed any substantial work on the complaint, or (D) adjudicated by the Exchange on its own motion under Rule 3312(b).

(2) – (3) No change.

(f) No change.