

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65101; File No. SR-FINRA-2011-039)

August 11, 2011

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 August 10, 2011, 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.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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

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 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

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 [sic] (June 10, 2010), 75 FR 34186 [sic] (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”).

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

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 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) [sic] through (3), a clearly erroneous review of a

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).

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 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

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.

¹¹ 15 U.S.C. 78o-3(b)(6).

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.

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)(iii) thereunder.¹³ FINRA has asked the Commission to waive the

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five day written

30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to align its clearly erroneous rules, with respect to Phase III securities, to those of the exchanges. Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.¹⁴

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.

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

notice requirement in this case. Therefore, the Commission notes that FINRA has satisfied this requirement.

¹⁴ 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).

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 10:00 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 publicly available. 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.¹⁵

Elizabeth M. Murphy
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).