

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72057; File No. SR-FINRA-2014-021)

April 30, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a 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 April 17, 2014, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 amend Rule 11892 to add new provisions to address multi-day clearly erroneous events, transactions occurring during trading halts, and to make non-substantive clarifications to the rule.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amendments to Rule 11892 (the "Rule") to add new paragraphs (c) and (d) to provide FINRA authority to: (1) declare as null and void transactions effected on one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted issuance information, and (2) in the event of a disruption or malfunction in the operation of the electronic communication and trading facilities of a self-regulatory organization or responsible single plan processor in connection with transmittal or receipt of a regulatory halt, suspension or pause (i.e., a "trading halt"), declare as null and void any transactions that occur after the primary listing market for a security declares a trading halt with respect to such security.³ FINRA also is proposing to make non-substantive clarifications to the text of the Rule.

FINRA also proposes a change to certain cross-references in the Rule, due to the addition of paragraphs (c) and (d). Specifically, FINRA proposes to update cross-references in existing Rule 11892.03 in order to make clear that the provisions of Supplementary Material .03 do not alter the application of other provisions of Rule 11892, including new paragraphs (c) and (d).

³ In the event a trading halt is declared, prematurely lifted in error, and then re-instituted, under proposed paragraph (d), any transactions that occurred before the official, final end of the trading halt according to the primary listing market also would be declared as null and void.

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 to provide for uniform treatment of clearly erroneous reviews: (1) in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect.⁴ FINRA also adopted additional changes to Rule 11892 that reduced FINRA's ability to deviate from the objective standards set forth in the Rule⁵ and, in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or the "Plan").⁶ Most recently, FINRA removed the specific provisions related to individual stock trading pauses and extended until April 8, 2014 the pilot program applicable to certain provisions of Rule 11892.⁷

⁴ See Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR-FINRA-2010-032).

⁵ Supra note 4.

⁶ See Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-012); See also Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

⁷ See Securities Exchange Act Release No. 70516 (September 26, 2013), 78 FR 60952 (October 2, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-041).

As proposed, new paragraphs Rule 11892(c) and (d) would be subject to the existing clearly erroneous pilot period, which recently was amended to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.⁸

Multi-Day Clearly Erroneous Executions Based on Fundamentally Incorrect or Grossly Misinterpreted Issuance Information

FINRA proposes to adopt a new paragraph (c) to Rule 11892 (Multi-day Events), which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (e.g., with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the “Event”).

As proposed, a FINRA officer, acting on his or her own motion, would be required to take action to declare all transactions in a security that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the FINRA officer would be required to take action to declare all transactions in that security that occurred during the Event null and void prior to the resumption of trading. FINRA proposes to make clear that no action can be taken pursuant to proposed paragraph (c) with respect to any transactions that have reached the settlement date for the security or that result from an initial public offering (“IPO”) of a security. FINRA believes that declaring a trade null and void after the settlement date would be complex to administer and unfair to the affected parties. FINRA also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no

⁸ See Securities Exchange Act Release No. 71781 (March 24, 2014), 79 FR 17615 (March 28, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-013).

benchmark information are not called into question as it is the IPO process itself including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, FINRA proposes that, to the extent transactions related to an Event involve one or more other self-regulatory organizations, FINRA promptly will coordinate with such other self-regulatory organizations to ensure consistent treatment of the transactions related to the Event, if practicable. FINRA also proposes to state in the Rule that any action taken in connection with paragraph (c) will be taken without regard to the numerical guidelines set forth in paragraph (b)(1) of Rule 11892. In particular, FINRA believes that there could be scenarios where there are erroneous transactions related to an Event that would not meet the applicable numerical guidelines but that are, upon review, clearly erroneous. An example of a scenario that proposed new paragraph (c) is intended to address is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet the applicable numerical guidelines, the proposal would provide FINRA with the authority to declare as null and void such transactions if they were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (i.e., although the security should be trading at a price further away from its previous price range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action, the security continues to trade at a price that does not meet the applicable numerical guidelines).

FINRA also proposes to provide that each member involved in a transaction subject to proposed paragraph (c) shall be notified as soon as practicable of a determination to declare such

transaction null and void, and the party aggrieved by such action may appeal in accordance with Rule 11894.

In particular, FINRA believes it is necessary to have authority to declare as null and void transactions that occur in an event similar to an event involving an exchange offer (“Exchange Offer”) made by U.S. Bancorp on the New York Stock Exchange (“NYSE”) in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information and, as a result, the securities traded at severely dislocated prices (the “U.S. Bancorp Event”). At the time, the NYSE filed an emergency rule filing in order to respond to that event.⁹ With the filing, the NYSE interpreted its clearly erroneous rule as permitting the NYSE to nullify all trades occurring after the Exchange Offer at severely dislocated prices.¹⁰ FINRA believes it is important to have in place a provision to declare trades null and void if an event like the U.S. Bancorp Event occurs again in the future. The U.S. Bancorp Event is described in further detail below and is intended to be illustrative of the manner in which FINRA proposes to utilize proposed paragraph (c), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, \$100,000 liquidation preference per share (the “Depositary Shares”) for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of \$1,000 (the “Normal ITS”). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16,

⁹ See Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2010-55).

¹⁰ Supra note 9.

2010 at prices in the range of \$79.00 per share. There were additional executions on the NYSE in that price range on June 17, 2010 and June 18, 2010. On June 18th, the NYSE learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to \$800 per share. Upon learning of the pricing disparity, the NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

To address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous rule such that trading in the Depositary Shares from June 16th to June 18th constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation.¹¹ Because the Depositary Shares were halted before the price of the Depositary Shares ceased to be dislocated, and remained halted, the NYSE was able to review trading in the Depositary Shares and declare as null and void all trading related to the U.S. Bancorp Event before the security resumed trading. FINRA believes it is appropriate to include in Rule 11892 the authority to address such an event should a similar situation arise in the future.

Transactions Occurring After a Trading Halt Has Been Declared

FINRA proposes to add new paragraph (d) to Rule 11892 (Transactions Occurring During Trading Halts) to make clear that, in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt, a FINRA officer, acting on his or her own motion, shall declare as null and void any transaction that occurs after the primary listing market for a security declares a trading halt

¹¹ Supra note 9.

and before such trading halt with respect to such security has officially ended according to the primary listing market.

In addition, proposed paragraph (d) will make clear that, in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, FINRA will declare as null and void all transactions that occur before the official, final end of the trading halt according to the primary listing market. Any action taken in connection with paragraph (d) must be taken in a timely fashion, generally within thirty minutes of the detection of the erroneous transaction and in no circumstances later than the start of normal market hours¹² on the trading day following the date of the execution(s) under review. FINRA also proposes to specify that any action taken in connection with proposed paragraph (d) will be taken without regard to the numerical guidelines set forth in paragraph (b)(1) of Rule 11892. FINRA believes it is appropriate to declare transactions pursuant to proposed paragraph (d) as null and void without regard to the numerical guidelines because, in the situations covered by paragraph (d), the subject transactions were prohibited from occurring during a trading halt and, thus, declaring them null and void does not put the parties in any different position than they should have been. FINRA also believes that the certainty provided by this provision is critical in situations involving trading halts. FINRA proposes that each member involved in a transaction subject to proposed paragraph (d) shall be notified by FINRA as soon as practicable of a determination to declare a transaction(s) as null and void, and the party aggrieved by such action may appeal the action in accordance with Rule 11894.

FINRA rules provide authority to halt over-the-counter trading in an exchange-listed security in certain cases, including when the primary listing market issues a trading halt in the

¹² Normal market hours are from 9:30 a.m. E.T. to 4:00 p.m. E.T.

security.¹³ However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, members may execute transactions over the counter following the declaration of such a trading halt. Similarly, although rare, there have been extraordinary circumstances in which a trading halt is declared, then prematurely lifted in error, and then re-instituted. FINRA believes it is appropriate to provide for certainty that, in such extraordinary circumstances, any transactions occurring after a trading halt has been declared will be deemed null and void. In the event that a trading halt is declared as of a future time (i.e., if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), FINRA would nullify only those transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market. FINRA believes that such authority is appropriate because, when relied upon, FINRA will be nullifying trades that should not have occurred in the first instance and because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities. Finally, FINRA is making non-substantive amendments to the rule to simplify and clarify the text.

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, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

¹³ See FINRA Rules 6120 and 6121.

¹⁴ 15 U.S.C. 78o-3(b)(6).

FINRA believes that it is appropriate to adopt a provision granting FINRA authority to declare as null and void trades that occur if an event similar to the U.S. Bancorp Event occurs again. FINRA believes that this provision will allow FINRA to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade; and that the proposal is, therefore, consistent with the Act. Similarly, FINRA believes that adding a provision: (1) allowing FINRA to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstated, and (2) providing that, in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt, FINRA will nullify trades occurring after a trading halt has been declared by the primary listing market for the security – will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore is consistent with the Act.

FINRA further believes that the proposal is appropriate and consistent with the Act because, when relied upon, FINRA will be nullifying trades that should not have occurred in the first instance. FINRA also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

FINRA believes that the proposal to update cross-references in existing Supplementary Material .03 of Rule 11892 to include new paragraphs (c) and (d) is consistent with the Act because, as is the case with respect to the current Rule, this change makes clear that the provisions of Supplementary Material .03 do not alter the application of other provisions of Rule

11892. Finally, FINRA believes that the proposed non-substantive clarifications are consistent with the Act in that they provide the market with clarity as to the intended operation of the Rule.

FINRA believes that other self-regulatory organizations also are filing similar proposals to add provisions similar to the provisions being proposed by FINRA in this filing. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across the self-regulatory organizations concerning treatment of transactions as clearly erroneous. The proposed rule change also helps ensure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

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

FINRA does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, FINRA believes that other self-regulatory organizations also are filing similar proposals and, thus, that the proposal will help to ensure consistency across markets.

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

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any written comments from members or other interested parties.

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

Within 45 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 or disapprove 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-2014-021 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-2014-021. 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 the 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-2014-021 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

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).