

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90219; File No. SR-FINRA-2020-036)

October 19, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Program Related to 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 October 16, 2020, the 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 and II 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 extend the current pilot program related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) (“Clearly Erroneous Transaction Pilot” or “Pilot”) until April 20, 2021.

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 a rule change to extend the current pilot program related to FINRA Rule 11892 governing clearly erroneous transactions in exchange-listed securities until the close of business on April 20, 2021. Extending the Pilot would provide FINRA and the national securities exchanges additional time to consider a permanent proposal for clearly erroneous transaction reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: (i) provided for uniform treatment of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of FINRA to deviate from the objective standards set forth in the rule.³ In 2013, FINRA adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS ("Plan").⁴ Finally, in 2014, FINRA adopted two additional provisions addressing (i) erroneous transactions that occur over one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted information resulting in a severe valuation error; and (ii) a disruption or

³ See Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR-FINRA-2010-032).

⁴ 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).

malfunction in the operation of the facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt.⁵

On April 9, 2019, FINRA filed a proposed rule change to untie the effectiveness of the Clearly Erroneous Transaction Pilot from the effectiveness of the Plan, and to extend the Pilot's effectiveness to the close of business on October 18, 2019.⁶ On October 18, 2019, FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2020.⁷ On March 27, 2020, FINRA filed a proposed rule change to extend the pilot's effectiveness until October 20, 2020.⁸ FINRA now is proposing to further extend the Pilot until April 20, 2021, so that market participants can continue to benefit from the more objective clearly erroneous transaction standards under the Pilot.⁹ Extending the Pilot also would provide more time to permit FINRA and the other self-regulatory organizations to consider what changes, if any, to the clearly erroneous transaction rules are appropriate.¹⁰

⁵ See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (Order Approving File No. SR-FINRA-2014-021).

⁶ See Securities Exchange Act Release No. 85612 (April 11, 2019), 84 FR 16107 (April 17, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-011).

⁷ See Securities Exchange Act Release No. 87344 (October 18, 2019), 84 FR 57076 (October 24, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-025).

⁸ See Securities Exchange Act Release No. 88495 (March 27, 2020), 85 FR 18608 (April 2, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-008).

⁹ If the pilot period is not either extended or approved as permanent, the version of Rule 11892 prior to SR-FINRA-2010-032 shall be in effect, and the amendments set forth in SR-FINRA-2014-021 and the provisions of Supplementary Material .03 of the rule shall be null and void.

¹⁰ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days from the date of filing, so that FINRA can implement the proposed rule change 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 change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning the review of transactions as clearly erroneous. FINRA believes that extending the Pilot under FINRA Rule 11892, until April 20, 2021, would help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, FINRA believes the Clearly Erroneous Transaction Pilot should continue to be in effect while FINRA and the national securities exchanges consider a permanent proposal for clearly erroneous transaction reviews.

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. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous transaction rules across the U.S. equities markets while FINRA and the national securities

¹¹ 15 U.S.C. 78q-3(b)(6).

exchanges consider further amendments to these rules. FINRA understands that the national securities exchanges also will file similar proposals to extend their clearly erroneous execution pilot programs, as applicable. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while FINRA and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁶

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.

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-2020-036 on the subject line.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-036. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-FINRA-2020-036 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).