

Additions: Underlined
 Deletions: [Bracketed]

Rule 128. Clearly Erroneous Executions For NYSE Equities

The provisions of sections (c), (e)(2), (f), and (g) of this Rule, as amended on [insert date of approval order], 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 sections (c), (e)(2), (f), and (g) shall be in effect.

(a) – (b) (No changes.)

(c) **Thresholds.** 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]:

(1) *Numerical Guidelines.* Subject to the provisions of paragraph (c)(3) below, a [A] transaction executed during the regular trading hours of the Exchange and after hours of the Exchange 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 Numerical Guideline applied is the Regular Trading Hours or the After Hours of the Exchange. 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 (c)(2) below; (B) transactions not involving a Multi-Stock Event as described in paragraph (c)(2) that trigger a trading pause and subsequent transactions, as described in paragraph (c)(4) below, in which case the Reference Price shall be determined in accordance with that paragraph (c)(4); 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], Circumstance or Product	Regular Trading Hours of the Exchange Numerical Guidelines (Subject transaction’s % difference from the [Consolidated Last Sale] Reference Price):	After Hours Trading of the Exchange Numerical Guidelines (Subject transaction’s % difference from the [Consolidated Last Sale] Reference Price):
Greater than \$0.00 up to and including	10%	20%

\$25.00		
Greater than \$25.00 up to and including \$50.00	5%	10%
Greater than \$50.00	3%	6%
Multi-Stock Event – Filings involving five or more, <u>but less than twenty</u> , securities <u>whose executions occurred within a period of five minutes or less</u> [by the same member or member organization will be aggregated into a single filing]	10%	10%
Multi-Stock Event – Filings involving <u>twenty or more securities whose executions occurred within a period of five minutes or less</u>	<u>30%, subject to the terms of paragraph (c)(2) below</u>	<u>30%, subject to the terms of paragraph (c)(2) below</u>
Leveraged ETF/ETN securities	Regular Trading Hours of the Exchange Numerical Guidelines multiplied by the leverage multiplier (<i>i.e.</i> , 2x)	[After] <u>Regular Trading Hours</u> of the Exchange Numerical Guidelines multiplied by the leverage multiplier (<i>i.e.</i> 2x)

(2) [*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] may be such that immediate finality is 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 security trading pause as described in paragraph (c)(4) 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.

(3) *Additional Factors.* Except in the context of a Multi-Stock Event involving five or more securities, and individual security trading pauses as described in paragraph (c)(4) below, an [An] Officer 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 Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, Liquidity Replenishment Points ("LRPs"), Depth Guidelines 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.

[(4) *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.

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

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

(4) Individual Security Trading Pauses. For purposes of this paragraph, the phrase “Trading Pause Trigger Price” shall mean the price that triggered a trading pause pursuant to Rule 80C. 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 security trading pause pursuant to Rule 80C, and regardless of whether the security at issue is part of a Multi-Stock Event involving five or more securities as described in paragraphs (c)(1) and (c)(2) 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 security trading pause to determine and communicate the Trading Pause Trigger Price for such security. Notwithstanding the discretion otherwise provided by the first sentence of paragraph (g) below, the Exchange shall review, on its own motion pursuant to paragraph (g), 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 (c)(1) above other than the Numerical Guidelines applicable to Multi-Stock Events. In conducting this review, and notwithstanding anything to the contrary contained in paragraph (c)(1), 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.

(d) (No Changes.)

(e) Review Procedures.

(1) Determination by Officer. Unless all parties to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Officer. If the Officer determines that the transaction is not clearly erroneous, the Officer shall decline to take any action in connection with the completed trade. In the event that the Officer determines that the transaction(s) in dispute is clearly erroneous, the Officer shall either: (i) declare the transaction(s) null and void, or (ii) if such transaction(s) occurred only on the Exchange and no contemporaneous transactions occurred on other market centers at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in,

had the error not occurred. A determination shall be made generally within thirty (30) minutes of receipt of the complaint, but in no case later than the open of the Regular Trading Hours of the Exchange on the following trading day. The parties shall be promptly notified of the determination.

(2) *Appeals.* If an member or member organization affected by a determination made under this Rule so requests within the time permitted below, the Clearly Erroneous Execution Panel ("CEE Panel") will review decisions made by the Officer under this Rule, including whether a clearly erroneous execution occurred and whether the correct adjustment was made; provided however that the CEE Panel will not review decisions made by an Officer under subsection (f) of this Rule if such Officer also determines under subsection (f) of this Rule 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 in conjunction with one or more additional market centers, the number of the 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.

(A) The CEE Panel will consist of the NYSE's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and representatives from two (2) member or member organizations of the Exchange.

(B) The Exchange shall designate at least ten (10) member or member organization representatives to be called upon to serve on the CEE Panel as needed. In no case shall a CEE Panel include a person affiliated with a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a CEE Panel on an equally frequent basis.

(f) System Disruption [and] or Malfunctions. In the event of any disruption or a malfunction in the [use or] operation of any electronic communications and trading facilities of the Exchange[, or 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 exist, the Officer, on his or her own motion, may review such transactions and declare such transactions arising out of the [use or] operation of such facilities during such period either: (i) null and void or, (ii) if such transaction(s) occurred only on the Exchange and no contemporaneous transactions occurred on other market centers at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. In all such events, the Officer will rely on the provisions of Section (c)(1)-(3) 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 Officer pursuant to this subsection (f) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer must be taken by no later than the start of the regular trading hours of the Exchange the day following the date of execution(s) under review. Each Exchange member or member organization involved in the transaction shall be notified as soon as practicable, and the member or member organization aggrieved by the action may appeal such action in accordance with the provisions of subsection (e)(2)-(4).

(g) Officer Acting On Own Motion. An Officer acting on its own motion, may review potentially erroneous executions that occur on the Exchange and may decline to take any action in connection with the completed transaction(s) or shall either: (i) declare such transaction(s) null and void or, (ii) if such transaction(s) occurred only on the Exchange and no contemporaneous transactions occurred on other market centers at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. In all such events, the Officer will rely on the provisions of Sections (c)(1)-(4)[(3)] of this Rule[, but in extraordinary circumstances the Officer 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 Officer 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 Officer must be taken by no later than the start of the Regular Trading Hours of the Exchange 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 subsection (e)(2)-(4) above.

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