

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62608; File No. SR-FINRA-2010-038)

July 30, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Stated Interpretation of the Meaning, Administration, and Enforcement of FINRA Rule 11892 and Supplementary Material .01

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2010, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “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 stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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 a stated interpretation of the meaning, administration, and enforcement of FINRA Rule 11892 and Supplementary Material .01.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

The text of the proposed rule change is available on FINRA's Web site 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In light of recent market events, some exchanges have adopted interpretations to their clearly erroneous rules regarding (1) the range of transactions subject to review and potential nullification and (2) the date by which clearly erroneous determinations must be made.⁵ FINRA is filing the proposed rule change to make clear that it will defer to an exchange's interpretation of its clearly erroneous authority in deciding which over-the-counter trades in exchange-listed securities are subject to nullification under FINRA Rule 11892.

FINRA Rule 11892(a)(1) provides that, in the event of a determination by a national securities exchange to nullify one or more transactions in a security traded on such national securities exchange, certain FINRA staff may review any similarly situated transaction(s) reported through a FINRA system in such security and declare the transaction(s) null and void.

⁵ See SR-NYSE-2010-55.

Supplementary Material .01 to FINRA Rule 11892 states that “FINRA will generally follow the determination of a national securities exchange to break a trade(s) when [the] national securities exchange has broken a trade(s) at or near the price range in question at or near the time in question . . . such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection.” These provisions were adopted to ensure consistent and transparent determinations of clearly erroneous transactions.⁶ To promote consistency among self-regulatory organizations, FINRA believes it is necessary to defer to exchanges’ interpretations of their clearly erroneous rules when FINRA makes determinations of whether to cancel similarly situated over-the-counter transactions in exchange-listed securities under FINRA Rule 11892(a)(1). Consequently, when making clearly erroneous determinations under FINRA Rule 11892(a)(1) and Supplementary Material .01, FINRA will follow the interpretations of exchanges regarding the range of transactions subject to review, and potential nullification, as clearly erroneous and the date by which determinations must be made.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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 stated interpretation clarifies that FINRA will exercise its authority to declare over-the-counter transactions in exchange-listed securities null and void under FINRA Rule 11892 and Supplementary Material .01 consistent with decisions made by the exchange(s)

⁶ See Securities Exchange Act Release No. 61080 (December 1, 2009), 74 FR 64117 (December 7, 2009) (order approving SR-FINRA-2009-068).

⁷ 15 U.S.C. 78q-3(b)(6).

trading such securities. FINRA believes that such an interpretation promotes just and equitable principles of trade because it ensures consistent application of clearly erroneous determinations across markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(1)⁹ thereunder. At any time within the 60-day period beginning on the date 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2010-038 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2010-038. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 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 FINRA's principal office. 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-2010-038 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).