

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 11.17, entitled “Clearly Erroneous Executions,” to modify the Exchange’s rule regarding clearly erroneous executions. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.³ The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁴ If such waiver is granted by the Commission, the Exchange shall implement this rule proposal on October 5, 2009.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on June 25, 2009. This action constitutes requisite approval under the Exchange’s By-Laws.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

⁴ Id.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8520.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose

The Exchange proposes to amend BATS Rule 11.17 in order to modify the Exchange's rule regarding clearly erroneous executions. The proposed changes are part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions. This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. The proposed changes are more fully discussed below.

Definition

The Exchange will maintain the meaning of the definition of a clearly erroneous execution, but proposes to add clarifying language with respect to cancelled trades. The proposed change identifies that a transaction made in clearly erroneous error and agreed to be canceled by both parties or determined by the Exchange to be clearly erroneous will be removed "from the Consolidated Tape."⁵ A trade will only be removed from the Consolidated Tape when the determination is deemed final and any applicable appeals have been exhausted.

Member Initiated Review Requests

⁵ For purposes of this Rule, "removed from the Consolidate Tape" means that a subsequent message will be sent to the Consolidated Tape indicating that a previously executed trade has been cancelled.

The Exchange proposes to amend BATS Rule 11.17 to update the procedures for requesting a review of a clearly erroneous transaction. The Exchange currently requires requests for review of a clearly erroneous execution to be made both by electronic mail (“email”) and telephone. The proposed amended rule would require that requests for review be made by email or “other electronic means specified from time to time by the Exchange.” Requiring requests for review to be made via email creates a standard format that can easily be logged and tracked. Due to the evolution of electronic systems, however, it is possible that the Exchange will develop a more efficient means of electronic submission, and thus, has proposed language with a broader scope. The Exchange will publish the email address or other electronic means to be used for all clearly erroneous filings in a circular distributed to Members.⁶

In order to be consistent with the clearly erroneous execution rules of other exchanges, the language of the proposed rule slightly differs from the current rule with respect to the information that must be included with a request for review. The only substantive difference between the current rule and proposed rule in this regard, however, is that the Exchange will no longer request that a Member indicate a requested resolution of the matter (*i.e.*, break or adjust) and will require a Member to include the factual basis for the request.

The proposed rule also requires the Exchange to notify the counterparty to a trade upon receipt of a timely filed request for review that satisfies the numerical guidelines set forth within the Rule (the “Numerical Guidelines”). This proposed language eliminates

⁶ BATS Rule 1.5(n) defines a Member as “any registered broker or dealer that has been admitted to membership in the Exchange.”

the requirement that counterparties be notified of every request for a ruling and instead requires notice only when a request is filed in a timely manner and satisfies the Numerical Guidelines. This change alleviates the burden on the Exchange of notifying the counterparty when a request for review does not merit a ruling.

The Exchange proposes to amend BATS Rule 11.17 to allow an Officer of the Exchange or such other employee designee (“Officer”) of the Exchange to request additional information from each party to a transaction under review. Parties to the review will have 30 minutes from the time of the request to provide additional supporting information.

Routed Executions

The Exchange proposes to give other market centers an additional thirty (30) minutes from the receipt of their participant’s timely filing to request a ruling, but no longer than sixty (60) minutes from the time of the execution under review. This provision accounts for those executions initially directed to an away market center and subsequently routed by that away market center to the Exchange. For example, assume an order is initially routed by a participant to Market Center A and subsequently routed to BATS where the order is executed at a price outside of the Numerical Guidelines. This provision generally requires Market Center A to file with the Exchange within 30 minutes from the time it receives its participant’s timely filed request for review. This provision caps the filing deadline for an away market center at 60 minutes from the time of the execution under review.

Threshold Factors

Currently, the Exchange's Clearly Erroneous Execution rule does not identify specific numeric guidelines for determining what constitutes a clearly erroneous transaction. The current rule simply provides that an Exchange Official "shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest."⁷ The Exchange proposes adding certain numerical thresholds to the Rule that explicitly state what constitutes a clearly erroneous execution.

Numerical Guidelines

The proposed numerical guidelines state that a transaction executed during Regular Trading Hours⁸ or the Pre-Opening⁹ and After Hours Trading Sessions¹⁰ may be found to be clearly erroneous only if the price of the transaction to buy is greater, or less in the case of a sale, than the reference price by an amount that equals or exceeds the numerical guidelines for a particular transaction category. The execution time of the transaction under review determines whether the guidance threshold is Regular Trading Hours or Pre-Opening or After Hours Trading Sessions (which occur before and after the Regular Trading Hours). The Reference Price shall be equal to the Consolidated Last Sale immediately prior to the execution under review, unless unusual circumstances are present. The proposed guidelines for sales greater than \$0.00 up to and including \$25.00

⁷ BATS Rule 11.17(b).

⁸ Regular Trading Hours last from 9:30 a.m. until 4:00 p.m. (Eastern Time). BATS Rule 1.5(w).

⁹ The Pre-Opening Session begins at 8:00 a.m. and concludes 9:30 a.m. (Eastern Time). BATS Rule 1.5(r).

¹⁰ The After Hours Trading Session begins at 4:00 p.m. and concludes at 5:00 p.m. (Eastern Time). BATS Rule 1.5(c).

are 10% for Regular Trading Hours and 20% for the Pre-Opening and After Hours Trading Sessions. The proposed guidelines for sales greater than \$25.00 up to and including \$50.00 are 5% for Regular Trading Hours and 10% for the Pre-Opening and After Hours Trading Sessions. The proposed guidelines for sales greater than \$50.00 are 3% for Regular Trading Hours and 6% for the Pre-Opening and After Hours Trading Sessions. A filing involving five or more securities by the same Member will be aggregated into a single filing called a “Multi-Stock Event.” In the case of a Multi-Stock Event, the proposed guidelines are 10% for Regular Trading Hours and 10% for the Pre-Opening and After Hours Trading Sessions. In the case of Leveraged ETF/ETN securities, the above guidelines are to be multiplied by the leverage multiplier of the security. Executions that do not meet or exceed the Numerical Guidelines will not be eligible for review under this section. The following chart summarizes the proposed Numerical Guidelines.

Reference Price	Regular Trading Hours Numerical Guidelines (Subject transaction’s % difference from the Reference Price):	Pre-Opening and After Hours Trading Session Numerical Guidelines (Subject transaction’s % difference from the Reference Price):
Greater than \$0.00 up to and including \$25.00	10%	20%
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 securities by the	10%	10%

same Member will be aggregated into a single filing		
Leveraged ETF/ETN securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (<i>i.e.</i> , 2x)	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (<i>i.e.</i> , 2x)

Establishing Numerical Guidelines within the Rule brings regulatory transparency and consistency in the application of the rules of the Exchange. These Numerical Guidelines represent the general consensus approach and were developed based on the collective experiences of a market-wide group. The Exchange believes that the Thresholds established are fair and appropriate and apply evenly to all participants.

Unusual Circumstances

The Exchange further proposes that in Unusual Circumstances 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. Unusual Circumstances may include periods of extreme market volatility, sustained illiquidity, or widespread system issues. Other Reference Prices that the Exchange may use would include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions.

The following example explains the use of a Reference Price equal to the consolidated last sale prior to a series of executions.

ABC has a consolidated last sale of \$10.00. During Regular Trading Hours Customer A enters a market order to buy 10,000 shares, although it had intended a

market order for 1,000 shares. The size of the order is such that the order sweeps the BATS Book, which reflects 1,000 shares of liquidity offered at each of following prices.

Executions occur, moving through the depth of Book, as follows:

Trade #1 – 1000 shares @ \$10.00 (9000 remaining)

Trade #2 – 1000 shares @ \$10.20 (8000 remaining)

Trade #3 – 1000 shares @ \$10.40 (7000 remaining)

Trade #4 – 1000 shares @ \$10.60 (6000 remaining)

Trade #5 – 1000 shares @ \$10.80 (5000 remaining)

Trade #6 – 1000 shares @ \$11.00 (4000 remaining)

Trade #7 – 1000 shares @ \$11.20 (3000 remaining)

Trade #8 – 1000 shares @ \$11.40 (2000 remaining)

Trade #9 – 1000 shares @ \$11.60 (1000 remaining)

Trade #10 – 1000 shares @ \$11.80 (complete)

Thus, to be eligible for review, a transaction must be at a price that is at least 10% higher than the consolidated last sale prior to the series of executions. Customer A could request a ruling for trades #6 through #10, priced at \$11.00 and above, but trades #1 through #5 would not be eligible for review.

Under the proposed rule the Exchange may also use a higher numerical guideline if, after market participants have been alerted to erroneous activity, the price of the security returns toward its prior trading range but continues to trade beyond the price it would have normally been broken.

Joint Market Rulings

In the interest of achieving consistency across markets, the Exchange proposes that, in events that involve other markets, the Exchange would have the ability to use a different Reference Price and/or Numerical Guideline. In these instances the Reference Price would be determined based on a consensus among the Exchanges where the transactions occurred. Furthermore, when a ruling is made across markets, the Exchange may determine that the ruling is not eligible for appeal because immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

Additional Factors

The proposed amendments to BATS Rule 11.17 also enumerate some additional factors that an Officer may consider when determining whether an execution is clearly erroneous. These factors include, but are 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 initial public offering, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Pre-Opening or After Hours Trading Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, 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, the protection of investors and the public interest.

Numerical Guidelines Applicable to Volatile Market Opens

The proposed Rule would give the Exchange the ability to 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. When the S&P Futures are up or down from 3% up to but not including 5% at 9:15 a.m., the Numerical Guidelines are doubled. When the S&P Futures are up or down 5% or greater at 9:15 a.m., the Numerical Guidelines are tripled. The Exchange believes that the S&P 500 Futures contract is an appropriate and reliable barometer of market activity prior to the market opening due to its broad based market coverage and deep liquidity. Using the S&P 500 Futures disseminated value at 9:15 a.m. as the barometer of market activity, the Exchange is providing a transparent means of offering adjusted guidelines in times of volatile market activity.

Outlier Transactions

The proposed amendments to BATS Rule 11.17 provide that an Officer may consider requests for review received after 30 minutes, but not longer than 60 minutes after the execution in question in the case of an Outlier Transaction. An Outlier Transaction is a transaction where the execution price of the security is greater than three times the current Numerical Guidelines. In addition, if the execution price of the security breaches the 52-week high or low, then the Exchange may consider Additional Factors to determine if the transaction qualifies for review or if the Exchange shall decline to act.

Review Procedures

Initial Determination: The Exchange proposes removing language that currently allows an Officer to modify one or more of the terms of a transaction under review. Under the proposed rule, the Officer of the Exchange will only have the authority to

break the trades or rule to let the trades stand. This change attempts to remove the subjectivity from the rule that is necessitated by an adjustment. The Exchange also proposes adding language stating that a determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of Regular Trading Hours on the following trading day. Rulings made outside of 30 minutes by an Officer will not fail for lack of timeliness. The guideline simply provides participants an appropriate expectation that a ruling will generally be made within 30 minutes, and in no case later than the start of Regular Trading Hours on the following trading day.

Appeals: The Exchange proposes to amend the appeals procedure for trades that are deemed to be clearly erroneous. First, the Exchange will no longer accept appeal requests via facsimile. Similar to the proposed language for an initial request for a ruling, all appeal requests must be made via email or other electronic means specified by the Exchange.

The current rule provides that the Exchange shall review and render a decision upon an appeal within a timeframe prescribed by the Exchange. The proposed rule offers more definite guidelines to ensure the expedient resolution of appeals. It requires the Exchange to review appeals as soon as practicable, but generally on the same day as the executions under review. Appeals received between 3:00 Eastern Time and the close of trading of the After Hours Trading Session should be made as soon as practicable, but in no case later than the trading day following the date of the execution under review. Appeals will not fail for lack of timeliness. This revised provision provides participants a reasonable expectation of when a ruling on appeal will generally be made.

Further, the proposed rule declares that any determination made by an Officer or by the CEE Panel shall be rendered without prejudice as to the right of the parties to the transaction to submit their dispute to arbitration. This provision simply clarifies the fact that nothing in the proposed rule limits or impedes the rights of the parties to arbitrate their dispute.

System Disruption and Malfunctions

Within the System Disruptions and Malfunctions section of current BATS Rule 11.17, after an Officer determines that a trade was clearly erroneous he may declare the transaction null and void or modify the trade to attempt to achieve an equitable rectification of the error. The proposed Rule eliminates the Exchange's ability to modify a clearly erroneous execution. The Exchange must either uphold or nullify the execution based upon the findings of the Officer reviewing the execution. The proposed Rule provides that, in the event of a disruption or a malfunction, an Officer of the Corporation or other senior level employee designee will rely on the proposed Numerical Guidelines in determining whether an execution is clearly erroneous. However, the Officer or senior level employee may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors, and protect the public interest. The proposed rule also adds that actions taken under these circumstances must be taken within 30 minutes of detection of the erroneous transaction in the ordinary case, and by no later than the start of Regular Trading Hours on the day following the date of the execution under review when extraordinary circumstances exist.

Officers Acting on Their Own Motion

The Exchange proposes to add a section to the Rule that will grant an Officer of the Exchange or other senior level employee designee the ability to act on his or her own motion to review potentially erroneous executions. Under the current rule, an Officer of the Exchange or other senior level employee designee has the ability to act upon his or her own motion only in the event of a system disruption or malfunction. The proposed rule would allow an Officer of the Corporation or other senior level employee designee to review executions and rely on the Numerical Guidelines, under any circumstance. In extraordinary circumstances an Officer or senior level employee designee may apply a lower Numerical Guideline if it is determined that such action is necessary to maintain a fair and orderly market or protect investors and the public interest. In some instances the Exchange may detect a single execution that breaches the Numerical Guidelines but is not the subject of a ruling request. This provision gives the Exchange the ability to review such executions. Additionally, in practice, clearly erroneous executions commonly involve multiple parties and multiple executions. In such instances, all affected parties may not request a ruling. The Exchange proposes this provision to permit an Officer of the Exchange or other senior level employee designee to rule on a group of transactions related to the same occurrence or event as a whole, without a formal request for a ruling from every affected party.

(b) Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national

securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹¹ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹² because it would 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. The proposed rule change provides transparency and finality for participants and creates consistent results across U.S. equities exchanges with respect to clearly erroneous executions. This proposed change further promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

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

The proposed rule change does not impose any burden on competition.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹³ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁴ The Exchange

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4.

asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with 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, or such shorter time as designated by the Commission.¹⁵ Also, the Exchange's proposed rule is based on the proposed rule of another self-regulatory organization that was developed through significant coordination amongst exchanges, which proposed rule has been approved by the Commission.¹⁶ The comment period for such rule has expired without comment. For the foregoing reasons, and because it is based on the approved rules of other Self-Regulatory Organizations, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.

The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁷ As noted above, the proposed rule is the result of a market-wide effort to harmonize the clearly erroneous rules of U.S. equities exchanges so that market participants receive more uniform rulings regarding their executions on different exchanges. To best achieve such harmonization, the Exchange believes that the rules those national securities exchanges that are

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ Securities Exchange Act Release No. 59838 (April 28, 2009), 74 FR 20767 (May 5, 2009) (SR-NYSEArca-2009-36).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

amending their rules should be amended as of the same date, and the date that NYSE Arca's proposed rule is to be implemented is currently planned for October 5, 2009. In addition, the Exchange believes that benefits to Exchange Members expected from the proposed rule change should not be delayed. Based on the foregoing, the Exchange believes that its proposal should become immediately effective and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁸ Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

This proposed rule change is based on the rule filing submitted by NYSE Arca, Inc. to amend NYSE Arca Equities Rule 7.10, which rule filing has been approved by the Commission.¹⁹

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ See Securities Exchange Act Release No. 60706 (September 22, 2009) (SR-NYSEArca-2009-36).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BATS-2009-030)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.17, entitled “Clearly Erroneous Executions.”

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 September 28, 2009, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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 the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with 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

The Exchange is proposing to amend BATS Rule 11.17, entitled “Clearly Erroneous Executions,” to modify the Exchange’s rule regarding clearly erroneous executions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, 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, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BATS Rule 11.17 in order to modify the Exchange's rule regarding clearly erroneous executions. The proposed changes are part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions. This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. The proposed changes are more fully discussed below.

Definition

The Exchange will maintain the meaning of the definition of a clearly erroneous execution, but proposes to add clarifying language with respect to cancelled trades. The proposed change identifies that a transaction made in clearly erroneous error and agreed to be canceled by both parties or determined by the Exchange to be clearly erroneous will

be removed “from the Consolidated Tape.”⁵ A trade will only be removed from the Consolidated Tape when the determination is deemed final and any applicable appeals have been exhausted.

Member Initiated Review Requests

The Exchange proposes to amend BATS Rule 11.17 to update the procedures for requesting a review of a clearly erroneous transaction. The Exchange currently requires requests for review of a clearly erroneous execution to be made both by electronic mail (“email”) and telephone. The proposed amended rule would require that requests for review be made by email or “other electronic means specified from time to time by the Exchange.” Requiring requests for review to be made via email creates a standard format that can easily be logged and tracked. Due to the evolution of electronic systems, however, it is possible that the Exchange will develop a more efficient means of electronic submission, and thus, has proposed language with a broader scope. The Exchange will publish the email address or other electronic means to be used for all clearly erroneous filings in a circular distributed to Members.⁶

In order to be consistent with the clearly erroneous execution rules of other exchanges, the language of the proposed rule slightly differs from the current rule with respect to the information that must be included with a request for review. The only substantive difference between the current rule and proposed rule in this regard, however, is that the Exchange will no longer request that a Member indicate a requested resolution

⁵ For purposes of this Rule, “removed from the Consolidate Tape” means that a subsequent message will be sent to the Consolidated Tape indicating that a previously executed trade has been cancelled.

⁶ BATS Rule 1.5(n) defines a Member as “any registered broker or dealer that has been admitted to membership in the Exchange.”

of the matter (*i.e.*, break or adjust) and will require a Member to include the factual basis for the request.

The proposed rule also requires the Exchange to notify the counterparty to a trade upon receipt of a timely filed request for review that satisfies the numerical guidelines set forth within the Rule (the “Numerical Guidelines”). This proposed language eliminates the requirement that counterparties be notified of every request for a ruling and instead requires notice only when a request is filed in a timely manner and satisfies the Numerical Guidelines. This change alleviates the burden on the Exchange of notifying the counterparty when a request for review does not merit a ruling.

The Exchange proposes to amend BATS Rule 11.17 to allow an Officer of the Exchange or such other employee designee (“Officer”) of the Exchange to request additional information from each party to a transaction under review. Parties to the review will have 30 minutes from the time of the request to provide additional supporting information.

Routed Executions

The Exchange proposes to give other market centers an additional thirty (30) minutes from the receipt of their participant’s timely filing to request a ruling, but no longer than sixty (60) minutes from the time of the execution under review. This provision accounts for those executions initially directed to an away market center and subsequently routed by that away market center to the Exchange. For example, assume an order is initially routed by a participant to Market Center A and subsequently routed to BATS where the order is executed at a price outside of the Numerical Guidelines. This provision generally requires Market Center A to file with the Exchange within 30

minutes from the time it receives its participant's timely filed request for review. This provision caps the filing deadline for an away market center at 60 minutes from the time of the execution under review.

Threshold Factors

Currently, the Exchange's Clearly Erroneous Execution rule does not identify specific numeric guidelines for determining what constitutes a clearly erroneous transaction. The current rule simply provides that an Exchange Official "shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest."⁷ The Exchange proposes adding certain numerical thresholds to the Rule that explicitly state what constitutes a clearly erroneous execution.

Numerical Guidelines

The proposed numerical guidelines state that a transaction executed during Regular Trading Hours⁸ or the Pre-Opening⁹ and After Hours Trading Sessions¹⁰ may be found to be clearly erroneous only if the price of the transaction to buy is greater, or less in the case of a sale, than the reference price by an amount that equals or exceeds the numerical guidelines for a particular transaction category. The execution time of the transaction under review determines whether the guidance threshold is Regular Trading

⁷ BATS Rule 11.17(b).

⁸ Regular Trading Hours last from 9:30 a.m. until 4:00 p.m. (Eastern Time). BATS Rule 1.5(w).

⁹ The Pre-Opening Session begins at 8:00 a.m. and concludes 9:30 a.m. (Eastern Time). BATS Rule 1.5(r).

¹⁰ The After Hours Trading Session begins at 4:00 p.m. and concludes at 5:00 p.m. (Eastern Time). BATS Rule 1.5(c).

Hours or Pre-Opening or After Hours Trading Sessions (which occur before and after the Regular Trading Hours). The Reference Price shall be equal to the Consolidated Last Sale immediately prior to the execution under review, unless unusual circumstances are present. The proposed guidelines for sales greater than \$0.00 up to and including \$25.00 are 10% for Regular Trading Hours and 20% for the Pre-Opening and After Hours Trading Sessions. The proposed guidelines for sales greater than \$25.00 up to and including \$50.00 are 5% for Regular Trading Hours and 10% for the Pre-Opening and After Hours Trading Sessions. The proposed guidelines for sales greater than \$50.00 are 3% for Regular Trading Hours and 6% for the Pre-Opening and After Hours Trading Sessions. A filing involving five or more securities by the same Member will be aggregated into a single filing called a “Multi-Stock Event.” In the case of a Multi-Stock Event, the proposed guidelines are 10% for Regular Trading Hours and 10% for the Pre-Opening and After Hours Trading Sessions. In the case of Leveraged ETF/ETN securities, the above guidelines are to be multiplied by the leverage multiplier of the security. Executions that do not meet or exceed the Numerical Guidelines will not be eligible for review under this section. The following chart summarizes the proposed Numerical Guidelines.

Reference Price	Regular Trading Hours Numerical Guidelines (Subject transaction’s % difference from the Reference Price):	Pre-Opening and After Hours Trading Session Numerical Guidelines (Subject transaction’s % difference from the Reference Price):
Greater than \$0.00 up to and including \$25.00	10%	20%
Greater than \$25.00 up to and including	5%	10%

\$50.00		
Greater than \$50.00	3%	6%
Multi-Stock Event – Filings involving five or more securities by the same Member will be aggregated into a single filing	10%	10%
Leveraged ETF/ETN securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (<i>i.e.</i> , 2x)	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (<i>i.e.</i> , 2x)

Establishing Numerical Guidelines within the Rule brings regulatory transparency and consistency in the application of the rules of the Exchange. These Numerical Guidelines represent the general consensus approach and were developed based on the collective experiences of a market-wide group. The Exchange believes that the Thresholds established are fair and appropriate and apply evenly to all participants.

Unusual Circumstances

The Exchange further proposes that in Unusual Circumstances 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. Unusual Circumstances may include periods of extreme market volatility, sustained illiquidity, or widespread system issues. Other Reference Prices that the Exchange may use would include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions.

The following example explains the use of a Reference Price equal to the consolidated last sale prior to a series of executions.

ABC has a consolidated last sale of \$10.00. During Regular Trading Hours Customer A enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order sweeps the BATS Book, which reflects 1,000 shares of liquidity offered at each of following prices. Executions occur, moving through the depth of Book, as follows:

Trade #1 – 1000 shares @ \$10.00 (9000 remaining)

Trade #2 – 1000 shares @ \$10.20 (8000 remaining)

Trade #3 – 1000 shares @ \$10.40 (7000 remaining)

Trade #4 – 1000 shares @ \$10.60 (6000 remaining)

Trade #5 – 1000 shares @ \$10.80 (5000 remaining)

Trade #6 – 1000 shares @ \$11.00 (4000 remaining)

Trade #7 – 1000 shares @ \$11.20 (3000 remaining)

Trade #8 – 1000 shares @ \$11.40 (2000 remaining)

Trade #9 – 1000 shares @ \$11.60 (1000 remaining)

Trade #10 – 1000 shares @ \$11.80 (complete)

Thus, to be eligible for review, a transaction must be at a price that is at least 10% higher than the consolidated last sale prior to the series of executions. Customer A could request a ruling for trades #6 through #10, priced at \$11.00 and above, but trades #1 through #5 would not be eligible for review.

Under the proposed rule the Exchange may also use a higher numerical guideline if, after market participants have been alerted to erroneous activity, the price of the

security returns toward its prior trading range but continues to trade beyond the price it would have normally been broken.

Joint Market Rulings

In the interest of achieving consistency across markets, the Exchange proposes that, in events that involve other markets, the Exchange would have the ability to use a different Reference Price and/or Numerical Guideline. In these instances the Reference Price would be determined based on a consensus among the Exchanges where the transactions occurred. Furthermore, when a ruling is made across markets, the Exchange may determine that the ruling is not eligible for appeal because immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

Additional Factors

The proposed amendments to BATS Rule 11.17 also enumerate some additional factors that an Officer may consider when determining whether an execution is clearly erroneous. These factors include, but are 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 initial public offering, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Pre-Opening or After Hours Trading Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, 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, the protection of investors and the public interest.

Numerical Guidelines Applicable to Volatile Market Opens

The proposed Rule would give the Exchange the ability to 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. When the S&P Futures are up or down from 3% up to but not including 5% at 9:15 a.m., the Numerical Guidelines are doubled. When the S&P Futures are up or down 5% or greater at 9:15 a.m., the Numerical Guidelines are tripled. The Exchange believes that the S&P 500 Futures contract is an appropriate and reliable barometer of market activity prior to the market opening due to its broad based market coverage and deep liquidity. Using the S&P 500 Futures disseminated value at 9:15 a.m. as the barometer of market activity, the Exchange is providing a transparent means of offering adjusted guidelines in times of volatile market activity.

Outlier Transactions

The proposed amendments to BATS Rule 11.17 provide that an Officer may consider requests for review received after 30 minutes, but not longer than 60 minutes after the execution in question in the case of an Outlier Transaction. An Outlier Transaction is a transaction where the execution price of the security is greater than three times the current Numerical Guidelines. In addition, if the execution price of the security breaches the 52-week high or low, then the Exchange may consider Additional Factors to determine if the transaction qualifies for review or if the Exchange shall decline to act.

Review Procedures

Initial Determination: The Exchange proposes removing language that currently allows an Officer to modify one or more of the terms of a transaction under review. Under the proposed rule, the Officer of the Exchange will only have the authority to break the trades or rule to let the trades stand. This change attempts to remove the subjectivity from the rule that is necessitated by an adjustment. The Exchange also proposes adding language stating that a determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of Regular Trading Hours on the following trading day. Rulings made outside of 30 minutes by an Officer will not fail for lack of timeliness. The guideline simply provides participants an appropriate expectation that a ruling will generally be made within 30 minutes, and in no case later than the start of Regular Trading Hours on the following trading day.

Appeals: The Exchange proposes to amend the appeals procedure for trades that are deemed to be clearly erroneous. First, the Exchange will no longer accept appeal requests via facsimile. Similar to the proposed language for an initial request for a ruling, all appeal requests must be made via email or other electronic means specified by the Exchange.

The current rule provides that the Exchange shall review and render a decision upon an appeal within a timeframe prescribed by the Exchange. The proposed rule offers more definite guidelines to ensure the expedient resolution of appeals. It requires the Exchange to review appeals as soon as practicable, but generally on the same day as the executions under review. Appeals received between 3:00 Eastern Time and the close of trading of the After Hours Trading Session should be made as soon as practicable, but in no case later than the trading day following the date of the execution under review.

Appeals will not fail for lack of timeliness. This revised provision provides participants a reasonable expectation of when a ruling on appeal will generally be made.

Further, the proposed rule declares that any determination made by an Officer or by the CEE Panel shall be rendered without prejudice as to the right of the parties to the transaction to submit their dispute to arbitration. This provision simply clarifies the fact that nothing in the proposed rule limits or impedes the rights of the parties to arbitrate their dispute.

System Disruption and Malfunctions

Within the System Disruptions and Malfunctions section of current BATS Rule 11.17, after an Officer determines that a trade was clearly erroneous he may declare the transaction null and void or modify the trade to attempt to achieve an equitable rectification of the error. The proposed Rule eliminates the Exchange's ability to modify a clearly erroneous execution. The Exchange must either uphold or nullify the execution based upon the findings of the Officer reviewing the execution. The proposed Rule provides that, in the event of a disruption or a malfunction, an Officer of the Corporation or other senior level employee designee will rely on the proposed Numerical Guidelines in determining whether an execution is clearly erroneous. However, the Officer or senior level employee may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors, and protect the public interest. The proposed rule also adds that actions taken under these circumstances must be taken within 30 minutes of detection of the erroneous transaction in the ordinary case, and by no later than the start of Regular Trading Hours on the day following the date of the execution under review when extraordinary circumstances exist.

Officers Acting on Their Own Motion

The Exchange proposes to add a section to the Rule that will grant an Officer of the Exchange or other senior level employee designee the ability to act on his or her own motion to review potentially erroneous executions. Under the current rule, an Officer of the Exchange or other senior level employee designee has the ability to act upon his or her own motion only in the event of a system disruption or malfunction. The proposed rule would allow an Officer of the Corporation or other senior level employee designee to review executions and rely on the Numerical Guidelines, under any circumstance. In extraordinary circumstances an Officer or senior level employee designee may apply a lower Numerical Guideline if it is determined that such action is necessary to maintain a fair and orderly market or protect investors and the public interest. In some instances the Exchange may detect a single execution that breaches the Numerical Guidelines but is not the subject of a ruling request. This provision gives the Exchange the ability to review such executions. Additionally, in practice, clearly erroneous executions commonly involve multiple parties and multiple executions. In such instances, all affected parties may not request a ruling. The Exchange proposes this provision to permit an Officer of the Exchange or other senior level employee designee to rule on a group of transactions related to the same occurrence or event as a whole, without a formal request for a ruling from every affected party.

As noted above, the proposed rule is the result of a market-wide effort to harmonize the clearly erroneous rules of U.S. equities exchanges so that market participants receive more uniform rulings regarding their executions on different exchanges. To best achieve such harmonization, the Exchange believes that the rules

those national securities exchanges that are amending their rules should be amended as of the same date, and such implementation is currently planned for October 5, 2009.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹¹ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹² because it would 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. The proposed rule change provides transparency and finality for participants and creates consistent results across U.S. equities exchanges with respect to clearly erroneous executions. This proposed change further promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Changes 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 Act¹³ and Rule 19b-4(f)(6)(iii) thereunder.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 proposal 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 No. SR-BATS-2009-030 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.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File No. SR-BATS-2009-030. 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 changes 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. 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 No. SR-BATS-2009-030 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

Rules of BATS Exchange, Inc.

CHAPTER XI. TRADING RULES

Rule 11.17. Clearly Erroneous Executions

(a) *Definition.* For purposes of this Rule [11.17], the terms of a transaction executed on the Exchange are “clearly erroneous” when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by the Exchange to be clearly erroneous will [may] be removed from the Consolidated Tape[, if the parties do not object, subject to the approval of the Exchange].

(b) *Request and Timing of [for Exchange] Review.* A Member that receives an execution on an order that was submitted erroneously to the Exchange for its own or customer account may request that the Exchange review the transaction under this Rule [11.17]. An Officer of the Exchange or such other employee designee of the Exchange (“Official”) shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such request for review shall be made in writing via [telephone and by] e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to Members.

(1) Requests for Review. Requests for review must be received by the Exchange within thirty (30) minutes of execution time and shall include information concerning the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. [and submitted within thirty (30) minutes of the trade in question. Once a request is submitted, it may not be withdrawn without the consent of both parties to the trade. The request should contain the name of the Member, time(s) of the trade, the symbol(s), the quantity, the side (bought or sold), the price and the requested resolution (break trade or adjust price to what new price).] Upon receipt of a timely filed request that satisfies the numerical guidelines set forth in paragraph (c)(1) of this Rule, the counterparty to the trade, if any, shall be notified by the Exchange as soon as practicable, but generally within thirty (30) minutes. [Thereafter, an Officer of the Exchange or such other designee of the Exchange (“Official”) shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.] An Official may request additional supporting written information to aid in the resolution of the matter. If requested, each [Each] party to the transaction shall provide any supporting written information as may be reasonably requested by the Official to aid resolution of the matter

within thirty (30) minutes of the Official's request [for review]. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(2) Routed Executions. Other market centers will generally have an additional thirty (30) minutes from receipt of their participant's timely filing, but no longer than sixty (60) minutes from the time of the execution at issue, to file with the Exchange for review of transactions routed to the Exchange from that market center and executed on the Exchange.

(c) Thresholds. Determinations of whether an execution is clearly erroneous will be based on all relevant factors on a case by case basis including, but not limited to, the following:

(1) Numerical Guidelines. A transaction executed during Regular Trading Hours or during the Pre-Opening or After Hours Session 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 guidance threshold is Regular Trading Hours or Pre-Opening or After Hours Trading Sessions (which occur before and after the Regular Trading Hours). The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for in Unusual Circumstances as described in paragraph (c)(2) below.

<u>Reference Price</u>	<u>Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):</u>	<u>Pre-Opening and After Hours Trading Session Numerical Guidelines (Subject transaction's % difference from the Reference Price):</u>
<u>Greater than \$0.00 up to and including \$25.00</u>	<u>10%</u>	<u>20%</u>
<u>Greater than \$25.00 up to and including \$50.00</u>	<u>5%</u>	<u>10%</u>
<u>Greater than \$50.00</u>	<u>3%</u>	<u>6%</u>
<u>Multi-Stock Event – Filings involving five or more securities by the same Member will be aggregated into a single filing</u>	<u>10%</u>	<u>10%</u>
<u>Leveraged</u>	<u>Regular Trading Hours</u>	<u>Regular Trading Hours</u>

ETF/ETN securities	<u>Numerical Guidelines multiplied by the leverage multiplier (i.e., 2x)</u>	<u>Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)</u>
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(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 the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

(3) Additional Factors. An Official 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 initial public offering, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Pre-Opening or After Hours Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, 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. (all times Eastern) based on the disseminated value of the S&P 500 Futures at 9:15 a.m.

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

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

(d) *Outlier Transactions.* In the case of an Outlier Transaction, an Official may, in his or her sole discretion, and on a case-by-case basis, consider requests received pursuant to paragraph (b) of this Rule after thirty (30) minutes, but not longer than sixty (60) minutes after the transaction in question, depending on the facts and circumstances surrounding such request.

(1) An “Outlier Transaction” means a transaction where the execution price of the security is greater than three times the current Numerical Guidelines set forth in paragraph (c)(1) of this Rule.

(2) If the execution price of the security in question is not within the Outlier Transaction parameters set forth in paragraph (d)(1) of this Rule but breaches the 52-week high or 52-week low, the Exchange may consider Additional Factors as outlined in paragraph (c)(3), in determining if the transaction qualifies for further review or if the Exchange shall decline to act.

[(c)](e) Review Procedures.

(1) *Determination by Official.* Unless both 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 Official. If the Official determines that the transaction is not clearly erroneous, the Official shall decline to take any action in connection with the completed trade. In the event that the Official determines that the transaction in dispute is clearly erroneous, the Official shall declare the transaction null and void [or 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 start of Regular Trading Hours on the following day. The parties shall be promptly notified of the determination. [Such action shall constitute final action by the Exchange on the matter.]

(2) *Appeals.* If a Member affected by a determination made under this Rule [11.17] so requests within the time permitted below, the Clearly Erroneous Execution Panel (“CEE Panel”) will review decisions made by the Official under this Rule, including whether a clearly erroneous execution occurred and whether the correct determination [adjustment] was made; provided however that the CEE Panel will not review decisions made by an Officer under [subsection (d)] paragraph (f) of this Rule if such Officer also determines under [subsection (d)] paragraph (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.

(A) The CEE Panel will be comprised of the CRO, or a designee of the CRO, and representatives from two (2) Members.

(B) The Exchange shall designate at least ten (10) representatives of Members to be called upon to serve on the CEE Panel as needed. In no case shall a CEE Panel include a person [related to] 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.

(C) A request for review on appeal must be made in writing via [facsimile or] e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CEE Panel shall review the facts and render a decision [within the time frame prescribed by the Exchange] as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received between 3:00 p.m. Eastern Time and the close of trading in the After Hours Trading Session, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

(D) The CEE Panel may overturn or modify an action taken by the Official under this Rule. All determinations by the CEE Panel shall constitute final action by the Exchange on the matter at issue.

(E) If the CEE Panel votes to uphold the decision made pursuant to [Rule 11.17(c)(1)] paragraph (e)(1) above, the Exchange will assess a \$500.00 fee against the Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Member.

(F) Any determination by an Officer or by the CEE Panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

[(d)](f) *System Disruption, Malfunctions and Review on Motion of Officer.* 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, an Officer of the Exchange or other senior level employee designee [“(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 null and void [or modify the terms of these transactions if such Officer determines that the transaction(s) are clearly erroneous, or that such actions are necessary

for the maintenance of a fair and orderly market or for the protection of investors and the public interest]. In such events, the Officer of the Exchange or such other senior level employee designee will rely on the provisions of paragraph (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 [Any] such action of the Officer of the Exchange or other senior level employee designee pursuant to this [subsection (d)] paragraph (f) shall be taken [as promptly as practicable following] within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or senior level employee designee must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Each Member 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 paragraph (e)(2) above.

(g) *Officer Acting on Own Motion.* An Officer of the Exchange or senior level employee designee, acting on his or her own motion, may review potentially erroneous executions and declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the Officer of the Exchange or such other senior level employee designee will rely on the provisions of paragraph (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 of the Exchange or other senior level employee designee 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 of the Exchange or other senior level employee designee must be taken by no later than the start of Regular Trading Hours 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 paragraph (e)(2) above.