

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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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 Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to provide guidance regarding factors generally considered by Nasdaq in adjudicating clearly erroneous transactions under Rule 11890. Nasdaq has designated this proposal as non-controversial and requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).³ If such waiver is granted by the Commission, Nasdaq will implement this rule proposal immediately.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

IM-11890-4. Clearly Erroneous Transaction Guidance for Filings under Rule 11890(a) and Single Stock Events under Rule 11890(b)

Nasdaq is providing the following guidance on how it generally considers:

- all complaints filed by market participants under Rule 11890(a); and
- many events involving a single security considered on Nasdaq’s own motion pursuant to Rule 11890(b).

Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. Participants in Nasdaq are responsible for ensuring that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

appropriate price and type of order are entered into Nasdaq's systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

Numerical factors for review

Nasdaq primarily considers the execution price of a trade in determining whether it is clearly erroneous.

<u>Execution Price</u>	<u>Range Away From Reference Price</u>
<u>\$1.75 and under</u>	<u>Equal to or greater than the minimum threshold required for adjudication under Rule 11890(a)(2)(C)(ii)</u>
<u>Over \$1.75 and up to \$25</u>	<u>10%</u>
<u>Over \$25 and up to \$50</u>	<u>5%</u>
<u>Over \$50</u>	<u>3%</u>

Nasdaq uses different Reference Prices based on the time of the trade of the security in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

<u>Time of Trade</u>	<u>Reference Price</u>
<u>Non-Nasdaq-listed securities for trades executed between 9:30am and 4:00 pm Eastern Time ("Regular Session") and after primary market has posted first two-sided quote</u>	<u>The national BBO at the time of execution of first share of the disputed order</u>
<u>Non-Nasdaq-listed securities for trades executed during Regular Session and before primary market has posted first two-sided quote</u>	<u>The national BBO at the time of execution of first share of the disputed order. If national BBO does not appear substantially related to market, Nasdaq may consider other Reference Prices including the opening trade, indication of interest and first two-sided quote in the primary market (which may occur after the execution) and the closing price for the prior Regular Session for the security's primary market.</u>
<u>Non-Nasdaq-listed securities for trades executed after 4:00 pm and before 9:30 am Eastern Time</u>	<u>Closing price of security for the last Regular Session on the security's primary market.</u>

Additional Factors

In occasional circumstances, Nasdaq may consider additional factors in determining whether a transaction is clearly erroneous. These include:

- Material news released for the security
- Suspicious trading activity
- System malfunctions or disruptions
- Locked or crossed markets
- Trading in the security was recently halted/resumed
- The security is an initial public offering
- Volume and volatility for the security
- Stock-split, reorganization or other corporate action
- Validity of consolidated tape trades and quotes and Nasdaq BBO comparison to national BBO
- General volatility of market conditions
- Reason for the error

Additional Information Concerning Rule 11890(b)

Nasdaq may on its own motion review transactions in any security in the event of:

- A disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the SEC;
- 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.

Consequently, Rule 11890(b) is focused on systemic problems that involve large numbers of parties or trades, or market conditions where it would not be in the best interests of the market to proceed under the processes set forth in Rule 11890(a). Sometimes events involving a single security will meet the standards of Rule 11890(b). However, market participants should not assume that Rule 11890(b) will be available where, for example, they failed to file a complaint within the time periods specified in Rule 11890(a). The rule could be available, however, in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand.

The guidance set forth in IM-11890-4 applies to many events involving a single security adjudicated pursuant to Rule 11890(b). However, Nasdaq may apply the guidance set forth in IM 11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with other markets.

IM-11890-5. Clearly Erroneous Transaction Guidance for Multi-Stock Events under Rule 11890(b)

Nasdaq is providing the following guidance on how it generally considers multi-stock events adjudicated on Nasdaq's own motion pursuant to Rule 11890(b).

Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. Participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into Nasdaq's systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

Nasdaq may on its own motion review transactions in any security in the event of:

- A disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the SEC; 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.

Consequently, Rule 11890(b) is focused on systemic problems that involve large numbers of parties or trades, or market conditions where it would not be in the best interests of the market to proceed under the processes set forth in Rule 11890(a). Even in cases involving multiple securities, however, market participants should not assume that Rule 11890(b) will be available where, for example, they failed to file a complaint within the time periods specified in Rule 11890(a). The rule could be available, however, in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand. The determination of whether to adjudicate an event under Rule 11890(b) is made by Nasdaq in its sole discretion pursuant to the terms of the rule.

Numerical factors for review

Nasdaq primarily considers the execution prices of the trades in question in determining whether trades should be nullified in a multi-stock event pursuant to Rule 11890(b). Generally all trades more than 10% away from the Reference Price would be clearly erroneous.

NASDAQ uses different Reference Prices based on time of the trade in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

<u>Time of Trade</u>	<u>Reference Price</u>
<u>All trades executed after the opening of trading during regular market hours and until the end of regular market hours</u>	<u>The national BBO at the time of execution of first share of the disputed order</u>

<u>All securities for trades executed:</u> <ul style="list-style-type: none"> • <u>after 4:00 p.m., Eastern Time (ET)</u> • <u>before 9:30 a.m., ET</u> • <u>during the market opening process for regular market hours</u> 	<u>The closing price of the security for regular market hours on the security's primary market.</u>
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In occasional circumstances, Nasdaq may consider additional factors in determining whether the transactions are clearly erroneous. These include:

- Material news released for individual securities
- Suspicious trading activity

Nasdaq may also apply the guidance set forth in IM 11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with markets.

* * * * *

2. Procedures of the Self-Regulatory Organization

The Board of Directors of Nasdaq approved the proposed rule change on October 26, 2005 and April 19, 2006, and the Board of Governors of the NASD reviewed the proposed rule change on November 1, 2005 and April 19, 2006, which authorized the filing of the rule change with the Commission. The staff of Nasdaq has provided an opportunity for the staff of NASD Regulation, Inc. to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. No other action by the NASD is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to John M. Yetter, Senior Associate General Counsel, Nasdaq, at (301) 978-8497 (telephone) or (301) 978-8472 (fax).

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

a. Purpose

Nasdaq is adopting Interpretive Material under Rule 11890 to provide guidance with regard to its consideration of transactions that may be clearly erroneous. Paragraph (a) of Rule 11890 allows market participants to petition Nasdaq to nullify or modify trades in non-Nasdaq exchange-listed securities that they allege to be clearly erroneous. Paragraph (b) allows Nasdaq to nullify or modify trades on its own motion in the event of a disruption or malfunction in the use or operation of Nasdaq systems 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. Nasdaq is providing one set of Interpretive Material relating to Rule 11890(a) and many events involving a single stock under Rule 11890(b), and a second set of Interpretive Material relating to events involving multiple stocks under Rule 11890(b). In each case, the Interpretive Material is intended to provide market participants with insights into the factors generally considered by Nasdaq in determining whether to nullify or modify trades under the rule.⁴

At its basic level, Rule 11890 is intended to allow Nasdaq to adjudicate disputes between firms as to the status of a trade, with a goal of preventing unjust enrichment of one market participant at the expense of another in circumstances where the terms of a trade are clearly out of line with objective market conditions for a security. Thus, Rule

⁴ The Interpretive Material relates solely to trades in non-Nasdaq exchange-listed securities, with respect to which Nasdaq continues to administer NASD Rule 11890 pursuant to authority delegated by NASD. The NASDAQ Stock Market LLC is also filing a version of the Interpretive Material as a Nasdaq Exchange Rule. See SR-NASDAQ-2006-046 (November 7, 2006).

11890(a) allows the party that believes it made a significant error to petition for an adjudication, and in appropriate circumstances, to be relieved of the obligation to settle the trade. The rule may not be used as an insurance policy against trades that merely lose money, however. Accordingly, the rule was amended in 2005⁵ to establish a conclusive presumption that a trade is not eligible for review under Rule 11890(a) unless its price deviates from the inside market for the security by an amount in excess of certain bright-line numerical thresholds. This aspect of the rule reflects the view that it is preferable to promote market certainty and accountability by market participants by allowing all trades close to the inside market to stand, even if a particular trade may arguably have been caused by a market participant error.

Nevertheless, in an environment of continual increases in the scope and speed of electronic trading, Rule 11890(b) provides an important safeguard against market disruptions caused by trader errors or system malfunctions that result in executions affecting multiple market participants and/or securities. Thus, Rule 11890(b) mitigates systemic risk by providing a mechanism to break erroneous trades that may have a serious detrimental effect on one or more market participants. Rule 11890(b) has been used both with respect to events affecting a single stock, as where an erroneous order causes a large number of trades involving multiple market participants to execute, and events affecting multiple stocks, as where a system malfunction results in a more widespread problem. Because of its focus on system malfunctions and overall market integrity, market participants should not assume that Rule 11890(b) will be used where, for example, they failed to file a complaint within the time periods specified in Rule

⁵ Securities Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005) (SR-NASD-2004-009).

11890(a). However, the rule could be available in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand. Thus, for example, if a firm's erroneous trades had the potential to cause a firm's insolvency but its petition was untimely, Nasdaq might consider using 11890(b)(ii) to prevent the insolvency.⁶

Thus, under both parts of the rule, Nasdaq strives to strike a balance between certainty and flexibility, to ensure that (i) similar situations are addressed in a similar manner, (ii) market participants do not attempt to use the rule to attain unfair advantage, and (iii) the rule is not written or construed in a way that may prevent action necessary to protect market quality or prevent systemic problems and thereby maintain a fair and orderly market and protect investors and the public interest. With these considerations in mind, Nasdaq believes that the Interpretive Material allows market participants to achieve a better understanding of Nasdaq's application of the rule without limiting its adaptability. In effect, the Interpretive Material describes Nasdaq's understanding of the precedents that have emerged through years of adjudications under the rule; as with judicial precedents, they serve as a guide to future cases without constricting adaptability to new or unique fact patterns.

Both sets of Interpretive Material reflect that Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and

⁶ As is the case in all instances where a firm's erroneous trades raise questions as to the adequacy of its internal controls, Nasdaq would also refer the firm for investigation by the NASD.

orderly market, and the protection of investors and the public interest. The Interpretive Material also stresses that participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into Nasdaq's systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

IM-11890-4 concerns all complaints filed by market participants under Rule 11890(a), as well as many events involving a single security considered on Nasdaq's own motion pursuant to Rule 11890(b). Nasdaq primarily considers the execution price of a trade in determining whether it is clearly erroneous. Specifically, Nasdaq generally uses the following guidelines.

Execution Price	Range Away From Reference Price
\$1.75 and under	Equal to or greater than the minimum threshold required for adjudication under Rule 11890(a)(2)(C)(ii)
\$25 and under	10%
Over \$25 and up to \$50	5%
Over \$50	3%

Thus, the degree of deviation from a specified reference price needed for a trade to be declared clearly erroneous depends on the execution price: securities trading at lower prices require a higher percentage deviation before they will be considered clearly erroneous, since the normal daily trading ranges for these securities generally involve larger percentage movements. In the case of securities priced at \$1.75 or below, a trade will generally be considered clearly erroneous if it is eligible for adjudication at all under the minimum thresholds under Rule 11890(a)(2)(C)(ii), since these thresholds require significant percentage deviation before a low-priced trade is eligible.

Nasdaq uses different Reference Prices based on time of the trade of the security in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a Reference Price not specifically described in the Interpretive Material. For example, in a case where material news about a security was released after market close for the security and a trade occurring after 4:00 p.m. and before 9:30 a.m. is at issue, it may be more appropriate to use a Reference Price derived from after-hours trading activity than to use the closing price of the security. Similarly, in the case of several large orders that execute at multiple prices, a Reference Price based on a weighted average of the BBO at relevant times may be more appropriate than a Reference Price based solely on the BBO immediately prior to the execution of the first share of the order.

Time of Trade	Reference Price
Non-Nasdaq-listed securities for trades executed between 9:30am and 4:00 pm Eastern Time (“Regular Session”) and after primary market has posted first two-sided quote	The national BBO at the time of execution of first share of the disputed order
Non-Nasdaq-listed securities for trades executed during Regular Session and before primary market has posted first two-sided quote	The national BBO at the time of execution of first share of the disputed order. If national BBO does not appear substantially related to market, Nasdaq may consider other Reference Prices including the opening trade, indication of interest and first two-sided quote in the primary market (which may occur after the execution) and the closing price for the prior Regular Session for the security’s primary market.
Non-Nasdaq-listed securities for trades executed after 4:00 pm and before 9:30 am Eastern Time	Closing price of security for the last Regular Session on the security’s primary market.

In occasional circumstances, Nasdaq may consider additional factors in determining whether a transaction is clearly erroneous. These include:

- Material news released for the security
- Suspicious trading activity
- System malfunctions or disruptions
- Locked or crossed markets
- Trading in the security was recently halted/resumed
- The security is an initial public offering
- Volume and volatility for the security
- Stock-split, reorganization or other corporate action
- Validity of consolidated tape trades and quotes and Nasdaq BBO comparison to national BBO
- General volatility of market conditions
- Reason for the error

IM-11890-5 concerns multi-stock events adjudicated on Nasdaq's own motion pursuant to Rule 11890(b). In such cases, Nasdaq primarily considers the numerical factors of the execution prices in determining whether trades should be nullified. Generally all trades more than 10% away from the Reference Price would be clearly erroneous.⁷

Nasdaq uses different Reference Prices based on time of the trade in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

Time of Trade	Reference Price
All trades executed after the opening of trading during regular market hours and until the end of regular market hours	The national BBO at the time of execution of first share of the disputed order
All securities for trades executed:	The closing price of the security for regular

⁷ Nasdaq generally uses 10% threshold in these cases, in contrast to the sliding scale of percentages described in IM-11890-4, because multi-stock events adjudicated under Rule 11890(b) generally require coordination with other venues trading the stock in order to ensure consistent treatment of trades across all venues affected by the event. Nasdaq has found that the 10% threshold is generally used by other venues and therefore facilitates a coordinated and timely response.

<ul style="list-style-type: none"> • after 4:00 p.m., Eastern Time (ET) • before 9:30 a.m., ET • during the market opening process for regular market hours 	market hours on the security's primary market.
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In occasional circumstances, Nasdaq may consider additional factors in determining whether the transactions in a multi-stock event are clearly erroneous, including material news released for individual securities or suspicious trading activity.

The guidance set forth in IM-11890-4 will apply to many events involving a single security adjudicated pursuant to Rule 11890(b). However, Nasdaq may apply the guidance set forth in IM-11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with other markets.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(6) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The Interpretive Material will promote market participants' understanding of Nasdaq's application of Rule 11890, thereby promoting greater certainty and accountability.

⁸ 15 U.S.C. 780-3.

⁹ 15 U.S.C. 78o-3(b)(6).

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

Nasdaq 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, as amended.

5. 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.

6. Extension of Time Period for Commission Action

Nasdaq does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹⁰

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

Pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder,¹² Nasdaq has designated this proposal as one that effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Nasdaq requests that the

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 C.F.R. 240.19b-4(f)(6).

Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).¹³ If such waiver is granted by the Commission, Nasdaq will implement this rule proposal, which is effective upon filing with the Commission, immediately. Nasdaq believes that the filing may appropriately be designated as “non-controversial” and that waiving the 30-day pre-operative period contained in Exchange Act Rule 19b-4(f)(6)(iii)¹⁴ is appropriate, because the filing promotes market participants’ understanding of Nasdaq’s application of Rule 11890, thereby promoting greater certainty with regard to the administration of the rule. Accordingly, Nasdaq believes that its proposal should become immediately effective and the Commission should grant Nasdaq’s request to waive the 30-day pre-operative waiting period.

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

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ Id.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2006-123)

November __, 2006

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Regarding Guidance for Adjudicating Clearly Erroneous Transactions under Rule 11890

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2006, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal 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 the Substance of the Proposed Rule Change

Nasdaq is providing guidance regarding factors it generally considers in adjudicating clearly erroneous transactions under Rule 11890.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 C.F.R. 240.19b-4(f)(6).

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

IM-11890-4. Clearly Erroneous Transaction Guidance for Filings under Rule 11890(a) and Single Stock Events under Rule 11890(b)

Nasdaq is providing the following guidance on how it generally considers:

- all complaints filed by market participants under Rule 11890(a); and
- many events involving a single security considered on Nasdaq’s own motion pursuant to Rule 11890(b).

Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. Participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into Nasdaq’s systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

Numerical factors for review

Nasdaq primarily considers the execution price of a trade in determining whether it is clearly erroneous.

<u>Execution Price</u>	<u>Range Away From Reference Price</u>
<u>\$1.75 and under</u>	<u>Equal to or greater than the minimum threshold required for adjudication under Rule 11890(a)(2)(C)(ii)</u>
<u>Over \$1.75 and up to \$25</u>	<u>10%</u>
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<u>Time of Trade</u>	<u>Reference Price</u>
<u>Non-Nasdaq-listed securities for trades executed between 9:30am and 4:00 pm Eastern Time (“Regular Session”) and after primary market has posted first two-sided quote</u>	<u>The national BBO at the time of execution of first share of the disputed order</u>

<u>Non-Nasdaq-listed securities for trades executed during Regular Session and before primary market has posted first two-sided quote</u>	<u>The national BBO at the time of execution of first share of the disputed order. If national BBO does not appear substantially related to market, Nasdaq may consider other Reference Prices including the opening trade, indication of interest and first two-sided quote in the primary market (which may occur after the execution) and the closing price for the prior Regular Session for the security's primary market.</u>
<u>Non-Nasdaq-listed securities for trades executed after 4:00 pm and before 9:30 am Eastern Time</u>	<u>Closing price of security for the last Regular Session on the security's primary market.</u>

Additional Factors

In occasional circumstances, Nasdaq may consider additional factors in determining whether a transaction is clearly erroneous. These include:

- Material news released for the security
- Suspicious trading activity
- System malfunctions or disruptions
- Locked or crossed markets
- Trading in the security was recently halted/resumed
- The security is an initial public offering
- Volume and volatility for the security
- Stock-split, reorganization or other corporate action
- Validity of consolidated tape trades and quotes and Nasdaq BBO comparison to national BBO
- General volatility of market conditions
- Reason for the error

Additional Information Concerning Rule 11890(b)

Nasdaq may on its own motion review transactions in any security in the event of:

- A disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the SEC;
- 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.

Consequently, Rule 11890(b) is focused on systemic problems that involve large numbers of parties or trades, or market conditions where it would not be in the best interests of the market to proceed under the processes set forth in Rule 11890(a). Sometimes events

involving a single security will meet the standards of Rule 11890(b). However, market participants should not assume that Rule 11890(b) will be available where, for example, they failed to file a complaint within the time periods specified in Rule 11890(a). The rule could be available, however, in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand.

The guidance set forth in IM-11890-4 applies to many events involving a single security adjudicated pursuant to Rule 11890(b). However, Nasdaq may apply the guidance set forth in IM 11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with other markets.

IM-11890-5. Clearly Erroneous Transaction Guidance for Multi-Stock Events under Rule 11890(b)

Nasdaq is providing the following guidance on how it generally considers multi-stock events adjudicated on Nasdaq's own motion pursuant to Rule 11890(b).

Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. Participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into Nasdaq's systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

Nasdaq may on its own motion review transactions in any security in the event of:

- A disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the SEC; 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.

Consequently, Rule 11890(b) is focused on systemic problems that involve large numbers of parties or trades, or market conditions where it would not be in the best interests of the market to proceed under the processes set forth in Rule 11890(a). Even in cases involving multiple securities, however, market participants should not assume that Rule 11890(b) will be available where, for example, they failed to file a complaint within the time periods specified in Rule 11890(a). The rule could be available, however, in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand. The determination of whether to adjudicate

an event under Rule 11890(b) is made by Nasdaq in its sole discretion pursuant to the terms of the rule.

Numerical factors for review

Nasdaq primarily considers the execution prices of the trades in question in determining whether trades should be nullified in a multi-stock event pursuant to Rule 11890(b). Generally all trades more than 10% away from the Reference Price would be clearly erroneous.

NASDAQ uses different Reference Prices based on time of the trade in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

<u>Time of Trade</u>	<u>Reference Price</u>
<u>All trades executed after the opening of trading during regular market hours and until the end of regular market hours</u>	<u>The national BBO at the time of execution of first share of the disputed order</u>
<u>All securities for trades executed:</u> <ul style="list-style-type: none"> • <u>after 4:00 p.m., Eastern Time (ET)</u> • <u>before 9:30 a.m., ET</u> • <u>during the market opening process for regular market hours</u> 	<u>The closing price of the security for regular market hours on the security’s primary market.</u>

In occasional circumstances, Nasdaq may consider additional factors in determining whether the transactions are clearly erroneous. These include:

- Material news released for individual securities
- Suspicious trading activity

Nasdaq may also apply the guidance set forth in IM 11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with markets.

* * * * *

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

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq is adopting Interpretive Material under Rule 11890 to provide guidance with regard to its consideration of transactions that may be clearly erroneous. Paragraph (a) of Rule 11890 allows market participants to petition Nasdaq to nullify or modify trades in non-Nasdaq exchange-listed securities that they allege to be clearly erroneous. Paragraph (b) allows Nasdaq to nullify or modify trades on its own motion in the event of a disruption or malfunction in the use or operation of Nasdaq systems 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. Nasdaq is providing one set of Interpretive Material relating to Rule 11890(a) and many events involving a single stock under Rule 11890(b), and a second set of Interpretive Material relating to events involving multiple stocks under Rule 11890(b). In each case, the Interpretive Material is intended to provide market participants with insights into the factors generally considered by Nasdaq in determining whether to nullify or modify trades under the rule.⁴

At its basic level, Rule 11890 is intended to allow Nasdaq to adjudicate disputes between firms as to the status of a trade, with a goal of preventing unjust enrichment of

⁴ The Interpretive Material relates solely to trades in non-Nasdaq exchange-listed securities, with respect to which Nasdaq continues to administer NASD Rule 11890 pursuant to authority delegated by NASD. The NASDAQ Stock Market LLC is also filing a version of the Interpretive Material as a Nasdaq Exchange Rule. See SR-NASDAQ-2006-046 (November 7, 2006).

one market participant at the expense of another in circumstances where the terms of a trade are clearly out of line with objective market conditions for a security. Thus, Rule 11890(a) allows the party that believes it made a significant error to petition for an adjudication, and in appropriate circumstances, to be relieved of the obligation to settle the trade. The rule may not be used as an insurance policy against trades that merely lose money, however. Accordingly, the rule was amended in 2005⁵ to establish a conclusive presumption that a trade is not eligible for review under Rule 11890(a) unless its price deviates from the inside market for the security by an amount in excess of certain bright-line numerical thresholds. This aspect of the rule reflects the view that it is preferable to promote market certainty and accountability by market participants by allowing all trades close to the inside market to stand, even if a particular trade may arguably have been caused by a market participant error.

Nevertheless, in an environment of continual increases in the scope and speed of electronic trading, Rule 11890(b) provides an important safeguard against market disruptions caused by trader errors or system malfunctions that result in executions affecting multiple market participants and/or securities. Thus, Rule 11890(b) mitigates systemic risk by providing a mechanism to break erroneous trades that may have a serious detrimental effect on one or more market participants. Rule 11890(b) has been used both with respect to events affecting a single stock, as where an erroneous order causes a large number of trades involving multiple market participants to execute, and events affecting multiple stocks, as where a system malfunction results in a more widespread problem. Because of its focus on system malfunctions and overall market

⁵ Securities Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005) (SR-NASD-2004-009).

integrity, market participants should not assume that Rule 11890(b) will be used where, for example, they failed to file a complaint within the time periods specified in Rule 11890(a). However, the rule could be available in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand. Thus, for example, if a firm's erroneous trades had the potential to cause a firm's insolvency but its petition was untimely, Nasdaq might consider using 11890(b)(ii) to prevent the insolvency.⁶

Thus, under both parts of the rule, Nasdaq strives to strike a balance between certainty and flexibility, to ensure that (i) similar situations are addressed in a similar manner, (ii) market participants do not attempt to use the rule to attain unfair advantage, and (iii) the rule is not written or construed in a way that may prevent action necessary to protect market quality or prevent systemic problems and thereby maintain a fair and orderly market and protect investors and the public interest. With these considerations in mind, Nasdaq believes that the Interpretive Material allows market participants to achieve a better understanding of Nasdaq's application of the rule without limiting its adaptability. In effect, the Interpretive Material describes Nasdaq's understanding of the precedents that have emerged through years of adjudications under the rule; as with judicial precedents, they serve as a guide to future cases without constricting adaptability to new or unique fact patterns.

Both sets of Interpretive Material reflect that Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the

⁶ As is the case in all instances where a firm's erroneous trades raise questions as to the adequacy of its internal controls, Nasdaq would also refer the firm for investigation by the NASD.

market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. The Interpretive Material also stresses that participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into Nasdaq's systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

IM-11890-4 concerns all complaints filed by market participants under Rule 11890(a), as well as many events involving a single security considered on Nasdaq's own motion pursuant to Rule 11890(b). Nasdaq primarily considers the execution price of a trade in determining whether it is clearly erroneous. Specifically, Nasdaq generally uses the following guidelines.

Execution Price	Range Away From Reference Price
\$1.75 and under	Equal to or greater than the minimum threshold required for adjudication under Rule 11890(a)(2)(C)(ii)
\$25 and under	10%
Over \$25 and up to \$50	5%
Over \$50	3%

Thus, the degree of deviation from a specified reference price needed for a trade to be declared clearly erroneous depends on the execution price: securities trading at lower prices require a higher percentage deviation before they will be considered clearly erroneous, since the normal daily trading ranges for these securities generally involve larger percentage movements. In the case of securities priced at \$1.75 or below, a trade will generally be considered clearly erroneous if it is eligible for adjudication at all under

the minimum thresholds under Rule 11890(a)(2)(C)(ii), since these thresholds require significant percentage deviation before a low-priced trade is eligible.

Nasdaq uses different Reference Prices based on time of the trade of the security in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a Reference Price not specifically described in the Interpretive Material. For example, in a case where material news about a security was released after market close for the security and a trade occurring after 4:00 p.m. and before 9:30 a.m. is at issue, it may be more appropriate to use a Reference Price derived from after-hours trading activity than to use the closing price of the security. Similarly, in the case of several large orders that execute at multiple prices, a Reference Price based on a weighted average of the BBO at relevant times may be more appropriate than a Reference Price based solely on the BBO immediately prior to the execution of the first share of the order.

Time of Trade	Reference Price
Non-Nasdaq-listed securities for trades executed between 9:30am and 4:00 pm Eastern Time (“Regular Session”) and after primary market has posted first two-sided quote	The national BBO at the time of execution of first share of the disputed order
Non-Nasdaq-listed securities for trades executed during Regular Session and before primary market has posted first two-sided quote	The national BBO at the time of execution of first share of the disputed order. If national BBO does not appear substantially related to market, Nasdaq may consider other Reference Prices including the opening trade, indication of interest and first two-sided quote in the primary market (which may occur after the execution) and the closing price for the prior Regular Session for the security’s primary market.
Non-Nasdaq-listed securities for trades executed after 4:00 pm and before 9:30 am Eastern Time	Closing price of security for the last Regular Session on the security’s primary market.

In occasional circumstances, Nasdaq may consider additional factors in determining whether a transaction is clearly erroneous. These include:

- Material news released for the security
- Suspicious trading activity
- System malfunctions or disruptions
- Locked or crossed markets
- Trading in the security was recently halted/resumed
- The security is an initial public offering
- Volume and volatility for the security
- Stock-split, reorganization or other corporate action
- Validity of consolidated tape trades and quotes and Nasdaq BBO comparison to national BBO
- General volatility of market conditions
- Reason for the error

IM-11890-5 concerns multi-stock events adjudicated on Nasdaq's own motion pursuant to Rule 11890(b). In such cases, Nasdaq primarily considers the numerical factors of the execution prices in determining whether trades should be nullified. Generally all trades more than 10% away from the Reference Price would be clearly erroneous.⁷

Nasdaq uses different Reference Prices based on time of the trade in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

Time of Trade	Reference Price
All trades executed after the opening of trading during regular market hours and until the end of regular market hours	The national BBO at the time of execution of first share of the disputed order
All securities for trades executed:	The closing price of the security for regular

⁷ Nasdaq generally uses 10% threshold in these cases, in contrast to the sliding scale of percentages described in IM-11890-4, because multi-stock events adjudicated under Rule 11890(b) generally require coordination with other venues trading the stock in order to ensure consistent treatment of trades across all venues affected by the event. Nasdaq has found that the 10% threshold is generally used by other venues and therefore facilitates a coordinated and timely response.

<ul style="list-style-type: none"> • after 4:00 p.m., Eastern Time (ET) • before 9:30 a.m., ET • during the market opening process for regular market hours 	market hours on the security's primary market.
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In occasional circumstances, Nasdaq may consider additional factors in determining whether the transactions in a multi-stock event are clearly erroneous, including material news released for individual securities or suspicious trading activity.

The guidance set forth in IM-11890-4 will apply to many events involving a single security adjudicated pursuant to Rule 11890(b). However, Nasdaq may apply the guidance set forth in IM-11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with other markets.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(6) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The Interpretive Material will promote market participants' understanding of Nasdaq's application of Rule 11890, thereby promoting greater certainty and accountability.

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

⁸ 15 U.S.C. 780-3.

⁹ 15 U.S.C. 78o-3(b)(6).

Nasdaq 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, as amended.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Nasdaq has requested that the Commission waive the 30-day pre-operative period requirement for “non-controversial” proposals, based upon a representation that such waiver is appropriate because the filing promotes market participants’ understanding of Nasdaq’s application of Rule 11890, thereby promoting greater certainty with regard to the administration of the rule. In light of the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the operative delay, and the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 C.F.R. 240.19b-4(f)(6).

Act,¹² and Rule 19b-4(f)(6) thereunder,¹³ with no operative delay. 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 proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-123 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASD-2006-123. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

<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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2006-123 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).