

## **Clearly Erroneous Execution**

A **Clearly Erroneous Execution (“CEE”)** is defined as an execution at a price, for a quantity of shares, or with a symbol, that is substantially inconsistent with the current trading pattern of the issue.

Equity Trading Permit Holders (“ETP”) of NYSE Arca Equities, Inc (“NYSE Arca” or “Exchange”) are responsible for ensuring that the price and type of an order entered into the NYSE Arca’s system is appropriate. To maintain the integrity of the Exchange, NYSE Arca reserves the right to modify or cancel the terms of transactions executed through NYSE Arca if the Exchange determines such transactions resulted from the placement of an order or a system malfunction/disruption that results in a clearly erroneous execution. NYSE Arca’s right shall be exercised in its sole discretion and upon such information that NYSE Arca deems adequate.

### **Timing of CEE Request**

If an ETP believes a CEE has occurred, the ETP should contact the NYSE Arca Trading Operations Desk (“NYSE Arca TOD”) by phone, email or fax, within 15 minutes of the transaction to request a ruling by NYSE Arca. Generally, requests for a ruling should be made within 15 minutes of the transaction in question, although in some circumstances NYSE Arca may consider requests made up to 30 minutes after the transaction. NYSE Arca may consider, at its sole discretion and on a case-by-case basis, requests received after 30 minutes of the transaction in question, depending on the facts and circumstances surrounding such request. If an order is routed away, the execution is subject to the rules and policies of the away market center.

### **General Requirements for Determination of a CEE**

**Unjust Enrichment:** ETPs should make a good faith effort to resolve any problems that result from an erroneous execution. ETPs shall attempt to reconcile a problem at the request of the NYSE Arca TOD when it is reasonably apparent that, but for an error, an execution at a particular price or for a quantity of shares would not have occurred. Such efforts help to ensure that a party to a CEE is not the recipient of a greater value than entitled to at an unreasonable cost to the other party. It is expected that these efforts will result in a mutual satisfactory solution to the problem, through the cancellation or modification of a trade.

Where a mutually satisfactory solution to a problem cannot be achieved, a party to the transaction may request a ruling by NYSE Arca, and NYSE Arca may determine to cancel or modify the terms of a CEE even if a party to the transaction does not request such action. The following are the guidelines NYSE Arca uses in determining whether to cancel or modify the terms of a transaction or to delete it from a consolidated tape. These guidelines are not NYSE Arca rules, but rather are guidelines that may be applied at NYSE Arca’s discretion to determine whether an execution is made in clear error. As these are guidelines they are at the sole discretion of NYSE Arca.

In making a determination, NYSE Arca shall take into account all the circumstances at the time of the transaction, the preservation of the National Market System and maintenance of a fair and orderly market. CEE rulings will be made by an Officer of NYSE Arca working in the Market Management Department.

### **Ruling Resolution Criteria**

Upon request for ruling, NYSE Arca primarily considers the numerical guidelines of the execution price(s) and the trade(s) in question. In addition to the numerical guidelines, NYSE Arca may incorporate additional factors (see “Additional Factors” below).

### **Numerical Guidelines**

#### **Core Session:**

- Securities priced < 100 dollars, executions greater than \$1.00 or 10% away from the consolidated last sale.
- Securities priced = or >100 dollars, executions greater than \$2.00 away from the consolidated last sale.

#### **Early and Late Session:**

- Securities priced < 100 dollars, executions greater than \$2.00 or 15% away from the consolidated last sale.
- Securities priced = or >100 dollars, executions greater than \$3.00 away from the consolidated last sale.

#### **Market Order Auction (“MOA”)**

- Securities priced < 100 dollars, executions greater than \$1.00 or 10% away from the consolidated last sale.
- Securities priced = or >100 dollars, executions greater than \$2.00 away from the consolidated last sale.

#### **Market On Close Auction (“MOC”)**

- Securities priced < 100 dollars, executions greater than \$1.00 or 10% away from the consolidated last sale.
- Securities priced = or >100 dollars, executions greater than \$2.00 away from the consolidated last sale.

#### **Additional Factors:**

- NYSE Arca Equities and SEC Rules
- System malfunctions or disruptions
- Volume and volatility for the security
- News released for the security
- Trading in the security was recently halted/resumed
- The security is an IPO (see Initial Public Offerings below for further information)
- Stock-split, reorganization or any other corporate action
- Overall volatility of general market conditions
- Opening and Late Session executions
- Validity of the Consolidated tapes trades and quotes
- Consideration of primary market indications
- Executions Inconsistent with Trading Patterns

– Executions that are within the NYSE Arca erroneous guidelines but are deemed by NYSE Arca Market Management to be inconsistent with the

trading patterns of a particular stock are subject to review and ruling by NYSE Arca Market Management. Trading pattern criteria may include but is not limited to the following:

- \_ the current day's trading high/low
- \_ recent day's/week's trading high/low
- \_ executions outside 52 week high/low
- \_ news effecting high/low
- \_ effect of a single large order creating several prints at various prices
- \_ price spread or the stock's average daily trading range a stock generally exhibits, (i.e. stocks whose typical trading pattern does not fluctuate more than .10 to .15 per day vs. a stock that may fluctuate \$1.00 or more dollars per day)

### **Undisputed Rulings**

NYSE Arca does understand that there may be legitimate occasions when material information was not available at the time an original ruling was rendered. When such circumstances are brought to the Trading Operations Desk's attention within a reasonable timeframe, an Officer of NYSE Arca Market Management shall evaluate the information, on a case-by-case basis. In no event will NYSE Arca undo the original ruling. However, if NYSE Arca determines that the execution warrants further consideration, NYSE Arca could recommend to NYSE Arca Market Management an appropriate resolution to the disadvantaged party

### **Incoming Order Posted Erroneously**

If an incoming order enters the system and posts, execution(s) resulting from this posted order, ruled by NYSE Arca Market Management to be erroneous, shall be busted unless both parties to the trade mutually agree to an acceptable adjustment price.

### **Incoming Erroneous Order Accesses Liquidity Providing Quote**

An incoming customer order that accesses a Liquidity Providing quote in the book and such Liquidity Providing quote is a reasonable quote, that is equal to or less than 25% away from last sale during core trading session or, equal to or less than 30% away from last sale in pre/post market sessions in that it is inline with last sale etc., the disadvantaged party may be forced to accept an adjustment as within the stated guidelines of the CEE policy.

An incoming customer order that accesses a Liquidity Providing quote that is equal to or greater than 25% away from last sale during core trading session or, equal to or greater than 30% away from last sale in pre/post market sessions the resulting trades will be automatically busted and no adjustments will be made.

### **Incoming Customer Order with Multiple Orders/Securities Executions**

In the event of an extraordinary customer order containing multiple securities and multiple executions (I.E. basket order), the party requesting a ruling shall provide NYSE Arca with an electronic spreadsheet of all trades in question. The spreadsheet shall contain the security, the time of execution, the executed price and the consolidated last sale. In the interest of providing timely trade resolutions and maintaining a fair and orderly market, NYSE Arca Market Management will review such occurrences utilizing

strict numerical guidelines only. “Additional Factors” noted in the CEE policy will not be used. Execution prices outside the numerical guidelines will be busted. Price adjustments will not be considered. Trade resolutions will be communicated to the involved parties to the trade via telephonic, email and/or website display ([www.nyse.com](http://www.nyse.com)).

### **Initial Public Offerings**

Given the unique nature of Initial Public Offerings (IPO’s), public customers have an expectation that the opening will be orderly and that the pricing will be reasonable for the listing company. Opening execution prices transacted on the primary listed exchange (and other market centers) represent the price of the stock in the secondary market, which may not necessarily reflect the IPO pricing disseminated prior to the start of secondary market trading by the underwriters/syndicates. NYSE Arca will review the opening of IPO’s on NYSE Arca on a best efforts basis. The review of IPO opening prices will utilize criteria that is also used to judge erroneous executions during the pre-core, core and post-core sessions. Opening IPO trades will be evaluated for uniformity with the primary listed exchange as well as with other market centers’ prints. Initial trades on NYSE Arca that are executed at prices more than \$1.00 from the primary listed exchange’s opening print may be busted or adjusted to the primary listed exchange’s opening price. Additionally, executions that are priced within a \$1.00 of the primary listed exchange’s opening executions may also be reviewed if they are deemed outside the trading pattern of the IPO after the opening. In addition, criteria used to judge erroneous executions during the launch of an IPO may include a review of the subsequent executions after the opening has occurred. The time period for a review of subsequent executions could be up to, but not limited to, one minute after the opening print of the primary exchange hits the tape.

### **Appeal Process**

NYSE Arca Equities Rule 7.10(c)(2)-(4) implements an appeal process for determinations on clearly erroneous executions. The Rule allows a party affected by a determination to request an appeal to the Clearly Erroneous Execution Panel (“CEE Panel”) to review the determination made by the Officer under NYSE Arca Equities Rule 7.10(c)(1). Requests for appeal must be made by the ETP Holder, via facsimile or e-mail within thirty (30) minutes after the party requesting the appeal is given notification of the initial ruling determination. The ETP Holder must include reason(s) for requesting an appeal, including any additional factors that in their opinion may not have been considered during the original ruling. Such determination by the CEE Panel will be considered a final action by the Corporation on the matter at issue. All final determinations made 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. Pursuant to NYSE Arca Equities Rule 7.10(c)(5), if the CEE Panel votes to uphold a determination made pursuant to Rule 7.10(c)(1), the Exchange will assess a \$500.00 fee against the ETP who initiated the request for appeal.