



Number 09-48
October 2, 2009

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: CLEARLY ERRONEOUS EXECUTIONS (CEE) RULE AND PROCEDURE CHANGES

I. Purpose

The purpose of this Information Memo is to advise members and member organizations that effective Monday, October 5, 2009, in coordination with the other U.S. equities markets and pursuant to amended NYSE and NYSE Amex Rule 128 (Clearly Erroneous Executions), NYSE and NYSE Amex will change its procedures for requesting, reviewing, determining and remedying clearly erroneous executions.

II. Highlights of the New CEE Procedures:

- New industry protocol for requesting the review of clearly erroneous executions
- Revised timing parameters for submitting complaints and appeals of decisions to be considered for clearly erroneous filings
- Revised required information for all eligible filings
- Revised numerical guidelines, thresholds and reference prices for determining clearly erroneous executions
- Revised guidelines for volatile market opens
- Revised notification of counterparties and communications during periods of high volume of clearly erroneous requests

Clearly Erroneous Review Requests

The new procedure requires members and member organizations to make all requests for review in writing via email, except those members and member organizations that trade on the Floor of the Exchange. Floor participants may continue to request reviews of CEEs in person on the Floor of the Exchange.

- All requests for review must be made within 30 minutes from the time of execution for orders initially routed to and executed on NYSE or NYSE Amex.

- The request must include a minimum set of essential information (listed below).
- Requests for review of an “Outlier Filing,” as defined below, must be received within 60 minutes of the execution timestamp.
- All requests for appeal of a clearly erroneous determination must be emailed to the Exchange within 30 minutes after the notification of the determination being appealed.

Review Requests must include the following information:

- Execution(s)
- Security symbol(s)
- Number of shares
- Price(s)
- Side (bought or sold)
- Factual basis for believing that the trade is clearly erroneous

Numerical Guidelines

The Numerical Guidelines for CEEs have been revised to create clear standards for determining what may constitute a clearly erroneous execution. These Numerical Guidelines represent a consensus approach and were developed based on the collective experiences of a market-wide group, and will be implemented in conjunction with the other U.S. equities markets. NYSE and NYSE Amex believe that the Thresholds established are fair and appropriate, and apply evenly to all participants. Under the new Numerical Guidelines a transaction executed during the regular trading hours or the after hours of the Exchange 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. Thus, an assertion by a firm that a mistake was made in entering an order or a quote, or that the firm failed to pay attention to or update a quote, may not be sufficient to determine that a transaction was clearly erroneous.

NYSE and NYSE Amex will generally use the consolidated last sale as the Reference Price to determine whether an execution is clearly erroneous. The execution time of the transaction under review determines which Numerical Guideline is applied. The chart below outlines the details.

The Numerical Guidelines are as follows:

Reference Price: Consolidated Last Sale	Regular Trading Hours of the Exchange Numerical Guidelines (Subject transaction’s % difference from the Consolidated Last Sale):	After Hours of the Exchange Numerical Guidelines (Subject transaction’s % difference from the Consolidated Last Sale):
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 same ETP Holder will be aggregated into a single filing	10%	10%
Leveraged ETF/ETN securities	Regular Trading Hours of the Exchange Numerical Guidelines multiplied by the leverage multiplier (e.g. 2x)	After Hours of the Exchange Numerical Guidelines multiplied by the leverage multiplier (e.g.. 2x)

Additional Factors

An execution price may be outside the applicable threshold, but the NYSE and NYSE Amex may not be required to declare such execution null and void or modify it as a clearly erroneous execution, as such thresholds provide a minimum standard for review and not an automatic “break point.” The NYSE and NYSE Amex may consider additional factors to determine 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 IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Opening and Late Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, Depth Guidelines, Liquidity Replenishment Points (“LRPs”) and executions inconsistent with the trading pattern in the stock. NYSE and NYSE Amex will consider each additional factor with a view towards maintaining a fair and orderly market, the protection of investors and the public interest.

Outlier Transactions

An Outlier Transaction is executed at a price that meets the following parameters:

- Greater than three times the current Numerical Guidelines in effect at the time of execution, or
- Execution price breaches the 52-week high or 52-week low. In such cases, the Exchange may consider additional factors as outlined in NYSE and NYSE Amex Rules 128

Volatile Market Opens

During a Volatile Market Open, NYSE and NYSE Amex may expand the Numerical Guidelines applicable to transactions occurring between 9:30 a.m. and 10:00 a.m. based on the disseminated value of the S & P 500 Futures at 9:15 a.m. during a Volatile Market Open:

- When the S & P 500 Futures are up or down 3%, or up to but not including 5% at 9:15 a.m., the Numerical Guidelines are doubled for executions occurring between 9:30 a.m. and 10:00 a.m.

- When the S & P 500 Futures are up or down 5% or greater at 9:15 a.m., the Numerical Guidelines are tripled for executions occurring between 9:30 a.m. and 10:00 am.

Unusual Circumstances

In Unusual Circumstances and in order to maintain a fair and orderly market and protect investors and public interest, NYSE and NYSE Amex may use a Reference Price other than the consolidated last sale to determine whether a clearly erroneous execution has occurred. Unusual Circumstances can include periods of extreme market volatility, sustained illiquidity, or widespread system issues. 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.

Joint Market Rulings

In circumstances that involve other markets NYSE and NYSE Amex could potentially use a different Reference Price and/or Numerical Guideline. In these circumstances, the Reference Price would be determined based on a consensus among the Exchanges where the executions occurred.

Notification of Parties

The Exchange will 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. This 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 counterparties when a request for review does not merit a ruling to break the executions at issue.

Remedies for CEEs: “Bust” and “Adjust”

In the event an Officer of the Exchange or a senior level employee designee determines there is a clearly erroneous execution, the Officer or a designee will effectuate the following remedies: (1) declare the execution null and void or, (2) if such transaction occurred only on the Exchange and no contemporaneous transaction(s) occurred on another market center(s) at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred.

For purposes of a potential trade adjustment, a transaction will be considered to have been contemporaneous if it was reported to the Consolidated Tape within a reasonable time frame of the transaction under review. Such time frame shall be determined by the Officer at the time of the clearly erroneous determination based on the liquidity of the relevant security, but shall in no case be less than one (1) second before or after the time of execution on the Exchange. In assessing whether there was a contemporaneous transaction on another market center, the Exchange will consider the existence of any clearly erroneous review of a transaction in the subject security on another market center of which it has actual knowledge, which may be indicative that

the transaction under review on such other market center was contemporaneous with the transaction under review on the Exchange. However, the Exchange will not be required to initiate communication with other market centers to determine the existence of any such review(s).

For the complete text of the rule please refer to NYSE and NYSE Amex Equities Rule 128, which will be in effect on Monday, October 5, 2009.

III. Staff Contacts

Questions regarding Clearly Erroneous Executions should be directed to:

- NYSE DOT Services at (212) 656-3073 or dotreview@nyx.com

Questions regarding amended NYSE and NYSE Amex Rules 128 should be directed to:

- Jean Walsh, Managing Director, Office of the General Counsel, NYSE Regulation, Inc. at (212) 656-4931 or jwalsh@nyx.com
- Karen Lorentz, Managing Director, NYSE Floor Operations at (212) 656-5858 or klorentz@nyx.com

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