

September 30, 2009



CBSX Trader News Update

CBSX to Update Clearly Erroneous Policy Effective October 5, 2009

Overview and Effective Date

Effective Monday, October 5, 2009, CBSX is modifying Rule 52.4 "Clearly Erroneous Policy".

Compliance and supervisory personnel should note that effective Monday, October 5, 2009, CBSX is modifying Rule 52.4 "Clearly Erroneous Policy" to conform to a uniform process adopted by all equity Market Centers.

The text of the new rule, which changes, among other things, timing parameters for submitting complaints, required information for complaints, numerical break thresholds, and reference price calculation, is provided below.

Rule Text

Rule 52.4 Clearly Erroneous Policy

(a) *Definition.* For purposes of this Rule, the terms of a transaction executed on CBSX 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 CBSX to be clearly erroneous will be removed from the Consolidated Tape.

(b) *Request and Timing of Review.* A CBSX Trader that receives an execution on an order that was submitted erroneously to CBSX for its own or customer account may request that CBSX review the transaction under this Rule. One or more senior level officials of CBSX designated by the President ("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 e-mail or other electronic means specified from time to time by CBSX in a circular distributed to CBSX Traders.

(i) *Requests for Review.* Requests for review must be received 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. 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 shall be notified by CBSX as soon as practicable, but generally within 30 minutes. An Official may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction shall provide, within thirty (30) minutes of the request, any supporting written information. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

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

(c) *Thresholds.* Determinations of a clearly erroneous execution 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 on CBSX 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 guideline threshold is regular trading hours or between 8:15 am CT to 8:30 am CT (which occurs before 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 (c)(2) below.

Reference Price: Consolidated Last Sale	Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale)	8:15 am CT to 8:30 am CT Numerical Guidelines (Subject transaction's % difference from the Consolidated Last Sale)
Greater than \$0.00 and up to and including \$25.00	10%	20%

Greater than \$25.00 and 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 CBSX Trader will be aggregated into a single filing	10%	10%
Leveraged ETF/ETN securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (ie 2x)	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (ie 2x)

(2) *Unusual Circumstances and Joint Market Rulings.* In Unusual Circumstances, which may include periods of extreme market volatility, sustained illiquidity, or widespread system issues, CBSX 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. CBSX 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 IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, validity of the consolidated tape's 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.* CBSX may expand the Numerical Guidelines applicable to transactions occurring between 8:30 a.m. CT and 9:00 a.m. CT based on the disseminated value of the S & P 500 Futures at 8:15 a.m. CT.

(i) When the S & P 500 Futures are up or down from 3% to up to but not including 5% at 8:15 a.m. the Numerical Guidelines (calculated pursuant to paragraph (c)(1) above) are doubled for executions occurring between 8:30 a.m. and 9:00 a.m.

(ii) When the S & P 500 Futures are up or down 5% or greater at 8:15 a.m. the Numerical Guidelines (calculated pursuant to paragraph (c)(1) above) are tripled for executions occurring between 8:30 a.m. and 9:00 am.

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

(1) "Outlier Transaction" means a transaction where:

(A) the execution price of the security is greater than three times the current Numerical Guidelines set forth in paragraph (c)(1) of this Rule, or

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

(e) *Review Procedures.*

(1) *Determination by Official.* Unless both parties (or party, in the case of a cross order) 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. A determination shall be made generally within 30 minutes of receipt of the

complaint, but in no case later than the start of trading on the following trading day. The parties shall be promptly notified of the determination.

(2) Appeals. If a CBSX Trader affected by a determination made under this Rule so requests within the time permitted below, a 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 was made; provided however that the CEE Panel will not review decisions made by an official under paragraph (f) of this Rule if such Official also determines under 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 consist of the Exchange Chief Regulatory Officer ("CRO"), or a designee of the CRO, and representatives from two (2) CBSX Traders.

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

(3) A request for review on appeal must be made via e-mail 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 as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received between 2:00 CT and the close of trading, 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.

(4) 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 CBSX on the matter at issue.

(5) If the CEE Panel votes to uphold the decision made pursuant to paragraph (e)(1) of this Rule, CBSX will assess a \$500.00 fee against the CBSX Trader(s) who initiated the request for appeal.

(6) Any determination by an Official 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.

(f) *System Disruption and Malfunctions.* In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading

facilities of CBSX, or extraordinary market conditions or other circumstances in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the Official, 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. In such events, the Official 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 Official pursuant to this paragraph (f) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Official must be taken by no later than the start of trading on the day following the date of execution(s) under review. Each CBSX Trader involved in the transaction shall be notified as soon as practicable, and the CBSX Trader aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2)–(4).

(g) *Official Acting On Own Motion.* An Official, 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 Official 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 Official 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 Official must be taken by no later than the start of trading on 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 CBSX, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2)–(4) above.

(h) *Trade Nullification for UTP Securities that are Subject of Initial Public Offerings ("IPOs").* Pursuant to SEC Rule 12f-2, as amended, CBSX may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in the subject security has been effected on the national securities exchange or association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. A clearly erroneous error may be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on CBSX is the lesser of \$1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the Official shall declare the opening transaction null and void or shall decline to take action in connection with the completed trade(s). Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same

manner as the procedure set forth in paragraph (e)(1). Absent extraordinary circumstances, any such action of the Official pursuant to this paragraph (h) 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 Official must be taken by no later than the start of trading on the day following the date of execution(s) under review. Each party involved in the transaction shall be notified as soon as practicable by CBSX, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2)-(4) above.

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