

FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

August 11, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2016-028

Dear Mr. Fields,

The Financial Information Forum (“FIF”)¹ thanks the Securities and Exchange Commission (“Commission” or “SEC”) and the Financial Industry Regulatory Authority (“FINRA”) for the opportunity to comment on SR-FINRA-2016-028 - Proposed Rule Change to clarify the operation of the Regulation NMS Plan to address Extraordinary Market Volatility (“Proposed Rule”)(FINRA Rule 6121.01).

In commenting on the Proposed Rule change, FIF is focused on the narrow timeframe provided to the broker-dealer community to undergo the development work required to comply with FINRA’s proposed amendments to Rule 6121.01. FIF is most concerned with the implementation date of August 22, 2016, particularly given the numerous regulatory initiatives currently scheduled for quarters three and four of 2016. The following outlines the considerations that FIF members have identified as contributing to the extreme difficulty of meeting the implementation date of August 22, 2016, as well as a suggestion that will support compliance with minimal industry impact.

Background

On May 31, 2012, the Securities and Exchange Commission (“SEC”) approved the NMS Plan establishing policies and procedures to address Extraordinary Market Volatility (“Plan”).² Pursuant to the Plan, procedures were established for market-wide limit up-limit down (“LULD”) requirements that prevent trades in individual NMS securities from occurring outside of the specified Price Bands.³ On July 28, 2016, FINRA announced that they are taking measures to clarify the operation of the Plan relating to the

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² See SEC Release No. 34-75917

³ *Id.*

short time period (i.e. up to three milliseconds) following the resumption of trading of Reg NMS securities after a Trading Pause or Regulatory Halt but before Price Bands are received from the SIP.⁴ FINRA has proposed that following a Trading Pause or Regulatory Halt, a Reg NMS security that is subject to the Plan may resume trading otherwise than on an exchange if trading has commenced on the primary listing exchange and either: (1) the member has received the Price Bands from the SIP; or (2) the member has calculated an upper price band and lower price band consistent with the methodology provided in Section V of the Plan and ensures that any transactions prior to the receipt of the Price Bands from the SIP are within the ranges provided for pursuant to the Plan.⁵

Industry Interpretation

FINRA's proposed amendment to Rule 6121.01 addresses the resumption of trading after a Trading Pause or Regulatory Halt and before the Price Bands are received from the SIP for securities that are subject to the Plan.⁶ This implies that the industry has interpreted the requirements for the reopening of trading in a Reg NMS security in a similar manner; that is, following a Trading Pause, the firms must wait until the SIP has disseminated a LULD band prior to the commencement of trading. FIF believes that FINRA's interpretation of broker-dealer requirements following a Trading Pause or Regulatory Halt is more restrictive than the requirement prescribed in the Plan.⁷

The Plan stipulates that, during the reopening of trading during regular trading hours, five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall not attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.⁸ Thus, under the plain language of the Plan, broker-dealers have established policies and procedures to resume trading at the point at which the security status of a security impacted by a Regulatory Pause or Trading Halt is indicated as 'open.' Under the industry's current interpretation of the Plan, broker-dealers have processes in place that allow for the resumption of trading when the Primary Listing Exchange reports a Reopening Price, not the presence of a LULD band from the SIP.

Due to many firms' understanding of the Plan's requirements that trading is permissible at the reopen when the Primary Listing Exchange reports a Reopening Price, and is not driven by the publication of LULD bands from the SIP, many industry participants do not currently have the procedures in place to meet the requirements of FINRA's proposed amendments to Rule 6121.01 prior to the August 22, 2016 implementation date.

Impact of FINRA Amendment to Broker-Dealers

FIF believes there is a disconnect between the industry's and FINRA's interpretation of the Plan's requirements. FINRA's classification of the proposed amendment to Rule 6121.01 as 'non-controversial' implies that additional industry-wide changes are not required. However, in order to comply with the recent guidance provided by FINRA in the form of this rule amendment, many broker-dealers will have to undergo substantial developmental work to: (a) wait until they have received the LULD band from the SIP, or (b) calculate their own bands following a trading pause; as neither approach is currently part of

⁴ FINRA Release No. SR-FINRA-2016-028

⁵ *Id.*

⁶ *Id.*

⁷ SEC Release No. 34-75917

⁸ *Id.*

industry practice pursuant to the industry's interpretation of the appropriate time to resume trading following a Regulatory Pause or Trading Halt.

Implementation Timeframe

FIF members now understand and are in agreement with the intent of the proposed amendment, but are requesting an extension of the August 22, 2016 implementation date in order to complete the development work necessary to be in compliance with FINRA's amendment to Rule 6121.01. Substantial development work will be required by broker-dealers in order to change internal procedures and technology needed to process the information from the SIP and/or design the tools required to self-calculate their own Price Bands prior the resumption of trading following a Regulatory Pause or Trading Halt. Feedback from FIF members indicates that three to four months is an appropriate timeframe to complete the development work due to the significant resources required to develop the tools necessary to determine whether a security is eligible for trading based upon the criteria set forth in FINRA's amendment to Rule 6121.01. Furthermore, FIF member firms have indicated that their technical resources are already allocated to the development of technical requirements needed to be compliant with new regulatory initiatives scheduled for quarter three and quarter four of 2016 (e.g. Tick Size Pilot, OATS for ATS, SIP binary protocol).

SIP Transmission of the LULD Bands Prior to Transmission of Unhalt Message

FIF members suggest that the following alternative would reduce the implementation challenges of the amendment to Rule 6121.01, yet accomplish FINRA's objectives as prescribed in the amendment to Rule 6121.01. FIF believes that the August 22nd implementation date of the FINRA amendments will not provide broker-dealers adequate time to make the necessary internal changes to properly process SIP information/calculate their own LULD bands, which will result in a loss of significant trading volume following a mandatory Regulatory Pause or Trading Halt. However, FIF suggests as an alternative, the SIP should be required to always transmit the LULD bands prior to transmitting the unhalt (symbol open) message. If the SIP sends the bands prior to the unhalt message, broker-dealers will be able to continue to utilize the programming they currently have in place, without any negative impact upon the intent of the amendment to Rule 6121.01.

FIF believes that if the SIP simply reverses the sequence of messages (i.e. provide the LULD bands prior to transmitting the unhalt message), then broker-dealers would not be required to undergo any developmental changes, which would allow for most firms to be compliant by the August 22nd implementation date as well as save the industry significant developmental costs.⁹

Conclusion

FIF wishes to thank FINRA and the SEC for providing the opportunity to comment on this proposed amendment to clarify the operation of the Regulation NMS Plan to Address Extraordinary Volatility following a Trading Pause or Regulatory Halt in a security subject to the Plan. We believe consideration of FIF members' questions and recommendations would be beneficial to firms that trade in securities

⁹ FIF recognizes that some broker-dealers receive unhalt messages from direct feeds from exchanges and thus, the re-sequencing of SIP messages would not impact those firms. However, the firms currently receiving unhalt messages from direct feeds will be required to undergo the technical changes specified in FINRA's amendment to Rule 6121.01 and thus would require the additional timeframe discussed in this letter in order to implement those changes. FIF suggests that as an alternative, the SIP publish the LULD bands prior to all direct feeds from the exchanges in order to allow all firms to be in compliance with Rule 6121.01 on August 22nd.

subject to Reg NMS. FIF believes that the aforementioned suggestions will allow for the intent of the proposed amendment to Rule 6121.01 to be achieved with without negatively impacting the markets following a Trading Pause or Regulatory Halt.

Regards,

A handwritten signature in black ink, appearing to read 'C. Bok', with a long horizontal flourish extending to the right.

Christopher W. Bok
Financial Information Forum

CC Stephen Luparello, Director, Division of Trading and Markets, Securities and Exchange Commission
David Shillman, Associate Director, Division of Trading and Markets, Securities and Exchange Commission
Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA
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