

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65819; File No. SR-FINRA-2011-068)

November 23, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend FINRA Rule 6121.01 (Trading Pauses) to Exclude Rights and Warrants from the Trading Pause Pilot

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 21, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> 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 Substance of the Proposed Rule Change

FINRA is proposing to amend Supplementary Material .01 (Trading Pauses) to FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to exclude all rights and warrants from the trading pause pilot.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, FINRA 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. FINRA 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6121.01 (Trading Pauses) to exclude all rights and warrants from the trading pause pilot. The Commission approved FINRA Rule 6121.01 on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause Pilot").<sup>4</sup> The pilot was developed and implemented as a market-wide initiative by FINRA and other self-regulatory organizations ("SROs") in consultation with Commission staff. Initially, the pilot covered only the securities included in the S&P 500<sup>®</sup> Index ("S&P 500") ("Phase I securities"). FINRA and the other SROs subsequently expanded the Trading Pause Pilot to add the securities included in the Russell 1000<sup>®</sup> Index and a specified list of exchange traded products ("Phase II securities").<sup>5</sup> FINRA and the other SROs have stated in previous filings that they would continue to review whether

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<sup>4</sup> See Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (Order Approving File No. SR-FINRA-2010-025).

<sup>5</sup> See Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (Order Approving File No. SR-FINRA-2010-033).

and when to add securities to the pilot and whether the parameters of the pilot should be adjusted for different securities.<sup>6</sup>

On June 23, 2011, the Commission approved proposed amendments by FINRA and the other SROs to expand the Trading Pause Pilot to include all remaining NMS stocks (“Phase III securities”), which included rights and warrants.<sup>7</sup> With respect to the Phase III securities, the SRO rules<sup>8</sup> apply wider percentage price moves for triggering a trading pause than apply to the Phase I or Phase II securities.<sup>9</sup>

The trading pauses triggered since the adoption of the Trading Pause Pilot have been analyzed and over 25% of trading pauses have occurred in rights and warrants. Further, the SROs have experienced a significant increase in trading pauses involving rights and warrants since the inclusion of the Phase III securities, with such pauses representing as much as 52% of all trading pauses occurring through the end of August 2011 on one exchange. Rights and warrants trade on equity exchanges, but are closely related to call options.<sup>10</sup> Like options, the price of rights and warrants are affected by the price of the underlying stock as well as other

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<sup>6</sup> See e.g., Securities Exchange Act Release No. 62416 (June 30, 2010), 75 FR 39069 (July 7, 2010) (Notice of Filing of File No. SR-FINRA-2010-033).

<sup>7</sup> See Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (Order Approving File No. SR-FINRA-2011-023). This amendment became effective on August 8, 2011.

<sup>8</sup> FINRA’s trading pause rule does not include specific trigger percentages, but rather provides that FINRA will halt trading otherwise than on an exchange in a security if a primary listing market has issued an individual stock trading pause under its rules.

<sup>9</sup> For example, under amended NASDAQ Rule 4120(a)(11), a pause is triggered by a 30% or more price move in a Phase III Security priced at \$1.00 or higher, and by a 50% or more price move to such a security priced less than \$1.00. The price of a security is based on the closing price on the previous trading day or, if no closing price exists, the last sale reported to the consolidated tape on the previous trading day.

<sup>10</sup> Rights and warrants entitle owners to purchase shares of stock at predetermined prices subject to timing and various other conditions.

factors, particularly the volatility of the stock. Consequently, the price of rights and warrants may move more dramatically than the price of the underlying stock, even when the rights and warrants (and the underlying stock) are trading in an orderly manner. This difference in trading behavior may result in a scenario whereby the rights and warrants trigger, and are subject to, a trading pause, even while the underlying stock continues to trade. This can be particularly true of lower-priced rights and warrants. Accordingly, FINRA, in consultation with the other SROs, is proposing to exclude rights and warrants from the trading pause pilot of Rule 6121.01.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of filing to avoid further triggers of trading pauses in rights and warrants, thereby avoiding the potential confusion caused by such pauses.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change meets these requirements because it is consistent with the trading pause rules of the primary listing markets and refines the trading pause pilot to exclude certain securities that are prone to triggering pauses because of their unique characteristics. Given the fact that the price of rights and warrants may move more dramatically than the prices of the underlying stocks to which they are related, even when both are trading in an orderly manner, FINRA questions the benefit of applying the trading pause pilot to such securities. FINRA also

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<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

believes that the proposed rule change promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

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

FINRA 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.

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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires FINRA to give the Commission written notice of the FINRA's 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, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Including rights and warrants in the pilot program which may trigger a circuit breaker and be subject to a trading pause, even while the underlying security continues to trade, provides little benefit and has the potential to create confusion among investors. Excluding rights and warrants from the pilot program should minimize investor confusion that could result from temporary trading pauses in these securities. For this reason, the Commission designates the proposed rule change as operative upon the date of this Notice.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form

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<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-FINRA-2011-068 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-FINRA-2011-068. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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 No. SR-FINRA-2011-068 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).