

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68778; File No. SR-FINRA-2013-011)

January 31, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on January 30, 2013, 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. 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 delay the operative date of FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks), which reflects changes to the methodology for triggering market-wide circuit breakers for NMS stocks.³ FINRA is delaying the operative date from February 4, 2013 until April 8, 2013 to correspond to the initial date of operations for the Regulation NMS Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down” or “LULD” Plan”).⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved the proposed changes to the market-wide circuit breakers on a pilot basis for a period scheduled to start on February 4, 2013. See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (Order Approving File No. SR-FINRA-2011-054).

⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (Order Approving, on a Pilot Basis, the Limit Up-Limit Down Plan).

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 [sic].

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to delay the operative date of new FINRA Rule 6121.02 ("MWCB pilot"), which addresses the methodology for triggering market-wide circuit breakers in all NMS stocks otherwise than on an exchange from February 4, 2013 until April 8, 2013 to coincide with the revised initial date of operations of the LULD Plan, unless the MWCB pilot is either extended or approved permanently.

Current Rules

In 1988, the SEC approved several self-regulatory organization ("SRO") rule proposals that provided for market-wide circuit breakers at specified levels to promote stability and

FINRA anticipates that the initial date of LULD Plan operations will be April 8, 2013. See Letter from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, to Elizabeth M. Murphy, Secretary, SEC dated January 17, 2013 (NYSE Markets). Therefore, this proposal likewise delays the operative date of the market-wide circuit breaker provisions to April 8, 2013 so that the implementation dates for the two pilots remain the same.

investor confidence during a period of significant stress, along with a Policy Statement by FINRA (then known as NASD) that provided trading halt authority in the event of severe market declines.⁵ These measures were adopted as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.

On October 7, 2008, FINRA permanently adopted a new rule – FINRA Rule 6121 – that authorizes FINRA to halt trading otherwise than on an exchange in NMS stocks if other major U.S. securities markets initiate market-wide trading halts in response to their rules or extraordinary market conditions, or if otherwise directed by the SEC.⁶ Rule 6121 provides for a halt in trading otherwise than on an exchange in NMS stocks to promote stability and investor confidence during a period of significant stress.

New Rule 6121.02

FINRA adopted new Supplementary Material .02 to Rule 6121 to add more specificity to FINRA’s rules for halting trading otherwise than on an exchange in all NMS stocks when a market-wide circuit breaker has been put into effect on a primary listing market. Thus, new Rule

⁵ See Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988) (Order Approving File No. SR-NASD-88-46). FINRA’s Policy Statement on Market Closings (“Policy Statement”) provided, among other things, that when other major securities markets initiate market-wide trading halts in response to extraordinary market conditions, FINRA will, upon SEC request, halt domestic trading in all securities in equity and equity-related securities in the OTC market. As part of the approval order, the SEC requested that FINRA impose a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading. The language in the Policy Statement was subsequently codified, on a pilot basis, in Interpretive Material (IM) 4120-3 (later renumbered IM-4120-4). See Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Order Approving File No. SR-NASD-98-27). The IM-4120-3 pilot, which also was extended numerous times, expired on April 30, 2002.

⁶ See Securities Exchange Act Release No. 58753 (October 8, 2008), 73 FR 61177 (October 15, 2008) (Order Approving File No. SR-FINRA-2008-048).

6121.02 provides that, in the event of a Level 1, Level 2 or Level 3 Market Decline,⁷ as determined by a primary listing market and publicly disseminated, FINRA shall halt trading otherwise than on an exchange in all NMS stocks and shall not permit the resumption of trading for the time periods specified by the primary listing market, except as otherwise further provided for in the rule.

Specifically, Rule 6121.02 provides that, if trading is halted in all NMS stocks for a Level 1 or a Level 2 Market Decline, FINRA will halt trading otherwise than on an exchange in all NMS stocks until trading has resumed on the primary listing market. If, however, the primary listing market does not reopen a security within 15 minutes following the end of the 15-minute halt period, FINRA may permit the resumption of trading otherwise than on an exchange in that security if trading in the security has commenced on at least one other national securities exchange. If, however, a Level 3 Market Decline occurs at any time during the trading day, FINRA shall halt trading otherwise than on an exchange in all NMS stocks until the primary listing market opens the next trading day. These amendments were adopted in coordination with the other SROs and track the provisions put in place by the other SROs.

The MWCB pilot was adopted for a period that corresponds with the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together. In addition, FINRA established that the implementation date for the proposed rule changes should be the same date that the LULD Plan is implemented so that the SROs and the single plan processors responsible for the consolidation of information pursuant to Rule 603(b) of Regulation NMS

⁷ Rule 6121.02 also provides that a Market Decline means a decline in the value of the S&P 500® Index between 9:30 a.m. and 4:00 p.m. on a trading day as compared to the closing value of the S&P 500® Index for the immediately preceding trading day.

under the Securities Exchange Act of 1934 could coordinate making the necessary technological changes to implement both pilots.

The initial date of LULD Plan operations has been changed to April 8, 2013. Thus, and for the same reasons stated above, FINRA proposes to delay the operative date of the MWCB pilot to April 8, 2013 so that the implementation date for the MWCB pilot remains the same as that for the LULD Plan.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

2. Statutory Basis

FINRA believes that its proposal is consistent with Section 15A(b) of the Securities Exchange Act of 1934 (the “Act”)⁸ [sic] and furthers the objectives of Section 15A(b)(6) of the Act,⁹ in particular, in that it is 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.

Specifically, this rule proposal promotes uniformity across U.S. markets concerning when and how to halt trading in all NMS stocks as a result of extraordinary market volatility. In addition, delaying the operative date of the MWCB pilot until the initial date of operations of the LULD Plan would allow the MWCB pilot to begin and end at the same time of the LULD Plan so that FINRA, the other SROs and the Commission can assess the impact of the two pilots on the marketplace or whether other initiatives should be adopted in lieu of the pilots, which contributes to the protection of investors and the public interest.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78q-3(b)(6).

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

FINRA does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to delay the operation of the MWCB pilot until April 8, 2013 to allow it to begin and end at the same time as the LULD Plan, which contributes to the protection of investors and the public interest. The other SROs are subject to the same methodology for determining when to halt trading in all NMS stocks due to extraordinary market volatility and the same requirements specified in the LULD Plan. Thus, the proposed changes will not impose any burden on competition while providing that the MWCB pilot period corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires FINRA to give the Commission written notice of its 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. The Commission has waived this requirement.

FINRA has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will delay the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan, thereby allowing the pilot to run simultaneously with the LULD Plan, providing an opportunity to properly assess the impact of the two pilots on the marketplace and evaluate the pilots' effectiveness. Therefore, the Commission designates the proposal operative upon filing.¹²

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78s(b)(2)(B).

2013-011 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 Number SR-FINRA-2013-011. 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 the 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 Number SR-FINRA-2013-011 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).