

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88425; File No. SR-FINRA-2020-009)

March 19, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 18, 2020, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “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 receipt of this filing by 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 FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt.

---

<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).

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.

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 amend Rule 6121.02 concerning the resumption of trading following a Level 3 market-wide circuit breaker halt. FINRA is proposing this rule change in conjunction with other self-regulatory organizations ("SROs").

Rule 6121.02 addresses the circumstances under which FINRA shall halt, and subsequently resume, over-the-counter trading in all NMS stocks due to extraordinary market volatility (i.e., market-wide circuit breakers). The market-wide circuit breaker ("MWCB") mechanism under Rule 6121.02 was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "LULD Plan"),<sup>4</sup> including any

---

<sup>4</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release"). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

extensions to the pilot period for the LULD Plan.<sup>5</sup> Last year, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.<sup>6</sup> In light of the proposal to make the LULD Plan permanent, FINRA amended Rule 6121.02 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.<sup>7</sup> FINRA then filed a proposed rule change to extend the pilot for an additional year to the close of business on October 18, 2020.<sup>8</sup>

The market-wide circuit breaker under Rule 6121.02 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. FINRA and the U.S. equity exchanges adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 ("MWCB Rules"), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.<sup>9</sup> Market-wide circuit breakers provide for trading

---

<sup>5</sup> See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (Order Approving File No. SR-FINRA-2011-054); and 68778 (January 31, 2013), 78 FR 8668 (February 6, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-011) (Proposed Rule Change to Delay the Operative Date of FINRA Rule 6121.02).

<sup>6</sup> See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility).

<sup>7</sup> See Securities Exchange Act Release No. 85547 (April 8, 2019), 84 FR 14981 (April 12, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-010).

<sup>8</sup> See Securities Exchange Act Release No. 87078 (September 24, 2019), 84 FR 51669 (September 30, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-023).

<sup>9</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129)

halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 6121.02, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.

Today, in the event that a Level 3 market decline occurs, trading in exchange-listed stocks would be halted until the primary listing market opens the next trading day. Upon feedback from industry participants, FINRA has been working with other SROs to establish a standardized approach for resuming trading in all NMS stocks following a Level 3 halt. The proposed approach would allow for the opening of all NMS stocks the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants.<sup>10</sup>

---

(Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes as Modified by Amendments No. 1, Relating to Trading Halts Due to Extraordinary Market Volatility).

<sup>10</sup> Of note, the U.S. futures markets, which have similar rules for coordinated MWCB halts, normally begin their "next day" trading session at 6:00 p.m. ET (for CFE and CME) or at 8:00 p.m. ET (for ICE). If the U.S. futures markets amend their MWCB rules, as needed, to allow for normal course trading following a Level 3 halt, the futures markets would resume trading in their normal course at 6:00 p.m. ET (CFE and CME) or 8:00 p.m. ET (ICE) the same day as the Level 3 halt.

Furthermore, there may be cross-market differences in how each exchange currently opens the next day after a Level 3 MWCB halt. For example, while some exchanges

As proposed, a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow over-the-counter trading in all NMS stocks to resume the next day no differently from any other trading day. In other words, a member could resume trading otherwise than on an exchange in any NMS stock on the day following the Level 3 market wide circuit breaker, and would not need to wait for the primary listing market to re-open trading in a security before it could start trading such security, so long as the halt has been lifted by the applicable securities information processor (“SIP”).<sup>11</sup>

To effect this change, FINRA is amending Rule 6121.02 to delete the language requiring that members wait until the primary listing exchange opens the next trading day following a Level 3 market decline, and specify that FINRA will halt trading otherwise than on an exchange in all NMS stocks for the remainder of the trading day. The proposed rule change would therefore allow each SRO to resume trading in all NMS stocks the next trading day following a Level 3 halt as they normally would. Members should ensure that they have policies and procedures in place that address their resumption of over-the-counter trading in NMS stocks following a Level 3 MWCB.

---

currently resume trading in listed securities no differently from a regular trading day, other exchanges may, for instance, conduct a halt auction process instead of opening in the normal course under their respective rules. As discussed later in this filing, the proposed changes will allow each SRO to resume trading in all NMS stocks the next trading day following a Level 3 halt no differently from a regular trading day.

<sup>11</sup> The SEC has approved a proposed rule change by NASDAQ to permit NASDAQ to resume trading the day following a Level 3 market decline as it would on any other trading day. See Securities Exchange Act Release No. 88360 (March 11, 2020) (Order Approving File No. SR–NASDAQ– 2020–003) (“Nasdaq Approval Order”). FINRA anticipates that the other SROs also will file similar proposals to amend their MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally.

FINRA expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable SIP to lift the Level 3 trading halt message in all NMS stocks. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, FINRA expects that the primary listing exchanges would replace the Level 3 halt message with the applicable regulatory halt message.

Having a consistent approach for all NMS stocks will make the opening process the day after a Level 3 halt more uniform and reduce complexity, which FINRA believes is important after a significant market event. Based on industry feedback, FINRA believes that opening in the normal course for all NMS stocks will be more beneficial to the marketplace. By allowing trading to resume after a Level 3 halt in all NMS stocks no differently from any normal trading day under the respective rules of each SRO, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS stocks and balances out potential concerns around volatility. While FINRA recognizes that the impact of this proposal is to permit all NMS stocks to be traded during time periods that do not have certain price protections for volatility such as LULD Bands or MWCB protections, FINRA nonetheless believes that this outcome is outweighed by the benefits provided by opening in a manner that is more familiar to the marketplace. Moreover, allowing the resumption of trading to occur as it would on any other trading day will allow for price formation to occur earlier in the trading day, which in turn allows market participants to react to news that has developed. As such, trading at the beginning of regular hours may be more orderly.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>12</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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 6121.02 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. FINRA believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility, and how the markets will resume trading following a Level 3 market decline.

As described above, FINRA together with other SROs, is seeking to adopt a standardized approach related to resuming trading in NMS stocks after a Level 3 MWCB halt. In this regard, FINRA believes that the proposal to resume trading in all NMS stocks following a Level 3 halt in the same manner that these securities would open trading on a regular trading day will benefit investors, the national market system, and FINRA members by promoting a fair and orderly market and reducing confusion during a significant cross-market event. By allowing trading to

---

<sup>12</sup> 15 U.S.C. 78q-3(b)(6).

resume after a Level 3 halt in all NMS stocks no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS stocks.

Based on the foregoing, FINRA believes that the benefits to market participants under the proposed revisions to Rule 6121.02 with the proposed standardized process for resuming trading in all NMS stocks following a Level 3 halt will promote fair and orderly markets, and protect investors and the public interest.

**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 because the proposed Level 3 rule change described above would standardize the opening process for all NMS stocks, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity. Further, The Nasdaq Stock Market LLC ("Nasdaq") already amended its rules to adopt amendments concerning the resumption of trading following a Level 3 MWCB to allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day.<sup>13</sup> FINRA understands that the other SROs will file similar proposals to adopt the proposed changes related to resumptions following a Level 3 MWCB.

**Economic Impact Assessment**

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and

---

<sup>13</sup> See Nasdaq Approval Order.



competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.<sup>14</sup>

#### Regulatory Objective

FINRA proposes to amend Rule 6121.02 concerning the resumption of trading following a Level 3 market-wide circuit breaker halt. The proposed rule change would allow each SRO to resume trading in all NMS stocks the next trading day following a Level 3 halt as they normally would, without requiring the primary listing market to first re-open trading in a security.

#### Economic Baseline

The market-wide circuit breaker under Rule 6121.02 provides an automatic mechanism that is invoked to promote stability and investor confidence during a period of stress when securities markets experience extreme broad-based declines. Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 6121.02, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. A market decline that triggers a Level 3 halt, defined as a 20% decline in price from the prior day's closing price of the S&P 500 Index, currently would halt market-wide trading until the primary listing market opens the next trading day.

Over-the-counter trading in an NMS stock currently may start the next trading day when its primary listing market opens the security. Consequently, the opening process for NMS stocks

---

<sup>14</sup> FINRA believes an abbreviated economic impact assessment is appropriate to facilitate the expedient adoption of consistent rules regarding the resumption of trading in all NMS stocks following a Level 3 market-wide circuit breaker.

after a Level 3 halt is different from any other trading day that was not preceded by a Level 3 MWCB. This adds to complexity the day after a Level 3 MWCB halt.

#### Economic Impact

Having a consistent approach for all NMS stocks will make the opening process the day after a Level 3 halt more uniform and reduce complexity. FINRA recognizes that the proposed rule change would permit all NMS stocks to be traded during time periods when certain price protections for volatility such as LULD Bands or MWCB protections are not in force. The absence of these protections may be mitigated because the resumption of trading would occur as it would on any other trading day, which permits price formation to occur earlier in the trading day, and should allow market participants to more quickly react to news events. As a result, trading at the beginning of regular hours may be less volatile.

#### Alternatives

No further alternatives are under consideration.

#### 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</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

---

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

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

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>19</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that it approved a substantively similarly proposed rule change submitted by The Nasdaq Stock Market LLC.<sup>20</sup> Waiver of the operative delay will ensure consistency across the market centers and the timely implementation of the proposed rule change. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of such 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

---

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 the pre-filing requirement.

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> See Securities Exchange Act Release No. 88360 (March 11, 2020) (SR-NASDAQ-2020-03).

<sup>21</sup> 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).

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)<sup>22</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-009 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2020-009. 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

---

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-009 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>23</sup>

J. Matthew DeLesDernier  
Assistant Secretary

---

<sup>23</sup> 17 CFR 200.30-3(a)(12).