

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68985; File No. SR-FINRA-2013-016)

February 25, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend FINRA Rules in Accordance with the Regulation NMS Plan to Address Extraordinary Market Volatility

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 February 11, 2013, 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 rules in accordance with the provisions of the Regulation NMS Plan to Address Extraordinary Market Volatility.

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

On May 31, 2012, the Commission approved a joint industry plan to address extraordinary market volatility (“Limit Up-Limit Down” or the “Plan”) filed by FINRA and the other self-regulatory organizations (“Participants”)<sup>4</sup> pursuant to Section 11A of the Act<sup>5</sup> and Rule 608 thereunder.<sup>6</sup> The Limit Up-Limit Down mechanism is intended to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010 by generally prohibiting the display of offers at prices below the lower price band and bids above the upper price band and the execution of trades outside the price bands for NMS Stocks.<sup>7</sup> The

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<sup>4</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (Approval Order). A copy of the Plan is attached as Exhibit A to the Approval Order.

The Plan was subsequently amended to, among other things, revise the implementation schedule, as discussed further below. See Letter dated January 17, 2013 from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, to Elizabeth M. Murphy, Secretary, SEC, available at [www.nyse.com/attachment/LULD\\_Plan\\_Amendment\\_No\\_2.pdf](http://www.nyse.com/attachment/LULD_Plan_Amendment_No_2.pdf).

<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 242.608.

<sup>7</sup> The single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act shall calculate and

Plan combines the use of the Limit Up-Limit Down mechanism with trading pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). By its terms, the Plan will be implemented on a one-year pilot basis in two phases.<sup>8</sup> Pursuant to the Plan, each Participant must adopt rules requiring compliance by its members with the provisions of the Plan.<sup>9</sup>

To that end, in furtherance of its obligations under the Plan, FINRA is proposing to: (1) adopt new Rule 6190 (Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility) and (2) amend Rules 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) and 6121 (Trading Halts Due to Extraordinary Market Volatility).

Proposed Rule 6190 requires members that are trading centers in NMS Stocks to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the requirements of the Plan and specifically to prevent: (1) the execution of trades at prices that are below the lower price band or above the upper price band for an NMS Stock, except as permitted under the Plan; (2) the display of offers below the lower price band and bids above the upper price band for an NMS Stock; and (3) the execution of trades in an NMS Stock

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disseminate to the public the lower and upper price bands for an NMS Stock during regular trading hours.

<sup>8</sup> Phase I of Plan implementation will begin on April 8, 2013 in select Tier 1 NMS Stock symbols, with full Phase I implementation completed three months after the initial date of Plan operations (or such earlier date as may be announced by the Plan processor with at least 30 days notice). Phase II of the Plan will commence six months after the initial date of the Plan (or such earlier date as may be announced by the Plan processor with at least 30 days notice).

<sup>9</sup> See Section II(B) of the Plan.

during a trading pause.<sup>10</sup> Under the Plan, the term “trading center” has the meaning set forth in Regulation NMS under the Exchange Act.<sup>11</sup>

FINRA is clarifying that the proposed rule applies to members to the extent that they are trading centers, as defined under the Plan, and are acting as such with respect to any given trade or quotation. For example, Firm A is an OTC market maker and also a trading center. Firm A, in its capacity as an OTC market maker, receives a customer order to sell and routes the order to an exchange or other trading center. In that instance, Firm A could rely on the exchange or other trading center to ensure compliance with the Plan, and for example, if the offer were displayed in violation of the Plan, FINRA would not deem Firm A to be in violation of proposed Rule 6190. This rule will be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

Rule 5260 generally prohibits members from directly or indirectly effecting any transaction or publishing any quotation during a trading halt, including a trading pause. Because the Plan permits all bids and offers in an NMS Stock to be displayed during a trading pause, FINRA is proposing to amend Rule 5260 to prohibit member quoting and trading activity during a trading halt, except as permitted under the Plan.

In addition, FINRA is proposing to amend Rule 6121.01 to reflect the Plan’s trading pause provisions and to clarify that if trading in an NMS Stock is permitted to resume after a trading pause under the Plan, then FINRA may permit the resumption of trading otherwise than

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<sup>10</sup> No trades in a paused NMS Stock may occur during the trading pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

<sup>11</sup> Specifically, Rule 600(b) of Regulation NMS defines “trading center” as a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. 17 CFR 242.600(b).

on an exchange in such NMS Stock if trading has commenced on at least one other national securities exchange (i.e., when a transaction has been executed on an exchange, not merely when quoting has commenced on the exchange). This provision will be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

FINRA also is proposing to amend Rule 6121.01 to clarify that the current trading pause provisions will continue to apply to Tier 1 and Tier 2 NMS Stocks until the Plan is implemented for those securities. As noted above, Phase I of the Plan will begin on April 8, 2013 for certain Tier 1 NMS Stocks. As of that date, Rule 6121.01(b) will not apply to those Tier 1 NMS Stocks, but will continue to apply to all other Tier 1 and Tier 2 NMS Stocks. Upon full implementation of Phase I, this provision will apply only to Tier 2 NMS Stocks and will no longer be in effect upon full implementation of Phase II of the Plan.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change shall be the implementation date of the Regulation NMS Plan to Address Extraordinary Market Volatility, which currently is expected to be April 8, 2013.

## 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, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act<sup>13</sup> in that it seeks to assure fair competition among brokers and dealers and among exchange markets. FINRA

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

<sup>13</sup> 15 U.S.C. 78k-1(a)(1).

believes that the proposed rule change meets these requirements in that it facilitates compliance with the Plan, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility, including severe volatility of the kind that occurred on May 6, 2010. Accordingly, FINRA believes that the proposed rules will further the goals of investor protection and fair and orderly markets.

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. As discussed above, the Plan requires that the Participants adopt rules requiring compliance by their members with the provisions of the Plan. FINRA believes that the other Participants will file similar proposals, and therefore, the proposed rule change will help to ensure consistent rules across the marketplace. In addition, FINRA does not believe that the Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.<sup>14</sup>

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>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> Because the proposed rule change does not: (i)

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<sup>14</sup> 15 U.S.C. 78k-1(c)(1)(D).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires FINRA to give the Commission written notice of 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.

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 and Rule 19b-4(f)(6)(iii) thereunder.

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 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) of the Act<sup>17</sup> 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 No. SR-FINRA-2013-016 on the subject line.

##### Paper comments:

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

- 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-2013-016. 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-2013-016 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>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).