

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70516; File No. SR-FINRA-2013-041)

September 26, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Clearly Erroneous Pilot Period and to Remove Certain References to Individual Stock Trading Pauses in FINRA Rule 11892

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 September 24, 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,³ 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 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the clearly erroneous pilot, which currently is scheduled to expire on September 30, 2013. FINRA also proposes to remove certain references to individual stock trading pauses contained in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

Rule 11892. FINRA has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁴

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 FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the amendments set forth in File No. SR-FINRA-2010-032 (the "clearly erroneous pilot"). Portions of Rule 11892, explained in further detail below, currently are operating as a pilot set to expire on September 30, 2013.⁵ FINRA proposes to extend the clearly erroneous pilot until April

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ See Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Clearly Erroneous Pilot Period and To Adopt a New Provision in Connection With the Limit Up-Limit Down Plan) ("File No. SR-FINRA-2013-012").

8, 2014. FINRA also proposes to remove references to individual stock trading pauses described in Rule 11892(b)(4).

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 to provide for uniform treatment: (1) of clearly erroneous execution reviews in multi-stock events involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect.⁶ FINRA also adopted additional changes to Rule 11892 that reduced the ability of FINRA to deviate from the objective standards set forth in Rule 11892,⁷ and in 2013, adopted a provision designed to address the operation of the clearly erroneous rules and the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or the “Plan”).⁸ FINRA believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. FINRA believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, FINRA believes that the protections of the clearly erroneous rule should continue while the industry gains further experience with the operation of the Limit Up-Limit Down Plan.

FINRA also proposes to eliminate all references in Rule 11892 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11892(b)(4)

⁶ See Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Granting Approval of Proposed Rule Change Relating to Clearly Erroneous Transactions) (“File No. SR-FINRA-2010-032”).

⁷ See File No. SR-FINRA-2010-032.

⁸ See File No. SR-FINRA-2013-012.

provides specific rules that apply to the review of an execution as potentially clearly erroneous in the context of an individual stock trading pause issued for that security where the security is included in the S&P 500[®] Index, the Russell 1000[®] Index, or a pilot list of Exchange Traded Products (“Subject Securities”). The trading pauses described in Rule 11892(b)(4) are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan already is operational with respect to all Subject Securities, and thus, FINRA believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11892(b)(4) contained in other portions of Rule 11892.⁹

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

2. Statutory Basis

FINRA believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association and, in particular, with the requirements of Section 15A of the Act.¹⁰ In particular, the proposal is consistent with Section 15A(b)(6)¹¹ because it is designed to

⁹ FINRA notes that certain Exchange Traded Products (“ETPs”) are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11892(b)(4). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11892(b)(1) through (3). See Securities Exchange Act Release No. 65101 (August 11, 2011), 76 FR 51097 (August 17, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Rule 11892) (SR-FINRA-2011-039).

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(6).

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 clearly erroneous pilot promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, FINRA believes that the extension of the clearly erroneous pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process.

The proposed rule change also would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended clearly erroneous pilot, FINRA believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow FINRA to determine whether the pilot provisions of Rule 11892 are appropriate once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

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

FINRA does not believe that the proposed rule change implicates any competitive issues. FINRA believes that the other self-regulatory organizations also are filing similar proposals, and thus, that the proposal will help to ensure consistency across the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 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 Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹⁴

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 proposal 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-2013-041 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.

¹⁴ 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).

All submissions should refer to File Number SR-FINRA-2013-041. 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-2013-041 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).