

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81824; File No. SR-FINRA-2017-031)

October 5, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6121 to Reflect Recent Amendments to 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 September 29, 2017, 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, II, and III 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 (Trading Halts Due to Extraordinary Market Volatility) to reflect recent amendments to the Regulation NMS Plan to Address Extraordinary Volatility (“Plan”) regarding the resumption of trading in a security subject to the Plan.<sup>4</sup>

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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).

<sup>4</sup> Unless otherwise specified, the capitalized terms used herein have the same meanings as set forth in the 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.

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 Rule 6121.01 (Resumption of Trading in Securities Subject to the Regulation NMS Plan to Address Extraordinary Market Volatility) ("Rule") addresses the circumstances under which a member may resume trading otherwise than on an exchange following a Trading Pause or Regulatory Halt in an NMS Stock that is subject to the Plan.

The Rule currently provides that, following a Trading Pause or Regulatory Halt in an NMS Stock that is subject to the Plan, a member may resume trading otherwise than on an exchange if trading has commenced on the Primary Listing Exchange (or on another national securities exchange in the case of the resumption of trading following a ten-minute Trading Pause) and either: (1) the member has received the Price Bands from the Processor; or (2) if immediately following a Trading Pause or Regulatory Halt the member has not yet received the Price Bands from the Processor, the member has calculated an upper price band and lower price

band consistent with the methodology provided for in Section V of the Plan and ensures that any transactions prior to the receipt of the Price Bands from the Processor are within the ranges provided for pursuant to the Plan. In addition, the Rule provides that, where the Primary Listing Exchange does not reopen for trading at the end of a ten-minute Trading Pause (and has issued notice that it cannot resume trading for a reason other than a significant imbalance), a member may resume trading otherwise than on an exchange if trading has commenced in such NMS Stock on at least one other national securities exchange.

On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan, which provides, among other things, that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, even if such reopening is more than 10 minutes after the beginning of a Trading Pause.<sup>5</sup> The Twelfth Amendment generally provides that the only time trading may resume in the absence of a Reopening Price from the Primary Listing Exchange is if the Primary Listing Exchange notifies the Processor that it is unable to reopen due to a systems or technology issue.

To conform to this change, FINRA is amending Rule 6121.01 to provide that a member may not resume trading otherwise than on an exchange following a Trading Pause or Regulatory Halt in an NMS Stock that is subject to the Plan unless trading has commenced on the Primary Listing Exchange and either: (1) the member has received the Price Bands from the Processor; or (2) if the Processor hasn't yet disseminated Price Bands, but a Reference Price is available, the member calculates and applies Price Bands based on the same Reference Price that the Processor

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<sup>5</sup> See Securities Exchange Act Release No. 79410 (November 28, 2016), 81 FR 87114 (December 2, 2016) (Notice of Filing of the Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility) (“Twelfth Amendment”); see also Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017) (Order Approving the Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility) (“Approval Order”).

would use for calculating such Price Bands until such member receives Price Bands from the Processor, consistent with Section V(A)(1)<sup>6</sup> of the Plan (i.e., “Synthetic Price Bands”). Thus, consistent with the Twelfth Amendment, the proposed amendments provide that a member may only use Synthetic Price Bands in the limited circumstance where a Reference Price is available but Price Bands have not yet been disseminated by the Processor.<sup>7</sup>

Finally, the proposed amendments provide that a member may, nonetheless, resume trading otherwise than on an exchange in an NMS Stock that is subject to the Plan if the Primary Listing Exchange notifies the Processor that it is unable to reopen the security due to a systems or technology issue, or if the Primary Listing Exchange reopens trading with a quotation that has a zero bid or zero offer, or both, and: (1) the member has received the Price Bands from the Processor; and (2) trading has commenced on at least one other national securities exchange. In these limited circumstances, trading may resume otherwise than on an exchange in the absence of a Reopening Price from the Primary Listing Exchange, but only where the member has received the Price Bands from the Processor and at least one other national security exchange has already resumed trading. FINRA believes that requiring trading to first commence on at least one other national securities exchange prior to the resumption of trading over the counter continues to be appropriate and is consistent with existing FINRA rules and guidance regarding the resumption of over-the-counter trading in a paused security.<sup>8</sup>

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<sup>6</sup> FINRA is correcting a reference to the Plan in the existing rule text by replacing “Section VI(A)(1)” with “Section V(A)(1).”

<sup>7</sup> See supra note 5.

<sup>8</sup> See FAQ #6 (When can trading in a paused security resume?) in Regulatory Notice 10-30 (June 2010); see also Regulatory Notice 13-12 (March 2013).

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be the same as the implementation date of the Twelfth Amendment to the Plan.<sup>9</sup>

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</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 is designed to conform to the Twelfth Amendment to the Plan, which was approved by the Commission as being consistent with Section 11A of the Act<sup>11</sup> and Rule 608 thereunder<sup>12</sup> because it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and that it removes impediments to, and perfects the mechanism of, a national market system.<sup>13</sup> The proposed rule change seeks to help ensure that the goals of the Plan are met; thus, FINRA believes that the proposed rule change will further the goals of investor protection and fair and orderly markets.

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<sup>9</sup> See Securities Exchange Act Release No. 81720 (September 26, 2017), <https://www.sec.gov/rules/sro/nms/2017/34-81720.pdf> (Notice of Filing and Immediate Effectiveness of the Fifteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility) (providing that the implementation date for the changes to the Plan set forth in the Twelfth and Thirteenth Amendment would be changed to no later than November 30, 2017).

<sup>10</sup> 15 U.S.C. 78q-3(b)(6).

<sup>11</sup> 15 U.S.C. 78k-1.

<sup>12</sup> 17 CFR 242.608.

<sup>13</sup> See Approval Order at 8552.

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. The proposed rule change seeks to conform the requirements applicable to member trading otherwise than on an exchange under the Rule to the Twelfth Amendment to the Plan.

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: (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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

#### 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-2017-031 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-2017-031. 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 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; 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-2017-031 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>16</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).