

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63256; File No. SR-FINRA-2010-055)

November 5, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 6140 (Other Trading Practices)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 29, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 amend FINRA Rule 6140 to eliminate the provisions regarding the handling of stop orders, delete definitions relating to stop stock transactions and to relocate the definition of “initial public offering.”

The text of the proposed rule change is available on FINRA’s Web site 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

FINRA Rule 6140(h) (the "Rule") addresses the handling of stop orders in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS.<sup>3</sup> Specifically, the Rule provides that members may, but are not obligated to, accept stop orders. The Rule further provides that a stop order becomes a market order (or a stop limit order becomes a limit order) when a transaction takes place at or above the stop price (in the case of a buy stop order) or at or below the stop price (in the case of a sell stop order). Thus, as defined in the Rule, a stop order cannot be triggered by the publication of a quotation at the stop price (only by a transaction). However, members have stated that they believe quotations may be a better indicator of the current price of a security than transactions, and requested that FINRA provide members the flexibility to determine whether the trigger of a stop order will be based on transactions or quotations in the subject security at the stop price.

FINRA rules do not typically define the parameters of the various order types that members may accept and we agree that members should have the ability to define the triggering event for stop orders as well as to design their systems consistent with such determination.<sup>4</sup>

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<sup>3</sup> Stop buy orders generally are entered by investors with short positions to limit losses should the stock price increase. Stop sell orders generally are entered in a stock whose price has increased substantially in order to protect the investor's profits should the stock price decline.

<sup>4</sup> These requirements were initially adopted by NASD (and the national securities exchanges) in 1975. See Notice to Members 75-42 (June 10, 1975) (Rules Governing

Therefore, FINRA is proposing to delete Rule 6140(h). FINRA is also deleting Rule 6140(i), which defines the terms “stop stock price” and “stop stock transaction.”

Members that also are members of another self-regulatory organization (“SRO”) will continue to be subject to any applicable provisions adopted by such other SRO with respect to the handling of stop orders. FINRA expects that, irrespective of whether a transaction or quotation is used as the trigger for a customer stop order, each member will apply the approach consistently firm-wide to all customer orders and fully disclose its practice to its customers.

FINRA also is proposing to move the definition of “initial public offering” from Rule 6220 (Definitions) to Rule 6130 (Transactions Related to Initial Public Offerings).<sup>5</sup> FINRA is not proposing substantive changes to the definition of “initial public offering.” FINRA believes that Rule 6130 is the more appropriate location for the definition of “initial public offering” and that relocating this definition, as proposed, will reduce confusion for members.

FINRA will announce the implementation date of the proposed rule change no later than 30 days following Commission approval. The implementation date will be no more than 60 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</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

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Reporting of Transactions to Consolidated Tape).

<sup>5</sup> For the purposes of Rule 6130(a), “initial public offering” means: (1) the offering of the security is registered under the Securities Act; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Act.

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

principles of trade and, in general, to protect investors and the public interest. FINRA believes that adopting the proposed rule change will provide members with the flexibility to determine whether the execution of stop orders will be triggered by transactions or quotations in the subject security without compromising investor protection. In addition, FINRA believes that relocating the definition of “initial public offering” to Rule 6130 is appropriate and will reduce member confusion.

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.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2010-055 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-2010-055. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>7</sup> 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 Web site viewing and printing in the Commission's Public Reference Room, 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

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<sup>7</sup> The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov/rules/sro.shtml>.

available publicly. All submissions should refer to File Number SR-FINRA-2010-055 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>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).