

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68526; File No. SR-FINRA-2012-010)

December 21, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 6440 (Trading and Quotation Halt in OTC Equity Securities)

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 December 20, 2012, 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.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6440 (Trading and Quotation Halt in OTC Equity Securities) to clarify that FINRA may (1) initiate a trading and quotation halt in an OTC Equity Security upon notice of a foreign regulatory halt for news pending, including notice from a reliable third-party source; (2) continue to halt trading and quoting in such OTC Equity Security until notice from the appropriate foreign regulatory authority is received that it has or intends to resume trading in the security, even if such halt is longer than 10 business days; and (3) extend a halt initiated under Rule 6440(a)(3) for an extraordinary event beyond 10 business days if it determines that the basis for the halt still exists.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 6440 (Trading and Quotation Halt in OTC Equity Securities) provides FINRA with the authority to initiate a trading and quotation halt for OTC Equity Securities.³ Generally, Rule 6440(a) provides that, in circumstances where it is necessary to protect investors and the public interest, FINRA may direct members to halt trading and quotations of an OTC Equity Security when: (1) a foreign securities exchange or market halts trading in its market, for regulatory reasons, in an OTC Equity Security or the security underlying an American Depository Receipt (“ADR”) that is an OTC Equity Security (“OTC ADR”) that is listed on or registered with such foreign securities exchange or market, except that FINRA will not impose halts if the foreign halt was imposed solely for material news, a regulatory filing deficiency or operational reasons (“Foreign Regulatory Halt”); (2) a national securities exchange or foreign securities exchange halts trading in a listed security of which the OTC Equity Security or the security underlying the OTC ADR is a derivative or component (“Derivative Halt”); or (3)

³ “OTC Equity Security” means any equity security that is not an “NMS stock” as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term “OTC Equity Security” shall not include any Restricted Equity Security. See FINRA Rule 6420(f).

FINRA determines an extraordinary event has occurred or is ongoing that has a material effect on the market for the OTC Equity Security, or has the potential to cause major disruption to the marketplace or significant uncertainty in the settlement and clearing process (“Extraordinary Event Halt”). Pursuant to Rule 6440(b)(3), FINRA has authority to halt trading and quotations in the OTC market pursuant to an Extraordinary Event Halt for up to 10 business days.

FINRA is proposing to amend Rule 6440 to: (1) eliminate the restriction in Rule 6440(a)(1) on FINRA’s ability to initiate a Foreign Regulatory Halt when the foreign halt is imposed for material news; (2) modify the halt procedures outlined in paragraph (b) of the Rule to clarify that FINRA may initiate a trading and quotation halt in an OTC Equity Security as a result of a Foreign Regulatory Halt or Derivative Halt upon notice from a reliable third-party source; (3) modify the halt procedures outlined in paragraph (b) of the Rule to clarify that in instances where FINRA initiates a trading and quotation halt upon notice of a foreign halt pursuant to a Foreign Regulatory Halt or Derivative Halt, trading and quotation in the OTC Equity Security or the OTC ADR, FINRA may continue the halt until such time as FINRA receives notice that trading has been resumed in the security on the appropriate securities exchange on which it is listed or registered or by the other applicable regulatory authority, even if such halt is longer than 10 business days; and (4) amend Rule 6440 Supplementary Material .01 to clarify that FINRA may extend and continue in effect an Extraordinary Event Halt for subsequent periods of up to 10 business days each if, at the time of any such extension, FINRA finds that the basis for the halt still exists and determines that the continuation of the halt beyond the prior 10 business day period is necessary in the public interest and for the protection of investors.

Background

FINRA performs several critical functions with respect to the OTC market in furtherance of its obligations under Exchange Act Section 15A to have rules that are designed “to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.”⁴ In particular, FINRA believes its authority to halt trading and quotations in OTC Equity Securities pursuant to Rule 6440 is a valuable tool for maintaining fair and orderly markets, as provided in Exchange Act Section 15A. However, FINRA does not operate a “listed” market and thus has no ability to compel issuers to disclose information. While FINRA may obtain halt information provided by issuers to national securities markets or foreign securities exchanges or markets on which their securities are listed or registered, such markets are under no obligation to provide halt information to FINRA. For this reason, FINRA’s current authority to halt trading and quotations in an OTC Equity Security as a result of a Foreign Regulatory Halt provides that FINRA will not halt for material news, regulatory deficiencies or operational reasons. However, FINRA believes that with the globalization of securities markets, cross-border coordination of trading and quotation halts is important to ensure fairness in trading.

Proposal

FINRA is proposing several amendments to Rule 6440. The first amendment that FINRA is proposing would eliminate the restriction in Rule 6440(a)(1) on FINRA’s ability to initiate a halt as a result of a Foreign Regulatory Halt when the foreign halt is imposed for material news. FINRA has historically not halted in these instances because, as noted above,

⁴ See 15 U.S.C. 78o-3(b)(6).

FINRA lacks privity with OTC issuers and cannot compel such issuers to disclose information to FINRA. However, with the growth of foreign securities markets and the ease at which trading can occur across jurisdictions and markets (especially exchanges in Canada where many issuers of OTC Equity Securities are listed), FINRA believes increased coordination of trading halts across markets will protect investors by reducing instances of potentially material disparities in information regarding the security or even fraudulent or manipulative trading in the security and act to protect U.S. investors. Moreover, such coordination is consistent with how FINRA currently imposes news pending trading halts on OTC Equity Securities that are derivatives or components of securities listed on national or foreign securities exchanges pursuant to Rule 6440(a)(2).

As noted above, FINRA would be relying on the ability of the foreign market on which the security is listed or registered to oversee the issuer and evaluate news pending or other information regarding the issuer and the securities to determine if a trading halt is warranted. For example, a foreign exchange may halt trading and quoting in the security of an issuer on its market when the issuer is the subject of a significant corporate event, such as a change in ownership or corporate structuring as a result of a merger or acquisition, borrows a significant amount of funds or triggers events of default, enters into or terminates a significant contract, or is subject to major litigation.

The limitations in Rule 6440(a)(1) relating to FINRA's halt authority where the Foreign Regulatory Halt is imposed solely for a regulatory filing deficiency would remain because FINRA believes that the regulatory filing deficiency may be a listing jurisdiction requirement that is not consistent across market centers and may be of less concern to market participants outside that jurisdiction. For example, in some instances, a foreign regulatory jurisdiction may

impose a regulatory filing deficiency halt for failure to file timely financials or information related to significant corporate events. The limitation with regard to the operational halt would also remain because these halts may reflect local market trading conditions only. Rules relating to regulatory filing deficiency halts and operational halts are not consistent across market centers.

It is important to note that with respect to “domestic” OTC Equity Securities (e.g., securities that are not ADRs or are listed or registered with a foreign securities exchange or market), FINRA will have the authority to halt trading and quotation solely for news pending, only if such OTC Equity Security is a derivative or component of a security listed on or registered with a national securities exchange. Where the domestic OTC Equity Security is not a derivative or component of a security listed or registered with an exchange, FINRA will not have the authority to halt trading or quotation of the security in the OTC market. FINRA believes this distinction is consistent with the authority it is proposing with respect to foreign stocks given that in both cases, FINRA would be relying on the market on which the stock is listed or registered or the regulator with direct authority over the issuer, to compel timely notification of news pending events and determine whether trading should be halted.

The second amendment that FINRA is proposing would modify the halt procedures outlined in paragraph (b)(1) of the Rule to clarify that FINRA may initiate a trading and quotation halt in an OTC Equity Security as a result of a Foreign Regulatory Halt or Derivative Halt upon notice from another reliable third-party source where FINRA can validate the information provided. Rule 6440(b)(1) currently provides that, upon receipt of information from a securities exchange or market, or regulatory authority overseeing the issuer, exchange or market, FINRA will promptly evaluate the information and determine if a trading and quotation

halt in the OTC Equity Security is appropriate. Proposed Rule 6440(b)(1) would clarify that upon notice, not simply receipt of information, of a Foreign Regulatory Halt or Derivative Halt from: (i) the national or foreign securities exchange or market on which the OTC Equity Security or the security underlying the OTC ADR is listed or registered; (ii) a regulatory authority overseeing such issuer, exchange or market; or (iii) another reliable third-party source where FINRA can validate the information provided, FINRA will promptly initiate a trading and quotation halt in the OTC Equity Security. FINRA generally receives notice of foreign trading and quotation halts from official sources, such as the relevant foreign exchange or regulator (i.e., the Canadian Securities Commission, the Toronto Stock Exchange, the London Stock Exchange, etc.). However, in some cases, notice of a trading and quotation halt may be received from reliable third-party sources, such as The Depository Trust & Clearing Corporation, broker-dealers or financial news data vendors. FINRA verifies all third-party information relating to trading and quotation halts in foreign markets before it acts upon such information.

FINRA believes having the authority to halt trading and quotation in an OTC Equity Security upon notice from a reliable third-party source that can be validated provides a valuable tool that will allow FINRA to act more promptly to initiate trading and quotation halts in such securities.

The third amendment that FINRA is proposing would modify the halt procedures outlined in paragraph (b)(2) of the Rule to clarify the circumstances under which FINRA will resume trading after initiating a Foreign Regulatory Halt or Derivative Halt. Proposed Rule 6440(b)(2) clarifies that FINRA may continue the halt in trading and quoting in the OTC market for the OTC Equity Security until such time as FINRA receives notice that trading has resumed in the security on the national or foreign securities exchange on which it is listed or registered,

even if such halt is longer than 10 business days. FINRA adopted the 10-business day halt standard largely to be consistent with trading suspensions ordered by the SEC pursuant to Exchange Act Section 12(k).⁵ However, with respect to halts in OTC securities as a result of a Foreign Regulatory Halt or a Derivative Halt for a security listed on or registered with a national or foreign securities exchange, FINRA believes that such halt should run concurrently with, and for as long as, the halt imposed on the security in the market on which it is listed or registered. FINRA will disseminate an appropriate public notice that a trading and quotation halt under the Rule is no longer in effect.

The fourth amendment that FINRA is proposing would modify Rule 6440 Supplementary Material .01 to clarify that FINRA may extend and continue in effect a trading and quotation halt under the Extraordinary Event Halt authority for subsequent periods of up to 10 business days each, if at the time of any such extension, FINRA finds that the basis for the halt still exists and determines that the continuation of the halt beyond the prior 10 business day period is necessary in the public interest and for the protection of investors. FINRA believes the authority to halt beyond the initial 10 business day period is vital in the OTC marketplace where concerns regarding settlement and clearance, pricing, or other extraordinary events can take time to be resolved. FINRA is also proposing to add headings to Rule 6440 Supplementary Material .01 and .02 for clarity.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

⁵ 15 U.S.C. 78l(k).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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. FINRA believes that the proposed amendments to Rule 6440 will act to increase coordination of trading halts across markets and help reduce the potential for investors' trading based on materially disparate levels of information, and even fraudulent or manipulative activities in an OTC security, while it is halted by another regulatory authority. In addition, FINRA believes the authority to extend Extraordinary Event Halts for the additional 10 business day periods is vital in the OTC marketplace where concerns regarding settlement and clearance, pricing, or other extraordinary events can take time to be resolved.

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. FINRA will exercise judgment in each trading halt situation to assure that the halt is necessary to protect investors and not unnecessarily burden competition.

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

⁶ 15 U.S.C. 78q-3(b)(6).

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 or disapprove 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. Please include File Number SR-FINRA-2012-010 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-2012-010. 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-2012-010, 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.⁷

Kevin M. O'Neill
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).