

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78435; File No. SR-FINRA-2016-028)

July 28, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Operation of 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 July 22, 2016, 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 clarify the operation of the Regulation NMS Plan to Address Extraordinary Volatility (“Plan”) following a Trading Pause or Regulatory Halt in a security subject to the Plan.<sup>4</sup>

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.

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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.

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 (Trading Pauses) ("Rule") sets forth requirements applicable to member firms in connection with Trading Pauses.<sup>5</sup> The Rule addresses the Plan's provisions regarding Trading Pause, including that no trades in an NMS Stock are permitted to occur during a Trading Pause, and sets forth the circumstances under which trading in an NMS Stock can resume after a Trading Pause. Currently, the Rule also provides that FINRA may permit the resumption of trading otherwise than on an exchange if trading has commenced on at least one other national securities exchange. In addition, FINRA Rule 6190 (Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility) provides, among other things, that a member that is a Trading Center in an NMS Stock must establish, maintain and enforce written policies and procedures reasonably designed to comply with the requirements of the Plan, including to prevent the execution of trades at prices below the Lower Price Band or above the

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<sup>5</sup> 17 CFR 242.608.

Upper Price Band for an NMS Stock. The pilot period for the Plan was recently extended through April 21, 2017.<sup>6</sup>

FINRA and other self-regulatory organizations (SROs) are taking measures to clarify the operation of the Plan that results from the short period of time (generally up to three milliseconds) following the resumption of trading after a Trading Pause or Regulatory Halt and before the Price Bands are received from the Processor for securities that are subject to the Plan.<sup>7</sup> Specifically, FINRA is proposing an amendment to Rule 6121.01 to provide 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, consistent with Section VI(A)(1) of the Plan.

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<sup>6</sup> See Securities Exchange Act Release No. 77679 (April 21, 2016), 81 FR 24908 (April 27, 2016).

<sup>7</sup> See NASDAQ Equity Trader Alert # 2016-79 (NASDAQ Announces Improved Protections for Equity Markets Coming Out of Halts (“Leaky Bands”)) (April 12, 2016); See Bats Release Notes (Bats Announces Updates to Halt Resumption Behavior Effective July 15, 2016) (June 2, 2016). FINRA anticipates that other SROs will adopt similar measures to calculate an interim band for their listed securities to be applied in the brief time between the resumption of trading and when the Price Bands are subsequently received from the Processor.

The proposed rule change also clarifies what activity is permitted around the resumption of trading following a Trading Pause. Previously, the Rule provided that FINRA may permit the resumption of trading following a Trading Pause if trading has resumed on any national securities exchange. FINRA is revising the Rule to provide that members may resume trading following a Trading Pause if trading has resumed on the Primary Listing Exchange or, 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.<sup>8</sup>

Thus, the proposed amendment addresses the brief time between the resumption of trading following a Trading Pause or Regulatory Halt and when the Price Bands are received from the Processor by requiring members to take measures to ensure bands are in place (either by waiting for the receipt of the Price Bands from the Processor or calculating an interim upper price band and lower price band and ensuring that trades occur within those bands). Members may not rely on interim bands beyond the short period of time (generally up to three milliseconds) between the resumption of trading and the receipt of Price Bands by market participants.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be August 22, 2016.

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<sup>8</sup> Deleted language from paragraph (b) is no longer applicable because it addressed a transitional period in Plan implementation prior to the Plan becoming effective as to all NMS Stocks. The Plan applied to all NMS Stocks on December 8, 2013. Rights and warrants are excluded from the Plan. See Securities Exchange Act Release No. 70273 (August 27, 2013), 78 FR 54321 (September 3, 2013) (File No. 4-631).

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</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>10</sup> in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule change is designed to better implement the goals of the Plan, which has been approved by the Commission as reasonably designed to prevent potentially harmful price volatility, including severe volatility of the kind that occurred on May 6, 2010. In clarifying the operation of the Plan, the proposed rule change seeks to help ensure that the goals of the Plan are met. Accordingly, FINRA believes that the proposed rule change 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. The proposed rule change seeks to require members to take measures to ensure that their trading activity is in compliance with FINRA Rule 6190 and the Plan, and does not impose requirements that do not currently exist under FINRA rules, FINRA guidance and the Plan.

Specifically, a member that is a Trading Center in an NMS Stock already is required to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the requirements of the Plan, including to prevent the execution of trades at prices

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78k-1(a)(1).

that are outside of the Price Bands. To comply with this requirement, members must be aware of the upper and lower price bands applicable to their trading activity. This proposal provides that, immediately following a halt of a security subject to the Plan, a member may not resume trading until trading has resumed on the primary listing exchange (or on another national securities exchange in the case of the resumption of trading following a ten-minute pause) and either the member has received the Price Bands from the processor or has established interim bands calculated in compliance with 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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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.

#### 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-2016-028 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-028. 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-2016-028 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>13</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).