

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62416; File No. SR-FINRA-2010-033]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility)

June 30, 2010.

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 June 30, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“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 6121 (Trading Halts Due to Extraordinary Market Volatility) to add securities to the pilot rule.

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 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 6121.01 to add securities included in the Russell 1000<sup>®</sup> Index (“Russell 1000”) and specified Exchange Traded

Products (“ETP”) to the pilot rule. For purposes of this filing, ETPs include Exchange Traded Funds (“ETF”),<sup>3</sup> Exchange Traded Vehicles (“ETV”),<sup>4</sup> and Exchange Traded Notes (“ETN”).<sup>5</sup>

FINRA Rule 6121.01 was approved by the Commission on June 10, 2010 on a pilot basis set to end on December 10, 2010.<sup>6</sup> As FINRA noted in its filing to adopt FINRA Rule 6121.01, during the pilot period, FINRA would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities.

Currently, the pilot list of securities is all securities included in the S&P 500<sup>®</sup> Index (“S&P 500”). As noted in comment letters in response to the Original Notice, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot. FINRA agrees with the commenters that the pilot list of securities should be expanded.

In consultation with other self-regulatory organizations (“SROs”), FINRA proposes to add the securities included in the Russell 1000 and specified ETPs to the pilot beginning in July 2010, subject to Commission approval. FINRA believes that adding these securities would begin to address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, FINRA and the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

<sup>3</sup> An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the SEC to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

<sup>4</sup> An ETV tracks the underlying performance of an asset or index, allowing investors exposure to underlying assets such as futures contracts, commodities, and currency without actually trading futures or taking physical delivery of the underlying asset. An ETV is traded intraday like an ETF. An ETV is an open-ended trust or partnership unit that is registered under the Securities Act of 1933.

<sup>5</sup> An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer.

<sup>6</sup> See Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (Order Approving File No. SR-FINRA-2010-025) (“Original Notice”) [sic].

In particular, FINRA proposes to add securities included in the Russell 1000 because FINRA believes that the securities included in that index have similar trading characteristics to securities included in the S&P 500 (many of which are the same securities).

In addition, FINRA, in consultation with other SROs, proposes to add to the pilot a selected list of ETPs. FINRA believes that the proposed list of ETPs is appropriate because it identifies those ETPs that have component securities that largely track the securities included in the S&P 500 and Russell 1000. Accordingly, if an S&P 500 or Russell 1000 security experiences a trading pause, any resulting price volatility in a related ETP also would be subject to a trading pause trigger.

As proposed, the list includes broad-based ETPs, which FINRA recognizes has raised some debate. In particular, concerns have been raised about whether halting an index-based ETP may impact an index-based option or future. However, FINRA believes that including broad-based ETPs is appropriate so that ETP investors are protected should the component securities experience such volatility that trading in the broad-based ETP is impacted, as it was on May 6, 2010. Because this is a pilot rule, FINRA and the other SROs can continue to assess whether it is appropriate to have a trading pause in broad-based ETPs when there is not a similar trading pause in related index-based options or futures. As noted above, during the pilot, FINRA will continue to re-assess whether specific ETPs should be added or removed from the pilot list.

To effect this change, FINRA proposes to amend Supplementary Material .01 to FINRA Rule 6121 to provide that the pilot applies to all securities in the S&P 500, the Russell 1000, as well as a pilot list of ETPs. The pilot list of ETPs is identified in Exhibit 3.

FINRA has requested that the Commission approve the proposed rule change on an accelerated basis so that these securities become subject to the pilot as soon as possible.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</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. FINRA believes that the

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

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

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

proposed rule change meets these requirements in that it promotes uniformity across markets concerning which securities are included in the trading pause pilot.

#### *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 35 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.<sup>8</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning all aspects of the foregoing, including whether the proposed rule change is consistent with the Act.

The Commission notes that ETF trades constituted a substantial majority of the trades that were cancelled on May 6, and the proposed amendments would bring certain ETFs within the scope of the trading pause pilot for the first time. The Commission solicits comment regarding the inclusion of ETFs within the trading pause pilot. The Commission requests comment in particular on the implications of including in the trading pause pilot ETFs on broad-based indices that also underlie options and futures products. What are the potential benefits and risks of including those ETFs in the pilot under circumstances where other products based on the same index may not be subject to any trading pause, or

may be subject to a different type of trading pause? Are existing mechanisms available in the markets for those other products sufficient to address any cross-market linkage concerns? What are the potential effects on price discovery and trading behavior in the different markets?

Similarly, the Commission solicits comments on the potential benefits and risks of excluding such ETFs from the pilot, particularly under circumstances where the securities underlying the ETF are included in the pilot. If there are trading pauses for the component securities of an index but not for an ETF based on that index, what consequences might that have for the ETF or for other products based on that index? If there are trading pauses in an ETF but not in the stocks that underlie that ETF, what consequences might that have for the underlying stocks or other products? What are the potential effects on price discovery for the ETF, the underlying stocks and other products?

Are there other market-based characteristics or metrics that should be considered for purposes of determining which ETFs should be included in the trading pause pilot, or for re-calibrating particular features of the trading pause? In addition, the Commission solicits comments regarding the operation of the trading pause pilot to date with respect to stocks in the S&P 500.

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-2010-033 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2010-033. 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, 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, 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 publicly available. All submissions should refer to File Number SR-FINRA-2010-033 and should be submitted on or before July 19, 2010.<sup>9</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62419; File No. SR-ISE-2010-66]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend ISE Rule 2102 To Add Additional Securities to the Pilot Rule**

June 30, 2010.

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 June 30, 2010, International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

<sup>9</sup> The Commission believes that a 10-day comment period is reasonable, given the urgency of the matter. It will provide adequate time for comment.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>8</sup> The Commission notes that FINRA has requested accelerated approval of the filing.