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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 016

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *

☒

Amendment *

☐

Withdrawal

☐

Section 19(b)(2) *

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Section 19(b)(3)(A) *

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Section 19(b)(3)(B) *

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Pilot

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Extension of Time Period for
Commission Action *

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Date Expires *

Rule

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19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

☐

Section 806(e)(2) *

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Security-Based Swap Submission pursuant to the
Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend FINRA Rule 6120 (Trading Halts) to Conform to Recent Amendments to the SIP
Plans and to Make Technical and Clarifying Changes to the Rule

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization
prepared to respond to questions and comments on the action.

First Name *

Robert

Last Name *

McNamee

Title *

Associate General Counsel

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Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

06/22/2022

(Title *)

By

Racquel Russell

(Name *)

Senior Vice President and Director of Capital M

Racquel
Russell

Digitally signed by Racquel
Russell
Date: 2022.06.22 17:13:49
-04'00'

NOTE: Clicking the signature block at right will initiate digitally signing the
form. A digital signature is as legally binding as a physical signature, and
once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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FINRA-2022-016 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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FINRA-2022-016 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐ Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐ Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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FINRA-2022-016 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 6120 (Trading Halts) to conform to recent amendments to the NMS plans governing the collection, consolidation and dissemination of quotation and transaction information for NMS stocks and to make technical and clarifying changes to the rule.²

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be 30 days from the date of filing.

¹ 15 U.S.C. 78s(b)(1).

² See CTA/CQ Approval Order and UTP Approval Order, infra note 8.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background

FINRA Rule 6120 provides FINRA with the authority to halt trading otherwise than on an exchange in NMS stocks under the circumstances specified in Rule 6120(a) and pursuant to the procedures set forth in Rule 6120(b). Rule 6120(a)(1) provides that FINRA shall halt trading otherwise than on an exchange in any NMS stock whenever any market that has the authority to call a regulatory halt in the security imposes a trading halt, or suspends a listing, to: (a) permit dissemination of material news; (b) obtain information from the issuer relating to material news; (c) obtain information relating to the issuer's ability to meet listing qualification requirements; or (d) obtain any other information that is necessary to protect investors and the public interest.

In addition, Rule 6120(a)(2) provides that FINRA shall halt trading otherwise than on an exchange in any NMS stock when extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid or offer. To halt trading under this provision, FINRA must determine that such extraordinary market activity is likely to have a material effect on the market for the security and either (i) FINRA determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, FINRA, or (ii) after consultation with a national securities exchange trading the security, FINRA determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic

quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange. Rule 6120(a)(3) addresses FINRA's authority to close its quotation display and trade reporting facilities for NMS stocks under specified circumstances. Specifically, Rule 6120(a)(3) provides that FINRA shall close the Alternative Display Facility ("ADF")³ or any Trade Reporting Facility ("TRF")⁴ to quotation or trade reporting activity, as applicable, whenever the ADF or TRF is unable to transmit real-time trade reporting information to the applicable Securities Information Processor (SIP").⁵ If the ADF or any TRF closes pursuant to this provision, members are not prohibited from trading through other markets for which trading is not halted.⁶

³ The ADF is a display-only facility operated by FINRA that provides FINRA members with a mechanism to display quotations and report over-the-counter ("OTC") transactions in NMS stocks.

⁴ The TRFs provide FINRA members with a mechanism to report OTC transactions in NMS stocks. There are currently three active TRFs: (1) FINRA/Nasdaq TRF Carteret, (2) FINRA/Nasdaq TRF Chicago and (3) FINRA/NYSE TRF. While each TRF is operated by an affiliate of a registered national securities exchange, each TRF is a FINRA facility and subject to FINRA's oversight.

⁵ Currently, there are two SIPs that are responsible for collecting, consolidating and disseminating quotation and transaction information in NMS stocks that is collected pursuant to the following three NMS plans: (1) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (the "UTP Plan"), (2) the Second Restatement of the CTA Plan (the "CTA Plan"), and (3) the Restated CQ Plan (the "CQ Plan" and, collectively with the UTP Plan and the CTA Plan, the "SIP Plans"). FINRA and the national securities exchanges are participants of the SIP Plans (collectively, the "Participants").

⁶ Rule 6120(a) also requires members to promptly notify FINRA whenever they have knowledge of any matter related to an NMS stock or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security. FINRA is not proposing any changes to this requirement.

Rule 6120(b) sets forth the procedures for commencement and termination of trading halts and closures declared under Rule 6120(a). Rule 6120(b)(1) provides that the commencement of a trading halt or closure, as applicable, will be effective simultaneously with appropriate notice. Rule 6120(b)(2) provides that trading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.

In February 2021, the Participants filed proposed amendments to the provisions of the SIP Plans governing regulatory and operational halts (the “SIP Plan Amendments”).⁷ The Commission approved the SIP Plan Amendments on May 28, 2021.⁸ Among other things, the SIP Plan Amendments updated and clarified the process for Regulatory Halts under the SIP Plans. Under the SIP Plan Amendments, the Primary Listing Market may also declare a Regulatory Halt in any security for which it is the Primary Listing Market,⁹

⁷ See Securities Exchange Act Release No. 91189 (February 23, 2021), 86 FR 12038 (March 1, 2021) (“CTA/CQ Amendments Release”); Securities Exchange Act Release No. 91190 (February 23, 2021), 86 FR 12045 (March 1, 2021) (“UTP Amendments Release”).

⁸ See Securities Exchange Act Release No. 92070 (May 28, 2021), 86 FR 29849 (June 3, 2021) (“CTA/CQ Approval Order”); Securities Exchange Act Release No. 92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (“UTP Approval Order”).

⁹ See, e.g., UTP Amendments Release, *supra* note 7, at 12046. “Regulatory Halt” is defined in the SIP Plan Amendments as “a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.” See *id.* at 12046 n.8. The “Primary Listing Market” is defined as “the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.” See *id.* at 12046 n.9. All capitalized terms not otherwise defined herein have the meaning given to them in the SIP Plans, as amended by the SIP Plan Amendments.

as provided for in the rules of the Primary Listing Market, if it determines that there is a SIP Outage,¹⁰ Material SIP Latency,¹¹ Extraordinary Market Activity,¹² or in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.¹³ The SIP Plan Amendments also clarified that the start time

¹⁰ “SIP Outage” is defined as “a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.” See, e.g., UTP Amendments Release, supra note 7, at 12046 n.10.

¹¹ “Material SIP Latency” is defined as “a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the high speed line or over the ‘high speed line’ under the CQ Plan, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.” See, e.g., UTP Amendments Release, supra note 7, at 12046 n.11. A “SIP Halt” includes any Regulatory Halt in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.

¹² “Extraordinary Market Activity” is defined as “a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period.” See, e.g., UTP Amendments Release, supra note 7, at 12046 n.12.

¹³ See, e.g., UTP Amendments Release, supra note 7, at 12046.

of a Regulatory Halt is when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.¹⁴ For Regulatory Halts other than SIP Halts, the Primary Listing Market will declare the resumption of trading when it determines that trading may resume in a fair and orderly manner and in accordance with its rules.¹⁵ Where such a Regulatory Halt is initiated by another Participant that is a Primary Listing Market, a Participant may resume trading after the Participant receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.¹⁶ For SIP Halts, the Primary Listing Market will terminate the halt with a notification that specifies a SIP Halt Resume Time.¹⁷

FINRA is proposing to amend FINRA Rule 6120 to conform to the updated Regulatory Halt provisions for NMS stocks as set forth in the SIP Plan Amendments. Under the proposed rule change, Rule 6120 would be amended as described below to incorporate the definitions, notice and timing requirements for Regulatory Halts under the SIP Plan Amendments, as well as to make related organizational, clarifying, and technical changes.

Authority to Initiate Halts and Facility Closures

The purpose of Rule 6120(a)(1) is to provide authority for FINRA to halt OTC trading in an NMS stock when a Primary Listing Market declares a Regulatory Halt in that NMS stock, so that trading is halted both on the equity exchanges and in the OTC

¹⁴ See, e.g., UTP Plan, Section X.D.1.

¹⁵ See, e.g., UTP Amendments Release, supra note 7, at 12046.

¹⁶ See, e.g., UTP Plan, Section X.E.2.

¹⁷ See, e.g., UTP Amendments Release, supra note 7, at 12046.

market. FINRA is proposing amendments to simplify the text of Rule 6120(a) to delete the list of specific types of Regulatory Halts and instead provide FINRA with authority to declare a halt in trading otherwise than on an exchange in an NMS stock whenever a Primary Listing Market declares any type of halt that meets the definition of a “Regulatory Halt” under the SIP Plans.¹⁸ Thus, for example, instead of explicitly adding “SIP Halt” to Rule 6120(a)(1), FINRA is amending the rule to tie FINRA’s authority for declaring OTC halts in any NMS stock to the declaration of any “Regulatory Halt,” as that term is defined in the SIP Plans, by a Primary Listing Market.¹⁹ FINRA believes that using the same terms (and cross-referencing the definitions) used in the SIP Plan Amendments would simplify and streamline the rule, as well as avoid any potential confusion about differences between FINRA’s authority under Rule 6120(a)(1) and Regulatory Halts that are declared by a Primary Listing Market.²⁰

In addition, Rule 6120(a)(2) would be updated to align FINRA’s authority to declare an OTC trading halt in an NMS stock due to “extraordinary market activity” with the scope of that term as provided for in the SIP Plan Amendments. As described above, Rule 6120(a)(2) provides that FINRA shall halt OTC trading in an NMS stock when

¹⁸ The proposed rule change would also update the citation in Rule 6120(a)(1) for the definition of “NMS stock” under Regulation NMS from Rule 600(b)(47) to Rule 600(b)(55) to reflect recent reorganization of the defined terms in Rule 600 of Regulation NMS.

¹⁹ The proposed rule change would also add new paragraph (c) to Rule 6120 providing that, for purposes of Rule 6120, the following terms have the meanings set forth in the applicable SIP Plan: “Primary Listing Market,” “Processor,” “Regulatory Halt,” “SIP Halt Resume Time,” and “Trading Center.”

²⁰ The proposed updates should ensure that Rule 6120(a)(1) remains consistent with the SIP Plans and avoid the need to update the FINRA rule to account for any changes in the types of Regulatory Halts covered under the SIP Plans.

extraordinary market activity is occurring, FINRA determines that such activity is likely to have a material effect on the market for the security, and FINRA determines that the activity is caused by the misuse or malfunction of a system operated by, or linked to, FINRA or a national securities exchange. Under the proposed rule change, FINRA is amending this provision to incorporate the elements of the definition of Extraordinary Market Activity under the SIP Plan Amendments.²¹ Specifically, Rule 6120(a)(2)(A) would be revised to provide halt authority where extraordinary market activity in a security is occurring that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. Consistent with the SIP Plan Amendments, Rule 6120(a)(2)(A) would further provide that, for purposes of FINRA Rule 6120(a)(2), a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period. Rules 6120(a)(2)(C)(i) and (ii) (to be redesignated as Rules 6120(a)(2)(B)(i) and (ii)) would also be adjusted in two ways to further align FINRA's authority with the authority for a Primary Listing Market to declare a Regulatory Halt in an NMS stock due to Extraordinary Market Activity under the SIP Plan Amendments. First, both provisions would be amended to refer to the

²¹ To reflect these changes and incorporate the new definition of "extraordinary market activity" within paragraph (a)(2)(A), paragraph (a)(2)(B) would be deleted and current paragraph (a)(2)(C) would be redesignated as paragraph (a)(2)(B).

“disruption” or malfunction of an applicable system, rather than the “misuse” or malfunction of such system. Second, Rule 6120(a)(2)(B)(i) would be amended to refer to a system operated by, or linked to, a FINRA member (in addition to a system operated by, or linked to, FINRA itself), and Rule 6120(a)(2)(B)(ii) would be similarly amended to refer to a system operated by, or linked to, a member of the exchange trading the security with which FINRA has consulted (in addition to a system operated by, or linked to, the exchange itself). FINRA believes that these proposed conforming amendments would enhance consistency between FINRA’s authority to halt trading in the OTC market for NMS stocks due to extraordinary market activity with the exchanges’ authority to halt trading due to extraordinary market activity, as set forth in the SIP Plan Amendments.

FINRA is also proposing several clarifying changes to Rule 6120(a)(3), which provides FINRA with authority to close the ADF or a TRF to quotation or trade reporting activity in certain circumstances.²² Rule 6120(a)(3) would be amended in several instances to refer to both quoting and trading, rather than just trading, since, among other things, the ADF provides FINRA members with a facility for the display of quotations.²³

²² As described above, Rule 6120(a) provides authority with respect to both trading halts and facility closures. Therefore, as an additional clarifying change, FINRA is also proposing to add a reference to facility closures in the title of paragraph (a).

²³ Specifically, clause (i) in the first sentence would be amended to provide that FINRA may close a facility when it is unable to “accept quotes or trade reports from participants or transmit real-time quotation or trade reporting information to the applicable Processor” and the last sentence would be revised to provide that if a facility closes “to quoting or trading...members would not be prohibited from quoting or trading through other markets for which quoting or trading is not halted.” In addition, the rule would be amended to clarify that FINRA shall, “in its discretion,” close the ADF or any TRF in such circumstances. This change is a non-substantive clarification, as FINRA is already responsible for determining whether circumstances exist that would merit closing the ADF or a TRF.

Finally, the proposed rule change would add a clause to the first sentence of Rule 6120(a)(3) to further clarify that in addition to circumstances where the ADF or a TRF is unable to accept quotes or trade reports from participants or transmit real-time quotation or trade reporting information to the Processor,²⁴ FINRA has the authority to close the relevant facility in the event of other internal or external systems issues that cause a severe and continuing negative impact on the functioning of the facility. For example, a system linked to the ADF or a TRF may cause a severe and continuing negative impact on the facility. This proposed additional language would clarify that FINRA's authority to close the ADF or a TRF extends to instances where a facility's ability to properly function is impacted by a system linked to the facility (e.g., a member's execution or reporting system), as well as malfunctions or disruptions originating within the facility itself.²⁵

²⁴ The existing reference to the applicable "Securities Information Processor" would be amended to refer to the "Processor" as defined in the SIP Plan Amendments. See supra note 19.

²⁵ FINRA reminds members that firms must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing OTC trading and reporting in the event of a systems issue during the trading day that prevents the firm from reporting OTC trades within the timeframe prescribed by FINRA rules. A firm's procedures should address the firm's response to a FINRA facility systems issue, as well as an issue with its own or its vendor's systems. In the event of a widespread FINRA facility systems issue, firms may only continue to directly execute OTC trades in NMS stocks if they have connectivity and the ability to report to another FINRA facility. See Trade Reporting Notice, January 20, 2016 (OTC Equity Trading and Reporting in the Event of Systems Issues ("Systems Issues Notice")). The proposed rule change would not affect these obligations.

Commencement and Termination of Halts or Facility Closures

With respect to the process for initiating and terminating halts or facility closures, the proposed rule change would amend Rule 6120(b) to align FINRA's process related to Regulatory Halts declared under Rule 6120(a)(1) with the process specified in the SIP Plan Amendments. Existing Rule 6120(b) would be reorganized to address Regulatory Halts initiated under Rule 6120(a)(1) under paragraph (b)(1), and separately address FINRA halts and facility closures initiated under Rules 6120(a)(2) or (3), respectively, under paragraph (b)(2).²⁶ Consistent with the SIP Plan Amendments, proposed Rule 6120(b)(1) would provide that, in the case of a Regulatory Halt, the start time of the trading halt shall be when the Primary Listing Market declares the Regulatory Halt, regardless of whether an issue with communications impacts the dissemination of the notice. Further, unless otherwise specified in Rule 6121,²⁷ trading following a Regulatory Halt shall resume upon notice from the Primary Listing Market that the Regulatory Halt has been terminated or at the SIP Halt Resume Time specified in such notice, as applicable. These changes would conform FINRA's language regarding the

²⁶ In connection with this reorganization, the title of Rule 6120(b) would be updated to include a reference to facility closures, Rule 6120(b)(1) would be titled "Regulatory Halts" and Rule 6120(b)(2) would be titled "FINRA Halts and Closures."

²⁷ Rule 6121 (Trading Halts Due to Extraordinary Market Activity) sets forth requirements specifically relating to the resumption of trading following a trading pause pursuant to the Regulation NMS Plan to Address Extraordinary Market Volatility (the "Limit Up Limit Down" Plan). Under the SIP Plan Amendments, a Limit Up Limit Down trading pause is a type of Regulatory Halt.

commencement and termination of Regulatory Halts with the language specified in the SIP Plan Amendments.²⁸

Proposed Rule 6120(b)(2) would incorporate the existing commencement and termination language under current Rules 6120(b)(1) and (2), and specify that such provisions apply to trading halts and facility closures initiated by FINRA under Rule 6120(a)(2) and (a)(3).²⁹ The proposed rule change would also make non-substantive, clarifying edits to the language of Rule 6120(b)(2).³⁰

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be 30 days from the date of filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³¹ which requires, among other things, that FINRA rules

²⁸ See supra note 17 and accompanying text.

²⁹ As noted above, firms must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing OTC trading and reporting in the event that a FINRA facility experiences a widespread systems issue during the trading day. FINRA has provided guidance regarding how it will announce when it believes that firms should invoke such procedures. See Systems Issues Notice, supra note 25, at 2. The proposed rule change would not affect such guidance.

³⁰ Specifically, Rule 6120(b)(2) would be amended to provide that “the commencement of the trading halt or closure will be effective simultaneously with appropriate notice from FINRA, and the halt or closure will terminate upon appropriate notice from FINRA that the trading halt or closure is no longer in effect,” rather than “the commencement of the trading halt or closure will be effective simultaneously with appropriate notice” and “[t]rading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.”

³¹ 15 U.S.C. 78o-3(b)(6).

must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. FINRA believes that conforming its trading halt authority under Rule 6120 with the updated provisions of the SIP Plans will promote consistency between the treatment of off-exchange and on-exchange trading in NMS stocks, thereby enhancing coordination among FINRA and the national securities exchanges. FINRA further believes that the other proposed technical, clarifying, and organizational updates to Rule 6120 are in furtherance of the objectives of the Act by clarifying the scope and operation of the rule.

4. 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. Further, the proposed rule change is expected to have little impact on how FINRA executes trading halts. Thus, FINRA does not expect the proposed rule change to impose any additional costs on member firms or the investing public, or to convey material benefits beyond providing additional clarity and avoiding potential confusion about differences between FINRA's authority under Rule 6120 and Regulatory Halts that are declared by a Primary Listing Market.

5. 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.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

FINRA has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act³² and paragraph (f)(6) of Rule 19b-4 thereunder.³³ FINRA asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.³⁴ The proposed rule change would conform FINRA's authority relating to OTC activity in NMS stocks with the changes made to the SIP Plans in the SIP Plan Amendments, as well as to make other organizational and clarifying changes to the rule that are not intended to substantively alter FINRA's existing trading halt authority or process.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

³² 15 U.S.C. 78s(b)(3)(A).

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2022-016)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6120 (Trading Halts) to Conform to Recent Amendments to the SIP Plans and to Make Technical and Clarifying Changes to the Rule

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 , the 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,³ 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 6120 (Trading Halts) to conform to recent amendments to the NMS plans governing the collection, consolidation and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

dissemination of quotation and transaction information for NMS stocks and to make technical and clarifying changes to the rule.⁴

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

Background

FINRA Rule 6120 provides FINRA with the authority to halt trading otherwise than on an exchange in NMS stocks under the circumstances specified in Rule 6120(a) and pursuant to the procedures set forth in Rule 6120(b). Rule 6120(a)(1) provides that FINRA shall halt trading otherwise than on an exchange in any NMS stock whenever any market that has the authority to call a regulatory halt in the security imposes a trading halt, or suspends a listing, to: (a) permit dissemination of material news; (b) obtain information from the issuer relating to material news; (c) obtain information relating to

⁴ See CTA/CQ Approval Order and UTP Approval Order, infra note 10.

the issuer's ability to meet listing qualification requirements; or (d) obtain any other information that is necessary to protect investors and the public interest.

In addition, Rule 6120(a)(2) provides that FINRA shall halt trading otherwise than on an exchange in any NMS stock when extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid or offer. To halt trading under this provision, FINRA must determine that such extraordinary market activity is likely to have a material effect on the market for the security and either (i) FINRA determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, FINRA, or (ii) after consultation with a national securities exchange trading the security, FINRA determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange. Rule 6120(a)(3) addresses FINRA's authority to close its quotation display and trade reporting facilities for NMS stocks under specified circumstances. Specifically, Rule 6120(a)(3) provides that FINRA shall close the Alternative Display Facility ("ADF")⁵ or any Trade Reporting Facility ("TRF")⁶ to

⁵ The ADF is a display-only facility operated by FINRA that provides FINRA members with a mechanism to display quotations and report over-the-counter ("OTC") transactions in NMS stocks.

⁶ The TRFs provide FINRA members with a mechanism to report OTC transactions in NMS stocks. There are currently three active TRFs: (1) FINRA/Nasdaq TRF Carteret, (2) FINRA/Nasdaq TRF Chicago and (3) FINRA/NYSE TRF. While each TRF is operated by an affiliate of a registered national securities exchange, each TRF is a FINRA facility and subject to FINRA's oversight.

quotation or trade reporting activity, as applicable, whenever the ADF or TRF is unable to transmit real-time trade reporting information to the applicable Securities Information Processor (SIP”).⁷ If the ADF or any TRF closes pursuant to this provision, members are not prohibited from trading through other markets for which trading is not halted.⁸

Rule 6120(b) sets forth the procedures for commencement and termination of trading halts and closures declared under Rule 6120(a). Rule 6120(b)(1) provides that the commencement of a trading halt or closure, as applicable, will be effective simultaneously with appropriate notice. Rule 6120(b)(2) provides that trading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.

⁷ Currently, there are two SIPs that are responsible for collecting, consolidating and disseminating quotation and transaction information in NMS stocks that is collected pursuant to the following three NMS plans: (1) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (the “UTP Plan”), (2) the Second Restatement of the CTA Plan (the “CTA Plan”), and (3) the Restated CQ Plan (the “CQ Plan” and, collectively with the UTP Plan and the CTA Plan, the “SIP Plans”). FINRA and the national securities exchanges are participants of the SIP Plans (collectively, the “Participants”).

⁸ Rule 6120(a) also requires members to promptly notify FINRA whenever they have knowledge of any matter related to an NMS stock or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security. FINRA is not proposing any changes to this requirement.

In February 2021, the Participants filed proposed amendments to the provisions of the SIP Plans governing regulatory and operational halts (the “SIP Plan Amendments”).⁹ The Commission approved the SIP Plan Amendments on May 28, 2021.¹⁰ Among other things, the SIP Plan Amendments updated and clarified the process for Regulatory Halts under the SIP Plans. Under the SIP Plan Amendments, the Primary Listing Market may also declare a Regulatory Halt in any security for which it is the Primary Listing Market,¹¹ as provided for in the rules of the Primary Listing Market, if it determines that

⁹ See Securities Exchange Act Release No. 91189 (February 23, 2021), 86 FR 12038 (March 1, 2021) (“CTA/CQ Amendments Release”); Securities Exchange Act Release No. 91190 (February 23, 2021), 86 FR 12045 (March 1, 2021) (“UTP Amendments Release”).

¹⁰ See Securities Exchange Act Release No. 92070 (May 28, 2021), 86 FR 29849 (June 3, 2021) (“CTA/CQ Approval Order”); Securities Exchange Act Release No. 92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (“UTP Approval Order”).

¹¹ See, e.g., UTP Amendments Release, *supra* note 9, at 12046. “Regulatory Halt” is defined in the SIP Plan Amendments as “a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.” See *id.* at 12046 n.8. The “Primary Listing Market” is defined as “the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.” See *id.* at 12046 n.9. All capitalized terms not otherwise defined herein have the meaning given to them in the SIP Plans, as amended by the SIP Plan Amendments.

there is a SIP Outage,¹² Material SIP Latency,¹³ Extraordinary Market Activity,¹⁴ or in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.¹⁵ The SIP Plan Amendments also clarified that the start time of a Regulatory Halt is when the Primary Listing Market declares the halt,

¹² “SIP Outage” is defined as “a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.” See, e.g., UTP Amendments Release, supra note 9, at 12046 n.10.

¹³ “Material SIP Latency” is defined as “a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the high speed line or over the ‘high speed line’ under the CQ Plan, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.” See, e.g., UTP Amendments Release, supra note 9, at 12046 n.11. A “SIP Halt” includes any Regulatory Halt in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.

¹⁴ “Extraordinary Market Activity” is defined as “a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period.” See, e.g., UTP Amendments Release, supra note 9, at 12046 n.12.

¹⁵ See, e.g., UTP Amendments Release, supra note 9, at 12046.

regardless of whether an issue with communications impacts the dissemination of the notice.¹⁶ For Regulatory Halts other than SIP Halts, the Primary Listing Market will declare the resumption of trading when it determines that trading may resume in a fair and orderly manner and in accordance with its rules.¹⁷ Where such a Regulatory Halt is initiated by another Participant that is a Primary Listing Market, a Participant may resume trading after the Participant receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.¹⁸ For SIP Halts, the Primary Listing Market will terminate the halt with a notification that specifies a SIP Halt Resume Time.¹⁹

FINRA is proposing to amend FINRA Rule 6120 to conform to the updated Regulatory Halt provisions for NMS stocks as set forth in the SIP Plan Amendments. Under the proposed rule change, Rule 6120 would be amended as described below to incorporate the definitions, notice and timing requirements for Regulatory Halts under the SIP Plan Amendments, as well as to make related organizational, clarifying, and technical changes.

Authority to Initiate Halts and Facility Closures

The purpose of Rule 6120(a)(1) is to provide authority for FINRA to halt OTC trading in an NMS stock when a Primary Listing Market declares a Regulatory Halt in that NMS stock, so that trading is halted both on the equity exchanges and in the OTC

¹⁶ See, e.g., UTP Plan, Section X.D.1.

¹⁷ See, e.g., UTP Amendments Release, supra note 9, at 12046.

¹⁸ See, e.g., UTP Plan, Section X.E.2.

¹⁹ See, e.g., UTP Amendments Release, supra note 9, at 12046.

market. FINRA is proposing amendments to simplify the text of Rule 6120(a) to delete the list of specific types of Regulatory Halts and instead provide FINRA with authority to declare a halt in trading otherwise than on an exchange in an NMS stock whenever a Primary Listing Market declares any type of halt that meets the definition of a “Regulatory Halt” under the SIP Plans.²⁰ Thus, for example, instead of explicitly adding “SIP Halt” to Rule 6120(a)(1), FINRA is amending the rule to tie FINRA’s authority for declaring OTC halts in any NMS stock to the declaration of any “Regulatory Halt,” as that term is defined in the SIP Plans, by a Primary Listing Market.²¹ FINRA believes that using the same terms (and cross-referencing the definitions) used in the SIP Plan Amendments would simplify and streamline the rule, as well as avoid any potential confusion about differences between FINRA’s authority under Rule 6120(a)(1) and Regulatory Halts that are declared by a Primary Listing Market.²²

In addition, Rule 6120(a)(2) would be updated to align FINRA’s authority to declare an OTC trading halt in an NMS stock due to “extraordinary market activity” with the scope of that term as provided for in the SIP Plan Amendments. As described above, Rule 6120(a)(2) provides that FINRA shall halt OTC trading in an NMS stock when

²⁰ The proposed rule change would also update the citation in Rule 6120(a)(1) for the definition of “NMS stock” under Regulation NMS from Rule 600(b)(47) to Rule 600(b)(55) to reflect recent reorganization of the defined terms in Rule 600 of Regulation NMS.

²¹ The proposed rule change would also add new paragraph (c) to Rule 6120 providing that, for purposes of Rule 6120, the following terms have the meanings set forth in the applicable SIP Plan: “Primary Listing Market,” “Processor,” “Regulatory Halt,” “SIP Halt Resume Time,” and “Trading Center.”

²² The proposed updates should ensure that Rule 6120(a)(1) remains consistent with the SIP Plans and avoid the need to update the FINRA rule to account for any changes in the types of Regulatory Halts covered under the SIP Plans.

extraordinary market activity is occurring, FINRA determines that such activity is likely to have a material effect on the market for the security, and FINRA determines that the activity is caused by the misuse or malfunction of a system operated by, or linked to, FINRA or a national securities exchange. Under the proposed rule change, FINRA is amending this provision to incorporate the elements of the definition of Extraordinary Market Activity under the SIP Plan Amendments.²³ Specifically, Rule 6120(a)(2)(A) would be revised to provide halt authority where extraordinary market activity in a security is occurring that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. Consistent with the SIP Plan Amendments, Rule 6120(a)(2)(A) would further provide that, for purposes of FINRA Rule 6120(a)(2), a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period. Rules 6120(a)(2)(C)(i) and (ii) (to be redesignated as Rules 6120(a)(2)(B)(i) and (ii)) would also be adjusted in two ways to further align FINRA's authority with the authority for a Primary Listing Market to declare a Regulatory Halt in an NMS stock due to Extraordinary Market Activity under the SIP Plan Amendments. First, both provisions would be amended to refer to the

²³ To reflect these changes and incorporate the new definition of "extraordinary market activity" within paragraph (a)(2)(A), paragraph (a)(2)(B) would be deleted and current paragraph (a)(2)(C) would be redesignated as paragraph (a)(2)(B).

“disruption” or malfunction of an applicable system, rather than the “misuse” or malfunction of such system. Second, Rule 6120(a)(2)(B)(i) would be amended to refer to a system operated by, or linked to, a FINRA member (in addition to a system operated by, or linked to, FINRA itself), and Rule 6120(a)(2)(B)(ii) would be similarly amended to refer to a system operated by, or linked to, a member of the exchange trading the security with which FINRA has consulted (in addition to a system operated by, or linked to, the exchange itself). FINRA believes that these proposed conforming amendments would enhance consistency between FINRA’s authority to halt trading in the OTC market for NMS stocks due to extraordinary market activity with the exchanges’ authority to halt trading due to extraordinary market activity, as set forth in the SIP Plan Amendments.

FINRA is also proposing several clarifying changes to Rule 6120(a)(3), which provides FINRA with authority to close the ADF or a TRF to quotation or trade reporting activity in certain circumstances.²⁴ Rule 6120(a)(3) would be amended in several instances to refer to both quoting and trading, rather than just trading, since, among other things, the ADF provides FINRA members with a facility for the display of quotations.²⁵

²⁴ As described above, Rule 6120(a) provides authority with respect to both trading halts and facility closures. Therefore, as an additional clarifying change, FINRA is also proposing to add a reference to facility closures in the title of paragraph (a).

²⁵ Specifically, clause (i) in the first sentence would be amended to provide that FINRA may close a facility when it is unable to “accept quotes or trade reports from participants or transmit real-time quotation or trade reporting information to the applicable Processor” and the last sentence would be revised to provide that if a facility closes “to quoting or trading...members would not be prohibited from quoting or trading through other markets for which quoting or trading is not halted.” In addition, the rule would be amended to clarify that FINRA shall, “in its discretion,” close the ADF or any TRF in such circumstances. This change is a non-substantive clarification, as FINRA is already responsible for determining whether circumstances exist that would merit closing the ADF or a TRF.

Finally, the proposed rule change would add a clause to the first sentence of Rule 6120(a)(3) to further clarify that in addition to circumstances where the ADF or a TRF is unable to accept quotes or trade reports from participants or transmit real-time quotation or trade reporting information to the Processor,²⁶ FINRA has the authority to close the relevant facility in the event of other internal or external systems issues that cause a severe and continuing negative impact on the functioning of the facility. For example, a system linked to the ADF or a TRF may cause a severe and continuing negative impact on the facility. This proposed additional language would clarify that FINRA's authority to close the ADF or a TRF extends to instances where a facility's ability to properly function is impacted by a system linked to the facility (e.g., a member's execution or reporting system), as well as malfunctions or disruptions originating within the facility itself.²⁷

²⁶ The existing reference to the applicable "Securities Information Processor" would be amended to refer to the "Processor" as defined in the SIP Plan Amendments. See supra note 21.

²⁷ FINRA reminds members that firms must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing OTC trading and reporting in the event of a systems issue during the trading day that prevents the firm from reporting OTC trades within the timeframe prescribed by FINRA rules. A firm's procedures should address the firm's response to a FINRA facility systems issue, as well as an issue with its own or its vendor's systems. In the event of a widespread FINRA facility systems issue, firms may only continue to directly execute OTC trades in NMS stocks if they have connectivity and the ability to report to another FINRA facility. See Trade Reporting Notice, January 20, 2016 (OTC Equity Trading and Reporting in the Event of Systems Issues ("Systems Issues Notice")). The proposed rule change would not affect these obligations.

Commencement and Termination of Halts or Facility Closures

With respect to the process for initiating and terminating halts or facility closures, the proposed rule change would amend Rule 6120(b) to align FINRA's process related to Regulatory Halts declared under Rule 6120(a)(1) with the process specified in the SIP Plan Amendments. Existing Rule 6120(b) would be reorganized to address Regulatory Halts initiated under Rule 6120(a)(1) under paragraph (b)(1), and separately address FINRA halts and facility closures initiated under Rules 6120(a)(2) or (3), respectively, under paragraph (b)(2).²⁸ Consistent with the SIP Plan Amendments, proposed Rule 6120(b)(1) would provide that, in the case of a Regulatory Halt, the start time of the trading halt shall be when the Primary Listing Market declares the Regulatory Halt, regardless of whether an issue with communications impacts the dissemination of the notice. Further, unless otherwise specified in Rule 6121,²⁹ trading following a Regulatory Halt shall resume upon notice from the Primary Listing Market that the Regulatory Halt has been terminated or at the SIP Halt Resume Time specified in such notice, as applicable. These changes would conform FINRA's language regarding the

²⁸ In connection with this reorganization, the title of Rule 6120(b) would be updated to include a reference to facility closures, Rule 6120(b)(1) would be titled "Regulatory Halts" and Rule 6120(b)(2) would be titled "FINRA Halts and Closures."

²⁹ Rule 6121 (Trading Halts Due to Extraordinary Market Activity) sets forth requirements specifically relating to the resumption of trading following a trading pause pursuant to the Regulation NMS Plan to Address Extraordinary Market Volatility (the "Limit Up Limit Down" Plan). Under the SIP Plan Amendments, a Limit Up Limit Down trading pause is a type of Regulatory Halt.

commencement and termination of Regulatory Halts with the language specified in the SIP Plan Amendments.³⁰

Proposed Rule 6120(b)(2) would incorporate the existing commencement and termination language under current Rules 6120(b)(1) and (2), and specify that such provisions apply to trading halts and facility closures initiated by FINRA under Rule 6120(a)(2) and (a)(3).³¹ The proposed rule change would also make non-substantive, clarifying edits to the language of Rule 6120(b)(2).³²

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be 30 days from the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³³ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

³⁰ See supra note 19 and accompanying text.

³¹ As noted above, firms must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing OTC trading and reporting in the event that a FINRA facility experiences a widespread systems issue during the trading day. FINRA has provided guidance regarding how it will announce when it believes that firms should invoke such procedures. See Systems Issues Notice, supra note 27, at 2. The proposed rule change would not affect such guidance.

³² Specifically, Rule 6120(b)(2) would be amended to provide that “the commencement of the trading halt or closure will be effective simultaneously with appropriate notice from FINRA, and the halt or closure will terminate upon appropriate notice from FINRA that the trading halt or closure is no longer in effect,” rather than “the commencement of the trading halt or closure will be effective simultaneously with appropriate notice” and “[t]rading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.”

³³ 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, 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. FINRA believes that conforming its trading halt authority under Rule 6120 with the updated provisions of the SIP Plans will promote consistency between the treatment of off-exchange and on-exchange trading in NMS stocks, thereby enhancing coordination among FINRA and the national securities exchanges. FINRA further believes that the other proposed technical, clarifying, and organizational updates to Rule 6120 are in furtherance of the objectives of the Act by clarifying the scope and operation of the rule.

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. Further, the proposed rule change is expected to have little impact on how FINRA executes trading halts. Thus, FINRA does not expect the proposed rule change to impose any additional costs on member firms or the investing public, or to convey material benefits beyond providing additional clarity and avoiding potential confusion about differences between FINRA's authority under Rule 6120 and Regulatory Halts that are declared by a Primary Listing Market.

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 Act³⁴ and Rule 19b-4(f)(6) thereunder.³⁵

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

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-016 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-2022-016. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2022-016 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.³⁶

Jill M. Peterson
Assistant Secretary

³⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6100. QUOTING AND TRADING IN NMS STOCKS

* * * * *

6120. Trading Halts

(a) Authority to Initiate Halts In Trading Otherwise Than on an Exchange in NMS Stocks and Facility Closures

FINRA, pursuant to the procedures set forth in paragraph (b):

(1) shall halt trading otherwise than on an exchange in any NMS stock, as defined in Rule 600(b)([47]55) of SEC Regulation NMS, whenever a Primary Listing Market[any market that has the authority to call] declares a [r]Regulatory [h]Halt in the security[imposes a trading halt, or suspends the listing, to:].

[(A) permit dissemination of material news;]

[(B) obtain information from the issuer relating to material news;]

[(C) obtain information relating to the issuer's ability to meet listing qualification requirements; or]

[(D) obtain any other information that is necessary to protect investors and the public interest.]

(2) shall halt trading otherwise than on an exchange in any NMS stock when:

(A) extraordinary market activity in the security is occurring[, such as the execution of a series of transactions for a significant dollar

value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer,] that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this paragraph, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period; and

(B) [FINRA determines that such extraordinary market activity is likely to have a material effect on the market for the security; and]

[(C)](i) FINRA determines that such extraordinary market activity is caused by the [misuse]disruption or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, FINRA or a FINRA member; or

(ii) After consultation with a national securities exchange trading the security, FINRA determines that such extraordinary market activity is caused by the [misuse]disruption or malfunction of an electronic quotation, communication, reporting, or execution

system operated by, or linked to, such [other] national securities exchange or a member of such exchange.

(3) shall, in its discretion, close the Alternative Display Facility (ADF) or any Trade Reporting Facility (TRF) to quotation and/or trade reporting activity, as applicable, whenever the ADF or such TRF is unable to accept quotes or trade reports from participants or transmit real-time quotation or trade reporting information to the applicable [Securities Information]Processor or in the event of any other internal or external systems issue that causes a severe and continuing negative impact on the proper functioning of the facility. If the ADF or any TRF closes to quoting or trading pursuant to this subparagraph (3), members would not be prohibited from quoting or trading through other markets for which quoting or trading is not halted.

Members shall promptly notify FINRA whenever they have knowledge of any matter related to an NMS stock or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) Commencement and Termination of a Trading Halt or Facility Closure

(1) Regulatory Halts. In the case of a Regulatory Halt, the start time of the trading halt shall be when the Primary Listing Market declares the Regulatory Halt, regardless of whether an issue with communications impacts the dissemination of the notice. Unless otherwise specified in Rule 6121, trading shall resume upon notice from the Primary Listing Market that the Regulatory

Halt has been terminated or at the SIP Halt Resume Time specified in such notice, as applicable.

(2) FINRA Halts and Closures. In the event FINRA determines that a basis exists under this Rule 6120 to initiate a trading halt or close the ADF or any TRF, the commencement of the trading halt or closure will be effective simultaneously with appropriate notice[.] from FINRA, and the halt or closure will terminate

[(2) Trading shall resume] upon appropriate notice from FINRA that [a] the trading halt or closure is no longer in effect.

(c) Definitions

For purposes of this Rule 6120, the following terms shall have the meanings as set forth in the NMS Plan of the applicable Securities Information Processor: “Primary Listing Market,” “Processor,” “Regulatory Halt,” “SIP Halt Resume Time” and “Trading Center.”

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