

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62251; File No. SR-FINRA-2010-025)

June 10, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Accelerated Approval to Proposed Rule Change to Amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to Permit FINRA to Halt Trading by FINRA Members Otherwise Than on an Exchange Where a Primary Listing Market has Issued a Trading Pause due to Extraordinary Market Conditions

I. Introduction

On May 18, 2010, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ a proposed rule change to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to permit FINRA to halt trading by FINRA members otherwise than on an exchange where a primary listing market has issued a trading pause due to extraordinary market conditions.⁴

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Also on May 18, 2010, each of BATS Exchange, Inc. (“BATS”), EDGX Exchange, Inc. (“EDGX”), NASDAQ OMX BX, Inc. (“BX”), International Securities Exchange LLC (“ISE”), New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“NYSEAmex”), NYSE Arca, Inc. (“NYSEArca”), The NASDAQ Stock Market LLC (“NASDAQ”), National Stock Exchange, Inc. (“NSX”) and Chicago Board Options Exchange, Incorporated (“CBOE”) filed proposed rule changes. On May 19, 2010, EDGA Exchange, Inc (“EDGA”) and Chicago Stock Exchange, Inc. (“CHX”) filed proposed rule changes to provide for similar trading pauses. See Securities Exchange Act Release Nos. 62121 (May 19, 2010), 75 FR 28834 (May 24, 2010); 62123 (May 19, 2010), 75 FR 28844 (May 24, 2010); 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010); 62125 (May 19, 2010), 75 FR 28836 (May 24, 2010); 62126 (May 19, 2010), 75 FR 28831 (May 24, 2010); 62127 (May 19, 2010), 75 FR 28837 (May 24, 2010); 62128 (May 19, 2010), 75 FR 28830 (May 24, 2010); 62129 (May 19, 2010), 75

The proposed rule change was published for comment in the Federal Register on May 24, 2010.⁵ The Commission received 26 comments on the proposals and on the broader concept of circuit breakers on individual securities.⁶ This order grants

FR 28839 (May 24, 2010); 62131 (May 19, 2010), 75 FR 28845 (May 24, 2010); 62132 (May 19, 2010), 75 FR 28847 (May 24, 2010); 62122 (May 19, 2010), 75 FR 28833 (May 24, 2010); and 62130 (May 19, 2010), 75 FR 28842 (May 24, 2010). These filings are being approved today by the Commission. See Securities Exchange Act Release No. 62252 (June 10, 2010). In this order, the term “Exchanges” refers collectively to all of the exchanges. The term “Listing Markets” refers collectively to NYSE, NYSEAmex and NASDAQ. The term “Nonlisting Markets” refers collectively to the remaining nine national securities exchanges. The term “SROs” refers to the Exchanges and the Financial Industry Regulatory Authority (“FINRA”).

⁵ See Securities Exchange Act Release No. 62133 (May 19, 2010), 75 FR 28841 (May 24, 2010).

⁶ The Commission considered letters received prior to May 18 discussing the concept of individual stock circuit breakers as well as formal letters citing the rule filings. See Letter from Senator Charles E. Schumer to Chairman Schapiro, Commission, *et. al.*, dated May 10, 2010; Letter from Congressman Edward J. Markey to Chairman Schapiro, Commission, dated May 11, 2010; Letter from Cliff Pereira to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010; Letter from Thomas Hofler to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010 (“Hofler Letter”); Letter from James K. Rutledge to Rule-Comments, Commission, dated May 13, 2010; Letter from John Meredith to Elizabeth M. Murphy, Secretary, dated May 19, 2010; Letter from Peter Skopp, Molinete Trading Inc. to Elizabeth M. Murphy, Secretary, Commission, dated May 20, 2010 (“Molinete Letter”); letter from Paul Rogers to Rule-Comments, Commission, dated May 20, 2010; Letter from Congressman Eric Cantor to Chairman Schapiro, Commission, dated May 21, 2010; Letter from T.P. Tursick to Elizabeth M. Murphy, Secretary, Commission, dated May 25, 2010; Letter from James J. Angel to the Commission, dated May 25, 2010 (“Angel Letter”); Letter from Larry Harris, USC Marshall School of Business, to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2010 (“Harris Letter”); Letter from Judith Kittinger to WebMaster, Commission, dated May 27, 2010; Letter from Congresswoman Melissa L. Bean to Chairman Schapiro, Commission, dated May 28, 2010 (“Bean Letter”); Letter from Patrick J. Healy, Issuer Advisory Group, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated May 31, 2010 (“IAG Letter”); Letter from [Hal McIntyre, The Summit Group](#), to Elizabeth M. Murphy, Commission, undated “Summit Group Letter”); Letter from Ira Shapiro, BlackRock Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2010 (“BlackRock Letter”); Letter from Christopher Nagy, TD Ameritrade to Elizabeth M. Murphy, Secretary, Commission, dated

accelerated approval to the proposed rule change.

II. Description of the Proposals

On May 6, 2010, the U.S. equity markets experienced a severe disruption.⁷ Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reversing to prices consistent with their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and were broken by the SROs. The Commission is concerned that events such as those that occurred on May 6 can seriously undermine the integrity of the U.S. securities markets. Accordingly, it is working on a variety of fronts to assess the causes and contributing factors of the May 6 market disruption and to fashion policy responses that will help prevent a recurrence.

June 3, 2010 (“TD Ameritrade Letter”); Letter from Alexander M. Cutler, Business Roundtable to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (“Business Roundtable Letter”); Letter from George U. Sauter, The Vanguard Group, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (“Vanguard Letter”); Letter from Julie Sweet, Accenture plc to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (“Accenture Letter”); Letter from Tom Quaadman, Center for Capital Markets Competitiveness to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (CCMC Letter”); Letter from Jeffrey W. Rubin, American Bar Association Business Law Section to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (“ABA Letter”); Letter from Karrie McMillan, Investment Company Institute to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (“ICI Letter”); Letter from Daniel Mathisson, Credit Suisse Securities (USA) LLC to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (“Credit Suisse Letter”); Letter from Leonard J. Amoroso, Knight Capital Group, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 4, 2010 (“Knight Letter”).

⁷ The events of May 6 are described more fully in the report of the staffs of the Commodity Futures Trading Commission (“CFTC”) and the Commission, titled Report of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, “Preliminary Findings Regarding the Market Events of May 6, 2010,” dated May 18, 2010.

The Commission also recognizes the importance of moving quickly to implement appropriate steps that could help limit potential harm from extreme price volatility. In this regard, it is pleased that FINRA began consulting with the Exchanges soon after May 6 in an effort to develop consistent circuit breaker rules that could be implemented on an expedited basis. FINRA and the Exchanges were able to reach agreement on a consensus approach, and, on May 18 and 19, 2010, all of the SROs filed proposed rule changes with the Commission.

These rules would require the Listing Markets to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets would notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape.⁸ Under the rules, once a Listing Market issues a trading pause, the other Exchanges would be required to pause trading in that security on their markets. FINRA's rule provides that it will similarly pause trading in the over-the-counter market by FINRA members, including alternative trading systems and market makers, when a Listing Market has issued a trading pause. In order to avoid interfering with existing procedures designed to facilitate orderly openings and closings, the trading pause requirements would apply only from 9:45 a.m. until 3:35 p.m.

⁸ When a trading pause is issued, the Listing Market will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Exchange Act. The single plan processor for all listed securities other than Nasdaq-listed securities is the Securities Industry Automation Corporation ("SIAC"). The single plan processor for Nasdaq-listed securities is Nasdaq.

At the end of the five-minute pause, the primary Listing Market would reopen trading in the security in accordance with its procedures for doing so. Trading would resume on the other Exchanges and in the over-the-counter market once trading has resumed on the primary Listing Market. In the event of a significant imbalance on the primary Listing Market at the end of a trading pause, the primary Listing Market may delay reopening. If the primary Listing Market has not reopened within ten minutes from the initiation of the trading pause, however, the other Exchanges may resume trading.⁹ In addition, FINRA's proposed rule permits over-the-counter market participants to resume trading only if trading has resumed on at least one Exchange.

FINRA has proposed that this rule change be implemented as a pilot that would end on December 10, 2010. The pilot period would enable the SROs and the Commission to assess the effect of the new rules on the marketplace. To initiate this pilot promptly, the proposed rules would be in effect only with respect to securities included in the S&P 500 Index. The Commission understands that FINRA expects to file an additional rule proposal in the near future to expand the scope of the pilot (for example, to include ETFs) within the pilot period.¹⁰

FINRA has requested that the Commission approve the proposed rule change on an accelerated basis, so that it may become operative as soon as practicable.

III. Discussion of Comments and Commission Findings

As of June 7, the Commission received 26 comment letters regarding the proposed rule changes, a substantial number of which were generally supportive. For

⁹ Some of the Nonlisting Markets, such as ISE, may not begin trading under their proposed rules until the Listing Market begins.

¹⁰ Any such rule proposals would be published for public comment in accordance with Section 19(b) of the Act.

example, an institutional investor stated that “on very rare occasions like May 6 a pause in trading is necessary to give market participants a chance to ‘reset’ and react appropriately to periods of dislocation. A reasonable trading halt will provide investors time to rationally assess the market events and commit liquidity at appropriate price levels.”¹¹ Another institutional investor strongly supported single stock circuit breakers, noting that “trading pauses may reduce market volatility resulting from temporary supply-demand imbalances without unduly interrupting price discovery.”¹²

The commenters also raised a variety of significant issues regarding the scope and operation of the circuit breakers. These include: (1) whether the circuit breakers should be expanded beyond S&P 500 stocks, particularly to exchange traded funds (“ETFs”) and the securities of other companies that were most severely affected on May 6;¹³ (2) the need for revised market-wide circuit breakers;¹⁴ and (3) operational issues regarding the circuit breakers, including the times when they should apply,¹⁵ the threshold events that

¹¹ See Vanguard Letter, supra note 6.

¹² See, e.g., BlackRock Letter, supra note 6.

¹³ See, e.g., ABA Letter, Accenture Letter, Angel Letter, Bean Letter, CCMP Letter, Credit Suisse Letter, IAG Letter, ICI Letter (expressing particular concern that if circuit breakers exist for individual securities contained in ETFs’ baskets, but not for the ETFs themselves, ETFs could again suffer disproportionately during a market event such as that of May 6), Summit Group Letter, TD Ameritrade Letter, and Vanguard Letter, supra note 6. One commenter also raised concerns about the potential consequences of circuit breakers being triggered simultaneously in many securities. See Angel Letter.

¹⁴ See, e.g., Angel Letter, supra note 6.

¹⁵ Suggestions included applying the circuit breakers for the entire trading day (i.e., including during the opening and closing periods). See, e.g., Angel Letter (noting the considerable trading activity and volatility that occurs during the first and last minutes of the trading day), Credit Suisse Letter (noting that in S&P 500 stocks 6% of the daily volume typically occurs from 9:30 a.m. to 9:45 a.m., and 18% occurs from 3:35 p.m. to 4:00 p.m., and that intra-day volatility tends to be highest during these time periods), IAG Letter, and TD Ameritrade Letter

should trigger them and the length of the pause,¹⁶ the procedures for resuming trading after a pause,¹⁷ and alternatives to the circuit breaker mechanism.¹⁸

The Commission believes that most if not all of these suggestions regarding potential ways to improve or perfect the scope and operation of the circuit breaker, or variations on them, were generally considered by FINRA and the Exchanges in developing consistent proposals that could be implemented in a reasonably short period of time and yet provide important benefits to the markets. The Commission recognizes that all of these issues warrant continued close consideration in the coming days and

(arguing that the many retail investor orders executed at market open should not be deprived the protections of the circuit breaker rules), supra note 6.

¹⁶ Suggestions included using a trigger threshold other than 10% or a pause period other than five minutes. See, e.g., Angel Letter (suggesting securities outside the S&P 500 may need a trigger threshold greater than 10%, and that the pause period may need to be longer than five or ten minutes), BlackRock Letter (arguing that the 10% circuit breaker level is too narrow, with their data showing it would have halted trading on only 58 of S&P 500 stocks on May 6, 2010, as opposed to 309 S&P 500 stocks on that day with a 5% circuit breaker), Credit Suisse Letter (suggesting a ten-minute halt period), Hofler Letter (suggesting that trigger thresholds vary commensurate with the stock's volatility, perhaps 5% for low beta stocks, 10% for medium beta stocks, and 30% for high beta stocks), Knight Letter (recommending a minimum trigger threshold of 15%, and the use of more sophisticated variables such as dollar price, average daily volume, and market capitalization), and Summit Group Letter (suggesting a longer pause period may be required to allow small investors to respond), supra note 6. Other commenters suggested using a trigger based on the national best bid or offer rather than a trade price. See, e.g., Molinete Letter, supra note 6.

¹⁷ Suggestions included precluding resumption of trading until the primary listing market has resolved any imbalances. See, e.g., BlackRock Letter, Credit Suisse Letter, Knight Letter and TD Ameritrade Letter, supra note 6. But see Harris Letter, supra note 6 (arguing that trade halt rules are anti-competitive because they encourage traders to submit their orders to the dominant exchanges so that they can participate in the call auctions that restart trading).

¹⁸ Suggestions included using a futures-style "limit down" mechanism rather than a full trading pause. See, e.g., Accenture Letter, Credit Suisse Letter, and Harris Letter (arguing that trading at prices that reverse the triggering price change should be permitted), supra note 6.

months, and it expects that FINRA will continue to consult with the Exchanges, the Commission and market participants on both the scope and operation of the circuit breakers.

With respect to the specific proposals under consideration here, however, the Commission has evaluated them based on whether they are consistent with the Act and whether they represent a useful first step that should improve the existing procedures for protecting investors and maintaining fair and orderly markets. It finds that the proposal meets these standards and therefore is approving it on an expedited basis.

The Commission agrees that consideration should be given by FINRA to whether the circuit breakers should be expanded to additional securities, but does not believe that there is a reason to delay the implementation of circuit breakers for S&P 500 stocks as a reasonable first step.¹⁹ Similarly, it agrees that the existing market-wide circuit breakers should be re-examined in light of current market conditions, but again does not believe that the initial stage of the circuit breaker pilot for individual stocks should be delayed pending that re-examination. With respect to operational issues regarding the circuit breakers, the Commission anticipates that FINRA will continue to evaluate these issues during the pilot period, and will propose any modifications to the circuit breakers that

¹⁹ In particular, the Commission acknowledges the concerns raised by the ICI, Blackrock, and others regarding the potential adverse consequences for ETFs if the circuit breakers cover individual securities that are held by an ETF but not the ETF itself. Those comment letters do not explicitly recommend delaying the launch of the pilot program with respect to the S&P 500, but they do urge that ETFs be added to the pilot as soon as possible. As noted below, the Commission anticipates that FINRA will be proposing amendments to the pilot to include ETFs.

may be necessary or appropriate before that period has ended, but does not believe that the first stage of the circuit breaker pilot should be delayed pending such consideration.²⁰

A few commenters expressed concern that the proposed circuit breakers could cause more harm than good. One, for example, suggested that the timeframe for implementation of the proposed rule change could be overly aggressive and lead to systems problems.²¹ The Commission understands that FINRA has been working closely with market participants to address implementation issues and facilitate a prompt yet workable roll-out of the circuit breaker pilot. No other comments were received indicating that exchanges, other trading venues or broker-dealers would not be able to fully implement the proposed circuit breakers within the timeframes established in the FINRA filing.

Other commenters questioned whether trading halts may exacerbate price volatility, and one stated that a trading halt on May 6 might have increased the order imbalance preventing an intraday recovery.²² Many other commenters, however,

²⁰ Commenters also raised a number of issues not directly related to the scope or operation of the trading pauses. One, for example, was the operation of the SROs' erroneous trade rules. See TD Ameritrade Letter, supra note 6. The Commission expects that FINRA and the Exchanges will continue to consult on these rules and anticipates they will submit proposals to clarify their operation in the near future.

²¹ See Molinete Letter, supra note 6.

²² See Harris Letter, supra note 6 (arguing that trading halts will attenuate volatility if liquidity or rationality arrives before markets return to normal operation, and positing that on May 6 many traders would have thought the price drop was due to fundamental valuation issues, in which case the order imbalance could have grown larger during the halt as traders drew incorrect inferences from the event). See also Molinete Letter, supra note 6 (suggesting the proposed rules may exacerbate market volatility rather than reduce it due to the interplay of stock circuit breaker rules, erroneous trade rules, and market participants' reactions to securities nearing the threshold). Another commenter urged the Commission to proceed cautiously in this area, expressing the view that "unencumbered market

believed that the events of May 6 demonstrate the need for trading pauses in individual stocks as a means to reduce excessive market volatility.²³ The Commission agrees that the proposed trading pauses are prudent measures that are appropriately being introduced on a pilot basis to address extraordinarily severe and harmful price volatility of the kind that occurred on May 6.

In sum, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA. In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,²⁴ which among other things requires that the rules of FINRA be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.²⁵

The Commission believes the proposed rule change, among other things, will establish consistent, market-wide trading pauses as a means to prevent potentially destabilizing price volatility and will thereby help promote the goals of investor protection and fair and orderly markets.

forces are preferable to the implementation of artificial trade frictions wherever possible.” See Knight Letter, supra note 6. The Commission will continue to consider these comments in evaluating the impact of the pilot.

²³ See, e.g., Accenture Letter, BlackRock Letter, Business Roundtable Letter, CCMP Letter, Credit Suisse Letter, ICI Letter, TD Ameritrade Letter, Vanguard Letter, supra note 6.

²⁴ 15 U.S.C. 78f(b)(5), 15 U.S.C. 78o-3(b)(6).

²⁵ In approving the proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

The Commission also finds good cause for approving the proposal before the 30th day after the publication of notice thereof in the Federal Register. FINRA has worked quickly and cooperatively with the Exchanges to devise a response to the events of May 6, 2010. The Commission received a number of comments on the proposal, the great majority of which were supportive of the proposed trading pause. The proposed rule change is being implemented on a pilot basis so that the Commission and FINRA can monitor the effects of the pilot on the marketplace and consider adjustments, as necessary. The Commission believes that accelerating approval of this proposal is appropriate as it will enable FINRA nearly immediately to begin coordinating trading pauses with the Exchanges in the event of sudden changes in the value of the S&P 500 Index stocks. In particular, the Commission believes that this proposed rule change should further the goals of investor protection and fair and orderly markets.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-FINRA-2010-025) be, and hereby is, approved on an accelerated basis.

By the Commission.

Elizabeth M. Murphy
Secretary

²⁶ 15 U.S.C. 78s(b)(2).