

# FINANCIAL INFORMATION FORUM

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## Via Electronic Delivery

December 23, 2013

Elizabeth M. Murphy  
Secretary, Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. SR-FINRA-2013-036 - Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to Wash Sale Transactions and FINRA Rule 5210 (Publication of Transactions and Quotations)

Dear Ms. Murphy,

The Financial Information Forum (FIF)<sup>1</sup> would like to take this opportunity to provide comments on Amendment No 1 of SR-FINRA-2013-036 and the Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to Wash Sale Transactions and FINRA Rule 5210 (“the filing”). In the filing, the Commission expresses concern that Amendment No. 1 “may not achieve its stated purpose of addressing the identified problems associated with respect to self-trades, and therefore believes questions remain as to whether FINRA’s proposal is consistent with the requirements of Section 15A(b)(6) of the Act.” The filing further discusses the “flexibility” that Amendment No. 1 would afford firms with respect to self-trade prevention.

While not incorporating all of FIF’s recommendations with respect to the original proposal, FIF believes that Amendment No. 1 strikes the right balance of addressing a pattern and practice of self –trading while acknowledging the implementation issues inherent in preventing every self-trade. Specifically, FINRA’s comment letter<sup>2</sup> on the original proposal states:

“Rather, a firm’s obligation is to review its trading activity to assess any self-trading in which the firm has engaged and, where necessary, take appropriate actions to prevent a pattern or practice of such activity from occurring going forward. This is the case because, as noted above, isolated self-trades are generally bona fide transactions; it is only when that type of trading activity accounts for a material percentage of the volume in a particular security that the self-trading activity results in potential misinformation that can adversely affect the price discovery process. FINRA is therefore most concerned with those firms that engage in a pattern or practice of effecting self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks.”

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<sup>1</sup> FIF ([www.fif.com](http://www.fif.com)) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

<sup>2</sup> See letter to Elizabeth M. Murphy, Secretary, Commission, from Brant K. Brown, FINRA, dated December 2, 2013.

FIF believes that the pattern and practices standard addresses the core problem identified in the original proposal which was to prevent self-trading that creates “the misimpression of active trading in a security that could adversely impact the price discovery process.” It is important to note that this pattern and practices standard is consistent with wash sale guidance from the futures market which focuses on such activity that occurs “on more than an incidental basis.”<sup>3</sup>

FIF’s comment letter<sup>4</sup> on the original proposal highlighted a number of reasons why flexibility is necessary. For example, there are instances where the same investment advisor may be on the opposite side of the market on behalf of different beneficial owners. Other scenarios include those where agency brokers are executing for other broker dealers or foreign brokers either on an omnibus/flip basis or in an average price account. In the case of the former, the agency broker does not know the ultimate beneficial owner and in the case of the latter, the execution and clearing broker does not know the beneficial owner until the post trade allocation is received. FIF would like to request that FINRA clarify in a Regulatory Notice that self-trades resulting from orders that originate from unrelated algorithms would not be deemed related merely based on the fact that the unrelated algorithms were being used by traders that reside on the same trading desk.

FIF believes that the flexibility afforded in Amendment No. 1 would address many of the concerns of FIF members while still meeting the goals of Section 15A(b)(6) of the Act that “requires that the rules of a registered securities association be designed, among other things, 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.” Allowing for legitimate trading activity while preventing a pattern and practice of self-trades, achieves this goal. For this reason, FIF recommends approving Amendment No. 1 of SR-FINRA-2013-036.

Regards,



Manisha Kimmel  
Executive Director  
Financial Information Forum

cc: The Honorable Mary Jo White, Chairman  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Daniel J. Gallagher, Commissioner  
The Honorable Kara M. Stein, Commissioner  
The Honorable Michael S. Piwowar, Commissioner

John Ramsay, Acting Director, Division of Trading and Markets  
James R. Burns, Deputy Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets

Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA  
Brant Brown, Associate General Counsel, FINRA

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<sup>3</sup> See CME Group RA1308-5, Market Regulation Advisory Notice re: Wash Sales Prohibited, November 19, 2013

<sup>4</sup> See letter from Manisha Kimmel, Executive Director, Financial Industry Forum, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013