



January 13, 2014

Via Electronic Mail (rule-comments@sec.gov)

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

Re: File No. SR-FINRA-2013-036: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; 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 Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the above-referenced proposed rule change filed by the Financial Industry Regulatory Authority (“FINRA”) with the Securities and Exchange Commission (“Commission”). The Commission has instituted proceedings to determine whether to approve or disapprove the proposed rule change.² SIFMA supports approval of the proposal as amended by Amendment No. 1, which FINRA filed with the Commission on December 2, 2013.

As we noted in our initial comment letter on this filing, SIFMA supports the goal of clarifying broker-dealers’ obligations for transactions that unintentionally result in no change in beneficial ownership and do not involve manipulative or fraudulent intent, what FINRA now defines as “self-trades.” In its initial proposal, FINRA identified a core concern, namely that self-trades have a distortive effect when they account for a material percentage of the consolidated trading volume in a security on a particular day. Through Amendment No. 1, FINRA has tailored the proposal in way that would address its core concern while maximizing implementation and compliance efficiencies. In particular, the proposed rule change now draws an important distinction between intentional wash trades and unintentional “self-trades.” The proposed rule change also establishes an obligation on broker-dealers to take steps to avoid

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See Securities Exchange Act Release No. 70966 (December 3, 2013), 78 FR 73900 (December 9, 2013).

engaging in self-trades, which should prevent self-trades from causing market distortions. As a result, the proposed rule change serves the interest of both regulators and market participants.

In its order instituting proceedings, the Commission staff raises concerns that the proposal as amended may not be consistent with applicable requirements of the Securities Exchange Act of 1934 (“Exchange Act”). In particular, the Commission staff states that, “[d]espite raising these serious concerns about self-trades, however, FINRA’s proposal would appear to provide substantial flexibility with respect to the required policies and procedures, such that a significant number of self-trades could continue to be publicly reported.”³ It is not clear, however, how FINRA’s amended proposal would allow a significant number of self-trades to continue to be reported. Under FINRA’s proposal, broker-dealers that engage in a pattern and practice of self-trades would be subject to disciplinary action under Rule 5210. The proposal as amended would be an effective deterrent for broker-dealers to address the occurrence of self-trades in a manner designed to prevent a significant number of self-trades from continuing to be publicly reported.

SIFMA also notes that broker-dealers generally take steps on their own to avoid self-trades because those trades are not in a firm’s economic interest. The only conceivable reason for a firm to intentionally engage in self-trading would be to engage in fraud and, as we noted in our initial comment letter on this filing,⁴ self-trading with fraudulent intent is already prohibited by Section 9(a)(1) of the Exchange Act, which FINRA is responsible for enforcing against its members. It is difficult to understand how FINRA’s sensible attempts to fill a regulatory gap through this proposal could be inconsistent with the Exchange Act.

* * *

SIFMA greatly appreciates the Commission’s consideration of the issues raised above in connection with FINRA’s proposed rule change, and we urge the Commission to approve the proposal as amended. If you have any questions, please contact either me (at 202-962-7383 or tlazo@sifma.org) or Timothy Cummings (at 212-313-1239 or tcummings@sifma.org).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel

³ *Id.* at 73904.

⁴ See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Elizabeth M. Murphy, Secretary, Commission dated October 4, 2013.

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cc: Mary Jo White, Chairman
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