

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71636; File No. SR-FINRA-2013-036)

February 28, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Wash Sale Transactions and FINRA Rule 5210 (Publication of Transactions and Quotations)

On August 15, 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to add Supplementary Material .02 to FINRA Rule 5210 (Publication of Transactions and Quotations) to emphasize that wash sale transactions are generally non-bona fide transactions and that members have an obligation to have policies and procedures in place to review their trading activity for, and prevent, wash sale transactions. The proposed rule change was published for comment in the Federal Register on September 4, 2013.³ The Commission received five comment letters on the proposed rule change.⁴ On October 4, 2013, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70276 (August 28, 2013), 78 FR 54502 (“Notice”).

⁴ See letter from Anonymous to Elizabeth M. Murphy, Secretary, Commission, dated September 9, 2013 (“Anonymous Letter”); letter from William A. Jacobson, Clinical Professor of Law, and Director, Cornell Securities Law Clinic, and Jimin Lee, Cornell University Law School, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (“Cornell Letter”); letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (“MFA Letter”); letter from Manisha Kimmel, Executive Director, Financial Industry Forum, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (“FIF Letter”); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated October 4, 2013 (“SIFMA Letter”).

Commission extended the time period for Commission action to December 3, 2013.⁵ On December 2, 2013, FINRA submitted a response to the comment letters⁶ and filed Amendment No. 1 to the proposed rule change. On December 3, 2013, the Commission published for comment both Amendment No. 1 and an order instituting proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ The Commission received three comment letters on the Notice of Filing of Amendment No. 1 and Order Instituting Proceedings.⁹ On February 24, 2014, FINRA submitted a response to the comment letters.¹⁰

Section 19(b)(2)(B)(ii)(I) of the Act provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving a proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change.¹¹ The Commission may extend the period for issuing an order approving or

⁵ See Securities Exchange Act Release No. 70613 (October 4, 2013), 78 FR 62784 (October 22, 2013).

⁶ See letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated December 2, 2013 (“FINRA Response 1”).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 70966 (December 3, 2013), 78 FR 73900 (December 9, 2013) (“Notice of Filing of Amendment No. 1 and Order Instituting Proceedings”).

⁹ See letter from Manisha Kimmel, Executive Director, Financial Industry Forum, to Elizabeth M. Murphy, Secretary, Commission, dated December 23, 2013 (“FIF Letter 2”); letter from Mary Ann Burns, Chief Operating Officer, Futures Industry Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 6, 2014 (“FIA PTG Letter”); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 13, 2014 (“SIFMA Letter 2”).

¹⁰ See letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 24, 2014 (“FINRA Response 2”).

¹¹ 15 U.S.C. 78s(b)(2)(B)(ii)(I).

disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for the determination.¹²

The proposed rule change was published for comment in the Federal Register on September 4, 2013. The 180th day after that publication is March 3, 2014.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as amended, so that it has sufficient time to consider the amended proposal, the issues raised in the comment letters on the amended proposal, and FINRA's response to the comments.

¹² 15 U.S.C. 78s(b)(2)(B)(ii)(II).

Accordingly, the Commission, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,¹³ designates May 2, 2014, as the date by which the Commission should either approve or disapprove the proposed rule change (SR-FINRA-2013-036).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹³ Id.

¹⁴ 17 CFR 200.30-3(a)(57).