Pilot Program to continue while other SROs adopt similar provisions and meaningful data can be compiled into a Pilot Report.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the 30-day operative delay is appropriate and will benefit market participants because immediate operability will allow the SPY Pilot Program to continue without interruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change 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
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–130. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–130 and should be submitted on or before December 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29259 Filed 12–6–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70966; File No. SR–FINRA–2013–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; 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)

December 3, 2013.

I. Introduction

On August 15, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Commission extended the time period for Commission action to December 3, 2013.[5] On December 2, 2013, FINRA submitted a response to the comment letters[6] and filed Amendment No. 1 to the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

FINRA initially proposed to add Supplementary Material .02 to FINRA Rule 5210 to address members' obligations with respect to certain securities transactions that involve no change in the beneficial ownership of those securities (referred to by FINRA as ''wash sales''), that are occurring and being disseminated to the public when there is no fraudulent or manipulative motivation for the trading activity at issue.[8] The proposed rule change explains that wash sales are generally non-bona fide transactions for purposes of Rule 5210 and that member firms must have policies and procedures that are reasonably designed to review their trading for wash sale transactions and to prevent such transactions from taking place. The proposed rule excludes from the definition of wash sale, transactions that do not result in a change of beneficial ownership, but that originate from unrelated algorithms or from separate and distinct trading strategies, provided these transactions are not undertaken for manipulative or other fraudulent purposes.[9] The proposed rule also initially provided that algorithms or trading strategies within the most discrete unit of an effective system of internal controls at a member firm are presumed to be related, and provided the following examples of the ''most discrete unit of an effective system of internal controls'' in the text of the rule: An aggregation unit, or individual trading desks within an aggregation unit separated by reasonable information barriers, as applicable.

Even if transactions resulting in no change of beneficial ownership were not undertaken with fraudulent or manipulative intent, FINRA believes these transactions can create a misimpression of the level of legitimate trading interest and activity in the security. In a number of instances, FINRA has found that these types of transactions can account for a material percentage (*e.g.,* over 5%) of the consolidated trading volume in a security on a particular day, which can distort the market information that is publicly available for that security.

FINRA states that the proposed rule change is intended to address wash sales occurring due to orders sent by a single algorithm or the interaction of multiple, related algorithms operated by a single firm. The proposal does not seek to prevent trading activity that results from separate trading strategies operating within a single firm. FINRA explains that, in many situations, what may seem to be wash sale activity occurs as a result of orders that originate from the same firm, but from separate or distinct underlying trading strategies (*e.g.,* separate ''desks,'' aggregation units, or algorithms) that have different—and sometimes competing—investment objectives and that deliberately do not interact with each other before generating orders to the market.

FINRA states that only those firms that engage in a pattern or practice of effecting wash sale transactions that result in a material percentage of the trading volume in a particular security would generally violate Rule 5210. The proposed rule change requires reasonable policies and procedures and would not, therefore, apply to isolated wash sale transactions, provided the firm's policies and procedures were reasonable.[10]

FINRA rules and the federal securities laws explicitly prohibit transactions in securities that do not result in a change of beneficial ownership of the securities when there is a fraudulent or manipulative purpose behind the trading activity.[11] In addition, FINRA Rule 5210 provides that no member may cause to be published or circulated any report of a securities transaction unless the member knows or has reason to believe that the transaction was a bona fide transaction. Supplementary Material .01 states that ''[i]t shall be deemed inconsistent with Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices) and 5210 (Publication of Transactions and Quotations) for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.'' FINRA represents that each FINRA member has an existing obligation to know, or have a basis to believe, that transactions in which it participates are bona fide. FINRA states that a member must review its trading activity to determine whether it is engaging in wash sale transactions and make changes to minimize their occurrence.

In response to the comments received,[12] FINRA filed Amendment No. 1 which would amend the proposed rule change in the following ways: (1) By replacing the term ''wash sale'' with ''self-trade;'' (2) by clarifying that self-trades are transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security, and are bona fide transactions; (3) by clarifying that the policies and procedures required by Rule 5210 must be reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades

[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'').

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

[6] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Brant K. Brown, FINRA, dated December 2, 2013 (''FINRA Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities transactions that do not result in a change of beneficial ownership of the securities and that are undertaken for the purpose of creating or inducing a false or misleading appearance of activity in the securities are already prohibited by existing securities laws and FINRA rules. *See* footnote 11, *infra.*

[9] FINRA notes that transactions that originate from unrelated algorithms or from separate or distinct trading strategies, trading desks, or aggregation units that are frequent or numerous may raise a presumption that such transactions were undertaken with the intent that they cross and may, therefore, be intended as manipulative or fraudulent.

[10] FINRA notes that the proposed rule change would not change member firms' existing obligations under NASD Rule 3010 and FINRA Rule 2010 with respect to wash sales.

[11] *See, e.g.,* 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b).

[12] *See supra* note 4.

resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks; (4) by clarifying that transactions resulting from orders that originate from unrelated algorithms or separate and distinct trading strategies within the same firm would generally be considered bona fide self-trades; and (5) by removing the examples from the proposed rule text of the types of algorithms or trading desks FINRA would presume to be related for purposes of Rule 5210.

III. Comment Letters

As noted above, the Commission received five comment letters regarding the proposed rule change [13] and FINRA responded to the comments.[14] One comment letter supported the proposal.[15] Three comment letters suggested modifications to the proposal.[16] One comment letter opposed the proposal.[17]

The commenter who supports the proposed rule change believes the proposed rule will enhance the integrity of the markets by requiring FINRA members to prevent unintended wash sales from being effected, which can otherwise result in misleading volume in a security.[18] Further, the commenter agrees that not all wash sales can be prohibited, so it believes that the exception in the proposed rule for wash sale transactions resulting from unrelated algorithms or from separate and distinct trading strategies is appropriate.[19]

The three commenters who also support the proposed rule change, but recommend modifications, believe that the proposal is too restrictive in certain respects.[20] One such commenter argues that the unintentional interaction of orders from one or more algorithms from a single firm should not be a violation of Rule 5210,[21] and that the proposed rule change may create ''a chilling effect on legitimate trading.'' [22] The commenter believes that there should not be a presumption that algorithms within the most discrete trading units are related as they may only share common oversight staff and the same trading unit, but have different trading strategies.[23] In its letter, FINRA responded by stating that there should continue to be a rebuttable presumption that algorithms within the most discrete unit of a firm's internal controls are related.[24] FINRA agrees that firms should be able to attempt to demonstrate their compliance and rebut such a presumption.[25] By referencing examples such as aggregation units or information barriers, FINRA stated that it did not intend to limit the rule to those examples. To avoid confusion, however, FINRA is proposing to remove the examples.[26]

The commenter also requests clarification from FINRA that algorithms are not considered ''related'' ''because they share common infrastructure, inputs such as market data or certain characteristics of a security, or had common quantitative researchers.'' [27] The commenter recommends that the proposed rule change make clear that unrelated trading algorithms would not incur liability,[28] and that the proposed rule change should be limited to equities executed and reported in the United States and not be applied to transactions that are not publicly reported.[29] Finally, the commenter supports the development by markets of a functionality to prevent the unintentional interaction of orders from one or more algorithms at a single firm, and believes that FINRA members should take reasonable steps to prevent such transactions from being publicly reported.[30] In its letter, FINRA responded by stating, among other things, that it does not believe the rule should be limited to equity securities as the same issues can arise in fixed-income transactions.[31]

Another commenter who supports modifications to the proposal disagrees with the presumption made in the proposed rule that algorithms are related if they are in the same aggregation unit or are not separated by information barriers within a firm.[32] The commenter argues that the proposed rule would require such algorithms to have the capability of knowing the orders submitted by other algorithms within the same aggregation unit (or not separated by information barriers) to thus prevent their orders from crossing, which the commenter believes would require ''a substantial development effort,'' and could negatively affect legitimate trading activity.[33] In addition, the commenter is concerned with the proposed requirement that firms have policies and procedures in place that are reasonably designed to review their trading activity for, and prevent, wash sale transactions. The commenter believes it would be a significant challenge for firms to prevent wash sale transactions from taking place, and notes that current wash sale surveillances are done on a post-trade basis.[34] The commenter argues that the better standard would be to require firms to monitor wash sale activity and implement controls ''where such activity demonstrates a pattern or practice of effecting wash sale transactions that result in a material percentage of the volume in a security.'' [35] Review of such activity would occur on a post-trade basis. The commenter also lists several examples where it believes that the prevention requirement in the proposed rule could negatively affect legitimate trading activity,[36] such as by prohibiting an investment advisor from placing orders for different beneficial owners on both sides of the market.[37] FINRA responded to this last point by noting that it does not intend to modify the rule to remove the word ''prevent'' as there are already exchanges that ''provide functionalities and tools to help firms prevent self-trades.'' [38]

The third commenter also recommends modifications to the proposal. First, the commenter states that the proposed rule change should refer to ''wash sales'' as ''self-trades'' instead, as it believes that the term ''wash sales'' connotes manipulation or fraudulent activity.[39] In response to the comment, FINRA has determined to change the use of the term ''wash sale'' to ''self-trade'' to avoid the implication that the types of trading activity addressed in the supplementary material are limited to trading that is undertaken with manipulative intent. FINRA defines ''self-trade'' for purposes

[13] *See supra* note 4.

[14] *See* FINRA Letter, *supra* note 6.

[15] *See* Cornell Letter, *supra* note 4.

[16] *See* MFA Letter, FIF Letter, and SIFMA Letter, *supra* note 4.

[17] *See* Anonymous Letter, *supra* note 4.

[18] *See* Cornell Letter, *supra* note 4, at 1.

[19] *See id.,* at 2.

[20] *See* MFA Letter; FIF Letter; SIFMA Letter; *supra* note 4.

[21] *See* MFA Letter, *supra* note 4, at 1.

[22] *See id.,* at 2.

[23] *See id.,* at 3.

[24] *See* FINRA Letter, *supra* note 6, at 5.

[25] *See id.*

[26] At the same time, FINRA believes it is unlikely that in such situations firms will be able to rebut the presumption that algorithms are ''related.'' FINRA also clarifies that, notwithstanding a presumption that such algorithms are ''related,'' firms are permitted to attempt to demonstrate that two or more algorithms within the most discrete unit of a firm's internal controls, such as an aggregation unit, are not ''related.'' *See id.*

[27] *See MFA Letter, supra* note 4, at 3.

[28] *See id.*

[29] *See* MFA Letter, *supra* note 4, at 2.

[30] *See* MFA Letter, *supra* note 4, at 3.

[31] *See* FINRA Letter, *supra* note 6, at 7.

[32] *See* FIF Letter, *supra* note 4, at 1.

[33] *See id.,* at 2.

[34] *See id.*

[35] *See id.*

[36] *See id.,* at 2–3.

[37] *See* FIF Letter, *supra* note 4, at 3.

[38] *See* FINRA Letter, *supra* note 6, at 7.

[39] *See* SIFMA Letter, *supra* note 4, at 2.

of the rule as a transaction in a security resulting from the unintentional interaction of orders originating from the same firm that involves no change in the beneficial ownership of the security.[40]

Additionally, the commenter recommends that FINRA amend the proposed rule change to instead require firms to have policies and procedures to monitor and prevent ''self-trades'' that constitute a large amount of trading volume in a security on a trading day.[41] Further, the commenter believes that the proposed rule text should be amended to state that only broker-dealers that engage in a pattern or practice of unintentional ''self-trades'' that result in a material amount of trading volume would be in violation of the proposed rule.[42] The commenter urges that a firm that engages in ''self-trades'' on isolated trading days should not be in violation of the proposed rule if the firm then detects and rectifies the issue and takes preventative measures.[43] FINRA responded to this and other commenters who discussed the material percentage matter by stating that it does not believe the rule text should be limited to those transactions that have a material effect on the market because, in many instances, firms will not be able to know the ultimate effect self-trading has as it occurs. Rather, each individual firm should review its trading activity to assess any self-trading in which the firm has engaged and, where necessary, take appropriate action to prevent a pattern or practice of such activity from occurring going forward.[44] FINRA reiterated its view, however, that isolated self-trades are generally bona fide transactions, and that 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.[45] FINRA stated that it is amending the proposed rule to specifically note that firms' obligations are to prevent a pattern or practice of self-trades, and not all self-trades.[46]

Finally, the commenter requests that FINRA remove the broad presumption that all algorithms and strategies within the most discrete unit of an effective system of internal controls are related. According to the commenter, algorithms within a discrete unit may be unrelated, but may still effect unintentional ''self-trades.'' [47] The commenter believes that the exclusion for unrelated algorithms should be a non-exclusive safe harbor allowing FINRA members to ''demonstrate their compliance by those means that best reflect their organization, rather than be limited to information barriers alone.'' [48] In its letter, FINRA stated that it believes that the presumption that algorithms within the most discrete unit of a firm's internal controls are related is valid, and that firms should be permitted to demonstrate their compliance and rebut this presumption.[49] FINRA proposed to remove from its proposed rule text the examples it provided of such related algorithms and trading strategies—specifically, those ''within an aggregation unit, or individual trading desks within an aggregation unit separated by reasonable information barriers, as applicable'' to avoid limiting the proposed rule to those examples.[50] However, FINRA believes that it is unlikely that a firm will be able to rebut the presumption that algorithms or trading strategies within an aggregation unit or individual trading desks within an aggregation unit separated by information barriers are in fact related.[51]

The commenter who opposes the proposal questions the effectiveness of the proposed rule change, noting that FINRA acknowledged in the proposal that certain wash sales cannot be prevented without explaining why this is the case.[52] The commenter expresses concern that FINRA would treat such activity as acceptable when FINRA has stated that it can result in a significant distortion of the trading volume in a security, which thereby misleads market participants.[53] The commenter argues that by not prohibiting this activity, the proposed rule change is contrary to the public interest,[54] and that firms that consistently engage in wash sale activity should be required to incur the cost to prevent it, as the commenter notes that wash sales that occur on a regular basis are not mistakes, but the ''predictable, direct result of conduct in which the [f]irms have chosen to engage.'' [55] The commenter suggests that FINRA revise its proposed rule to prohibit multiple algorithms within the same firm from effecting transactions with no change of beneficial ownership.[56] Finally, the commenter requests that FINRA explain how it currently, and in the future, will surveil for compliance with the proposed rule,[57] and notes that it is not clear in the proposal how FINRA will be able to conclude that these transactions were not carried out with manipulative or fraudulent intent.[58]

FINRA disagreed with the commenter, stating that the proposal will ''take affirmative steps to address trading activity that is generally permitted. . . . but that can potentially result in misinformation in the marketplace.'' [59] FINRA further stated that a reported trade with a firm on both sides in not per se illegitimate.[60] FINRA then noted, as stated in the proposal, that the proposed rule change is not meant to prevent all types of trading activity that result from separate strategies operating within a single firm.[61] FINRA explained that the proposal is meant to strike a balance between allowing a single firm to engage in separate trading activities and strategies (recognizing that this may result at times in self-trades) while ensuring firms have policies and procedures in place to identify and prevent patterns and practices of self-trades that may materially distort reported trade volume.[62]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2013–036 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) [63] of the Act to determine whether the proposed rule change, as amended, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the

[40] *See* FINRA Letter, *supra* note 4, at 5–6. FINRA notes, however, that the use of the term ''self-trade'' in this context does not change members' existing obligations with respect to the prevention of wash sales under NASD Rule 3010 and FINRA Rule 2010.

[41] The commenter suggests specifically: ''policies and procedures reasonably designed to monitor for and prevent the otherwise unintentional transactions that result in no change of beneficial ownership that constitutes a material percentage of consolidated trading volume in a subject security on a particular day.'' *See* SIFMA Letter, *supra* note 4, at 3.

[42] *See id.*

[43] *See id.*

[44] *See* FINRA Letter, *supra* note 6, at 6.

[45] *See id.*

[46] *See id.,* at 6–7.

[47] *See* SIFMA Letter, *supra* note 4, at 3.

[48] *See id.*

[49] *See* FINRA Letter, *supra* note 6, at 5.

[50] *See id.*

[51] *See id.*

[52] *See* Anonymous Letter, *supra* note 4, at 1.

[53] *See id.,* at 2.

[54] *See id.,* at 3.

[55] *See id.,* at 2.

[56] *See id.*

[57] *See* Anonymous Letter, *supra* note 4, at 1.

[58] *See id.,* at 2.

[59] *See* FINRA Letter, *supra* note 6, at 3.

[60] *See id.* at 4.

[61] *See id.*

[62] *See id.*

[63] 15 U.S.C. 78s(b)(2)(B).

Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as amended, to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B),[64] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15A(b)(6)[65] 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.

Currently, FINRA Rule 5210 prohibits a member from reporting a transaction unless it believes such transaction was bona fide, and Supplementary Material .01 clarifies that a member should not report a transaction unless such member knows or has reason to believe that the transaction is bona fide. Through the proposed addition of Supplemental Material .02, as amended, FINRA appears to seek to create a presumption that ''self-trades,'' defined as the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security, generally are bona fide. In fact, FINRA would expressly provide that transactions resulting from orders that originate from unrelated algorithms or separate and distinct trading strategies within the same firm would generally be considered bona fide self-trades. FINRA would require members to have policies and procedures reasonably designed to prevent a pattern or practice of self-trades resulting from orders originating from a single or related algorithms or trading desks. FINRA's rationale for this requirement is that, even if transactions are not undertaken with fraudulent or manipulative intent, they can create a misimpression of the level of legitimate trading interest and activity in a security, and could adversely affect the price discovery process. FINRA expresses concern that firms will continue to allow this type of trading to occur rather than incur the costs necessary to prevent it, even though significant misinformation may be disseminated to the marketplace.

Despite 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. Although not formally part of the proposed rule text, FINRA expresses the view in its filing that only those firms that engage in a pattern or practice of effecting self-trades that result in a material percentage of the trading volume in a particular security would generally violate Rule 5210. In addition, the policies and procedures requirement would not apply at all to orders originating from ''unrelated'' algorithms or ''separate and distinct'' trading strategies, which are broad terms for which little guidance is provided by FINRA. Accordingly, the Commission is concerned that the proposal 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.

In addition, the Commission notes that FINRA filed Amendment No. 1 and its response to comments on December 2, 2013, one day before the Commission was required to act on the proposed rule change. Although Amendment No. 1 seeks to address a number of concerns expressed by commenters, the Commission believes the institution of proceedings is appropriate to allow the Commission and commenters time to assess whether the amended proposal is consistent with the Act.

V. Procedures: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any others they may have identified with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 15A(b)(6) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[66]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 30, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 13, 2014.

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
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–036. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[64] 15 U.S.C. 78s(b)(2)(B).

[65] 15 U.S.C. 78*o*–3(b)(6).

[66] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

available publicly. All submissions should refer to File Number SR–FINRA–2013–036 and should be submitted on or before December 30, 2013. Rebuttal comments should be submitted by January 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29257 Filed 12–6–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70971; File No. SR–NYSE–2013–68]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Section 907.00 of the Listed Company Manual To Expand the Suite of Complimentary Products and Services That Are Offered to Listed Companies

December 3, 2013.

I. Introduction

On October 1, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 amending Section 907.00 of the Listed Company Manual (''Manual'') to expand the suite of complimentary products and services that are offered to all listed issuers and to certain current and newly listed issuers. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Section 907.00 of the Manual to expand the suite of complimentary products and services that it offers to certain listed companies. Under current Exchange rules, all listed issuers receive some complimentary products and services through NYSE Market Access Center; however, certain tiers of currently listed issuers and newly listed issuers receive additional products and services. As specifically set forth in Section 907.00 of the Manual, the Exchange offers products and services in the following general categories to certain current and newly listed companies: market surveillance, web-hosting, market analytics and news distribution. According to the NYSE, the available products and services have approximate commercial values ranging from $10,000 to $45,000 annually.[5] The complimentary products and services are offered to companies under a tiered system based on shares issued and outstanding for currently listed companies, or global market value for newly listed companies.

With respect to currently listed companies, companies that have more than 270 million shares issued and outstanding (a ''Tier One Company'') are offered (i) a choice of market surveillance or market analytics products and services, and (ii) web-hosting products and services on a complimentary basis. Companies that have between 160 million and 269.9 million shares issued and outstanding (a ''Tier Two Company'') are offered a choice of market analytics or web-hosting products and services.

For newly listed companies, the Exchange offers different product and service options for an initial period of two years based on such company's global market value. A company with a global market value of $400 million or more (a ''Tier A Company'') is offered (i) a choice of market surveillance products and services for a period of twelve months or market analytics products and services for a period of 24 months, and (ii) web-hosting and news distribution products and services for a period of 24 months. Newly-listed companies with a global market value of less than $400 million (a ''Tier B Company'') are offered web-hosting and news distribution products and services for a period of 24 months.

The Exchange has proposed to amend Section 907.00 of the Manual to add three additional categories of complimentary products and services that will be offered to listed companies in the various tiers as described below. Specifically, the Exchange proposes to include corporate governance tools and advisory services (the ''Enhanced Package''), which the Exchange states has a commercial value of approximately $45,000 annually, and corporate governance tools (the ''Basic Package''), which the Exchange states has a commercial value of approximately $20,000 annually, to the list of complimentary products and services offered to certain listed companies. Further, the Exchange has proposed to offer data room services and virtual investor relation tools,[6] which the Exchange states has a commercial value of approximately $15,000–$20,000 annually, to the list of complimentary products and services offered to all listed companies. The Enhanced Package will be offered to Tier One Companies as a third alternative to the market surveillance and market analytics products they are already offered. The Basic Package will be offered to Tier Two Companies as a third alternative to the market analytics and web-hosting products they are already offered. The Basic Package also will be offered to Tier A Companies as a second alternative to the market analytics products and services that are offered for a 24-month period. The data room services and virtual investor relation tools will be offered to all listed companies on an annual basis. The Exchange has proposed to offer these tools through an affiliated service provider and may engage additional third-party providers in the future.

The Basic Package, offered to Tier Two and Tier A Companies, will consist of a combination of governance, risk, compliance and board tools for company directors and executives. In its filing, the Exchange noted that it expects that these tools will provide generic, easily implemented corporate governance advice and/or educational tools that are applicable to a wide range of listed companies.

The Enhanced Package, offered to Tier One Companies, will offer the same tools as the Basic Package but will also include access to advisory services. In its filing, the NYSE noted that such advisory services may include ongoing, periodic review of a company's corporate governance policies as well as benchmarking such polices against a company's peer group. In support of this change, the Exchange stated that the

[67] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 70628 (Oct. 8, 2013), 78 FR 62889 (''Notice'').

[5] Section 907.00 of the Manual currently states that the market surveillance products and services have a commercial value of approximately $45,000 annually, web-hosting products and services have a commercial value of approximately $12,000–$16,000 annually, market analytics products and services have a commercial value of approximately $20,000 annually and news distribution products and services have a commercial value of approximately $10,000 annually.

[6] In its filing, the NYSE explained that a data room is a password-protected Web site used for document storage. It is typically used to store due diligence materials to be reviewed in connection with transactional activity. Virtual investor relations tools are Web sites used to present roadshows and other investor presentations on a short-term basis, typically in connection with a specific transaction.