

December 2, 2013

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

**Re: File No. SR-FINRA-2013-036**

Dear Ms. Murphy:

As a courtesy to commenters, attached is Amendment No. 1 to the above-referenced proposed rule change that was filed with the Securities and Exchange Commission earlier today. FINRA also submitted a response to the comments raised.

If you have any questions, please contact me at (202) 728-6927.

Sincerely,



Brant K. Brown  
Associate General Counsel

Attachment

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of 6

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. SR -2013 - 036

Amendment No. (req. for Amendments \*) 1

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \*  Amendment \*  Withdrawal  Section 19(b)(2) \*  Section 19(b)(3)(A) \*  Section 19(b)(3)(B) \*

Pilot  Extension of Time Period for Commission Action \*

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Description

[Empty description box]

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

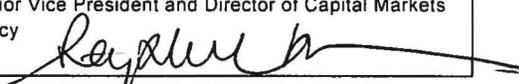
First Name \* Brant Last Name \* Brown  
Title \* Associate General Counsel  
E-mail \* brant.brown@finra.org  
Telephone \* (202) 728-6927 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/02/2013  
By Stephanie Dumont  
(Name \*)

(Title \*)  
Senior Vice President and Director of Capital Markets  
Policy  
  
Stephanie Dumont

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On August 15, 2013, FINRA filed with the Securities and Exchange Commission (“SEC”) SR-FINRA-2013-036, a proposed rule change to adopt Supplementary Material .02 to FINRA Rule 5210 to address transactions in a security that involve no change in the beneficial ownership of the security and members’ obligation to have policies and procedures in place to review their trading activity for, and prevent, these transactions.

On September 4, 2013, the SEC published the proposed rule change for comment in the Federal Register.<sup>1</sup> The comment period closed on September 25, 2013. The SEC received five comment letters in response to the proposed rule change.

FINRA is submitting by separate letter its response to comments on the proposed rule change contemporaneously with this Partial Amendment No. 1. In response to comments received by the SEC, FINRA is proposing to amend the proposed rule change as follows:

1. Replacing the term “wash sale” with “self-trade” and 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;
2. Clarifying that the policies and procedures required by the rule must be reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks; and
3. Removing the examples from the rule text on the types of algorithms or trading desks FINRA would presume to be related for purposes of the rule.

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<sup>1</sup> Securities Exchange Act Release No. 70276 (August 28, 2013), 78 FR 54502 (September 4, 2013) (Notice of Filing of File No. SR-FINRA-2013-036).

**EXHIBIT 4**

Exhibit 4 shows the changes proposed in this Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Amendment No. 1 appear underlined; proposed deletions appear in brackets.

\* \* \* \* \*

**5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES**

\* \* \* \* \*

**5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES**

**5210. Publication of Transactions and Quotations**

No Change.

**••• Supplementary Material: -----**

**.01 Manipulative and Deceptive Quotations.** No Change.

**.02 [Wash Sales] Self-Trades.** 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[, commonly known as “wash sales,”] (“self-trades”) generally are [non-]bona fide transactions for purposes of Rule 5210; however, [.] [M]members must have policies and procedures in place that are reasonably designed to review their trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks [wash sale transactions]. 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 [transactions and would not be considered wash sales, even if the transactions did not result in a change of

beneficial ownership, unless the transactions were undertaken for manipulative or other fraudulent purposes]. 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 [(e.g., within an aggregation unit, or individual trading desks within an aggregation unit separated by reasonable information barriers, as applicable)]. This Supplementary Material does not change members' existing obligations under NASD Rule 3010 and FINRA Rule 2010.

## EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

### 5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

\* \* \* \* \*

### 5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES

#### 5210. Publication of Transactions and Quotations

No Change.

#### ••• Supplementary Material: -----

**.01 Manipulative and Deceptive Quotations.** No Change.

**.02 Self-Trades.** 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 (“self-trades”) generally are bona fide transactions for purposes of Rule 5210; however, members must have policies and procedures in place that are reasonably designed to review their trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. 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. 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. This Supplementary Material does not change members’ existing obligations under NASD Rule 3010 and FINRA Rule 2010.