to the Exchange; NYSE Arca, Inc.; CBOE; C2 Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ; Phlx; BX; BATS Exchange, Inc. (''BATS''); and Miami International Securities Exchange LLC. Because market data users can thus find suitable substitutes for most proprietary market data products,[22] a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS, and Direct Edge. Two new options exchanges have been approved by the SEC in the last two years alone.[23]

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary options data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

*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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[24] of the Act and subparagraph (f)(2) of Rule 19b–4[25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)[26] 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–NYSEMKT–2014–40 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR–NYSEMKT–2014–40. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2014–40 and should be submitted on or before May 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–10389 Filed 5–6–14; 8:45 am]

**BILLING CODE 8011–01–P**

[22] *See supra* note 18.

[23] *See supra* note 21.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72067; File No. SR–FINRA–2013–036]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Self-Trades and FINRA Rule 5210 (Publication of Transactions and Quotations) May 1, 2014.

## 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 comment in the **Federal Register** on September 4, 2013.[3] The Commission

[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'').

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. 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 Act [7] 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] This order approves the proposed rule change, as modified by Amendment No. 1.

[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''). For a discussion of these comment letters, *see* Notice of Filing of Amendment No. 1 and Order Instituting Proceedings, *infra* note 8, at 73902–73903.

[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'').

## II. Description of the Proposal, as Modified by Amendment No. 1

FINRA proposes to add Supplementary Material .02 to FINRA Rule 5210 to address members' obligations with respect to certain securities transactions that result from the unintentional interaction of orders originating from the same firm (now referred to by FINRA as ''self-trades''), that involve no change in the beneficial ownership of the security.[11] The proposed rule change requires FINRA members to 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 from related algorithms or trading desks. Additionally, the proposed rule change states that transactions resulting from orders that originate from unrelated algorithms or from separate and distinct trading strategies within the same firm would generally be considered bona fide self-trades.[12] The proposed rule change also establishes a presumption that algorithms or trading strategies within the most discrete unit of an effective system of internal controls at a member firm are related.

The proposed rule change is intended to address self-trades that occur as a result of orders sent by a single algorithm or the interaction of multiple, related algorithms operated by a single firm. 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. In FINRA's view, even if not purposeful, these transactions can create the misimpression of active trading in a security that could adversely affect the price discovery process. Furthermore, FINRA believes that, in these instances, firms will continue to allow this type of trading to occur rather than incur the costs necessary to prevent it, even though the trading activity may result in instances where significant misinformation is disseminated to the market. The proposed rule change requires members to adopt reasonable policies and procedures to prohibit such activity and would not, therefore, apply to isolated self-trades resulting from orders originating from a single algorithm or trading desk, or from related algorithms or trading desks, provided the firm's policies and procedures were reasonably designed.[13]

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.[14] 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.'' Thus, each FINRA member has an existing obligation to know, or have a basis to believe, that transactions in which it participates are bona fide.

## III. Discussion and Commission Findings

The Commission has carefully considered the proposal, the comments submitted, and FINRA's response to the comments, and believes that FINRA has responded adequately to the concerns raised by the commenters and by the Commission in the Order Instituting Proceedings. For the reasons discussed below, the Commission finds that the proposal is consistent with the

[11] 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* note 14, *infra.*

The Commission notes that the original proposal addressed wash sale transactions. Subsequently, FINRA filed Amendment No. 1, which clarified that the focus of the proposal was self-trades, rather than wash sale transactions.

[12] 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. *See* Notice, *supra* note 3, at 54503.

[13] The proposed rule change would not change member firms' existing obligations under NASD Rule 3010 and FINRA Rule 2010 with respect to wash sales. *See* Notice, *supra* note 3, at 54503.

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

requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal requires firms to adopt policies and procedures reasonably designed to prevent a pattern or practice of certain types of self-trades, which could create the misimpression of active trading and adversely affect the price discovery process. Thus, the proposed rule change is designed to improve the quality of transaction information that is disseminated to the public.

As noted above, the Commission received three comment letters in response to the Notice of Filing of Amendment No. 1 and Order Instituting Proceedings [17] and FINRA responded to the comments.[18] Two comment letters supported the approval of the proposed rule change, as amended.[19] The third comment letter is generally supportive, but requests modifications to the proposal.[20]

Two commenters support FINRA's amendment to focus the proposed rule change on ''self-trades,'' rather than ''wash sales.'' [21] One commenter supports FINRA's replacement of the term ''wash sale'' with ''self-trade,'' explaining that, unlike wash sale transactions, self-trades can be inadvertent and bona fide.[22] The commenter believes that this change in terminology recognizes that automated trading can result in coincidental self-trades from independently initiated orders that lack the requisite fraudulent or manipulative intent to be classified as ''wash sales.'' [23] The other commenter also supports the distinction and states that the proposed rule better addresses the concern raised in the original proposal—that self-trades can distort market information regarding a security—by creating an obligation for broker-dealers to avoid transactions that unintentionally result in no change in beneficial ownership and do not involve manipulative or fraudulent intent.[24]

Because the proposal is intended to address the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security and can lead to the dissemination of misinformation to the marketplace and the public, the Commission believes that modifying the focus of the proposed rule from ''wash sales'' to ''self-trades'' appropriately tailors the scope of the proposed rule and addresses potential confusion.

Two commenters support FINRA's requirement that members have policies and procedures in place 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.[25] One commenter states, ''Amendment No. 1 strikes the right balance of addressing a pattern and [sic] practice of self-trading while acknowledging the implementation issues inherent in preventing every self-trade.'' [26] This commenter believes that the pattern or practice standard addresses the problem outlined in the proposal of self-trades that distort the market information that is publicly available for a security.[27] The other commenter believes that the pattern or practice standard would deter broker-dealers from permitting large numbers of self-trades from being publicly reported.[28]

In its response, FINRA explains that the proposed supplementary material is primarily designed to address instances where self-trades account for a significant percent of volume in a security, which may affect price discovery.[29] FINRA explains that its proposed policies and procedures requirement addresses its concern that self-trades by a single algorithm or trading desk, or related algorithms or trading desks, may not reflect genuine trading interest, especially when there is a pattern or practice of such trading behavior.[30] FINRA believes that its proposal will allow FINRA to more effectively deter self-trading that, while not involving fraudulent or manipulative intent, is disruptive to the marketplace.[31]

Tailoring the limitation in the supplementary material to a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks, would not prohibit isolated instances of self-trading, yet would address more systematic self-trading that could result in the dissemination of misleading trading information to the marketplace. The proposal would provide FINRA with an enforceable rule specifically targeting activity that rises to the level of a pattern or practice of such self-trading, and requires firms to have policies and procedures reasonably designed to review their trading activity for, and prevent, the same. The Commission encourages FINRA to surveil the efficacy of these policies and procedures in reducing the volume of self-trading, and to consider further refinement of the rule if warranted.

One commenter requests that FINRA clarify its distinction between bona fide and non-bona fide self-trades.[32] This commenter notes that the proposed rule states that self-trades that result from orders originating from unrelated algorithms or separate and distinct trading strategies within the same firm are generally bona fide, but that FINRA also stated in the Notice that such transactions, if frequent or regular, may raise a presumption of manipulative or fraudulent intent.[33] The commenter requests clarification of FINRA's views on frequent self-trades resulting from unrelated trading strategies, and asserts that it would be ''inappropriate and inaccurate to infer their relatedness or the intent to self-trade based solely on a volume threshold.'' [34] Instead, the commenter recommends that FINRA adopt a wash sale approach described by the Chicago Mercantile Exchange Group (''CME'') in a recent CME Market Regulation Advisory Notice to determine whether trades between unrelated algorithms are bona fide.[35] The commenter explains that the CME Market Regulation Advisory Notice states that orders entered by an independent trader in good faith for the purpose of executing bona fide

[15] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78*o*-3(b)(6).

[17] *See* FIF Letter 2; FIA PTG Letter; SIFMA Letter 2, *supra* note 9. For a discussion of the comment letters received by the Commission in response to the Notice, *see* Notice of Filing of Amendment No. 1 and Order Instituting Proceedings, *supra* note 8, at 73902–73903.

[18] *See* FINRA Response 2, *supra* note 10.

[19] *See* FIF Letter 2; SIFMA Letter 2, *supra* note 9.

[20] *See* FIA PTG Letter, *supra* note 9.

[21] *See* FIA PTG Letter, *supra* note 9, at 2; SIFMA Letter 2, *supra* note 9, at 1.

[22] *See* FIA PTG Letter, *supra* note 9, at 2.

[23] *Id.*

[24] *See* SIFMA Letter 2, *supra* note 9, at 1–2.

[25] *See* FIF Letter 2, *supra* note 9, at 1–2; SIFMA Letter 2, *supra* note 9, at 2. FIA PTG also supports FINRA's amended policies and procedures requirement, but believes the requirement needs to be clarified. *See* FIA PTG Letter, *supra* note 9, at 2, 7.

[26] *See* FIF Letter 2, *supra* note 9, at 1.

[27] *See* FIF Letter 2, at 2, *supra* note 9.

[28] *See* SIFMA Letter 2, *supra* note 9, at 2.

[29] *See* FINRA Response 2, *supra* note 10, at 3.

[30] *Id.*

[31] *Id.*

[32] *See* FIA PTG Letter, *supra* note 9, at 3–4.

[33] *Id.*

[34] *Id.* at 4.

[35] *Id.*

transactions, that are not prearranged and are entered without knowledge of the other trader's order, will not violate the CME's prohibition on wash trades.[36] Similarly, another commenter requests that FINRA issue a Regulatory Notice that states that self-trades resulting from orders originating from unrelated algorithms would not be deemed related based solely on the fact that the unrelated algorithms were being used by traders on the same trading desk.[37]

In its response, FINRA reiterates its position that, although self-trades between unrelated trading desks or algorithms are generally bona fide, frequent self-trades may raise concerns that they are intentional or undertaken with manipulative or fraudulent intent.[38] FINRA also distinguishes its proposal's goals from those addressed by the CME Market Regulation Advisory Notice.[39] FINRA notes that its proposal is meant to address unintentional self-trading activity—not the regulation of wash sale transactions.[40] Further, unlike the CME Market Regulation Advisory Notice, FINRA states that its proposal ''imposes specific additional obligations on firms that engage in algorithmic activity or use multiple algorithms or trading desks as part of their trading activity.'' [41] The proposal is intended to curb unintentional self-trades that result in the dissemination of misinformation to the public and negatively affect price discovery.

One commenter states that FINRA's amended proposal would continue to establish a rebuttable presumption that algorithms within discrete units of a firm's internal controls are related, regardless of comments that assert that ''discrete units of a firm's internal controls are established for reasons wholly separate from whether the trading strategies and algorithms within that unit are related.'' [42] The commenter believes that the proposal causes confusion over whether the presumption can be overcome.[43] The commenter requests that FINRA provide clear guidance on the standards that would rebut the presumption of relatedness.[44] In its response, FINRA explains that the presumption is based on the fact that generally firms have the same people supervising algorithms or trading desks within a discrete unit, and that such algorithms or trading desks communicate with each other.[45] FINRA states, however, that firms would be able to rebut this presumption if they can show, for example, that different personnel are responsible for supervising the algorithms or trading desks.[46] The Commission believes that FINRA has taken a reasonable position with respect to this presumption and provided appropriate guidance with respect to how it might be rebutted.

One commenter believes that the proposed rule lacks clarity regarding the types of self-trading for which firms would need to review, and prevent, patterns or practices.[47] The commenter requested more specificity from FINRA about the amount of activity that would constitute a pattern or practice.[48] In response to the commenter, FINRA states that it ''declines to establish a specific threshold below which a firm could continue to engage in unlimited self-trading.'' [49] FINRA reiterates that isolated self-trades are generally bona fide, but that a practice of self-trading over time ''whether of material volume, regularity, or both,'' would indicate a pattern or practice.[50] The Commission believes that the proposed rule change, as amended provides sufficient clarity to member firms, and notes that the concept of a pattern or practice is used in a number of FINRA rules.[51]

In the Notice of Filing of Amendment No. 1 and Order Instituting Proceedings, the Commission expressed concern that the proposed rule, as amended, would continue to allow a significant number of self-trades to be publicly reported.[52] Specifically, the Commission noted FINRA's statement 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 the proposed rule, as well as FINRA's proposed requirement that its members have policies and procedures to prevent, specifically, a pattern or practice of self-trades from orders originating from a single or related algorithms or trading desks.[53] The Commission stated that the proposed rule would appear to provide substantial flexibility regarding the required policies and procedures, such that a significant number of self-trades could continue to be publicly reported, as orders originating from ''unrelated'' algorithms or ''separate and distinct'' trading strategies would not be subject to the proposed rule, and because only self-trades amounting to a material percentage of a security's trading volume would constitute violative activity.[54] The Commission also noted that FINRA provided little guidance on its interpretations of what would constitute ''unrelated'' algorithms or ''separate and distinct'' trading strategies.[55]

In its response, FINRA explained that the proposed rule is designed to strike a balance between recognizing that self-trades may reflect genuine trading interest and therefore be bona fide, and imposing an obligation on firms to prevent a pattern or practice of self-trading that rises to the level of disruptive activity. While self-trades may be unintentional, if the number of self-trades by a firm constitutes a material percentage of the volume in a security, it could have a negative effect on the price discovery process.[56] FINRA explained that the proposed rule would allow it to better pursue self-trading violations because the proposed rule specifically addresses self-trades, allowing FINRA to charge a firm with a violation of the proposed rule for such conduct, in addition to a supervisory violation, and establishing a new requirement for firms to monitor and prevent self-trading activity from a single algorithm or trading desk, or related algorithms or trading desks.[57]

In response to the concern about a lack of guidance on the types of self-trades that would violate the proposed rule, FINRA stated its understanding that discrete units within a firm's system of internal controls typically do not coordinate their trading strategies or objectives with other discrete units of internal controls, but that multiple algorithms or trading desks within a discrete unit are permitted to communicate or are under the supervision of the same personnel and thus, are presumed to be related.[58] FINRA stated that the proposed rule permits firms to rebut this presumption, suggesting that a firm could demonstrate

[36] *Id.* In its comment letter, FIF noted that it believes that FINRA's pattern and practices standard is consistent with the guidance provided in the CME Market Regulation Advisory Notice. *See* FIF Letter 2, *supra* note 9, at 2.

[37] *See* FIF Letter 2, *supra* note 9, at 2.

[38] *See* FINRA Response 2, *supra* note 10, at 4.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *See* FIA PTG Letter, *supra* note 9, at 5.

[43] *Id.,* at 6.

[44] *Id.*

[45] *See* FINRA Response 2, *supra* note 10, at 4.

[46] *Id.*

[47] *See* FIA PTG Letter, *supra* note 9, at 7.

[48] *Id.*

[49] *See* FINRA Response 2, *supra* note 10, at 5.

[50] *Id.*

[51] *See, e.g.,* FINRA Rule 6282, Supplementary Material .02(b).

[52] *See* Notice of Filing of Amendment No. 1 and Order Instituting Proceedings, *supra* note 8, at 73904.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *See* FINRA Response 2, *supra* note 10, at 2–3.

[57] *Id.*

[58] *Id.* at 4.

that ''related'' algorithms or trading desks are in fact independent or are subject to supervision or management by separate personnel.[59] FINRA declined to specify a volume of trading that would constitute a ''pattern or practice'' for purposes of the proposed rule, explaining that it preferred not to ''establish a specific threshold below which a firm could continue to engage in unlimited self-trading,'' [60] but urged firms to examine their self-trading for volume and frequency, which could indicate a pattern or practice.[61]

Finally, FINRA noted that wash sales will continue to be subject to the same provisions in the federal securities laws and FINRA rules.[62] The Commission believes that FINRA has sufficiently addressed the Commission's concerns. For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[63] that the proposed rule change (SR–FINRA–2013–036), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–10384 Filed 5–6–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. S7–40–10; Release No. 72079]**

## Securities Exchange Act of 1934; In the Matter of Exchange Act Rule 13p–1 and Form SD; Order Issuing Stay

May 2, 2014.

On April 14, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *National Association of Manufacturers, et al.* v. *SEC, et al.,* No. 13–5252 (D.C. Cir. April 14, 2014). That case involved a challenge to Exchange Act Rule 13p–1 and Form SD.[1] The rule and form were adopted pursuant to Section 13(p) of the Securities Exchange Act of 1934, which was added by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] The Court of Appeals rejected all of the challenges to the rule based on the Administrative Procedure Act and the Exchange Act. The Court of Appeals, however, concluded that Section 13(p) and Rule 13p–1 ''violate the First Amendment to the extent the statute and rule require regulated entities to report to the Commission and to state on their Web site that any of their products have 'not been found to be 'DRC conflict free.' '' '' [3] In so concluding, the Court of Appeals specifically noted that there was no ''First Amendment objection to any other aspect of the conflict minerals report or required disclosures.'' [4] In an order issued concurrently with the decision, the Court of Appeals withheld the issuance of its mandate until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. As a result, the earliest date on which the Court of Appeals's mandate is likely to issue is June 5, 2014. Under Rule 13p–1, the first reports are due to be filed on June 2, 2014.

Section 705 of the Administrative Procedure Act provides that an agency may postpone the effective date of an action taken by it pending judicial review when it finds that ''justice so requires.'' 5 U.S.C. 705. In light of the Court of Appeals's decision, the Commission finds that it is consistent with what justice requires to stay the effective date for compliance with those portions of Rule 13p–1 and Form SD that would require the statements by issuers that the Court of Appeals held would violate the First Amendment. Among other things, a stay of those portions of the rule avoids the risk of First Amendment harm pending further proceedings. Moreover, limiting the stay to those portions of the rule requiring the disclosures that the Court of Appeals held would impinge on issuers' First Amendment rights furthers the public's interest in having issuers comply with the remainder of the rule, which was mandated by Congress in Section 1502 and upheld by the Court of Appeals.

Accordingly, it is *ordered,* pursuant to Section 705 of the Administrative Procedure Act, that the effective date for compliance with those portions of Rule 13p–1 and Form SD subject to the Court of Appeals's constitutional holding are hereby stayed pending the completion of judicial review, at which point the stay will terminate. For more detailed guidance regarding compliance, issuers should refer to the statement issued by the staff on April 29, 2014, and any further guidance subsequently provided.[5]

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–10437 Filed 5–6–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[ File No. 500–1]**

## In the Matter of: Genosys, Inc.: Order of Suspension of Trading

May 5, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GeNOsys, Inc. (''Genosys'') because Genosys has not submitted the following required periodic filings:

| Filing | Due date |
|---|---|
| Annual report on Form 10–K for period ended Nov. 30, 2011 | February 28, 2012. |
| Quarterly report on Form 10–Q for period ended Feb. 29, 2012 | April 16, 2012. |
| Quarterly report on Form 10–Q for period ended May 31, 2012 | July 16, 2012. |
| Quarterly report on Form 10–Q for period ended August 31, 2012 | October 15, 2012. |
| Annual report on Form 10–K for period ended Nov. 30, 2012 | February 28, 2013. |
| Quarterly report on Form 10–Q for period ended Feb. 28, 2013 | April 15, 2013. |
| Quarterly report on Form 10–Q for period ended May 31, 2013 | July 15, 2013. |
| Quarterly report on Form 10–Q for period ended August 31, 2013 | October 15, 2013. |
| Annual report on Form 10–K for period ended Nov. 30, 2013 | February 28, 2014. |

[59] *Id.*

[60] *Id.* at 5.

[61] *Id.*

[62] *See* FINRA Response 2, *supra* note 10, at 3.

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

[64] 17 CFR 200.30–3(a)(12).

[1] *Conflict Minerals,* 77 FR 56,274 (Sept. 12, 2012) (codified at 17 CFR 240, 249b).

[2] Public Law 111–203, 124 Stat. 1376, 2213 (2010).

[3] Slip. Op. at 23.

[4] Slip. Op. at 17 n.8.

[5] On April 30, 2014, the National Association of Manufacturers, the Chamber of Commerce, and Business Roundtable filed a motion requesting that the Commission stay Rule 13p–1 in its entirety. In accordance with the above order, the motion is denied.