

# **The SEC Solicits Comments on a Proposed Rule Change Relating to Wash Sale Transactions and FINRA Rule 5210**

On August 15, 2013, FINRA filed with the SEC a proposal to add supplementary material to FINRA Rule 5210 (Publications of Transactions and Quotations) to address members' obligations with respect to certain securities transactions that involve no change in the beneficial ownership of those securities, commonly known as "wash sales". On August 28, 2013, the SEC published a notice to solicit comments on the proposed rule change.

FINRA rules and federal securities laws prohibit transactions that do not result in a change of beneficial ownership in the securities when there is a fraudulent or manipulative purpose behind the trading activity. With a recent increase in automated trading activity and the use of algorithms, FINRA has noted an increase in transactions where a single firm's proprietary trading account is on both sides of a trade. FINRA's proposed rule change discussed below recognizes that even without fraudulent or manipulative motivation, wash sales "can create a misimpression of the level of legitimate trading interest and activity" in a security.

FINRA Rule 5210 provides that no member shall 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. FINRA is proposing to add Supplementary Material 0.2 to FINRA Rule 5210 to

emphasize that wash sale transactions are generally non-bona fide transactions and that members must have policies and procedures in place to review trading activity and prevent wash sales. The proposed rule change provides that transactions that originate from unrelated algorithms or separate and distinct trading strategies would not be considered wash sales, unless the transactions were undertaken for manipulative or fraudulent purposes. In addition, 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).

FINRA understands that not all wash sales are avoidable. Therefore, the proposed rule change requires reasonable policies and procedures and would not apply to isolated wash sale transactions.

The SEC's notice solicits comments on the proposed rule change from interested persons. All comments should be submitted on or before September 25, 2013.

To view the SEC notice, please [click here](#).