

# FINANCIAL INFORMATION FORUM

5 Hanover Square  
New York, New York 10004

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212-422-8568

March 18, 2011

Gary Goldsholle  
FINRA  
Vice President and Associate General Counsel, OGC  
1735 K Street, NW  
Washington DC 20006-1500

Re: FINRA Rule 5131 Implementation Issues

Dear Mr. Goldsholle:

The Financial Information Forum (FIF)<sup>1</sup> would like to take this opportunity to provide feedback on implementation issues with respect to FINRA Rule 5131. The focus of our group's discussions center around Paragraph (d)(4) which states: "No member may accept a market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market." Our concerns are around the following issues:

- Definition of "commencement of trading"
- Scope of the rule
- Implementation Timing

## Definition of "commencement of trading"

In order to clearly define when the prohibition against accepting market orders is lifted, firms request that FINRA provide an unambiguous definition for use by market participants. Based on our prior discussions, it is our understanding that generally, the first print from the listing market is the appropriate trigger, so long as that first print is a legitimate trade. We have confirmed with the listing exchanges that they do not recall the first print of an IPO as ever being anything other than a legitimate trade. The listing exchanges have strict policies and procedures in place to ensure that the opening print of an IPO is accurate and a legitimate trade. As such, FIF member firms respectfully suggest that FINRA offer guidance indicating that the first print from the listing market can serve as the triggering event for lifting the prohibition on accepting market orders in a new issue.

It is also worth noting that providing guidance as suggested above would bring FINRA Rule 5131 in alignment with FINRA Rule 6130 which states: "No member or person associated with a member shall execute or cause to be executed, directly or indirectly, a transaction otherwise than on an exchange in a security subject to an initial public offering until such security has first opened for trading on the

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<sup>1</sup> FIF ([www.fif.com](http://www.fif.com)) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes. This comment letter is based on feedback from FIF broker-dealers and vendors.

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national securities exchange listing the security, **as indicated by the dissemination of an opening transaction in the security by the listing exchange.**"

## Scope of the Rule

We are aware that other groups and individuals have raised questions regarding the inclusion of "not held" orders in the scope of the rule. While we agree with the position that "not held" orders should be outside the scope of this rule, FINRA's guidance with respect to this issue and the following questions will materially impact how development work is structured and how long the effort will take. Our open questions are as follows:

- Does the prohibition on market orders extend to proprietary trading or just client order flow?
- Is the prohibition only for inbound client orders? Is this block for any type of client including broker dealer clients?
- Does the prohibition on market orders mean that firms should prevent their internal traders from entering orders into their OMS?
- How does this impact basket orders? E.g. if a market order is entered in as a basket and there happens to be an IPO as part of the basket, should this order be rejected?
- Are there any exemptions to the prohibition?

## Implementation Timing

Once clear guidance is given with respect to the topics above, firms will need to modify systems and processes to comply with this rule. In addition to changing order entry screens, FIX gateways will need to be modified to incorporate logic from last sale feeds (e.g., CTS, UTDF). Essentially, firms will need to program and test all order entry access points to ensure that the prohibition of market orders is in place and is lifted in response to last sale feed data. Additionally, customer awareness and staff training will be part of the implementation effort. We respectfully request five months from the release of guidance to implement these changes. The IT departments responsible for implementing FINRA Rule 5131 are also responsible for making changes to comply with FINRA Rule 6460 (Compliance date: May 9, 2011) as well as the OATS for NMS release and the Market Access Rule (Rule 15c3-5). With both OATS for NMS Stocks and the Market Access Rule scheduled for a mid-July implementation, completion of Rule 5131 implementation in the September timeframe should be adequate.

We appreciate your consideration of our recommendations. Please do not hesitate to contact me at 312 953 9228 if you require any additional information.

Regards,



Manisha Kimmel  
Executive Director  
Financial Information Forum