

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59208; File No. SR-FINRA-2008-045]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, To Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

January 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 8, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on December 11, 2008,³ the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.

This Amendment No. 1 to SR-FINRA-2008-045 makes technical changes to the original filing filed on September 8, 2008. The text of the proposed rule change is attached as Exhibit 5 to this filing.⁴ Amendment No.

1 replaces and supersedes the proposed rule change filed on September 8, 2008, in its entirety, except with regard to Exhibit 2, a proposed *Regulatory Notice* that details the proposed related eligibility procedures.⁵

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc., and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁶ Consequently, as further detailed in the proposed *Regulatory Notice* (see Exhibit 2), FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations

with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed *Regulatory Notice* that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the *Regulatory Notice*. As further detailed in the *Regulatory Notice*, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) The type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA's Department of Member Regulation ("Member Regulation") to approve applications relating to a disqualification, where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arises under Section 3(a)(39)(E) of the Act (i.e., the added categories of disqualification). Currently, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the *Regulatory Notice*. Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the *Regulatory Notice*.

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing submitted to the Commission on September 8, 2008.

⁴ The text of the proposed rule change to the FINRA Rule 9520 Series as set forth in Exhibit 5 reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-021, which was approved by the Commission. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-

2008-021) (approval order). The FINRA Rule 9520 Series, as set forth in SR-FINRA-2008-021, became effective on December 15, 2008. See FINRA *Regulatory Notice* 08-57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

⁵ FINRA would issue the proposed *Regulatory Notice* upon the Commission's approval of the proposed rule change; the *Regulatory Notice* is written in a manner that assumes such approval.

⁶ See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023) (notice). See also Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR-NASD-2007-023) (approval order), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).

Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council ("NAC"). The proposed amendments to FINRA Rule 9522 would authorize Member Regulation to approve applications based on the added categories of disqualification. In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then proposed FINRA Rule 9523(b) would authorize Member Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. Consistent with the current rule regarding the submission of supervisory plans,⁷ proposed FINRA Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waive the following (in summary):

(a) The right to a hearing and any right of appeal to challenge the validity of the supervisory plan;

(b) The right to claim bias or prejudgment by Member Regulation or the General Counsel regarding the supervisory plan; and

(c) The right to claim a violation of the *ex parte* prohibitions or the separation of functions provisions of FINRA Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a

statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA's Department of Registration and Disclosure and FINRA's Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation "may grant" or "may approve" certain matters with "is authorized to approve" such matters.

The effective date will be 90 days following Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above because it should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2008-045 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-2008-045. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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 available publicly. All submissions should refer to File Number SR-FINRA-2008-045 and should be submitted on or before February 3, 2009.

⁷ See FINRA Rule 9523(b)(1) (to be renumbered to FINRA Rule 9523(a)(1)).

⁸ 15 U.S.C. 78o-3(b)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59201; File No. SR-ISE-2008-101]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Amending the Fee Schedule

January 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 31, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees with respect to equity transactions. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose—Currently, the Exchange's Schedule of Fees for equity transactions consists of a tiered rebate structure for securities priced at or above \$1.00 across all Tapes, averaged across an entire month, where the first five million maker shares executed on an average daily volume (ADV) basis receive a rebate of \$0.0032 per share, with an increase in the rebate to \$0.0035 for each maker share executed above five million ADV.

The Exchange now proposes to rescind the tiered rebate structure and implement a flat rebate, irrespective of ADV. The Exchange is amending the fee schedule in an effort to increase order flow in securities that are reported to Tape B. Accordingly, the Exchange proposes to adopt a fee structure for transactions in securities priced at or above \$1.00 (excluding both order delivery and MidPoint Match orders) whereby the maker receives a per share rebate of \$0.0035 for transactions in securities that are reported to Tape B and a per share rebate of \$0.0029 for transactions in securities that are reported to Tape A and Tape C. The aforementioned fee changes will become operative on January 2, 2009.

The execution fee for orders that remove liquidity for securities, across all tapes, that trade at or above \$1.00 will remain unchanged at \$0.003. The execution fee for orders that remove liquidity for securities, across all tapes, priced under \$1.00 remains unchanged, at 0.3% of trade value with no rebates for adding liquidity in such securities.

Basis—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,³ in general, and furthers the objectives of Section 6(b)(4),⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, raising the rebate in Tape B securities may provide incentive to members to send order flow to the ISE for securities reported to Tape B.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2008-101 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-ISE-2008-101. This file number should be included on the subject line if e-mail 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

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 19b-4(f)(2).