

ISE recently amended DECN's fee schedule to lower the rebate that DECN subscribers who also are ISE members receive for orders in Tape B securities priced at or above \$1 that add liquidity on EDGX.<sup>9</sup> DECN receives this rebate for transactions it executes on EDGX in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to April 1, 2009, will allow DECN to pass through the lowered rebate to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide a rebate amount for non-ISE member subscribers that is equivalent to the rebate amount established for ISE member subscribers in the Member Fee Filing.<sup>10</sup>

ISE has requested that the Commission find good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the lowered rebate amount established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebate amounts for ISE member and non-member subscribers. In addition, because the proposal will apply the reduced rebate retroactively to April 1, 2009, the reduced rebates for ISE member and non-member subscribers will have the same effective date, thereby promoting consistency in DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-ISE-2009-18), as amended, is approved on an accelerated basis.

<sup>9</sup> See Securities Exchange Act Release No. 59592 (April 2, 2009) (notice of filing and immediate effectiveness of File No. SR-ISE-2009-17) (the "Member Fee Filing"). The Member Fee Filing reduced the rebate for these orders from \$.0035 per share to \$.003 per share.

<sup>10</sup> See note 9, *supra*.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59722; File No. SR-FINRA-2009-022]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to FINRA's Regulatory Notice on the FINRA Rule 9520 Series (Eligibility Proceedings)

April 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

FINRA proposes to make technical amendments to the proposed *Regulatory Notice* entitled "Eligibility Proceedings: Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications" (the "SD *Regulatory Notice*") that details impending changes to the FINRA Rule 9520 Series. The Commission recently approved amendments to 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.<sup>3</sup> The amendments to the FINRA Rule 9520

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SR-FINRA-2008-045) ("SD Approval Order").

Series will become effective on June 15, 2009.

The proposed rule change makes technical amendments to the original *SD Regulatory Notice* filed on September 8, 2008, in connection with the amendments to the FINRA Rule 9520 Series.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

#### 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 III 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 September 2008, FINRA filed a proposed rule change to amend the FINRA Rule 9520 Series, which governs eligibility proceedings under which FINRA may allow a person subject to a statutory disqualification to enter or remain in the securities industry, to comport with the amended definition of disqualification in the FINRA By-Laws. FINRA filed the original *SD Regulatory Notice* as part of its original filing on September 8, 2008, and amended its filing on December 11, 2008.<sup>4</sup> The *SD Regulatory Notice* describes in detail the circumstances under which persons must obtain FINRA approval to enter or remain in the securities industry, notwithstanding the existence of additional categories of statutory disqualification. The proposed rule change was published for comment in the **Federal Register** on January 13, 2009.<sup>5</sup> The Commission received no comments on the proposed rule change. On March 17, 2009, the Commission

<sup>4</sup> See SR-FINRA-2008-045, Exhibit 2 (filed September 8, 2008). Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing except with regard to Exhibit 2.

<sup>5</sup> See Securities Exchange Act Release No. 59208 (January 6, 2009), 74 FR 1738 (January 13, 2009) (SR-FINRA-2008-045) (notice).

approved the proposed rule change and issued the SD Approval Order.<sup>6</sup>

The current proposed rule change makes several technical amendments to the SD *Regulatory Notice* to, among other things, comport with the amendments to the FINRA Rule 9520 Series and the Commission's SD Approval Order.<sup>7</sup> In addition, the proposed rule change updates the status of FINRA's rule filing regarding revising the questions on Forms U4 and U5, which is referenced in a footnote of the SD *Regulatory Notice*.<sup>8</sup>

The effective date of the technical amendments to the SD *Regulatory Notice* pursuant to the proposed rule change will be the date of Commission approval of the proposed rule change. The effective date of the related amendments to the FINRA Rule 9520 Series, as detailed in the SD *Regulatory Notice*, will be June 15, 2009.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> 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 in that the proposed technical amendments to the SD *Regulatory Notice* will conform the text to the proposed amendments to the FINRA Rule 9520 Series and the Commission's recent SD Approval Order.

### 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.

<sup>6</sup> See *supra* note 3.

<sup>7</sup> See Exhibit 2. For example, the proposed amendments to the SD *Regulatory Notice* note that, with respect to the Department of Member Regulation review of applications, disqualified persons, in addition to disqualified members or sponsoring members, as the case may be, may be providing consent to supervisory plans. In addition, they replace the term "sponsoring member firm" with "sponsoring member." Further, the proposed amendments replace the phrase "[i]f the parties cannot agree on a supervisory plan" with "[i]f a supervisory plan is rejected." The proposed amendments also replace references to "Securities Exchange Act" with "Exchange Act" for consistency. Finally, the proposed amendments add a footnote that references the SD Approval Order and the current filing.

<sup>8</sup> See Exhibit 2, at note 7.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

### 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-022 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-2009-022. 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-2009-022 and

should be submitted on or before May 5, 2009.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 15 of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act<sup>11</sup> because the proposed technical amendments will conform the SD *Regulatory Notice* to the FINRA Rule 9520 Series and the Commission's recent SD Approval Order.

FINRA has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. Granting accelerated approval will allow FINRA to inform its members of the amendments to the FINRA Rule 9520 Series that will become effective on June 15, 2009. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-FINRA-2009-022) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>10</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).