

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).

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 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 the Exchange. 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-ISE-2008-101 and should be submitted on or before February 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59212, File No. SR-MSRB-2008-07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, to Establish a Transparency System for Municipal Auction Rate Securities and Municipal Variable Rate Demand Obligations

January 7, 2009.

On November 18, 2008, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, to establish a transparency system for municipal auction rate securities and municipal variable rate demand obligations. The proposed rule change was published for comment in the **Federal Register** on

November 28, 2008.³ The Commission received three comment letters about the proposed rule change.⁴ On January 2, 2009, the MSRB filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change as modified by Amendment No. 1.

The proposed rule change would establish a transparency system for municipal Auction Rate Securities ("ARS") and municipal Variable Rate Demand Obligations ("VRDO"). The proposed rule change would: (i) Implement an electronic system that would collect and disseminate ARS and VRDO information (the "Short-term Obligation Rate Transparency System Proposal"); (ii) provide free public access to information disseminated from the Short-term Obligation Rate Transparency ("SHORT") System through the MSRB's Electronic Municipal Market Access (EMMA) system (the "EMMA short-term obligation rate transparency service"); and (iii) amend Rule G-34, on CUSIP numbers and new issue requirements, to require brokers, dealers and municipal securities dealers (collectively "dealers") to report, or ensure the reporting of, interest rate and descriptive information to the SHORT System about ARS and VRDO following an ARS auction or VRDO interest rate reset. A full description of the proposal is contained in the Commission's Notice.

As previously noted, the Commission received three comment letters relating to the proposed rule change.⁶ The commenters generally supported the concept of the proposal, but raised concerns about the timing of its implementation and certain data points required to be collected. WFBS commented only with respect to the proposed effective date of the proposal.

³ See Securities Exchange Act Release No. 58998 (Nov. 21, 2008), 73 FR 72540 (Nov. 28, 2008) ("Commission's Notice").

⁴ See letter from Jeffrey A. Schuh, Vice President, Chief Compliance Officer, Wells Fargo Brokerage Services, LLC ("WFBS"), dated December 18, 2008; letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated December 19, 2008; and letter from Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers Association ("RBDA"), dated December 29, 2008.

⁵ In Amendment No. 1, the MSRB responded to the three comment letters and, in response to the comment letters, postponed the effective date of the proposed amendments to Rule G-34 that relate to Variable Rate Demand Obligations from January 30, 2009 to April 1, 2009. The proposed January 30, 2009 effective date for the proposed amendments to Rule G-34 that relate to Auction Rate Securities remains unchanged. This is a technical amendment and is not subject to notice and comment.

⁶ See *supra* note 4.

WFBS requested that the implementation date of the proposal be extended to four months from the date of publication of the final rule so that changes needed to support the SHORT proposal could be designed, thoroughly tested and implemented prior to the proposed implementation date.

SIFMA supported the concept of collection and display of auction rate reset and remarketing rate reset information, and focused its comments on the timing of implementation and certain data points proposed to be collected. SIFMA stated that its members feel strongly that January 30, 2009 is an unrealistically short timeframe for implementing the new regulatory requirement. SIFMA noted that this year has been a historic year for technological and operational issues due to the market dislocation, and that this as well as other issues have resulted in many urgent technology and operation projects queued at broker dealer firms. SIFMA requested that the proposal be delayed until the later of April 1, 2009 or 90 days after the final rule is approved by the SEC.

SIFMA also recommended that maximum and minimum VRDO rates not be required by the SHORT system. SIFMA stated that the terms of VRDO securities, by and large, have been negotiated on a bespoke basis for each transaction, that maximum rate formulas are not standardized, and that the administrative burden of calculating and reporting the maximum rate for every reset period is in excess of the theoretical benefits it provides. SIFMA also found no evidence of minimum rates in any VRDO transaction and stated that this is a superfluous field which should be eliminated.

SIFMA stated that the broker dealers regulated by the MSRB do not have control over all of the ARS data points being requested in the proposal because broker dealers merely receive the auction information from the auction agent. Therefore SIFMA believes that there should be an acknowledgement in Rule G-34(c)(i) that the broker dealer is only responsible for forwarding the information it has received from the auction agent and not be responsible for the accuracy of that data.

RBDA stated in its letter that they support the implementation of the proposal as early as is practical, but believe the intended effective date of January 30, 2009 will not give market participants sufficient time to implement and thoroughly test automated systems that will facilitate compliance with rules associated with the new system. RBDA requested that the effective date for full

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.