

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54136; File No. 4-517)

July 12, 2006

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Granting Approval of Plan for Allocation of Regulatory Responsibilities Between The NASDAQ Stock Market LLC and the National Association of Securities Dealers, Inc.

Notice is hereby given that the Securities and Exchange Commission (“SEC” or “Commission”) has issued an Order, pursuant to Sections 17(d)¹ and 11A(a)(3)(B)² of the Securities Exchange of 1934 (“Act”), granting approval and declaring effective a plan for allocating regulatory responsibility filed pursuant to Rule 17d-2 of the Act,³ by The NASDAQ Stock Market LLC (“Nasdaq”) and the National Association of Securities Dealers, Inc. (“NASD”).

Accordingly, NASD shall assume, in addition to the regulatory responsibility it has under the Act, the regulatory responsibilities allocated to it under the plan. At the same time, Nasdaq is relieved of those regulatory responsibilities allocated to NASD.⁴

I. Introduction

Section 19(g)(1) of the Act⁵, among other things, requires every national securities exchange and registered securities association (“SRO”) to examine for, and enforce compliance

¹ 15 U.S.C. 78q(d).

² 15 U.S.C. 78k-1(a)(3)(B).

³ 17 CFR 240.17d-2.

⁴ On January 13, 2006, the Commission approved Nasdaq’s application for registration as a national securities exchange. The Commission conditioned the operation of the Nasdaq Exchange upon satisfaction of several requirements, one of which was the approval by the Commission of an agreement pursuant to Rule 17d-2 between Nasdaq and NASD. Securities Exchange Act Release No. 53128, 71 FR 3550 (January 23, 2006). Commission approval of this plan allocating regulatory responsibility satisfies this requirement.

⁵ 15 U.S.C. 78s(g)(1).

by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2) of the Act.⁶ Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO.⁷ With respect to common members of two or more SROs, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1⁸ and Rule 17d-2 under the Act.⁹ Rule 17d-2 under the Act permits SROs to propose joint plans allocating regulatory responsibilities, other than financial responsibility rules, with respect to common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Upon effectiveness of a plan filed pursuant to Rule 17d-2, any self-regulatory organization is relieved of those regulatory

⁶ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2).

⁷ Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session. 32 (1975).

⁸ 17 CFR 240.17d-1. Rule 17d-1 authorizes the Commission to designate a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with financial responsibility requirements imposed by the Act, the rules thereunder, and SRO rules.

⁹ 17 CFR 240.17d-2.

responsibilities for common members that are allocated by the plan to another self-regulatory organization.

On April 17, 2006, the Commission published notice of the filing by Nasdaq and NASD of a joint plan allocating regulatory responsibility for common members.¹⁰ No comments were received. On July 12, 2006, Nasdaq and NASD filed an amended joint plan for allocating regulatory responsibility.¹¹ The plan, as amended, is intended to reduce regulatory duplication for firms that are common members of Nasdaq and NASD. Included in the plan is an attachment (“The Nasdaq Stock Market LLC Rules Certification for 17d-2 Agreement with NASD” referred to herein as the “Nasdaq Certification”) that clearly delineates regulatory responsibilities with respect to specified Nasdaq rules and specified federal securities laws. The Nasdaq Certification lists every Nasdaq rule that is identical or substantially similar to a NASD rule for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members. The Nasdaq Certification also includes the federal securities laws for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members.

II. Discussion

The Commission finds that the proposed plan is consistent with the factors set forth in Section 17(d) of the Act and Rule 17d-2(c)¹² in that the proposed plan is necessary or appropriate

¹⁰ Securities Exchange Act Release No. 53628 (April 10, 2006), 71 FR 19763.

¹¹ Nasdaq and NASD made clarifying changes in the amended plan, and included a list of the federal securities laws, and the rules and regulations thereunder, in the Nasdaq Certification for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members. These changes are non-substantive, and therefore the Commission is not seeking comment on the amended joint plan.

¹² 15 U.S.C. 78q(d) and 17 CFR 240.17d-2(c).

in the public interest and for the protection of investors, fosters cooperation and coordination among self-regulatory organizations, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed plan could reduce unnecessary regulatory duplication by allocating to the NASD certain responsibilities for common members that would otherwise be performed by both Nasdaq and NASD. The proposed plan promotes efficiency by reducing costs to common members. Furthermore, because Nasdaq and NASD will coordinate their regulatory functions in accordance with the plan, the plan should promote investor protection.

The Commission notes that Nasdaq and NASD have allocated regulatory responsibility for all Nasdaq rules that are identical or substantially similar to NASD rules, as set forth in the Nasdaq Certification.¹³ According to the plan, Nasdaq and NASD will undergo an annual review of the Nasdaq Certification to add Nasdaq rules that are identical or substantially similar to NASD rules; delete Nasdaq rules that are no longer identical or substantially similar to NASD rules; and confirm that the remaining rules on the Nasdaq Certification continue to be Nasdaq rules that are identical or substantially similar to NASD rules. The Commission today is declaring effective and approving a plan that allocates regulatory responsibility to NASD for the oversight and enforcement of all Nasdaq rules that are identical or substantially similar to the rules of the NASD for common members of Nasdaq and NASD. Therefore, modifications to the Nasdaq Certification need not be filed with the Commission as an amendment to the plan provided that the parties are only adding to, deleting from or confirming changes to Nasdaq rules in the Nasdaq Certification that are identical or substantially similar to NASD rules. However,

¹³ Nasdaq has represented that there are no Nasdaq rules that are identical or substantially similar to NASD rules that are not included in the Nasdaq Certification. Telephone call between Jeffrey Davis, Nasdaq Office of General Counsel, and Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, on June 19, 2006.

should Nasdaq or NASD decide to add a Nasdaq rule to the Nasdaq Certification that is not identical or substantially similar to an NASD rule, or delete a Nasdaq rule from the Nasdaq Certification that is identical or substantially similar to an NASD rule, or leave on the Nasdaq Certification a Nasdaq rule that is no longer identical or substantially similar to an NASD rule, such a change would be an amendment to the plan which must be filed with the Commission pursuant to Rule 17d-2 under the Act.

Nasdaq and NASD have also set forth the federal securities laws, and the rules and regulations thereunder, in the Nasdaq Certification for which, under the plan, NASD will bear responsibility for examining, and enforcing compliance by, common members. The Commission notes that any changes to this list of federal securities laws, and the rules and regulations thereunder, would be an amendment to the plan between Nasdaq and NASD and therefore must be filed with the Commission pursuant to Rule 17d-2 under the Act.

The plan further provides that NASD shall not assume regulatory responsibility, and Nasdaq will retain full responsibility, for surveillance and enforcement of trading activities or practices solely involving Nasdaq's own marketplace.

The plan also permits Nasdaq and NASD to terminate the plan for various reasons, including the non-payment of fees, for cause, and for convenience. The Commission notes, however, that while the plan permits the parties to terminate the plan, the allocation to NASD of the regulatory responsibilities set forth in the plan cannot be reallocated by the parties themselves under the terms of the plan. Rule 17d-2 requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission pursuant to Rule 17d-2.

III. Conclusion

This Order gives effect to the plan filed with the Commission in File No. 4-517. The parties to the plan shall notify all members affected by the plan of their rights and obligations under the plan.

IT IS THEREFORE ORDERED, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the plan, in File No. 4-517, between Nasdaq and NASD filed pursuant to Rule 17d-2 is approved and declared effective.

IT IS THEREFORE ORDERED that Nasdaq is relieved of those responsibilities allocated to NASD under the plan in File No. 4-517.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(34).