

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-54394; File No. 4-523)**

**August 31, 2006**

**Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Plan for Allocation of Regulatory Responsibilities Between NYSE Arca, Inc. and the National Association of Securities Dealers, Inc.**

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Sections 17(d)<sup>1</sup> and 11A(a)(3)(B)<sup>2</sup> of the Securities Exchange Act of 1934 (“Act”), granting approval and declaring effective a revised amended and restated plan for the allocation of regulatory responsibilities (“Plan”)<sup>3</sup> that was filed pursuant to Rule 17d-2 under the Act<sup>4</sup> by NYSE Arca, Inc.<sup>5</sup> (“NYSE Arca”) and the National Association of Securities Dealers, Inc. (“NASD”) (together with the NYSE Arca, the “Parties”).

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, NYSE Arca is relieved of those regulatory responsibilities allocated to NASD under the Plan.

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<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>3</sup> On January 20, 2006, the Parties submitted an amended and restated 17d-2 plan for review and approval by the Commission. On July 25, 2006, the Parties submitted a revised amended and restated plan (“Plan”), which was noticed for public comment. See infra note 13.

<sup>4</sup> 17 CFR 240.17d-2.

<sup>5</sup> NYSE Arca, Inc. was formerly called the Pacific Exchange, Inc. (“PCX”). On March 6, 2006, PCX filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the PCX, as well as several other related entities, to reflect Archipelago Holdings, Inc.’s (“Archipelago”) recent acquisition of PCX and the merger of the New York Stock Exchange, Inc. with Archipelago. See Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006).

## I. Introduction

Section 19(g)(1) of the Act,<sup>6</sup> among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or registered securities association to examine for, and enforce compliance 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)<sup>7</sup> or 19(g)(2)<sup>8</sup> of the Act. Section 17(d)(1) of the Act<sup>9</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO (“common members”).<sup>10</sup> With respect to a common member, 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-1<sup>11</sup> and Rule 17d-2 under the Act.<sup>12</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, with respect to their common

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<sup>6</sup> 15 U.S.C. 78s(g)(1).

<sup>7</sup> 15 U.S.C. 78q(d).

<sup>8</sup> 15 U.S.C. 78s(g)(2).

<sup>9</sup> 15 U.S.C. 78q(d)(1).

<sup>10</sup> See Securities Act 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).

<sup>11</sup> 17 CFR 240.17d-1. Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.

<sup>12</sup> 17 CFR 240.17d-2.

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 the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is 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, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

On August 2, 2006, the Commission published notice of the Plan filed by NYSE Arca and NASD.<sup>13</sup> The Commission received no comments on the Plan. The Plan is intended to replace and supersede the current 17d-2 plan between NASD and NYSE Arca and all prior amendments thereto in their entirety,<sup>14</sup> and is intended to reduce regulatory duplication for firms that are common members of NYSE Arca and NASD. The text of the Plan allocates regulatory responsibilities among the Parties with respect to common members. Included in the Plan is an attachment (“NYSE Arca Rules Certification for 17d-2 Agreement with NASD,” referred to

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<sup>13</sup> See Securities Exchange Act Release No. 54224 (July 27, 2006), 71 FR 43823.

<sup>14</sup> The Parties currently operate pursuant to a 17d-2 plan in which the NASD assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the “current NASD-NYSE Arca 17d-2 plan”). See Securities Exchange Act Release Nos. 14095 (October 25, 1977), 42 FR 57198 (November 1, 1977) (File No. 4-267) (notice of 1977 Agreement); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (File No. 4-267) (order granting temporary approval); 15722 (April 12, 1979), 44 FR 23616 (April 20, 1979) (File No. 4-267) (extension of time to file amendments); 15941 (June 21, 1979) (File No. 4-267), SEC Docket, Vol. 17, no. 14, page 995 (July 3, 1979) (further extension of time to file required amendments); 16462 (January 2, 1980), 45 FR 2121 (January 10, 1980) (File No. 4-267) (order granting temporary approval); 16591 (February 20, 1980), 45 FR 12573 (February 26, 1980) (File No. 4-267) (notice of 1980 Amendment); 16719 (April 2, 1980), 45 FR 23841 (April 8, 1980) (File No. 4-267) (order granting temporary approval); and 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (File No. 4-267) (approval order).

herein as the “Certification”) that lists every NYSE Arca rule and federal securities law and rule and regulation thereunder for which, under the Plan, 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<sup>15</sup> and Rule 17d-2(c) thereunder<sup>16</sup> in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, 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 NASD certain responsibilities for common members that would otherwise be performed by both NYSE Arca and NASD. Accordingly, the proposed Plan promotes efficiency by reducing costs to common members. Furthermore, because NYSE Arca and NASD will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, NYSE Arca and NASD have allocated regulatory responsibility for all NYSE Arca rules that are substantially similar to NASD rules in that NYSE Arca’s rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a dual member’s activity, conduct, or output in relation to such rule (“Common Rules”). These Common Rules are specifically listed in the Certification.<sup>17</sup> In addition, the NASD would

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<sup>15</sup> 15 U.S.C. 78q(d).

<sup>16</sup> 15 U.S.C. 78q(d) and 17 CFR 240.17d-2(c).

<sup>17</sup> NYSE Arca has represented that there are no NYSE Arca rules that are substantially similar to NASD rules that are not included in the Certification. See Telephone call between Janet Angstadt, Acting General Counsel, NYSE Arca, and Richard Holley III,







