

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76056; File No. 4-618)

September 30, 2015

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Amended Plan for the Allocation of Regulatory Responsibilities Between BATS Exchange, Inc., BATS Y-Exchange, Inc., BOX Options Exchange LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 17d-2 thereunder,² notice is hereby given that on September 2, 2015, BATS Exchange, Inc. (“BATS”), BATS Y-Exchange, Inc. (“BATS Y”), BOX Options Exchange LLC (“BOX”), Chicago Board Options Exchange, Incorporated (“CBOE”), C2 Options Exchange, Incorporated (“C2”), Chicago Stock Exchange, Inc. (“CHX”), EDGA Exchange, Inc. (“EDGA”), EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), International Securities Exchange, LLC (“ISE”), ISE Gemini, LLC (“ISE Gemini”), Miami International Securities Exchange, LLC (“MIAX”), The NASDAQ Stock Market LLC (“NASDAQ”), NASDAQ OMX BX, Inc. (“BX”), NASDAQ OMX PHLX, Inc. (“Phlx”), National Stock Exchange, Inc. (“NSX”), New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC (“NYSE MKT”), and NYSE Arca, Inc. (“NYSE Arca”) (each, a “Participating Organization,” and, together, the “Participating Organizations” or the “Parties”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) an amended plan for the allocation of regulatory

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

responsibilities with respect to certain Regulation NMS Rules listed in Exhibit A to the Plan (“17d-2 Plan” or the “Plan”). As further discussed in Section II, below, this Agreement amends and restates the agreement by and among the Participating Organizations approved by the SEC on December 3, 2010.³ The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,⁴ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national 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) or Section 19(g)(2) of the Act.⁵ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member,

³ See Securities Exchange Act Release No. 63230 (November 2, 2010), 75 FR 68632 (November 8, 1976).

⁴ 15 U.S.C. 78s(g)(1).

⁵ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁶ 15 U.S.C. 78q(d)(1).

⁷ 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).

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 and Rule 17d-2 under the Act.⁸ 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.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members.

Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if,

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

after providing for appropriate 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. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Amended Plan

On September 2, 2015, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add Regulation NMS Rules 606, 607, and 611(c) and (d). In addition, because Regulation NMS Rule 606 applies to “NMS Securities,” and thus includes responsibility for options, the Amended Plan adds additional Participating Organizations that are options markets.

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Participating Organization.¹¹ The proposed amendments to the Plan provide for the allocation of regulatory responsibility according to whether the covered rule pertains to NMS stocks or NMS securities. For covered rules that pertain to NMS stocks (i.e., Rules 607, 611, and 612), FINRA would serve as the “Designated Regulation NMS Examining Authority” (“DREA”) for common members that are members of FINRA, and therein would assume certain examination and enforcement responsibilities for those members with respect to specified Regulation NMS rules. For common members that are not members of FINRA, the amended Plan

¹¹ The proposed 17d-2 Plan refers to these members as “Common Members.”

provides that the member's DEA would serve as the DREA, provided that the DEA exchange operates a national securities exchange or facility that trades NMS stocks and the common member is a member of such exchange or facility. Section 1(c) of the amended Plan contains a list of proposed principles that would be applicable to the allocation of common members in cases not specifically addressed in the Plan. An exchange that does not trade NMS stocks would have no regulatory authority for covered Regulation NMS rules pertaining to NMS stocks. For covered rules that pertain to NMS securities, and thus include options (i.e., Rule 606), the proposed amended Plan provides that the DREA will be the same as the DREA for the rules pertaining to NMS stocks. For common members that are not members of an exchange that trades NMS stocks, the common member would be allocated according to the principles set forth in Section 1(c) of the Plan.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "Covered Regulation NMS Rules") that lists the federal securities laws, rules, and regulations, for which the applicable DREA would bear examination and enforcement responsibility under the proposed amended Plan for Common Members of the Participating Organization and their associated persons.

Specifically, under the 17d-2 Plan, the applicable DREA would assume examination and enforcement responsibility relating to compliance by Common Members with the Covered Regulation NMS Rules. Covered Regulation NMS Rules would not include the application of any rule of a Participating Organization, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such

matters are covered by a separate multiparty agreement under Rule 17d-2.¹² Under the Plan, Participating Organizations would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving their own marketplace.¹³

The text of the proposed amended 17d-2 Plan is as follows (additions are in italics; deletions are in brackets):

Agreement for the Allocation of Regulatory Responsibility for the Covered Regulation NMS Rules pursuant to §17(d) of the Securities Exchange Act of 1934, 15 U.S.C. §78q(d), and Rule 17d-2 Thereunder

This agreement (the “Agreement”) by and among BATS Exchange, Inc. (“BATS”), BATS Y-Exchange, Inc. (“BATS Y”), BOX Options Exchange LLC (“BOX”), Chicago Board Options Exchange, Incorporated[.] (“CBOE”)^[1], C2 Options Exchange, Incorporated (“C2”), Chicago Stock Exchange, Inc. (“CHX”), EDGA Exchange, Inc. (“EDGA”), EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), International Securities Exchange, LLC (“ISE”), ISE Gemini, LLC (“ISE Gemini”), Miami International Securities Exchange, LLC (“MIAX”), The NASDAQ Stock Market LLC (“NASDAQ”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., National Stock Exchange, Inc. (“NSX”), New York Stock Exchange LLC (“NYSE”), NYSE [Amex]MKT LLC (“NYSE [Amex]MKT”), and NYSE Arca, Inc. (“NYSE Arca”) (each, a “Participating Organization,” and, together, the

¹² See Securities Exchange Act Release No. 58350 (August 13, 2008), 73 FR 48247 (August 18, 2008) (File No. 4-566) (notice of filing of proposed plan). See also Securities Exchange Act Release No. 58536 (September 12, 2008) (File No. 4-566) (order approving and declaring effective the plan).

¹³ See paragraph 1 of the proposed 17d-2 Plan.

“Participating Organizations”), is made pursuant to §17(d) of the Securities Exchange Act of 1934 (the “Act” or “SEA”), 15 U.S.C. §78q(d), and Rule 17d-2 thereunder, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (“SROs”). Upon approval by the Securities and Exchange Commission (“Commission” or “SEC”), this Agreement shall amend and restate the agreement by and among the Participating Organizations approved by the SEC on December 3, 2010.

WHEREAS, the Participating Organizations desire to: (a) foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; and (d) eliminate duplication in their examination and enforcement of SEA Rules 606, 607, 611[(a) and (b)] and 612 (the “Covered Regulation NMS Rules”);

WHEREAS, the Participating Organizations are interested in allocating regulatory responsibilities with respect to broker-dealers that are members of more than one Participating Organization (the “Common Members”) relating to the examination and enforcement of the Covered Regulation NMS Rules; and

WHEREAS, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the [Securities and Exchange Commission (“Commission” or “]SEC[”) a] this plan for the above stated purposes [(this Agreement)] pursuant to the provisions of §17(d) of the Act, and Rule 17d-2 thereunder, as described below.

[¹ CBOE's allocation of certain regulatory responsibilities under this Agreement is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE.]

NOW, THEREFORE, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. Assumption of Regulatory Responsibility. The Designated Regulation NMS Examining Authority (the “DREA”) shall assume examination and enforcement responsibilities relating to compliance by Common Members with the Covered Regulation NMS Rules to which the DREA is allocated responsibility (“Regulatory Responsibility”). A list of the Covered Regulation NMS Rules is attached hereto as Exhibit A.

a. For Covered Regulation NMS Rules Pertaining to “NMS stocks” (as defined in Regulation NMS) (i.e., Rules 607, 611 and 612): FINRA shall serve as DREA for Common Members that are members of FINRA. The Designated Examining Authority (“DEA”) pursuant to SEA Rule 17d-1 shall serve as DREA for Common Members that are not members of FINRA, provided that the DEA operates a national securities exchange or facility that trades NMS stocks and the Common Member is a member of such exchange or facility. For all other Common Members, the Participating Organizations shall allocate Common Members among the Participating Organizations (other than FINRA) that operate a national securities exchange that trades NMS stocks based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member. (A Participating Organization that operates a national securities exchange that does not trade NMS stocks has no regulatory responsibilities related to Covered Regulation NMS Rules

pertaining to NMS stocks and will not serve as DREA for such Covered Regulation NMS Rules.)

b. For Covered Regulation NMS Rules Pertaining to “NMS securities” (as defined in Regulation NMS) (i.e., Rule 606), the DREA shall be same as the DREA for Covered Regulation NMS Rules pertaining to NMS stocks. For Common Members that are not members of a national securities exchange that trades NMS stocks and thus have not been appointed a DREA under paragraph a., the Participating Organizations shall allocate the Common Members among the Participating Organizations (other than FINRA) that operate a national securities exchange that trades NMS securities based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member with respect to Covered Regulation NMS Rules pertaining to NMS securities. The allocation of Common Members to DREAs (including FINRA) for all Covered Regulation NMS Rules is provided in Exhibit B.

c. For purposes of this paragraph 1, any allocation of a Common Member to a Participating Organization other than as specified in paragraphs a. and b. above shall be based on the following principles, except to the extent all affected Participating Organizations consent to one or more different principles and any such agreement to different principles would be deemed an amendment to this Agreement as provided in paragraph 22:

i. The Participating Organizations shall not allocate a Common Member to a Participating Organization unless the Common Member is a member of that Participating Organization.

ii. To the extent practicable, Common Members shall be allocated among the Participating Organizations of which they are members in such a manner as to equalize, as nearly as possible, the allocation among such Participating Organizations.

iii. To the extent practicable, the allocation will take into account the amount of NMS stock activity (or NMS security activity, as applicable) conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participating Organizations of which they are a members. The allocation will also take into account similar allocations pursuant to other plans or agreements to which the Participating Organizations are party to maintain consistency in oversight of the Common Members.¹

iv. The Participating Organizations may reallocate Common Members from time-to-time and in such manner as they deem appropriate consistent with the terms of this Agreement.

v. Whenever a Common Member ceases to be a member of its DREA (including FINRA), the DREA shall promptly inform the Participating Organizations, who shall review the matter and reallocate the Common Member to another Participating Organization.

vi. The DEA or DREA (including FINRA) may request that a Common Member be reallocated to another Participating Organization (including the DEA or DREA (including FINRA)) by giving 30 days written notice to the Participating Organizations. The Participating Organizations shall promptly consider such request and,

¹ For example, if one Participating Organization was allocated responsibility for a particular Common Member pursuant to a separate Rule 17d-2 Agreement, that Participant Organization would be assigned to be the DREA of that Common Member, unless there is good cause not to make that assignment.

in their discretion, may approve or disapprove such request and if approved, reallocate the Common Member to such Participating Organization.

vii. All determinations by the Participating Organizations with respect to allocations shall be by the affirmative vote of a majority of the Participating Organizations that, at the time of such determination, share the applicable Common Member being allocated; a Participating Organization shall not be entitled to vote on any allocation related to a Common Member unless the Common Member is a member of such Participating Organization.

d. The Participating Organizations agree that they shall conduct meetings among them as needed for the purposes of ensuring proper allocation of Common Members and identifying issues or concerns with respect to the regulation of Common Members.

Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibility” does not include, and each of the Participating Organizations shall retain full responsibility for, examination, surveillance and enforcement with respect to trading activities or practices involving its own marketplace unless otherwise allocated pursuant to a separate Rule 17d-2 Agreement. [Whenever a Common Member ceases to be a member of its DREA, the DREA shall promptly inform the Common Member’s DEA, which will become such Common Member’s new DREA.]

2. No Retention of Regulatory Responsibility. The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by the DREA under the terms of this Agreement.

Nothing in this Agreement will be interpreted to prevent a DREA from entering into Regulatory Services Agreement(s) to perform its Regulatory Responsibility.

3. No Charge. A DREA shall not charge Participating Organizations for performing the Regulatory Responsibility under this Agreement.

4. Applicability of Certain Laws, Rules, Regulations or Orders.

Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

5. Customer Complaints. If a Participating Organization receives a copy of a customer complaint relating to a DREA's Regulatory Responsibility as set forth in this Agreement, the Participating Organization shall promptly forward to such DREA a copy of such customer complaint. It shall be such DREA's responsibility to review and take appropriate action in respect to such complaint.

6. Parties to Make Personnel Available as Witnesses. Each Participating Organization shall make its personnel available to the DREA to serve as testimonial or non-testimonial witnesses as necessary to assist the DREA in fulfilling the Regulatory Responsibility allocated under this Agreement. The DREA shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that the

DREA requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

7. Sharing of Work-Papers, Data and Related Information.

a. Sharing. A Participating Organization shall make available to the DREA information necessary to assist the DREA in fulfilling the Regulatory Responsibility assumed under the terms of this Agreement. Such information shall include any information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member (“Regulatory Information”). This Regulatory Information shall be used by the DREA solely for the purposes of fulfilling the DREA’s Regulatory Responsibility.

b. No Waiver of Privilege. The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Special or Cause Examinations and Enforcement Proceedings. Nothing in this Agreement shall restrict or in any way encumber the right of a Participating Organization to conduct special or cause examinations of a Common Member, or take enforcement proceedings against a Common Member as a Participating Organization, in its sole discretion, shall deem appropriate or necessary.

9. Dispute Resolution Under this Agreement.

a. Negotiation. The Participating Organizations will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the Participating Organizations shall refer the dispute to binding arbitration.

b. Binding Arbitration. All claims, disputes, controversies, and other matters in question between the Participating Organizations to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the Participating Organizations will be resolved through binding arbitration. Unless otherwise agreed by the Participating Organizations, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in a city selected by the DREA in which it maintains a principal office or where otherwise agreed to by the Participating Organizations in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney. The arbitrators shall be appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

10. Limitation of Liability. As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage

resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except: (a) as otherwise provided for under the Act[,]; (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization[,]; or (c) in instances of a breach of confidentiality obligations owed to another Participating Organization. The Participating Organizations understand and agree that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

11. SEC Approval.

a. The Participating Organizations agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of the Agreement and of its impact on their members.

12. Subsequent Parties; Limited Relationship. This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this

Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

13. Assignment. No Participating Organization may assign this Agreement without the prior written consent of the DREAs performing Regulatory Responsibility on behalf of such Participating Organization, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign the Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of such Participating Organization's DREAs. No assignment shall be effective without Commission approval.

14. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

15. Termination. Any Participating Organization may cancel its participation in the Agreement at any time upon the approval of the Commission after 180 days written notice to the other Participating Organizations (or in the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose). The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

16. General. The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

17. Written Notice. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, or by a comparable means of electronic communication to each Participating Organization entitled to receipt thereof, to the attention of the Participating Organization's representative at the Participating Organization's then principal office or by e-mail.

18. Confidentiality. The Participating Organizations agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement, provided, however, that each Participating Organization may disclose such documents or information as may be required to comply with applicable regulatory requirements or requests for information from the SEC. Any Participating Organization disclosing confidential documents or information in compliance with applicable regulatory or oversight requirements will request confidential treatment of such information. No Participating Organization shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement.

19. Regulatory Responsibility. Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d-2 thereunder, the Participating Organizations request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations which are participants in this Agreement that are not the DREA as to a Common Member of any

and all responsibilities with respect to the matters allocated to the DREA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

20. Governing Law. This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the Participating Organizations hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

21. Survival of Provisions. Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by the DREA and any expiration of this Agreement shall survive and continue.

22. Amendment.

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, [solely] by an amendment executed by all applicable DREAs and such new Participating Organization. All other Participating Organizations expressly consent to allow such DREAs to jointly add new Participating Organizations to the Agreement as provided above. Such DREAs will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be [made] approved by each Participating Organization. All amendments, including adding a new Participating Organization but excluding changes to Exhibit B, must be filed with and approved by the Commission before they become effective.

23. Effective Date. The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by §17(d) of the Act, and Rule 17d-2 thereunder.

24. Counterparts. This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement among the Participating Organizations.

* * * * *

EXHIBIT A

COVERED REGULATION NMS RULES

SEA Rule 606 – Disclosure of Order Routing Information.*

SEA Rule 607 – Customer Account Statements.

SEA Rule 611[(a)] – Order Protection Rule. [– Reasonable Policies and Procedures.]

[SEA Rule 611(b) – Order Protection Rule. – Exceptions.]

SEA Rule 612 – Minimum Pricing Increment.

Covered Regulation NMS Rules with asterisks () pertain to NMS securities. Covered Regulation NMS Rules without asterisks pertain to NMS stocks.

* * * * *

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

Pursuant to Section 17(d)(1) of the Act¹⁴ and Rule 17d-2 thereunder,¹⁵ after [insert date 21 days from publication in the Federal Register], the Commission may, by written notice, declare the amended plan submitted by the Parties, File No. 4-618, to be effective if the Commission finds 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, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve the Parties of the responsibilities which would be assigned to the applicable DREA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-618 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

¹⁴ 15 U.S.C. 78q(d)(1).

¹⁵ 17 CFR 240.17d-2.

All submissions should refer to File Number 4-618. 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 website (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the plan also will be available for inspection and copying at the principal offices of the Parties. 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 4-618 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(34).