

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58765; File No. 4-551)

October 9, 2008

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, NYSE Arca, Inc., and NASDAQ OMX PHLX, Inc. Relating to Options Market Surveillance

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed pursuant to Rule 17d-2 of the Act,<sup>2</sup> by the American Stock Exchange LLC (“Amex”), Boston Stock Exchange, Inc. (“BSE”), Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), Financial Industry Regulatory Authority, Inc. (“FINRA”), The NASDAQ Stock Market LLC (“NASDAQ”), NYSE Arca, Inc. (“NYSE Arca”), and NASDAQ OMX PHLX, Inc. (“Phlx”) (collectively, “SRO Participants”) concerning options-related market surveillance.

I. Introduction

Section 19(g)(1) of the Act,<sup>3</sup> 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

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

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

<sup>3</sup> 15 U.S.C. 78s(g)(1).

the SRO is relieved of this responsibility pursuant to Section 17(d)<sup>4</sup> or Section 19(g)(2)<sup>5</sup> of the Act. 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 Act<sup>6</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>7</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 and Rule 17d-2 under the Act.<sup>8</sup> 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>9</sup> 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

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<sup>4</sup> 15 U.S.C. 78q(d).

<sup>5</sup> 15 U.S.C. 78s(g)(2).

<sup>6</sup> 15 U.S.C. 78q(d)(1).

<sup>7</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>8</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

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

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.<sup>10</sup> 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, 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. 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. The Plan

On December 11, 2007, the Commission declared effective the SRO Participants' Plan for allocating regulatory responsibilities pursuant to Rule 17d-2.<sup>11</sup> On April 11, 2008, the Commission approved an amendment to the Plan to include NASDAQ as a participant.<sup>12</sup> The Plan is designed to reduce regulatory duplication for common members by allocating regulatory

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

<sup>11</sup> See Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007) (File No. 4-551).

<sup>12</sup> See Securities Exchange Act Release No. 57649 (April 11, 2008), 73 FR 20976 (April 17, 2008) (File No. 4-551).

responsibility for certain options-related market surveillance matters among the SRO Participants.<sup>13</sup> Generally, under the current Plan, an SRO Participant will serve as the Designated Options Surveillance Regulator (“DOSR”) for each common member assigned to it and will assume regulatory responsibility with respect to that common member’s compliance with applicable common rules for certain accounts. When an SRO has been named as a common member’s DOSR, all other SROs to which the common member belongs will be relieved of regulatory responsibility for that common member, pursuant to the terms of the Plan, with respect to the applicable common rules specified in Exhibit A to the Plan.

### III. Proposed Amendment to the Plan

On October 1, 2008, the SRO Participants submitted a proposed amendment to the Plan. The purpose of the amendment is to clarify that the term Regulatory Responsibility for options position limits includes examination responsibilities for the delta hedging exemption. Specifically, the SRO Participants intend that FINRA will conduct examinations for the delta hedging exemption for all common members that are members of FINRA notwithstanding the fact that FINRA’s position limit rule is, in some cases, limited to only firms that are not members of an options exchange (i.e. access members). In such cases, FINRA’s examinations for the delta hedging exemption will be for the position limit rule(s) of the other SRO Participant(s). Examinations for the delta hedging exemption for common members that are non-FINRA members will be conducted by the same SRO Participant conducting position limit surveillance

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<sup>13</sup> The Plan is wholly separate from the multiparty options agreement made pursuant to Rule 17d-2 by and among Amex, BSE, CBOE, ISE, FINRA, New York Stock Exchange LLC, NASDAQ, NYSE Arca, and Phlx involving the allocation of regulatory responsibilities with respect to common members for options-related sales practice matters relating to the conduct of broker-dealers of accounts for listed options or index warrants. See Securities Exchange Act Release Nos. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008) (File No. S7-966).

as provided in Exhibit B to the Plan. In addition, Exhibit A to the Plan has been updated to reflect the addition of options position limit rules as common rules. Accordingly, regulatory responsibility for a common member's compliance with the options position limit rules included in Exhibit A to the Plan will be allocated to the applicable DOSR as provided by the amended Plan. The amended agreement replaces the previous agreement in its entirety. The text of the proposed amended 17d-2 Plan is as follows (additions are underlined; deletions are [bracketed]):

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AGREEMENT BY AND AMONG

THE AMERICAN STOCK EXCHANGE LLC,

THE BOSTON STOCK EXCHANGE, INC.,

THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED,

THE INTERNATIONAL SECURITIES EXCHANGE LLC,

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., NYSE ARCA, INC.,

THE NASDAQ STOCK MARKET LLC, AND [THE PHILADELPHIA STOCK

EXCHANGE]NASDAQ OMX PHLX, INC.,

PURSUANT TO RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This agreement (this "Agreement"), by and among the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NYSE Arca, Inc. ("Arca"), The NASDAQ Stock Market LLC ("Nasdaq"), and the [Philadelphia Stock Exchange]NASDAQ OMX PHLX, Inc. ("PHLX"), is made this 10th day of October, 2007, and as amended [this]the 31<sup>st</sup> day of March, 2008, and this 1<sup>st</sup> day of October, 2008, pursuant to Section 17(d) of the Securities Exchange Act of 1934, as

amended (the “Exchange Act”), and Rule 17d-2 thereunder (“Rule 17d-2”), which allows for a joint plan among self-regulatory organizations (“SROs”) to allocate regulatory obligations with respect to brokers or dealers that are members of two or more of the parties to this Agreement (“Common Members”). The Amex, BSE, CBOE, ISE, FINRA, Arca, Nasdaq, and PHLX are collectively referred to herein as the “Participants” and individually, each a “Participant.” This Agreement shall be administered by a committee known as the Options Surveillance Group (the “OSG” or “Group”), as described in Section V hereof. Unless defined in this Agreement or the context otherwise requires, the terms used herein shall have the meanings assigned thereto by the Exchange Act and the rules and regulations thereunder.

WHEREAS, the Participants desire to eliminate regulatory duplication with respect to SRO market surveillance of Common Member<sup>†1</sup> activities with regard to certain common rules relating to listed options (“Options”); and

WHEREAS, for this purpose, the Participants desire to execute and file this Agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) pursuant to Rule 17d-2.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Participants agree as follows:

- I. Except as otherwise provided in this Agreement, each Participant shall assume Regulatory Responsibility (as defined below) for the Common Members that are allocated or assigned to such Participant in accordance with the terms of this Agreement and shall be relieved of its Regulatory Responsibility as to the remaining Common Members. For purposes of this Agreement, a Participant shall be

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<sup>†1</sup> In the case of the BSE, members are those persons who are Options Participants (as defined in the Boston Options Exchange LLC Rules).

considered to be the Designated Options Surveillance Regulator (“DOSR”) for each Common Member that is allocated to it in accordance with Section VII.

II. As used in this Agreement, the term “Regulatory Responsibility” shall mean surveillance, investigation and enforcement responsibilities relating to compliance by the Common Members with such Options rules of the Participants as the Participants shall determine are substantially similar and shall approve from time to time, insofar as such rules relate to market surveillance (collectively, the “Common Rules”). For the purposes of this Agreement the list of Common Rules is attached as Exhibit A hereto, which may only be amended upon unanimous written agreement by the Participants. The DOSR assigned to each Common Member shall assume Regulatory Responsibility with regard to that Common Member’s compliance with the applicable Common Rules for certain accounts.<sup>†2</sup> A DOSR may perform its Regulatory Responsibility or enter an agreement to transfer or assign such responsibilities to a national securities exchange registered with the SEC under Section 6(a) of the Exchange Act or a national securities association registered with the SEC under Section 15A of the Exchange Act. A DOSR may not transfer or assign its Regulatory Responsibility to an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products.

The term “Regulatory Responsibility” does not include, and each Participant shall retain full responsibility with respect to:

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<sup>†2</sup> Certain accounts shall include customer (“C” as classified by the Options Clearing Corporation (“OCC”)) and firm (“F” as classified by OCC) accounts, as well as other accounts, such as market maker accounts as the Participants shall, from time to time, identify as appropriate to review.

- (a) surveillance, investigative and enforcement responsibilities other than those included in the definition of Regulatory Responsibility;
- (b) any aspects of the rules of a Participant that are not substantially similar to the Common Rules or that are allocated for a separate surveillance purpose under any other agreement made pursuant to Rule 17d-2. Any such aspects of a Common Rule will be noted as excluded on Exhibit A.

With respect to options position limits, the term Regulatory Responsibility shall include examination responsibilities for the delta hedging exemption. Specifically, the Participants intend that FINRA will conduct examinations for delta hedging for all Common Members that are members of FINRA notwithstanding the fact that FINRA's position limit rule is, in some cases, limited to only firms that are not members of an options exchange (i.e., access members). In such cases, FINRA's examinations for delta hedging options position limit violations will be for the identical or substantively similar position limit rule(s) of the other Participant(s). Examinations for delta hedging for Common Members that are non-FINRA members will be conducted by the same Participant conducting position limit surveillance. The allocation of Common Members to DOSRs for surveillance of compliance with options position limits and other agreed to Common Rules is provided in Exhibit B. The allocation of Common Members to DOSRs for examinations of the delta hedging exemption under the options position limits rules is provided in Exhibit C.

- III. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, or more frequently if required by changes in the rules of a Participant, each Participant shall submit to the other Participants, through the Chair

of the OSG, an updated list of Common Rules for review. This updated list may add Common Rules to Exhibit A, shall delete from Exhibit A rules of that Participant that are no longer identical or substantially similar to the Common Rules, and shall confirm that the remaining rules of the Participant included on Exhibit A continue to be identically or substantially similar to the Common Rules. Within 30 days from the date that each Participant has received revisions to Exhibit A from the Chair of the OSG, each Participant shall confirm in writing to the Chair of the OSG whether that Participant's rules listed in Exhibit A are Common Rules.

- IV. Apparent violation of another Participant's rules discovered by a DOSR, but which rules are not within the scope of the discovering DOSR's Regulatory Responsibility, shall be referred to the relevant Participant for such action as is deemed appropriate by that Participant.

Notwithstanding the foregoing, nothing contained herein shall preclude a DOSR in its discretion from requesting that another Participant conduct an investigative or enforcement proceeding ("Proceeding") on a matter for which the requesting DOSR has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Additionally, nothing in this Agreement shall prevent another Participant on whose market potential violative activity took place from conducting its own Proceeding on a matter. The Participant conducting the Proceeding shall advise the assigned DOSR. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in a Proceeding.

- V. The OSG shall be composed of one representative designated by each of the Participants (a “Representative”). Each Participant shall also designate one or more persons as its alternate representative(s) (an “Alternate Representative”). In the absence of the Representative, the Alternate Representative shall assume the powers, duties and responsibilities of the Representative. Each Participant may at any time replace its Representative and/or its Alternate Representative to the Group.<sup>†3</sup> A majority of the OSG shall constitute a quorum and, unless otherwise required, the affirmative vote of a majority of the Representatives present (in person, by telephone or by written consent) shall be necessary to constitute action by the Group.
- The Group will have a Chair, Vice Chair and Secretary. A different Participant will assume each position on a rotating basis for a one-year term. In the event that a Participant replaces a Representative who is acting as Chair, Vice Chair or Secretary, the newly appointed Representative shall assume the position of Chair, Vice Chair, or Secretary (as applicable) vacated by the Participant’s former Representative. In the event a Participant cannot fulfill its duties as Chair, the Participant serving as Vice Chair shall substitute for the Chair and complete the subject unfulfilled term. All notices and other communications for the OSG are to be sent in care of the Chair and, as appropriate, to each Representative.
- VI. The OSG shall determine the times and locations of Group meetings, provided that the Chair, acting alone, may also call a meeting of the Group in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior to the meeting

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<sup>†3</sup> A Participant must give notice to the Chair of the Group of such a change.

date. Representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VII. No less frequently than every two years, in such manner as the Group deems appropriate, the OSG shall allocate Common Members that conduct an Options business among the Participants (“Allocation”), and the Participant to which a Common Member is allocated will serve as the DOSR for that Common Member. Any Allocation shall be based on the following principles, except to the extent all affected Participants consent to one or more different principles:

(a) The OSG may not allocate a Common Member to a Participant unless the Common Member is a member of that Participant.

(b) To the extent practicable, Common Members that conduct an Options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants, provided that no Common Members shall be allocated to FINRA. For example, if sixteen Common Members that conduct an Options business are members only of three Participants, none of which is FINRA, those Common Members shall be allocated among the three Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members. If, in the previous example, one of the three Participants is FINRA, the sixteen Common Members would be allocated evenly between the remaining Participants, so that the two non-FINRA Participants would be allocated eight Common Members each.

- (c) To the extent practicable, Allocation shall take into account the amount of Options activity conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participants of which they are members. Allocation will also take into account similar allocations pursuant to other plans or agreements to which the Common Members are party to maintain consistency in oversight of the Common Members.<sup>†4</sup>
- (d) To the extent practicable, Allocation of Common Members to Participants will be rotated among the applicable Participants such that a Common Member shall not be allocated to a Participant to which that Common Member was allocated within the previous two years. The assignment of DOSRs pursuant to the Allocation is attached as Exhibit B hereto, and will be updated from time to time to reflect Common Member Allocation changes.
- (e) The Group may reallocate Common Members from time-to-time, as it deems appropriate.
- (f) Whenever a Common Member ceases to be a member of its DOSR, the DOSR shall promptly inform the Group, which shall review the matter and allocate the Common Member to another Participant.
- (g) A DOSR may request that a Common Member to which it is assigned be reallocated to another Participant by giving 30 days written notice to the Chair of

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<sup>†4</sup> For example, if one Participant was allocated a Common Member by another regulatory group that Participant would be assigned to be the DOSR of that Common Member, unless there is good cause not to make that assignment.

the OSG. The Group, in its discretion, may approve such request and reallocate the Common Member to another Participant.

- (h) All determinations by the Group with respect to Allocation shall be made by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any Allocation relating to a Common Member unless the Common Member is a member of such Participant.

VIII. Each DOSR shall conduct routine surveillance reviews to detect violations of the applicable Common Rules by each Common Member allocated to it with a frequency (daily, weekly, monthly, quarterly, semi-annually or annually as noted on Exhibit A) not less than that determined by the Group. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOSR. In addition, each Participant shall provide, to the extent not otherwise already provided, information pertaining to its surveillance program that would be relevant to FINRA or the Participant(s) conducting routine examinations for the delta hedging exemption.

At each meeting of the OSG, each Participant shall be prepared to report on the status of its surveillance program for the previous quarter and any period prior thereto that has not previously been reported to the Group. In the event a DOSR believes it will not be able to complete its Regulatory Responsibility for its allocated Common Members, it will so advise the Group in writing promptly. The Group will undertake to remedy this situation by reallocating the subject Common Members among the remaining Participants. In such instance, the Group may determine to impose a

- regulatory fee for services provided to the DOSR that was unable to fulfill its Regulatory Responsibility.
- IX. Each Participant will, upon request, promptly furnish a copy of the report or applicable portions thereof relating to any investigation made pursuant to the provisions of this Agreement to each other Participant of which the Common Member under investigation is a member.
- X. Each Participant will routinely populate a common database, to be accessed by the Group relating to any formal regulatory action taken during the course of a Proceeding with respect to the Common Rules concerning a Common Member.
- XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to any Participant to the attention of that Participant's Representative, to the Participant's principal place of business or by e-mail at such address as the Representative shall have filed in writing with the Chair.
- XII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any of the Participants may agree that one or more will compensate the other(s) for costs incurred.
- XIII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Group. Each Participant will notify the Common Members that have been allocated to it that such Participant will serve as DOSR for that Common Member.
- XIV. This Agreement shall be effective upon approval of the Commission. This Agreement may only be amended in writing duly approved by each Participant. All

- amendments to this Agreement, excluding changes to Exhibits A, B and [B]C, must be filed with and approved by the Commission.
- XV. Any Participant may manifest its intention to cancel its participation in this Agreement at any time upon providing written notice to (i) the Group six months prior to the date of such cancellation, or such other period as all the Participants may agree, and (ii) the Commission. Upon receipt of the notice the Group shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the canceling Participant was the DOSR. The canceling Participant shall retain its Regulatory Responsibility and other rights, privileges and duties pursuant to this Agreement until the Group has completed the reallocation as described above, and the Commission has approved the cancellation.
- XVI. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, or such other period as all the Participants may agree. Such termination will become effective upon Commission approval.
- XVII. Participation in the Group shall be strictly limited to the Participants and no other party shall have any right to attend or otherwise participate in the Group except with the unanimous approval of all Participants. Notwithstanding the foregoing, any national securities exchange registered with the SEC under Section 6(a) of the Act or any national securities association registered with the SEC under section 15A of the

Act may become a Participant to this Agreement provided that: (i) such applicant has adopted rules substantially similar to the Common Rules, and received approval thereof from the SEC; (ii) such applicant has provided each Participant with a signed statement whereby the applicant agrees to be bound by the terms of this Agreement to the same effect as though it had originally signed this Agreement and (iii) an amended agreement reflecting the addition of such applicant as a Participant has been filed with and approved by the Commission.

XVIII. This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d-2 by and among the Amex, BSE, CBOE, ISE, NASD, the New York Stock Exchange, LLC, Arca and PHLX involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on December 1, 2006, and as may be amended from time to time.

#### LIMITATION OF LIABILITY

No Participant nor the Group nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Regulatory Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other Participants or its respective directors, governors, officers, employees or representatives. No warranties, express or implied,

are made by the Participants, individually or as a group, or by the OSG with respect to any Regulatory Responsibility to be performed hereunder.

**RELIEF FROM RESPONSIBILITY**

Pursuant to Section 17(d)(1)(A) of the Exchange Act and Rule 17d-2, the Participants join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Participants that are party to this Agreement and are not the DOSR as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOSR.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

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**OPTIONS SURVEILLANCE GROUP 17d-2**

**Exhibit A**

**Common Rules**

Violation I: Expiring Exercise Declarations (EED) – For Listed Equity Options Expiring: The Third Saturday Following The Third Friday Of A Month, Quarterly, AND For Listed FLEX Options.			
SRO	Description of Rule	Exchange Rule Number	Frequency of Review
Amex	Exercise of Options Contracts	[Amex] Rule 980	At Expiration
BOX	Exercise of Options Contracts	[BOX] Rule 7.1	At Expiration

CBOE	Exercise of Options Contracts	[CBOE] Rule 11.1	At Expiration
FINRA	Exercise of Options Contracts	NASD Rule 2860	At Expiration
ISE	Exercise of Options Contracts	[ISE] Rule 1100	At Expiration
Nasdaq	Exercise of Options Contracts	Nasdaq Chapter VIII, Sec.1	At Expiration
NYSEArca	Exercise of Options Contracts	[NYSEArca] Rule 6.24	At Expiration
PHLX	Exercise of Equity Options Contracts	[PHLX] Rule 1042	At Expiration

<u>Violation II: Position Limits (PL) – For Listed Equity Options Expiring: The Third Saturday Following The Third Friday Of A Month, Quarterly</u>			
<u>SRO</u>	<u>Description of Rule (For review as they apply to PL)</u>	<u>Exchange Rule Number</u>	<u>Frequency of Review</u>
<u>Amex</u>	<u>Position Limits</u>	<u>Rule 904</u>	<u>Daily</u>
	<u>Liquidating Positions</u>	<u>Rule 907</u>	<u>As Needed</u>
<u>BOX</u>	<u>Position Limits</u>	<u>Chapter III, Section 7</u>	<u>Daily</u>
	<u>Exemptions from Position</u>	<u>Chapter III, Section 8</u>	<u>As Needed</u>
	<u>Liquidation Positions</u>	<u>Chapter III, Section 11</u>	<u>As Needed</u>
<u>CBOE</u>	<u>Position Limits</u>	<u>Rule 4.11</u>	<u>Daily</u>
	<u>Liquidation of Positions</u>	<u>Rule 4.14</u>	<u>As Needed</u>
<u>FINRA</u>	<u>Position Limits</u>	<u>NASD Rule 2860(b)(3)</u>	<u>Daily</u>
	<u>Liquidation of Positions and Restrictions</u>	<u>NASD Rule 2860(b)(6)</u>	<u>As Needed</u>

	<u>on Access</u>		
<u>ISE</u>	<u>Position Limits</u>	<u>Rule 412</u>	<u>Daily</u>
	<u>Exemptions from Position Limits</u>	<u>Rule 413</u>	<u>As Needed</u>
	<u>Liquidating Positions</u>	<u>Rule 416</u>	<u>As Needed</u>
<u>Nasdaq</u>	<u>Position Limits</u>	<u>Nasdaq Rule Chapter III</u> <u>Section 7</u>	<u>Daily</u>
	<u>Exemptions from Position Limits</u>	<u>Nasdaq Rule Chapter III</u> <u>Section 8</u>	<u>As Needed</u>
	<u>Liquidating Positions</u>	<u>Nasdaq Rule Chapter III</u> <u>Section 11</u>	<u>As Needed</u>
<u>NYSEArca</u>	<u>Position Limits</u>	<u>Rule 6.8</u>	<u>Daily</u>
	<u>Liquidation of Position</u>	<u>Rule 6.7</u>	<u>As Needed</u>
<u>PHLX</u>	<u>Position Limits</u>	<u>Rule 1001</u>	<u>Daily</u>
	<u>Liquidation of Positions</u>	<u>Rule 1004</u>	<u>As Needed</u>

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IV. Solicitation of Comments

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](mailto:rule-comments@sec.gov). Please include File Number 4-551 on the subject line.

Paper comments:

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

All submissions should refer to File Number 4-551. 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/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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of Amex, BSE, CBOE, ISE, FINRA, NASDAQ, NYSE Arca, and Phlx. 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 4-551 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Discussion

The Commission continues to believe that the Plan, as proposed to be amended, is an achievement in cooperation among the SRO Participants, and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related market surveillance matters that would otherwise be performed by multiple SROs. The Plan

promotes efficiency by reducing costs to firms that are members of more than one of the SRO Participants. In addition, because the SRO Participants coordinate their regulatory functions in accordance with the Plan, the Plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The Commission notes that the SRO Participants have separately determined to add options position limit rules to the list of common rules included in Exhibit A to the Plan.<sup>14</sup> To cover the full scope of regulatory responsibilities associated with these new position limit common rules, the SRO Participants have proposed to add language to the Plan to clarify the allocation of examination responsibilities with respect to the delta hedging exemption from options position limits. The amended Plan allocates to FINRA the examination responsibilities with respect to the delta hedging exemption for all common members that are members of FINRA, and allocates to the applicable DOSR the examination responsibilities with respect to the delta hedging exemption for common members that are not members of FINRA. In addition, to facilitate the ability of FINRA or a DOSR to perform examination responsibilities with regard to the position limit rules, the amended Plan states that each SRO Participant shall provide information pertaining to its surveillance program that would be relevant to FINRA or the applicable DOSR conducting routine examinations for the delta hedging exemption. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay.

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<sup>14</sup> See Section XIV of the Plan (regarding amendments to the Plan).

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4-551.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act,<sup>15</sup> that the Plan, as amended, made by and between Amex, BSE, CBOE, ISE, FINRA, NASDAQ, NYSE Arca, and Phlx filed with the Commission pursuant to Rule 17d-2 on October 1, 2008 is hereby approved and declared effective.

IT IS FURTHER ORDERED that those SRO Participants that are not the DOSR as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOSR under the amended Plan to the extent of such allocation.

IT IS FURTHER ORDERED that the SRO Participants are relieved of the examination responsibilities with respect to the delta hedging exemption from options position limits for all common members allocated to FINRA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Acting Secretary

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

<sup>17</sup> 17 CFR 200.30-3(a)(34).