

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88366; File No. 4-618)

March 12, 2020

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Proposed Amendment to the Plan for the Allocation of Regulatory Responsibilities Between Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and Long-Term Stock Exchange, Inc. Concerning Covered Regulation NMS and Consolidated Audit Trail Rules

On February 3, 2020, Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BATS Y”), BOX Exchange LLC (“BOX”), Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), NYSE Chicago, Inc. (“CHX”), Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq MRX, LLC (“MRX”), Investors Exchange LLC (“IEX”), Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), MIAX Emerald, LLC (“MIAX Emerald”), The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq BX, Inc. (“BX”), Nasdaq PHLX LLC (“PHLX”), NYSE National, Inc. (“NYSE National”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), and Long-Term Stock Exchange, Inc. (“LTSE”) (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 responsibilities (“17d-2 Plan” or the “Plan”). The Plan was published for comment on February

25, 2020.<sup>1</sup> The Commission received no comments on the Plan. This order approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>2</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 the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.<sup>3</sup> 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>4</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>5</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.

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<sup>1</sup> See Securities Exchange Act Release No. 88246 (February 20, 2020), 85 FR 10746.

<sup>2</sup> 15 U.S.C. 78s(g)(1).

<sup>3</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

<sup>4</sup> 15 U.S.C. 78q(d)(1).

<sup>5</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).

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>6</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>7</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 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>8</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 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)

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<sup>6</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

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

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

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 Amendment to the Plan

On February 3, 2020, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to: (i) add Rule 613 under the Act and the rules of each Participating Organization related to Rule 613 listed on Exhibit A to the Plan (“SRO Covered CAT Rules”); and (ii) to reflect the name change of Nasdaq PHLX, Inc. to Nasdaq PHLX LLC.

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Participating Organization.<sup>9</sup> The Plan provides 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 serves as the “Designated Regulation NMS Examining Authority” (“DREA”) for common members that are members of FINRA, and assumes 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 member’s DEA serves as the DREA and “Designated CAT Surveillance Authority (“DCSA”), 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 2(c) of the Plan contains a list of principles that are 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, Rule 613 and the SRO Covered CAT Rules),

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<sup>9</sup> The proposed 17d-2 Plan refers to these members as “Common Members.”

the Plan provides that the DREA will be the same as the DREA for the rules pertaining to NMS stocks and will serve as the DCSA. 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 2(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 Rules”) that lists the federal securities laws, rules, and regulations, for which the applicable DREA would bear examination and enforcement responsibility, and for which the applicable DCSA would bear surveillance, investigation, and enforcement responsibility, under the Plan for common members of the Participating Organization and their associated persons.

Specifically, the applicable DREA assumes examination and enforcement responsibility, and the applicable DCSA assumes surveillance, investigation, and enforcement responsibility, relating to compliance by common members with the Covered Rules. Covered Rules do 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.<sup>10</sup> Under the Plan, Participating Organizations retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving their own marketplace.<sup>11</sup>

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<sup>10</sup> See Securities Exchange Act Release No. 86542 (August 1, 2019), 84 FR 38679 (August 7, 2019) (File No. 4-566) (notice of filing and order approving and declaring effective an amendment to the insider trading 17d-2 plan).

<sup>11</sup> See paragraph 3 of the Plan.

### III. Discussion

The Commission finds that the Plan, as amended, is consistent with the factors set forth in Section 17(d) of the Act<sup>12</sup> and Rule 17d-2(c) thereunder<sup>13</sup> in that the proposed amended 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 amended Plan should reduce unnecessary regulatory duplication by allocating to the applicable DREA certain examination and enforcement responsibilities, and to the applicable DCSA certain surveillance, investigation, and enforcement responsibilities, for Common Members that would otherwise be performed by multiple Parties. Accordingly, the proposed amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Parties will coordinate their regulatory functions in accordance with the proposed amended Plan, the amended Plan should promote investor protection.

The Commission is hereby declaring effective a plan that allocates regulatory responsibility for certain provisions of the federal securities laws, rules, and regulations as set forth in Exhibit A to the Plan. The Commission notes that any amendment to the Plan must be approved by the relevant Parties as set forth in Paragraph 24 of the Plan and must be filed with and approved by the Commission before it may become effective.<sup>14</sup>

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<sup>12</sup> 15 U.S.C. 78q(d).

<sup>13</sup> 17 CFR 240.17d-2(c).

<sup>14</sup> See Paragraph 24 of the Plan. The Commission notes, however, that changes to Exhibit B to the Plan (the allocation of Common Members to DREAs) are not required to be filed with, and approved by, the Commission before they become effective.

IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-618. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan in File No. 4-618 is hereby approved and declared effective.

It is further ordered that the Parties who are not the DREA or DCSA as to a particular Common Member are relieved of those regulatory responsibilities allocated to the Common Member's DREA or DCSA under the Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(34).