

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55057; File No. 4-529)

January 8, 2007

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the International Securities Exchange, LLC and the National Association of Securities Dealers, Inc.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> notice is hereby given that on December 20, 2006, the International Securities Exchange, LLC (“ISE”) and the National Association of Securities Dealers, Inc. (“NASD”) (together with the ISE, the “Parties”) filed with the Securities and Exchange Commission (“Commission”) an amended and restated plan for the allocation of regulatory responsibilities. The Commission is publishing this notice to solicit comments on the amended and restated 17d-2 plan from interested persons.

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 registered 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)<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

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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).

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

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

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 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.

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<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).

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. Proposed Plan

The Parties currently operate pursuant to a 17d-2 plan in which NASD has assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the “current NASD-ISE 17d-2 Plan”).<sup>11</sup> On September 28, 2006, the Commission approved a proposed rule change submitted by ISE relating to the adoption of rules to govern its electronic trading system for equities.<sup>12</sup> In that filing, ISE represented that it would enter into a 17d-2 agreement with NASD to delegate to

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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 Nos. 42668 (April 11, 2000), 65 FR 21048 (April 19, 2000) (File No. 4-431) (notice of filing); and 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (File No. 4-431) (order).

<sup>12</sup> See Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR-ISE-2006-48).

NASD all regulatory oversight and enforcement responsibilities with respect to the ISE's outbound routing facility pursuant to applicable laws.<sup>13</sup>

On December 20, 2006, the Parties submitted an amended and restated 17d-2 plan for review by the Commission. The amended and restated 17d-2 plan, which would replace and supersede the current NASD-ISE 17d-2 Plan and all prior amendments thereto in their entirety, is intended to reduce regulatory duplication for firms that are common members of both ISE and NASD and to address regulation of the ISE's outbound routing facility for its new electronic trading system for equities. The text of the plan delineates regulatory responsibilities with respect to the Parties, including responsibility for ISE rules. Included in the amended and restated plan is an exhibit (the "ISE Certification of Common Rules," referred to herein as the "Certification") that lists every ISE rule and the federal securities laws, rules, and regulations thereunder for which, under the plan, NASD would bear responsibility for overseeing and enforcing with respect to common members. In particular, under the amended and restated 17d-2 plan, NASD would assume examination and enforcement responsibility relating to compliance by dual members and persons associated therewith with the rules of ISE that are substantially similar to the applicable rules of NASD ("Common Rules"),<sup>14</sup> as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification.<sup>15</sup> Under the plan, ISE would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving ISE's own marketplace, including, without limitation, ISE's rules relating to the rights and obligations of market makers; registration

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<sup>13</sup> See id. at 71 FR 58654.

<sup>14</sup> See paragraph 1(b) of the amended and restated 17d-2 plan (defining Common Rules).

<sup>15</sup> See paragraph 1(f) of the amended and restated 17d-2 plan. The Commission notes that there are currently no federal securities law rules listed on the Certification.

pursuant to its unique rules (i.e., non-Common Rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any rules that are not Common Rules, except for ISE rules for any ISE member that operates as a facility,<sup>16</sup> acts as an outbound router for the ISE, and is a member of NASD (the “Router Member”).<sup>17</sup>

The text of the amended and restated 17d-2 plan is as follows:

AGREEMENT BETWEEN NASD AND  
INTERNATIONAL SECURITIES EXCHANGE LLC PURSUANT TO  
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the National Association of Securities Dealers, Inc. (“NASD”) and the International Securities Exchange LLC (“ISE”), is made this 20th day of December, 2006 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d-2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. NASD and ISE may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between the parties on April 3, 2000 and amended on April 27, 2000, entitled “Agreement Between the National Association of Securities Dealers, Inc., NASD Regulation, Inc. and the International Securities Exchange LLC Pursuant to Section 17(d) and Rule 17d-2,” and any subsequent amendments thereafter.

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<sup>16</sup> See Section 3(a)(2) of the Act (defining “facility”). 15 USC 78c(a)(2).

<sup>17</sup> Apparent violations of such rules by any such entity will be processed by, and enforcement proceedings will be conducted by, the NASD. See paragraph 2(d) of the amended and restated 17d-2 plan. As of the date of the amended and restated 17d-2 plan, ISE Route LLC is the only Router Member.

WHEREAS, NASD and ISE desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, NASD and ISE desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, NASD and ISE hereby agree as follows:

**1. Definitions.** Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “ISE Rules” or “NASD Rules” shall mean the rules of the ISE or NASD, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean the ISE Rules that are substantially similar to the applicable NASD Rules in that examination for compliance with such rules 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.

(c) “Dual Members” shall mean those ISE members that are also members of NASD and the associated persons therewith.

(d) “Effective Date” shall have the meaning set forth in paragraph 14.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with the NASD Code of Procedure (the Rule 9000 Series) and other applicable NASD procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the NASD’s Code of Procedure and sanctions guidelines.

(f) “Regulatory Responsibilities” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

**2. Regulatory and Enforcement Responsibilities.** NASD shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, ISE furnished NASD with a current list of Common Rules and certified to NASD that such rules are substantially similar to the corresponding NASD rule (the “Certification”). NASD hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of ISE or NASD, ISE shall submit an updated list of Common Rules to NASD for review which shall add ISE rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete ISE rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be ISE rules that qualify as

Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, NASD shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibilities” does not include, and ISE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following:

(a) surveillance and enforcement with respect to trading activities or practices involving ISE’s own marketplace, including without limitation ISE’s rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any ISE Rules that are not Common Rules, except for ISE Rules for any ISE member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for the ISE and is a member of NASD (“Router Member”) as provided in paragraph 6. As of the date of this Agreement, ISE Route LLC is the only Router Member.

**3. Dual Members.** Prior to the Effective Date, ISE shall furnish NASD with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

**4. No Charge.** There shall be no charge to ISE by NASD for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. NASD shall provide ISE with ninety (90) days advance written notice in the event NASD decides to impose any charges to ISE for performing the Regulatory

Responsibilities under this Agreement. If NASD determines to impose a charge, ISE shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that NASD's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

**5. Reassignment of Regulatory Responsibilities.** Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

**6. Notification of Violations.** In the event that NASD becomes aware of apparent violations of any ISE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, NASD shall notify ISE of those apparent violations for such response as ISE deems appropriate. Apparent violations of all other applicable rules, including violations of the Common Rules, various securities acts, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by NASD as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on the ISE, ISE may in its discretion assume concurrent jurisdiction and responsibility. With respect to apparent violations of any ISE Rules by any Router Member, NASD shall not make referrals to ISE pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, NASD as provided in this Agreement. Each

party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

**7. Continued Assistance.** NASD shall make available to ISE all information obtained by NASD in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, NASD shall furnish ISE any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, ISE acknowledges and agrees to take all reasonable steps to maintain its confidentiality. ISE shall make available to NASD any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

**8. Dual Member Applications.**

(a) Dual Members subject to this Agreement shall be required to submit, and NASD shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of both ISE and NASD or associated with Dual Members thereof. Upon request, NASD shall advise ISE of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of both ISE and NASD.

(b) Dual Members shall be required to send to NASD all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions NASD becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual

Member, NASD shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep ISE advised of its actions in this regard for such subsequent proceedings as ISE may initiate.

(d) Notwithstanding the foregoing, NASD shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) meets the ISE requirements for general membership or for specified categories of membership or participation in the ISE, such as (A) Primary Market Maker Membership (“PMM”); (B) Competitive Market Maker Membership (“CMM”); (C) Electronic Access Membership (“EAM”) (or any similar type of ISE membership or participation that is created after this Agreement is executed); or (ii) meets the ISE requirements to be associated with, or employed by, an ISE member or participant in any capacity, such a Designated Trading Representative (“DTR”) (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). NASD shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of the ISE, or a person associated with, or requesting association with, a member or participant of the ISE.

**9. Branch Office Information.** NASD shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to

the Common Rules as they may be amended from time to time. NASD shall advise ISE monthly of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

**10. Customer Complaints.** ISE shall forward to NASD copies of all customer complaints involving Dual Members received by ISE relating to NASD's Regulatory Responsibilities under this Agreement. It shall be NASD's responsibility to review and take appropriate action in respect to such complaints.

**11. Advertising.** NASD shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with NASD in accordance with NASD's filing procedures and is accompanied with any applicable filing fees set forth in NASD Rules. Such review shall be made in accordance with then applicable NASD rules and interpretations. The advertising of Dual Members shall be subject only to compliance with appropriate NASD rules and interpretations.

**12. No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

**13. Termination.** This Agreement may be terminated by ISE or NASD at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

**14. Effective Date.** This Agreement shall be effective upon approval of the Commission.

**15. Arbitration.** In the event of a dispute between the parties as to the operation of this Agreement, ISE and NASD hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

**16. Separate Agreement.** This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act between the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. 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 January 14, 2004, and as may be amended from time to time.

**17. Notification of Members.** ISE and NASD shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

**18. Amendment.** This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

**19. Limitation of Liability.** Neither NASD nor ISE nor any of their respective directors, governors, officers or employees shall be liable to the other party to 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 Responsibilities as

provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of NASD or ISE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by NASD or ISE with respect to any of the responsibilities to be performed by each of them hereunder.

**20. Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, NASD and ISE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve ISE of any and all responsibilities with respect to matters allocated to NASD pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

## **EXHIBIT 1**

### ISE CERTIFICATION OF COMMON RULES

ISE hereby certifies that the requirements contained in the rules listed below for ISE are identical to, or substantially similar to, the comparable NASD rules identified.

<b>ISE RULE(S)</b>	<b>NASD RULE(S)</b>
408. Prevention of the Misuse of Material, Nonpublic Information	3010(a)(2) Supervision
409. Disciplinary Action	3070(a)(1) and (a)(10) Reporting Requirements
604. Continuing Education for Registered Persons*	1120 Continuing Education Requirements
622. Transfer of Accounts	11870 Customer Account Transfer Contracts
624. Brokers' Blanket Bonds*	3020 Fidelity Bonds
626. Telephone Solicitation*	2212 Telemarketing
1400. Maintenance, Retention, and Furnishing of Books, Records and Other Information	3110(a) Books and Records - Requirements
1407. Market Maker Hedge Exemption from Nasdaq Short Sale Rule*	5100 Short Sale Rule; IM-6130 Trade Reporting of Short Sales
2114. Doing Business with the Public <sup>1</sup>	2310 Recommendations to Customers (Suitability); 2320 Best Execution and Interpositioning; 2330 Customers' Securities or Funds; 2340 Customer Account Statements; 2341 Margin Disclosure Statement; 2350 Broker/Dealer Conduct on the Premises of Financial Institutions; 2360 Approval Procedures for Day-Trading Accounts; 2361 Day-Trading Risk Disclosure Statement; 2370 Borrowing From or Lending to Customers

<sup>1</sup> In connection with the approval of ISE Rule 2114, the Commission noted that since the ISE is requiring Equity EAMs that do business with the public to become members of NASD, those ISE members are required to comply with NASD rules that govern the practice of members when doing business with the public. The Commission noted that, among other things, these members would be obligated to comply with these listed NASD Rules. See Securities Exchange Act Release No. 54401 (September 1, 2006), 71 FR 53483 (September 11, 2006) (SR-ISE-2006-53).

\* ISE will be responsible for any significant differences between its rules and the comparable NASD rule identified, until such time amendments to such rule(s) may be approved.

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

Pursuant to Section 17(d)(1) of the Act<sup>18</sup> and Rule 17d-2 thereunder,<sup>19</sup> after [insert date 21 days from publication in the Federal Register], the Commission may, by written notice, declare the plan submitted by ISE and NASD, File No. 4-529, 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 amended and restated 17d-2 plan and to relieve ISE of the responsibilities which would be assigned to NASD, 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 4-529 on the subject line.

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<sup>18</sup> 15 U.S.C. 78q(d)(1).

<sup>19</sup> 17 CFR 240.17d-2.

Paper comments:

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

All submissions should refer to File Number 4-529. 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. Copies of the plan also will be available for inspection and copying at the principal offices of ISE and NASD. 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 4-529 and should be submitted on or before February 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(34).