

AGREEMENT BETWEEN THE NASD AND
NYSE ARCA, INC. PURSUANT TO
SEC RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, between the National Association of Securities Dealers, Inc. (“NASD”) and the NYSE Arca, Inc. (“NYSE Arca”), is made this 9th day of February, 2007, pursuant to the provisions of SEC Rule 17d-2 under the Securities Exchange Act of 1934 which calls for agreements between self-regulatory organizations for plans to reduce or eliminate regulatory duplication.

This Agreement supersedes and replaces the agreement entered into between the parties on July 25, 2006, entitled “Agreement Between the NASD and the NYSE Arca, Inc. Pursuant to SEC Rule 17d-2 Under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

WHEREAS, NASD and NYSE Arca are desirous of reducing duplication in the examination of their dual members (a broker-dealer firm which is a member of both NASD and NYSE Arca) and in the filing and processing of certain registration and membership records; and

WHEREAS, NASD and NYSE Arca are desirous of executing a plan covering such subjects pursuant to the provisions of Rule 17d-2 and filing such with the Commission for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereafter, the said NASD and NYSE Arca hereby agree as follows:

1. That NASD will assume regulatory responsibilities for all firms who are members of NYSE Arca and NASD (“dual members”). NYSE Arca shall furnish NASD with a current list of dual members, which shall be updated no less frequently than once each quarter.

2. For purposes of this plan, the term “regulatory responsibilities” shall mean the examination and enforcement responsibility relating to compliance by the dual members and persons associated therewith with the rules of NYSE Arca that are substantially similar to the rules of NASD in that the NYSE Arca’s rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a dual member’s activity, conduct, or output in relation to such rule, (the “Common Rules”). Prior to the effective date of this Agreement, NYSE Arca shall furnish NASD with a current list of Common Rules (“Certification”), and NASD will confirm in writing whether the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the commencement of operation of this Agreement, or more frequently if required by changes in either the rules of NYSE Arca or NASD, NYSE Arca shall submit an updated list of Common Rules to NASD for review which shall add NYSE Arca rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete NYSE Arca 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 NYSE Arca rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, NASD will confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Regulatory responsibilities under this Agreement shall also extend to those provisions of the federal securities laws and rules and regulations thereunder listed in the Certification.

The term “enforcement responsibility” 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. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “regulatory responsibilities” does not include, and NYSE Arca will retain full responsibility for (unless otherwise addressed by separate agreement or rule):

- a) surveillance and enforcement with respect to trading activities or practices involving NYSE Arca’s own marketplace, including without limitation NYSE Arca’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 Act; and

d) any rules of NYSE Arca that are not substantially similar to the rules of NASD, except for NYSE Arca rules for any broker-dealer subsidiary of Archipelago Holdings, Inc. as provided in paragraph 5.

3. There shall be no charge to NYSE Arca by NASD for performing the stated regulatory responsibilities under this plan except as hereinafter provided. NASD will provide NYSE Arca with ninety (90) days advance written notice in the event NASD decides to impose any charges to NYSE Arca for performing the stated regulatory responsibilities under this plan. If it becomes necessary to impose a charge, NYSE Arca shall have the right at the time of the imposition of such to terminate this Agreement; provided, however, that NASD's regulatory responsibilities under this Agreement shall continue until the SEC approves the termination of this Agreement.

4. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Securities and Exchange Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning regulatory responsibilities between self-regulatory organizations. To the extent such is inconsistent with this Agreement, such 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.

5. Should NASD become aware of apparent violations of NYSE Arca's rules, which are not listed as Common Rules, discovered pursuant to the performance of the

regulatory responsibilities assumed hereunder, NASD will notify NYSE Arca of those apparent violations. With respect to apparent violations of any NYSE Arca rules by any broker-dealer subsidiary of NYSE Arca's parent company, Archipelago Holdings, Inc., NASD shall not make referrals to NYSE Arca pursuant to this paragraph 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, NASD as provided in this agreement. Apparent violations of all other applicable rules, including violations of the various securities acts, and rules and regulations thereunder, will be processed by, and enforcement proceedings in respect thereto will be conducted by NASD as provided hereinbefore; provided however that in the event a covered dual member or a person associated therewith is the subject of an investigation relating to a transaction on NYSE Arca, NYSE Arca may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

6. NASD will make available to NYSE Arca all information obtained by it in the performance by it of the regulatory responsibilities hereunder in respect to the firms which are subject to this Agreement. In particular, and not in limitation of the foregoing, NASD will furnish NYSE Arca any information it obtains about dual members which reflects adversely on their financial condition and which should be known by NYSE Arca or any subsidiaries thereof. It is understood that such information is of an extremely sensitive nature and, accordingly, NYSE Arca agrees to take all reasonable steps to maintain its confidentiality. NYSE Arca will supply 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.

7. Dual members subject to this agreement will be required to submit, and NASD will 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 NYSE Arca and NASD or associated with dual members thereof. Upon request, NASD shall advise NYSE Arca of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of both NYSE Arca and NASD. Dual members will be required to send to NASD all letters, termination notices or other material respecting these individuals. When as a result of processing said submissions NASD becomes aware of a statutory disqualification as defined in the Securities Exchange Act of 1934 with respect to a dual member or person associated with a dual member, NASD will determine pursuant to sections 15A(g) and/or section 6(c) the acceptability or continued applicability of the person to whom such disqualification applies and keep NYSE Arca advised of its actions in this regard.

NASD will 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 under the Common Rules as they may be amended from time to time. Upon request, NASD will advise NYSE Arca of the opening, address change and termination of branch and main offices of dual members and the names of such branch office managers.

8. NYSE Arca shall forward to NASD copies of all customer complaints involving dual members and persons associated therewith received by it 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.

9. 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. Such review will be made in accordance with then applicable NASD rules and interpretations. In all cases of dual members subject to this Agreement, the advertising of dual members shall be subject only to compliance with appropriate NASD rules and interpretations.

10. Nothing contained in this Agreement shall restrict or in any way encumber the right of NASD or NYSE Arca to conduct special or cause examinations of dual members and persons associated therewith as NASD or NYSE Arca, in their sole discretions, shall deem appropriate.

11. Should a dispute arise between the parties as to the operation of this Agreement, NYSE Arca and NASD 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.

12. This Agreement may be cancelled by NYSE Arca or NASD at any time with the approval of the Securities and Exchange Commission upon one (1) year's written notice, except as provided in paragraph 3.

13. This Agreement shall be effective upon approval of the Securities and Exchange Commission.

14. This Agreement is wholly separate from the multiparty Agreement made pursuant to SEC Rule 17d-2 of the Securities Exchange Act of 1934 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, LLC, the NYSE Arca, 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 December 1, 2006, and as may be amended from time to time.

15. Limitation of Liability. Neither NASD nor NYSE Arca nor any of their respective directors, governors, officers or employees shall be liable to the other party to

this plan 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 NYSE Arca 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 NYSE Arca with respect to any of the responsibilities to be performed by each of them hereunder.

16. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Securities Exchange Act of 1934 and Rule 17d-2 promulgated pursuant thereto, NASD and NYSE Arca join in requesting the Commission, upon its approval of this plan or any part thereof, to relieve NYSE Arca of any and all responsibilities with respect to matters allocated to NASD pursuant to this plan.

IN WITNESS WHEREOF, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

NYSE ARCA, INC.

By _____
Name:
Title:

**NATIONAL ASSOCIATION OF SECURITIES
DEALERS, INC.**

By _____
Name:
Title: