

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55532; File No. S7-966)

March 26, 2007

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Granting Approval of Amendment to the Plan for the Allocation of Regulatory Responsibilities Among 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.

On December 5, 2006, the American Stock Exchange, LLC (“Amex”), the Boston Stock Exchange, Inc. (“BSE”), the Chicago Board Options Exchange, Inc. (“CBOE”), the International Securities Exchange, LLC (“ISE”), the National Association of Securities Dealers, Inc. (“NASD”), the New York Stock Exchange, LLC (“NYSE”), the NYSE Arca, Inc. (“NYSE Arca”), and the Philadelphia Stock Exchange, Inc. (“Phlx”) (collectively the “SRO participants”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 17(d)¹ of the Securities Exchange Act of 1934 (“Act”) and Rule 17d-2 thereunder,² an amendment to their January 14, 2004 plan for the allocation of regulatory responsibility. The proposed amended plan was published for comment on January 26, 2007.³ The Commission received no comments on the amended plan. This order approves the amended plan.

I. Introduction

Section 19(g)(1) of the Act,⁴ among other things, requires every national securities exchange and registered securities association (“SRO”) to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ Securities Exchange Act Release No. 55145 (January 22, 2007), 72 FR 3882.

⁴ 15 U.S.C. 78s(g)(1).

thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2) of the Act.⁵ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ 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.⁷ Rule 17d-1, adopted on April 20, 1976,⁸ 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. 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 applicable financial responsibility rules.

Rule 17d-1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its

⁵ 15 U.S.C. 78q(d) or 15 U.S.C. 78s(g)(2)

⁶ 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).

⁷ 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

⁸ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

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 other areas, on October 28, 1976, the Commission adopted Rule 17d-2 under the Act.⁹ This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to 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 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 September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d-2.¹⁰ On May 23, 2000, the Commission approved an amendment to the plan that added the ISE as a participant.¹¹ On November 8, 2002, the Commission approved another amendment that replaced the original plan in its entirety and, among other things, allocated regulatory responsibilities among all the

⁹ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

¹⁰ See Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983).

¹¹ See Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 24759 (May 31, 2000).

participants in a more equitable manner.¹² On February 5, 2004, the parties submitted an amendment to the plan, primarily to include the BSE, which was establishing a new options trading facility to be known as the Boston Options Exchange (“BOX”), as an SRO participant.¹³

The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants. Generally, under the current plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm’s “Designated Options Examining Authority” (“DOEA”). Pursuant to the current plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period the firm is assigned to a DOEA.

III. Proposed Amendment to the Plan

The purpose of the amended plan is to: (i) provide that NASD and NYSE will be DOEAs under the plan, (ii) provide that the Designated Examination Authority pursuant to Commission Rule 17d-1 under the Act for a broker-dealer that is a member of more than one SRO participant (but not a member of the NASD or the NYSE) shall perform the regulatory responsibility under the agreement as if such DEA were the DOEA, (iii) to incorporate a more formal procedure for updating the list of common rules, and (iv) make certain other changes to the plan. The amended plan replaces the previous plan in its entirety.

¹² See Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

¹³ See Securities Exchange Act Release No. 49197 (February 5, 2004), 69 FR 7046. (February 12, 2004).

IV. Discussion

The Commission finds that the amended plan is consistent with the factors set forth in Section 17(d) of the Act¹⁴ and Rule 17d-2(c) thereunder¹⁵ in that the amended plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, and to remove impediments to and foster the development of a national market system. In particular, the Commission continues to believe that the plan is an achievement in cooperation among the SRO participants, and that the plan will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice 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.

¹⁴ 15 U.S.C. 78q(d).

¹⁵ 17 CFR 240.17d-2(c).

V. Conclusion

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7-966. The SRO participants shall notify all members affected by the amended plan of their rights and obligations under the amended plan.

IT IS THEREFORE ORDERED, pursuant to Sections 17(d)¹⁶ of the Act, that the amended plan of the Amex, BSE, CBOE, ISE, NASD, NYSE, NYSE Arca, and Phlx filed pursuant to Rule 17d-2¹⁷ is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁶ 15 U.S.C. 78q(d).

¹⁷ 17 CFR 240.17d-2.

¹⁸ 17 CFR 200.30-3(a)(34).