

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56941; File No. 4-551)

December 11, 2007

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities 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., and the Philadelphia Stock Exchange, Inc.

On October 30, 2007, 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. (“NYSE Arca”), and the Philadelphia Stock Exchange, Inc. (“Phlx”) (collectively, “Participants”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> a proposed plan for the allocation of regulatory responsibilities (“Plan”).<sup>3</sup> The Plan was published for comment on November 9, 2007.<sup>4</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 Act,<sup>5</sup> among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or registered securities association to examine for, and enforce compliance by, its members and persons associated with

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

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

<sup>3</sup> See infra Section II (describing the proposed Plan).

<sup>4</sup> See Securities Exchange Act Release No. 56731 (November 1, 2007), 72 FR 63637 (File No. 4-551) (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(g)(1).

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>6</sup> or Section 19(g)(2)<sup>7</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>8</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>9</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>10</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>11</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

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

<sup>7</sup> 15 U.S.C. 78s(g)(2).

<sup>8</sup> 15 U.S.C. 78q(d)(1).

<sup>9</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>10</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>11</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

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>12</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

The Plan is intended to reduce regulatory duplication for common members by allocating regulatory responsibility for certain options-related market surveillance matters among the Participants.<sup>13</sup> Under the Plan, a Participant will serve as the Designated Options Surveillance

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<sup>12</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

<sup>13</sup> The proposed plan is wholly separate from the multiparty options agreement made pursuant to Rule 17d-2 by and among Amex, BSE, CBOE, ISE, NASD (n/k/a FINRA), NYSE, NYSE Arca, and Phlx involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct of broker-dealers of accounts for listed options or index warrants entered into on

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. As proposed, the Plan currently is limited to the review of expiring exercise declarations pursuant to the common rules listed in proposed Exhibit A to the Plan. 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. The full text of the proposed Plan and Exhibit A thereto can be found in the Notice.

### III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act<sup>14</sup> and Rule 17d-2(c) thereunder<sup>15</sup> in that the proposed 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 a national market system. In particular, the Commission believes that the proposed Plan is an achievement in cooperation among the Participants and should reduce regulatory duplication by allocating to the DOSR the responsibility for certain options-related market surveillance matters that would otherwise be performed by multiple Participants. Accordingly, the proposed Plan promotes efficiency by reducing costs to common members. Furthermore, because the Participants will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

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December 1, 2006, and as may be amended from time to time. See Securities Exchange Act Release Nos. 55145 (January 22, 2007), 72 FR 3882 (January 26, 2007) (File No. S7-966) and 55532 (March 26, 2007), 72 FR 15729 (April 2, 2007) (File No. S7-966).

<sup>14</sup> 15 U.S.C. 78q(d).

<sup>15</sup> 17 CFR 240.17d-2(c).

The Commission notes that the Plan will be administered by a committee known as the Options Surveillance Group (the “OSG”). The Commission further notes that, under the Plan, the Participants will allocate among themselves certain regulatory responsibilities relating to compliance by their 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”). The Common Rules covered by the Plan are specifically listed in Exhibit A to the Plan, as may be amended by the Participants from time to time upon unanimous written agreement by the Participants. The Commission notes that each year, or more frequently if required by changes in the rules of a Participant, each Participant will submit to the other Participants, through the Chair of the OSG, an updated list of Common Rules for review, and each Participant will confirm in writing to the Chair of the OSG whether that Participant’s rules listed in Exhibit A continue to qualify as Common Rules under the Plan. In reviewing the list of Common Rules, the Participants may add additional rules that qualify as Common Rules, will delete rules that are no longer identical or substantially similar to the Common Rules, and will confirm that the remaining rules included on Exhibit A continue to qualify as Common Rules. The Commission notes that all amendments to the Plan, excluding certain changes to Exhibits A and B, must be filed with and approved by the Commission.<sup>16</sup>

In addition, no less frequently than every two years, the OSG will allocate common members that conduct an options business among the Participants, and the Participant to which a

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<sup>16</sup> With respect to this proposed Plan, the Participants may include an additional rule in the list of Common Rules on Exhibit A without having to file an amendment to the Plan with the Commission, as long as such rules of each Participant that are to be included in Exhibit A meet the definition of Common Rules contained in the Plan and are otherwise consistent with the allocation of regulatory responsibility pursuant to the terms of the Plan.

common member is allocated will serve as the DOSR for that common member. The Plan also permits the Participants, subject to notice, to terminate the Plan or cancel their participation in the Plan. The Commission notes that a cancelling Participant will retain its regulatory responsibilities under the Plan until such time as the Commission has approved the cancellation or termination of the Plan.

The Commission also notes that the proposed Plan is wholly separate from the multiparty options agreement made pursuant to Rule 17d-2 by and among Amex, BSE, CBOE, ISE, NASD (n/k/a FINRA), NYSE, NYSE Arca, and Phlx involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct of 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.<sup>17</sup>

#### IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-551. The Participants 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,<sup>18</sup> that the Plan in

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<sup>17</sup> See Securities Exchange Act Release Nos. 55145 (January 22, 2007), 72 FR 3882 (January 26, 2007) (File No. S7-966) (notice) and 55532 (March 26, 2007), 72 FR 15729 (April 2, 2007) (File No. S7-966) (order).

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

File No. 4-551 by and between Amex, BSE, CBOE, ISE, FINRA, NYSE Arca, and Phlx, filed pursuant to Rule 17d-2 under the Act,<sup>19</sup> 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 Plan.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Deputy Secretary

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

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