

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63430; File No. 4-618)

December 3, 2010

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc. Relating to Regulation NMS Rules

On October 15, 2010, BATS Exchange, Inc. (“BATS”), BATS Y-Exchange, Inc. (“BATS Y”), Chicago Board Options Exchange, Inc. (“CBOE”),¹ Chicago Stock Exchange, Inc. (“CHX”), EDGA Exchange, Inc. (“EDGA”), EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), The NASDAQ Stock Market LLC (“NASDAQ”), NASDAQ OMX BX, Inc. (“BX”), NASDAQ OMX PHLX LLC (“PHLX”), National Stock Exchange, Inc. (“NSX”), New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“NYSE Amex”), and NYSE Arca, Inc. (“NYSE Arca”) (together, the “Participating Organizations” or the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a plan for the allocation of regulatory responsibilities with respect to certain Regulation NMS Rules (“17d-2 Plan” or the “Plan”). The Plan was published for comment on November 8, 2010.² The Commission received no comments on the Plan. This order approves and declares effective the Plan.

¹ CBOE's allocation of certain regulatory responsibilities under this Agreement is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE.

² See Securities Exchange Act Release No. 63230 (November 2, 2010), 75 FR 68632.

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (“Act”),³ 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.⁴ 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 Act⁵ 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 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁵ 15 U.S.C. 78q(d)(1).

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, respectively.

financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁸

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.⁹ 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) 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.

⁸ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

⁹ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. Proposed Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Party to the proposed 17d-2 Plan. Pursuant to the proposed 17d-2 Plan, the Designated Regulation NMS Examining Authority (“DREA”) would assume examination and enforcement responsibilities for broker-dealers that are members of more than one Participating Organization (“Common Members”) with respect to certain applicable laws, rules, and regulations. FINRA would serve as the DREA for Common Members that are members of FINRA. The DEA would serve as the DREA for Common Members that are not members of FINRA.

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 Regulation NMS Rules”) that lists the federal securities laws, rules, and regulations, for which the DREA would bear responsibility under the Plan for overseeing and enforcing with respect to Common Members.

Specifically, under the 17d-2 Plan, the DREA would assume examination and enforcement responsibility relating to compliance by Common Members with the Covered Regulation NMS Rules. Under the Plan, each Participating Organization would retain full responsibility for examination, surveillance and enforcement with respect to trading activities or practices involving its own marketplace, unless otherwise allocated pursuant to a separate Rule 17d-2 agreement.¹⁰

¹⁰ See Paragraph 1 of the proposed 17d-2 Plan; see e.g., Securities Exchange Act Release No. 58350 (August 13, 2008), 73 FR 48247 (August 18, 2008) (File No. 4-566) (notice of filing of proposed insider trading plan) and Securities Exchange Act Release No. 58536 (September 12, 2008) (File No. 4-566) (order approving and declaring effective the plan).

III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act¹¹ and Rule 17d-2(c) thereunder¹² 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 the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to the DREA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by each Party.¹³ Accordingly, the proposed Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Parties will coordinate their regulatory functions in accordance with the proposed Plan, the Plan should promote investor protection.¹⁴

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 22 of the Plan and must be filed with and approved by the Commission before it may become effective.¹⁵

¹¹ 15 U.S.C. 78q(d).

¹² 17 CFR 240.17d-2(c).

¹³ Paragraph 1 of the Plan provides that whenever a Common Member ceases to be a member of its DREA, the DREA shall promptly inform the Common Member's DEA, which will become such Common Member's DEA.

¹⁴ See, e.g., Paragraph 7 of the Plan (Sharing of Work Papers, Data and Related Information) and Paragraph 5 (sharing of customer complaints).

¹⁵ See Paragraph 22 of the Plan.

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 as to a particular Common Member are relieved of those regulatory responsibilities allocated to the Common Member's DREA under the Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(34).