

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79779; File No. 4-678)

January 12, 2017

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Amended Plan for the Allocation of Regulatory Responsibilities Among the Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, and MIAX PEARL, LLC

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 17d-2 thereunder,² notice is hereby given that on January 12, 2017, Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together, the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) an amended plan for the allocation of regulatory responsibilities, dated January 11, 2017 (“17d-2 Plan” or the “Plan”). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the 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

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

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

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 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.

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.

⁸ 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.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.

II. The Plan

On November 19, 2014, the Commission declared effective the Plan entered into between FINRA and MIAX for allocating regulatory responsibility pursuant to Rule 17d-2.¹⁰ The Plan is intended to reduce regulatory duplication for firms that are common members of both MIAX and FINRA. The plan reduces regulatory duplication for firms that are members of MIAX and FINRA by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations. Included in the Plan is an exhibit that lists every MIAX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to MIAX members that are also members of FINRA and the associated persons therewith.

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

¹⁰ See Securities Exchange Act Release No. 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014).

III. Proposed Amendment to Plan

On January 12, 2017, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX PEARL as a Participant to the Plan. The text of the proposed amended 17d-2 plan is as follows (additions are italicized; deletions are [bracketed]):

**AGREEMENT [~~BETWEEN~~]AMONG FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.,₂ [~~AND~~]
MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC AND MIAX PEARL, LLC
PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This Agreement, by and [~~between~~]among the Financial Industry Regulatory Authority, Inc. (“FINRA”),₂ [~~and~~] Miami International Securities Exchange, LLC (“MIAX”) and MIAX PEARL, LLC (“MIAX PEARL”), is made this [13th]11th day of [~~October~~]January, 201[4]7 (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. FINRA,₂ [~~and~~] MIAX and MIAX PEARL may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between FINRA and MIAX on October 13, 2014, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Miami International Securities Exchange, LLC Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

WHEREAS, [FINRA and MIAX]the parties desire to reduce duplication in the examination of their [Dual]Common Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, [FINRA and MIAX]the parties 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, [FINRA and MIAX]the parties 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) “MIAX Rules,” “MIAX PEARL Rules” or “FINRA Rules” shall mean: (i) the rules of MIAX or MIAX PEARL, respectively, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).
- (b) “Common Rules” shall mean MIAX Rules and MIAX PEARL Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order

to analyze the application of the provision or rule, or a [Dual]Common Member's activity, conduct, or output in relation to such provision or rule. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MIAX or MIAX PEARL, (ii) compliance with other referenced MIAX or MIAX PEARL Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by MIAX or MIAX PEARL, (iv) prior written approval of MIAX or MIAX PEARL and (v) payment of fees or fines to MIAX or MIAX PEARL.

- (c) “[Dual]Common Members” shall mean [those MIAX] members [that are also members of FINRA and the associated persons therewith] of FINRA and at least one of MIAX or MIAX PEARL.
- (d) “Effective Date” shall be the date this Agreement is approved by the Commission.
- (e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA’s Code of Procedure and sanctions guidelines.
- (f) “Regulatory Responsibilities” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the [Dual]Common 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.** FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for [Dual]Common Members. Attached as Exhibit 1 to this Agreement and made part hereof, MIAX and MIAX PEARL furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are MIAX Rules and MIAX PEARL Rules are substantially similar to the corresponding FINRA Rules (the “Certification”). FINRA 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 MIAX or FINRA] the rules of the parties, MIAX and MIAX PEARL shall submit an updated list of Common Rules to FINRA for review which shall add MIAX Rules or MIAX PEARL Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete MIAX Rules or MIAX PEARL 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 MIAX Rules or MIAX PEARL Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA 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 MIAX and MIAX PEARL shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “Retained Responsibilities”) the following:

- (a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving MIAX's and MIAX PEARL's own marketplace;
 - (b) registration pursuant to [its]their applicable rules of associated persons (i.e., registration rules that are not Common Rules);
 - (c) discharge of [its]their duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and
 - (d) any MIAX Rules and MIAX PEARL Rules that are not Common Rules as provided in paragraph 6.
3. **[Dual]Common Members.** Prior to the Effective Date, MIAX and MIAX PEARL shall furnish FINRA with a current list of [Dual]Common Members, which shall be updated no less frequently than once each quarter.
4. **No Charge.** There shall be no charge to MIAX and MIAX PEARL by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide MIAX and MIAX PEARL with ninety (90) days advance written notice in the event FINRA decides to impose any charges to MIAX and MIAX PEARL for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, MIAX and MIAX PEARL shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.
5. **Applicability of Certain Laws, Rules, Regulations or Orders.** Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule or order is inconsistent with one or more provisions of

this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. **Notification of Violations.** In the event that FINRA becomes aware of apparent violations of any MIAX Rules or MIAX PEARL Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify MIAX and MIAX PEARL of those apparent violations for such response as MIAX and MIAX PEARL deem[s] appropriate. In the event that MIAX or MIAX PEARL becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, MIAX and MIAX PEARL shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a [Dual]Common Member is the subject of an investigation relating to a transaction on MIAX or MIAX PEARL, MIAX and MIAX PEARL may in [its]their 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.

7. **Continued Assistance.**

- (a) FINRA shall make available to MIAX and MIAX PEARL all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the [Dual]Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish MIAX

and MIAX PEARL any information it obtains about [Dual]Common Members which reflects adversely on their financial condition. MIAX and MIAX PEARL shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of [Dual]Common Members or indicates possible violations of applicable laws, rules or regulations by such firms.

- (b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. [Neither]No party shall assert regulatory or other privileges as against [the]any other with respect to documents or information that is required to be shared pursuant to this Agreement.
- (c) The sharing of documents or information [between]among the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. **Statutory Disqualifications.** When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a [Dual]Common Member, FINRA 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 MIAX and MIAX PEARL advised of its actions in this regard for such subsequent proceedings as MIAX and MIAX PEARL may initiate.
9. **Customer Complaints.** MIAX and MIAX PEARL shall forward to FINRA copies of all customer complaints involving [Dual]Common Members received by MIAX and MIAX PEARL relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. **Advertising.** FINRA shall assume responsibility to review the advertising of [Dual]Common Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.
11. **No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of [either]any party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against [Dual]Common Members, as [either]any party, in its sole discretion, shall deem appropriate or necessary.
12. **Termination.** This Agreement may be terminated by [MIAX or FINRA]any party at any time upon the approval of the Commission after one (1) year's written notice to the other [party]parties (or such shorter time as agreed by the parties), except as provided in paragraph 4.
13. **Arbitration.** In the event of a dispute [between]among the parties as to the operation of this Agreement, [MIAX and FINRA]the parties 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. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other [party]parties. In the event of a dispute [between]among the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with

its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. **Separate Agreement.** This Agreement is wholly separate from the following agreement: (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, FINRA, MIAX, [the New York Stock Exchange LLC,] NYSE MKT LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, ISE Gemini, LLC, EDGX Exchange, Inc. and [Topaz Exchange, LLC] ISE Mercury, LLC 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 as approved by the SEC on [July 26, 2013]February 16, 2016, and as may be amended from time to time; and (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., EDGX Exchange, Inc., BOX Options Exchange LLC, NASDAQ OMX BX, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, FINRA, NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX PHLX, Inc., and MIAX[, and Topaz Exchange, LLC] involving the allocation of regulatory responsibilities with respect to SRO market surveillance of common members activities with regard to certain common rules relating to listed options approved by the SEC on [July 26, 2013]February 16, 2016, and as may be amended from time to time.

15. **Notification of Members.** [MIAX and FINRA]The parties shall notify [Dual]Common Members of this Agreement after the Effective Date by means of a uniform joint notice.
16. **Amendment.** This Agreement may be amended in writing provided that the changes are approved by [both parties]each party. All such amendments must be filed with and approved by the Commission before they become effective.
17. **Limitation of Liability.** [Neither FINRA nor MIAX]None of the parties nor any of their respective directors, governors, officers or employees shall be liable to [the]any 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 FINRA or MIAX]any party and caused by the willful misconduct of [the other]another party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by [FINRA or MIAX]any party hereto with respect to any of the responsibilities to be performed by [each of] them hereunder.
18. **Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA, [and] MIAX and MIAX PEARL join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve MIAX and MIAX PEARL of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.
19. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or

unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

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.

MIAMI INTERNATIONAL SECURITIES
EXCHANGE, LLC.

By: _____
Name:
Title:

MIAX PEARL, LLC.

By: _____
Name:
Title:

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC.

By: _____
Name:
Title:

EXHIBIT 1

Miami International Securities Exchange, LLC and MIAX PEARL, LLC Rules Certification for

17d-2 Agreement with FINRA

Miami International Securities Exchange, LLC (“MIAX”) and MIAX PEARL, LLC (“MIAX PEARL”) hereby [certifies]certify that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified (“Common Rules”).

MIAX RULES	<u>MIAX PEARL RULES</u>	FINRA (NASD) RULES, EXCHANGE ACT PROVISION OR SEC RULE
Rule 301 Just and Equitable Principles of Trade ¹	<u>Rule 301 Just and Equitable Principles of Trade¹</u>	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade*
Rule 303 Prevention of the Misuse of Material Nonpublic Information ^{1,#} [2]	<u>Rule 303 Prevention of the Misuse of Material Nonpublic Information^{1,#}</u>	Section 15(g) of the Exchange Act and <u>FINRA Rule 3110(b)(1) Supervision</u>
Rule 315 Anti-Money Laundering Compliance Program ^{[2]#}	<u>Rule 315 Anti-Money Laundering Compliance Program[#]</u>	FINRA Rule 3310 Anti-Money Laundering Compliance Program
Rule 318(a) Manipulation	<u>Rule 318(a) Manipulation</u>	FINRA Rule 2020 Use of Manipulative, Deceptive or other Fraudulent Devices*
Rule 318(b) Manipulation	<u>Rule 318(b) Manipulation</u>	FINRA Rule 6140 Other Trading Practices

¹ FINRA shall only have Regulatory Responsibilities regarding the rule and not the interpretations and policies.

[² FINRA shall not have Regulatory Responsibilities regarding the rule to the extent it requires notification to MIAX.]

Rule 319 Forwarding of Proxy and Other Issuer-Related Materials ^{[3]2}	<u>Rule 319</u> <u>Forwarding of Proxy and</u> <u>Other Issuer-Related</u> <u>Materials</u> ²	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials
Rule 320 Trading Ahead of Research Reports	<u>Rule 320</u> <u>Trading Ahead of Research</u> <u>Reports</u>	FINRA Rule 5280 Trading Ahead of Research Reports
Rule 800(a), (b) and (d) Maintenance, Retention and Furnishing of Books, Records and Other Information ^{1,[4]#}	<u>Rule 800(a), (b) and (d)</u> <u>Maintenance, Retention and</u> <u>Furnishing of Books,</u> <u>Records and Other</u> <u>Information</u> ^{1,#}	FINRA Rule 4511 General Requirements* and Section 17 of the Exchange Act and the rules thereunder [#]
Rule 1304 Continuing Education for Registered Persons ^{[4]#}	<u>Rule 1304</u> <u>Continuing Education for</u> <u>Registered Persons</u> [#]	FINRA Rule 1250(a)(1)-(4), (6) and (b) Continuing Education Requirements [#]
Rule 1321 Transfer of Accounts	<u>Rule 1321</u> <u>Transfer of Accounts</u>	FINRA Rule 11870 Customer Account Transfer Contracts
Rule 1325 Telemarketing	<u>Rule 1325</u> <u>Telemarketing</u>	FINRA Rule 3230 Telemarketing

In addition, the following provisions shall be part of this 17d-2 Agreement:

SEA Rule 200 of Regulation SHO – Definition of “Short Sale” and Marking Requirements and

SEA Rule 203 of Regulation SHO – Borrowing and Delivery Requirements

* FINRA shall not have Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among

[³]2 FINRA shall not have Regulatory Responsibilities regarding subsection (c) of Rule 319.

[⁴ FINRA shall not have Regulatory Responsibilities for exercise of exemptive or other discretionary authority by MIAX to the extent it makes the rule inconsistent with the FINRA rule. In addition, FINRA shall only have Regulatory Responsibilities to the extent the category of persons subject to MIAX registration is the same as FINRA.]

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., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca Inc., effective December 16, 2011, as may be amended from time to time.

#FINRA shall not have Regulatory Responsibilities regarding (i) notice, reporting or any other filings made directly to or from MIAX or MIAX PEARL, (ii) compliance with other referenced MIAX or MIAX PEARL Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by MIAX or MIAX PEARL, (iv) prior written approval of MIAX or MIAX PEARL and (v) payment of fees or fines to MIAX or MIAX PEARL.

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

Pursuant to Section 17(d)(1) of the Act¹¹ and Rule 17d-2 thereunder,¹² after [insert date 15 days from publication in the Federal Register], the Commission may, by written notice, declare the plan submitted by MIAX, MIAX PEARL, and FINRA, File No. 4-678, 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.

¹¹ 15 U.S.C. 78q(d)(1).

¹² 17 CFR 240.17d-2.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve MIAX and MIAX PEARL of the responsibilities which would be assigned to FINRA, 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. Please include File Number 4-678 on the subject line.

Paper comments:

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

All submissions should refer to File Number 4-678. 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 website (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of

MIAX, MIAX PEARL, and FINRA. 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 4-678 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(34).