

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83208; File No. 4-536)

May 10, 2018

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc., Cboe Exchange, Inc., and Cboe C2 Exchange, Inc.

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed on May 4, 2018, pursuant to Rule 17d-2 of the Act,<sup>2</sup> by the Financial Industry Regulatory Authority, Inc. (“FINRA”), Cboe Exchange, Inc. (“Cboe”), and Cboe C2 Exchange, Inc. (“C2”) (collectively, “Participating Organizations” or “parties”). This Agreement amends and restates the agreement entered into between FINRA, Cboe, and C2 on March 21, 2014, entitled “Agreement Among Financial Industry Regulatory Authority, Inc., Chicago Board Options Exchange, Incorporated, and C2 Options Exchange, Incorporated Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,<sup>3</sup> 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

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

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

<sup>3</sup> 15 U.S.C. 78s(g)(1).

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)<sup>4</sup> or Section 19(g)(2)<sup>5</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>6</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>7</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>8</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

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<sup>4</sup> 15 U.S.C. 78q(d).

<sup>5</sup> 15 U.S.C. 78s(g)(2).

<sup>6</sup> 15 U.S.C. 78q(d)(1).

<sup>7</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>8</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

Commission or SRO rules.<sup>9</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 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>10</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.

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<sup>9</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>10</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

## II. The Plan

On May 14, 2007, the Commission declared effective the Plan entered into between NASD (n/k/a FINRA) and Cboe for allocating regulatory responsibility pursuant to Rule 17d-2.<sup>11</sup> On May 9, 2014, the Commission declared effective an amendment to the Plan to add C2 as a Participant to the Plan.<sup>12</sup> The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and at least one of Cboe or C2 by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every Cboe and C2 rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to CBOE or C2 members that are also members of FINRA and the associated persons therewith.

## III. Proposed Amendment to the Plan

On May 4, 2018, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purposes of the Amended Plan are to (1) remove Cboe’s former equities trading facility, CBSX, from the Plan; (2) to the extent that it becomes a member of either exchange, allocate regulatory responsibility to FINRA for Cboe’s and C2’s affiliated routing broker-dealer, Cboe Trading, Inc.; and (3) allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act . The text of the proposed Amended Plan is as follows (additions are italicized; deletions are [bracketed]):

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<sup>11</sup> See Securities Exchange Act Release No. 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007).

<sup>12</sup> See Securities Exchange Act Release No. 72137 (May 9, 2014), 79 FR 27965 (May 15, 2014).

AGREEMENT AMONG FINANCIAL INDUSTRY REGULATORY AUTHORITY,  
INC., [CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED]CBOE  
EXCHANGE, INC., AND CBOE C2 [OPTIONS] EXCHANGE,  
[INCORPORATED]INC. PURSUANT TO  
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and among Financial Industry Regulatory Authority, Inc. (“FINRA”), [the Chicago Board Options Exchange, Incorporated]Cboe Exchange, Inc. (“[CBOE]Cboe”), and Cboe C2 [Options] Exchange, [Incorporated]Inc. (“C2”) is made this [21<sup>st</sup>]4th day of [March, 2014] May, 2018 (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, [CBOE]Cboe and C2 may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between [NASD (n/k/a) FINRA[)] and], [CBOE]Cboe and C2 on [April 4, 2007]March 21, 2014, entitled “Agreement [between NASD and CBOE]Among Financial Industry Regulatory Authority, Inc., Chicago Board Options Exchange, Incorporated, and C2 Options Exchange, Incorporated Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

WHEREAS, the parties desire to reduce duplication in the examination of their Common Members (as defined herein) and in the filing and processing of certain registration and membership records as it relates to [the CBOE]Cboe [options exchange,]and C2 [options exchange and the CBOE equity exchange facility operated by CBOE Stock Exchange, LLC (“CBSX”)]; and

WHEREAS, 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, 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) “Rule” of an “exchange” or an “association” shall have the meaning defined in Exchange Act Section 3(a)(27).
- (b) “Common Rules” shall mean the [CBOE]Cboe Rules and C2 Rules that are substantially similar to the applicable FINRA Rules in that examination for compliance with such 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 rule, or a Common Member’s activity, conduct, or output in relation to such rule[; provided, however, Common Rules shall not include the application of SEC, CBOE, C2 or FINRA Rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the BATS Exchange, Inc., BATS-Y Exchange, Inc., CBOE, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., FINRA, 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]. Common Rules shall not include any provisions regarding: (i) notice, reporting or any other filings made directly to or from C2 or Cboe; (ii) incorporation by reference of other C2 or Cboe Rules that are not Common Rules; (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by C2 or Cboe; (iv) prior written approval of C2 or Cboe; and (v) payment of fees or fines to C2 or Cboe.

(c)     “Common Members” shall mean members of FINRA and at least one of [CBOE]Cboe or C2.

(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 pertinent laws, rules or regulations 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 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. The term “Regulatory Responsibility” shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with the Rule 14e-4 of the Securities Exchange Act (“Rule 14e-4”), with a focus on the standardized call option provision of Rule 14e-4(a)(1)(ii)(D).

**2. Regulatory and Enforcement Responsibilities.** FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Common Members. Attached as Exhibit 1 to this Agreement and made part hereof, [CBOE]Cboe and C2 furnished FINRA with a current list of Common Rules and certified to FINRA that such Rules are substantially similar to the corresponding FINRA Rule (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 the Rules of the parties, [CBOE]Cboe and C2 shall submit an updated list of Common Rules to FINRA for review which shall add [CBOE]Cboe or C2 Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete [CBOE]Cboe or C2 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 [CBOE]Cboe or C2 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 [CBOE]Cboe and C2 shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the “Retained Responsibilities”):

- (a) surveillance and enforcement with respect to trading activities or practices involving [CBOE]Cboe’s or C2’s own marketplace, including without limitation [CBOE]Cboe’s or C2’s Rules relating to the rights and obligations of market makers;
- (b) registration pursuant to their applicable Rules of associated persons (i.e., registration rules that are not Common Rules);
- (c) discharge of their duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and
- (d) any [CBOE]Cboe Rules and C2 Rules that are not Common Rules, except Cboe Rules or C2 Rules for any Cboe or C2 affiliate that is a member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as a router for Cboe or C2 and is a member of FINRA (“Router Member”) as provided in paragraph 6. As of the date of this Agreement, Cboe Trading, Inc. is the only Router Member.

**3. Common Members.** Prior to the Effective Date, [CBOE]Cboe and C2 shall furnish FINRA with a current list of Common Members, which shall be updated no less frequently than once every six months.

**4. No Charge.** There shall be no charge to [CBOE]Cboe and C2 by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide [CBOE]Cboe and

C2 with ninety (90) days advance written notice in the event FINRA decides to impose any charges to [CBOE]Cboe and C2 for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, [CBOE]Cboe and C2 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. Reassignment of Regulatory Responsibilities.** Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action 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.

**6. Notification of Violations.** In the event that FINRA becomes aware of apparent violations of any [CBOE]Cboe or C2 Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify [CBOE]Cboe and C2 of those apparent violations for such response as [CBOE]Cboe and C2 deems appropriate. In the event, [CBOE]Cboe or C2 becomes aware of apparent violations of any Common Rules, discovered pursuant to the Retained Responsibilities, [CBOE]Cboe and C2 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 Common Member is the subject of an investigation relating to a transaction on [the CBOE]Cboe or C2 options exchanges, [or the CBSX, CBOE]Cboe and C2 may in their discretion assume concurrent jurisdiction and responsibility. With respect to apparent violations of any Cboe or C2 Rules by any Router Member, FINRA shall not make referrals to Cboe or C2 pursuant to this paragraph 6. Such apparent violations shall be processed and enforcement proceedings in respect thereto will be conducted, by FINRA as provided in this Agreement. 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.** FINRA shall make available to [CBOE]Cboe and C2 all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish [CBOE]Cboe and C2 any information it obtains about Common Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, [CBOE]Cboe and C2 acknowledge and agree to take all reasonable steps to maintain its confidentiality. [CBOE]Cboe and C2 shall make available to FINRA any information coming to their attention that reflects adversely on the financial condition of Common Members or indicates possible violations of applicable laws, rules or regulations by such firms.

**8. Common Member Applications.**

(a) Common Members subject to this Agreement shall be required to submit, and FINRA shall 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 the parties or associated with Common Members thereof. Upon request, FINRA shall advise [CBOE]Cboe and C2 of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the Rules of the parties.

(b) Common Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a 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 [CBOE]Cboe and C2 advised of its actions in this regard for such subsequent proceedings as [CBOE]Cboe and C2 may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination meets [the CBOE]Cboe or C2 requirements for general membership

or for specified categories of membership or participation in the [CBOE]Cboe or C2. FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of [the CBOE]Cboe or C2, or a person associated with, or requesting association with, a member or participant of [the CBOE]Cboe or C2.

**9. Branch Office Information.** FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Common Members and any other applications required of Common Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise [CBOE]Cboe and C2 of the opening, address change and termination of branch and main offices of Common Members and the names of such branch office managers.

**10. Customer Complaints.** [CBOE]Cboe and C2 shall forward to FINRA copies of all customer complaints involving Common Members received by [CBOE]Cboe and C2 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.

**11. Advertising.** FINRA shall assume responsibility to review the advertising of 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. Such review shall be made in accordance with then applicable FINRA Rules and interpretations. The advertising of Common

Members shall be subject only to compliance with appropriate FINRA Rules and interpretations.

**12. No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of any party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Common Members, as any party, in its sole discretion, shall deem appropriate or necessary.

**13. Termination.** This Agreement may be terminated by any party at any time upon the approval of the Commission after one (1) year's written notice (or such shorter time as may be agreed by the parties) to the other parties, except as provided in paragraph 4.

**14. Effective Date.** This Agreement shall be effective upon approval of the Commission.

**15. Arbitration.** In the event of a dispute among the parties as to the operation of this Agreement, 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.

**16. Separate Agreement.** This Agreement is wholly separate from the following agreements: (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among [BATS]BZX Exchange, Inc., BOX Options Exchange, LLC, [CBOE]Cboe, C2, [the International Securities Exchange]Nasdaq ISE, LLC, FINRA,

Miami International Securities Exchange, LLC, MIAX PEARL, LLC, [the New York Stock Exchange, LLC,] NYSE [Amex]American LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ [OMX] BX, Inc., [and] NASDAQ [OMX] PHLX LLC, Nasdaq GMX, LLC, Nasdaq MRX, LLC, and Bats EDGX 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 [April 25, 2012]January 13, 2017, 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 [Amex]American LLC, [BATS]Bats BZX Exchange, Inc., C2, [CBOE]Cboe, [International Securities Exchange]Nasdaq ISE, LLC, FINRA, NYSE Arca, Inc., The NASDAQ Stock Market LLC, the BOX Options Exchange, LLC, NASDAQ [OMX] BX, Inc., [and] NASDAQ [OMX] PHLX LLC, Nasdaq GMX, LLC, Nasdaq MRX, LLC, Bats EDGX Exchange, Inc., Miami International Securities Exchange, LLC, and MIAX PEARL, 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 entered into on [April 25, 2012]January 23, 2017, and as may be amended from time to time.

**17. Notification of Members.** The parties shall notify Common Members of this Agreement after the Effective Date by means of a uniform joint notice.

**18. Amendment.** This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

**19. Limitation of Liability.** None of the parties nor any of their respective directors, governors, officers or employees shall be liable to 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 any party and caused by the willful misconduct of another party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by any party hereto with respect to any of the responsibilities to be performed by them hereunder.

**20. Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA, C2 and [CBOE]Cboe join in requesting the Commission, upon its approval of this Agreement, to relieve [CBOE]Cboe and C2 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.

**21. 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.

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## Exhibit 1

Exhibit 1 is deleted in its entirety and replaced with the following:

### **CBOE AND C2 CERTIFICATION OF COMMON RULES**

Cboe and C2 hereby certify that the requirements contained in the Rules listed below are identical to, or substantially similar to, the NASD/FINRA or SEC Rules identified.

# Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from C2 or Cboe; (ii) incorporation by reference of other C2 or Cboe Rules that are not Common Rules; (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by C2 or Cboe; (iv) prior written approval of C2 or Cboe; and (v) payment of fees or fines to C2 or Cboe.

<b>C2 RULE(S)</b>	<b>CBOE RULE(S)</b>	<b>NASD/FINRA or SEC RULE(S)</b>
	3.4 Foreign Trading Permit Holders	NASD Rule 1090 Foreign Members
3.4(a) Qualification and Registration	3.6A(a) Qualification and Registration of Trading Permit Holders and Associated Persons#	NASD Rule 1031(a) Registration Requirements and NASD Rule 1060(a)(1)-(4)(A), (C) and (D) Persons Exempt from Registration
3.4(b) Qualification and Registration	3.6A(b) Qualification and Registration of Trading Permit Holders and Associated Persons#	NASD Rule 1022(b) Categories of Principal Registration
3.4(c) Qualification and Registration	3.6A(c) Qualification and Registration of Trading Permit Holders and Associated Persons	NASD Rule 1022(a)(1)(C) Categories of Principal Registration <sup>1</sup>
3.4(e) Qualification and Registration	3.6A(e) Qualification and Registration of Trading Permit Holders and Associated Persons	NASD Rule 1021(c) Registration Requirements
3.4 Qualification and Registration, Interpretation and Policy .01	3.6A Qualification and Registration of Trading Permit Holders and Associated Persons, Interpretations and Policies .01 and .02	FINRA Rule 1010(c) Electronic Filing Requirements for Uniform Forms and FINRA Bylaws Article V, Sec. 2
3.4 Qualification and Registration, Interpretations and Policies .03	3.6A Qualification and Registration of Trading Permit Holders and Associated Persons, Interpretations and Policies .04	FINRA Rule 1250 Continuing Education Requirements

C2 RULE(S)	CBOE RULE(S)	NASD/FINRA or SEC RULE(S)
3.4 Qualification and Registration, Interpretation and Policy.04	3.6A Qualification and Registration of Trading Permit Holders and Associated Persons, Interpretation and Policy .05#	NASD Rule 1070(d) Qualifications Examinations and Waiver Requirements
3.4 Qualification and Registration, Interpretation and Policy .06	3.6A Qualification and Registration of Trading Permit Holders and Associated Persons, Interpretation and Policy .07#	NASD Rule 1021(a) and (b) Registration Requirements, NASD Rule 1022(a)(6), and 1032(f) Categories of Representative Registration
3.4 Qualification and Registration, Interpretation and Policy .07	3.6A Qualification and Registration of Trading Permit Holders and Associated Persons, Interpretation and Policy .08	NASD Rule 1022(a)(6) Categories of Principal Registration
3.4 Qualification and Registration, Interpretation and Policy .08	3.6A Qualification and Registration of Trading Permit Holders and Associated Persons, Interpretation and Policy .09	NASD Rule 1031(a) Registration Requirements and FINRA Bylaws Article V., Sec. 1
	3.7(c) Certain Documents Required of Trading Permit Holders, Applicants and Associated Persons	Exchange Act Rule 17f-2
	3.7(d) Certain Documents Required of Trading Permit Holders, Applicants and Associated Persons	NASD Rule 1013(a)(2) New Member Application and Interview, and FINRA Bylaws Article IV, Sec. 1
Chapter 4 Business Conduct - CBOE Rule 4.1 incorporated by reference	4.1 Just and Equitable Principles of Trade	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade
Chapter 4 Business Conduct - CBOE Rule 4.7 incorporated by reference	4.7 Manipulation	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices and FINRA Rule 6140 Other Trading Practices
Chapter 4 Business Conduct - CBOE Rule 4.18 is incorporated by reference	4.18 Prevention of the Misuse of Material, Nonpublic Information#	Section 15(g) of the Securities Exchange Act of 1934 (Exchange Act) and FINRA Rule 3110(b)(1) and (d) Supervision
Chapter 4 Business Conduct - CBOE Rule 4.20 is incorporated by reference	4.20 Anti-Money Laundering Compliance Program	FINRA Rule 3310 Anti-Money Laundering Compliance Program <sup>2</sup>

C2 RULE(S)	CBOE RULE(S)	NASD/FINRA or SEC RULE(S)
Chapter 9 Doing Business with the Public - CBOE Rule 9.3A is incorporated by reference	9.3A Continuing Education For Registered Persons#	FINRA Rule 1250 Continuing Education Requirements
Chapter 9 Doing Business with the Public - CBOE Rule 9.4(a) is incorporated by reference	9.4(a) Other Affiliations of Registered Associated Persons	FINRA Rule 3270 Outside Business Activities of Registered Persons <sup>3</sup>
Chapter 9 Doing Business with the Public - CBOE Rule 9.13 is incorporated by reference	9.13 Statement of Financial Condition to Customers	Exchange Act Rule 17a-5
Chapter 9 Doing Business with the Public - CBOE Rule 9.16 is incorporated by reference	9.16 Restrictions on Pledge and Lending of Customers' Securities	FINRA Rule 4330 Customer Protection – Permissible Use of Customers' Securities
Chapter 9 Doing Business with the Public - CBOE Rule 9.20 is incorporated by reference	9.20 Transfer of Accounts#	FINRA Rule 11870 Customer Account Transfer Contracts
Chapter 9 Doing Business with the Public - CBOE Rule 9.24 is incorporated by reference	9.24 Telemarketing	FINRA Rule 3230 Telemarketing
Chapter 9 Doing Business with the Public - CBOE Rule 9.25 is incorporated by reference	9.25 Borrowing From or Lending to Customers	FINRA Rule 3240 Borrowing From or Lending to Customers

<sup>1</sup> FINRA shall have Regulatory Responsibilities to the extent the heightened qualification exam requirement of the Cboe and C2 rule is satisfied by the Series 24.

<sup>2</sup> FINRA shall not have any Regulatory Responsibilities regarding the requirement to conduct independent testing during the first calendar year of a broker-dealer becoming a Trading Permit Holder or TPH organization; responsibility for such requirement remains with Cboe and C2, as applicable.

<sup>3</sup> FINRA shall not have any Regulatory Responsibilities regarding the requirement that the Trading Permit Holder provide prior written consent to the TPH organization; responsibility for such requirement remains with Cboe and C2, as applicable.

The following provisions are covered:

- Rule 200 of Regulation SHO - Definition of Short Sales and Marking Requirements
- Rule 203 of Regulation SHO - Borrowing and Delivery Requirements
- Rule 204 of Regulation SHO – Close-Out Requirement
- Rule 105 of Regulation M – Short Selling in Connection with a Public Offering
- Section 14(e) of the Exchange Act
- Rule 14e-4 of the Exchange Act – Prohibited Transactions in Connection with Partial Tender Offers<sup>^</sup>
- Regulation ATS
- Regulation S-P

<sup>^</sup> FINRA shall perform surveillance, investigation and Enforcement Responsibilities for SEA Rule 14e-4(a)(1)(ii)(D).

**IV. Solicitation of Comments**

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/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-536 on the subject line.

**Paper Comments:**

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

All submissions should refer to File Number 4-536. 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/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed

with the Commission, and all written communications relating to the proposed plan 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 FINRA, Cboe, and C2. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-536 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act<sup>13</sup> and Rule 17d-2(c) thereunder<sup>14</sup> in that the proposed Amended 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 Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by Cboe, C2, and FINRA. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because Cboe, C2,

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<sup>13</sup> 15 U.S.C. 78q(d).

<sup>14</sup> 17 CFR 240.17d-2(c).

and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, Cboe, C2, and FINRA have allocated regulatory responsibility for those Cboe and C2 rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules 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 rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, Cboe and C2 will review the Certification, at least annually, or more frequently if required by changes in either the rules of Cboe, C2, or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add Cboe and C2 rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete Cboe and C2 rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be Cboe and C2 rules that qualify as common rules.<sup>15</sup> FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, Cboe and C2 will also provide FINRA with a current list of

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<sup>15</sup> See paragraph 2 of the Amended Plan.

Common Members and shall update the list no less frequently than once every six months.<sup>16</sup> The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all Cboe and C2 rules that are substantially similar to the rules of FINRA for Common Members of Cboe and FINRA, and C2 and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to Cboe or C2 rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a Cboe or C2 rule to the Certification that is not substantially similar to a FINRA rule; delete a Cboe or C2 rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a Cboe or C2 rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.<sup>17</sup>

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is

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<sup>16</sup> See paragraph 3 of the Amended Plan.

<sup>17</sup> The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

effective. The primary purposes of the amendment are to remove Cboe's former equities trading facility, CBSX, from the Plan; (2) to the extent that it becomes a member of either exchange, allocate regulatory responsibility to FINRA for Cboe's and C2's affiliated routing broker-dealer, Cboe Trading, Inc.; and (3) allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act . By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.<sup>18</sup> Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-536. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-536, between the FINRA, Cboe, and C2, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that Cboe and C2 are relieved of those responsibilities

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<sup>18</sup> See supra note 12 (citing to Securities Exchange Act Release No. 72137).

allocated to FINRA under the Amended Plan in File No. 4-536.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(34).