

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85189; File No. 4-678)

February 25, 2019

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

On December 20, 2018, Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), MIAX Emerald, LLC (“MIAX Emerald”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together, the “Parties”) filed with the Securities and Exchange Commission (“Commission”) a plan for the allocation of regulatory responsibilities, dated December 19, 2018 (“Amended 17d-2 Plan” or the “Amended Plan”). The Amended Plan was published for comment on February 1, 2019.¹ The Commission received no comments on the Amended Plan. This order approves and declares effective the Amended Plan.

I. Introduction

Section 19(g)(1) of the Act,² 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.³ 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

¹ See Securities Exchange Act Release No. 84997 (January 29, 2019), 84 FR 1252.

² 15 U.S.C. 78s(g)(1).

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

(“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁴ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁵ 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.⁶ 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.⁷ 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.

⁴ 15 U.S.C. 78q(d)(1).

⁵ 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).

⁶ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁷ 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.⁸ 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. Proposed Amended 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-2.⁹ 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 Amended 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 (“Certification”). On February 6, 2017, the Commission approved a proposed amendment to the Plan to add

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

⁹ See Securities Exchange Act Release No. 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014).

MIAX PEARL as a Participant to the Plan.¹⁰ On July 24, 2018, the Commission approved a proposed amendment to the Plan to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, as well as certain provisions of Regulation SHO.¹¹ On December 20, 2018, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX Emerald as a Participant to the Plan.

III. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d-2(c) thereunder¹³ 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 FINRA and at least one of MIAX, MIAX PEARL, or MIAX Emerald. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to common members. Furthermore, because MIAX, MIAX PEARL, MIAX Emerald and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

¹⁰ See Securities Exchange Act Release No. 79974 (February 6, 2017), 82 FR 10417 (February 10, 2017).

¹¹ See Securities Exchange Act Release No. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018).

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d-2(c).

The Commission notes that, under the Amended Plan, MIAX, MIAX PEARL, MIAX Emerald, and FINRA have allocated regulatory responsibility for those MIAX, MIAX PEARL, and MIAX Emerald 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, MIAX, MIAX PEARL, and MIAX Emerald will review the Certification at least annually, or more frequently if required by changes in either the rules of MIAX, MIAX PEARL, MIAX Emerald, or FINRA, and, if necessary, submit to FINRA an updated list of common rules to add MIAX, MIAX PEARL, or MIAX Emerald rules not included on the then-current list of common rules that are substantially similar to FINRA rules; delete MIAX, MIAX PEARL, or MIAX Emerald 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 MIAX, MIAX PEARL, or MIAX Emerald rules that qualify as common rules.¹⁴ 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, MIAX, MIAX PEARL, and MIAX Emerald also will provide FINRA with a current list of

¹⁴ See paragraph 2 of the Amended Plan.

common members and shall update the list no less frequently than once each quarter.¹⁵ 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 MIAX, MIAX PEARL, and MIAX Emerald rules that are substantially similar to the rules of FINRA for common members of FINRA and MIAX, FINRA and MIAX PEARL, and FINRA and MIAX Emerald. 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 MIAX, MIAX PEARL, or MIAX Emerald 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 MIAX, MIAX PEARL, or MIAX Emerald rule to the Certification that is not substantially similar to a FINRA rule; delete a MIAX, MIAX PEARL, or MIAX Emerald rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a MIAX, MIAX PEARL, or MIAX Emerald 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.¹⁶

¹⁵ See paragraph 3 of the Amended Plan.

¹⁶ 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.

IV. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-678. 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. 4-678, between the FINRA, MIAX, MIAX PEARL, and MIAX Emerald, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that MIAX, MIAX PEARL, and MIAX Emerald are each relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-678.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(34).