

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90702; File No. 4-529)

December 17, 2020

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. and Nasdaq ISE, LLC

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 November 19, 2020, pursuant to Rule 17d-2 of the Act,<sup>2</sup> by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and Nasdaq ISE, LLC (“ISE”) (collectively, “Participating Organizations” or “parties”). This agreement amends and restates the agreement entered into between FINRA and International Securities Exchange, LLC on December 16, 2006, entitled “Agreement Between Financial Industry Regulatory Authority, Inc. and International Securities Exchange, LLC 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 appropriate notice and opportunity for 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 February 27, 2007, the Commission declared effective the Plan entered into between FINRA and ISE for allocating regulatory responsibility pursuant to Rule 17d-2.<sup>11</sup> The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and ISE 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 ISE rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to ISE members that are also members of FINRA and the associated persons therewith (“Certification”).

III. Proposed Amendment to the Plan

On November 19, 2020, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act and to reflect the name change of International Securities Exchange, LLC to Nasdaq ISE, LLC. The text of the proposed Amended Plan is as follows (additions are underlined; deletions are [bracketed]):

\* \* \* \* \*

AGREEMENT BETWEEN [NASD]FINANCIAL INDUSTRY REGULATORY  
AUTHORITY, INC. AND  
[INTERNATIONAL SECURITIES EXCHANGE]NASDAQ ISE, LLC PURSUANT TO  
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

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<sup>11</sup> See Securities Exchange Act Release No. 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007).

This Agreement, by and between the [National Association of Securities Dealers, Inc. (“NASD”)]Financial Industry Regulatory Authority, Inc. (“FINRA”) and the [International Securities Exchange]Nasdaq ISE, LLC (“ISE”), is made this [20<sup>th</sup>] 16<sup>th</sup> day of[December] November, 20[06]20 (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. [NASD]FINRA and ISE may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between the parties on April 3, 2000 and amended on April 27, 2000 and December 20, 2006, entitled “Agreement Between the National Association of Securities Dealers, Inc., NASD [Regulation, Inc.] and the International Securities Exchange LLC Pursuant to Section 17(d) and Rule 17d-2,” and any subsequent amendments thereafter.

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

WHEREAS, [NASD]FINRA and ISE 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, [NASD]FINRA and ISE 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) “ISE Rules” or “[NASD]FINRA Rules” shall mean the rules of the ISE or [NASD]FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean the ISE Rules that are substantially similar to the applicable [NASD]FINRA Rules in that examination for compliance with such rules would not require [NASD]FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member’s activity, conduct, or output in relation to such rule. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from ISE, (ii) incorporation by reference of ISE 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 ISE, (iv) prior written approval of ISE and (v) payment of fees or fines to ISE.

(c) “Dual Members” shall mean those ISE members that are also members of [NASD]FINRA and the associated persons therewith.

(d) “Effective Date” shall have the meaning set forth in paragraph 14.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with the [NASD]FINRA Code of

Procedure (the Rule 9000 Series) and other applicable [NASD]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 the [NASD]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 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 Responsibilities” shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with 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.** [NASD]FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, ISE furnished [NASD]FINRA with a current list of Common Rules and certified to [NASD]FINRA that such rules are substantially similar to the corresponding [NASD]FINRA rule (the “Certification”). [NASD]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 ISE or [NASD]FINRA, ISE shall submit an updated list of Common Rules to [NASD]FINRA

for review which shall add ISE rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete ISE 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 ISE rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, [NASD]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 ISE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following:

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

**3. Dual Members.** Prior to the Effective Date, ISE shall furnish [NASD]FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

**4. No Charge.** There shall be no charge to ISE by [NASD]FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. [NASD]FINRA shall provide ISE with ninety (90) days advance written notice in the event [NASD]FINRA decides to impose any charges to ISE for performing the Regulatory Responsibilities under this Agreement. If [NASD]FINRA determines to impose a charge, ISE shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that [NASD]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 [NASD]FINRA becomes aware of apparent violations of any ISE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, [NASD]FINRA shall notify ISE of those apparent violations for such response

as ISE deems appropriate. Apparent violations of all other applicable rules, including violations of the Common Rules, various securities acts, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by [NASD]FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on the ISE, ISE may in its discretion assume concurrent jurisdiction and responsibility. With respect to apparent violations of any ISE Rules by any Router Member, [NASD]FINRA shall not make referrals to ISE pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, [NASD]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.** [NASD]FINRA shall make available to ISE all information obtained by [NASD]FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, [NASD]FINRA shall furnish ISE any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, ISE acknowledges and agrees to take all reasonable steps to maintain its confidentiality. ISE shall make available to [NASD]FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

**8. Dual Member Applications.**

(a) Dual Members subject to this Agreement shall be required to submit, and [NASD]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 both ISE and [NASD]FINRA or associated with Dual Members thereof. Upon request, [NASD]FINRA shall advise ISE of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of both ISE and [NASD]FINRA.

(b) Dual Members shall be required to send to [NASD]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 [NASD]FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, [NASD]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 ISE advised of its actions in this regard for such subsequent proceedings as ISE may initiate.

(d) Notwithstanding the foregoing, [NASD]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: (i) meets the ISE requirements for general membership or for

specified categories of membership or participation in the ISE, such as (A) Primary Market Maker Membership (“PMM”); (B) Competitive Market Maker Membership (“CMM”); (C) Electronic Access Membership (“EAM”) (or any similar type of ISE membership or participation that is created after this Agreement is executed); or (ii) meets the ISE requirements to be associated with, or employed by, an ISE member or participant in any capacity, such a Designated Trading Representative (“DTR”) (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). [NASD]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 ISE, or a person associated with, or requesting association with, a member or participant of the ISE.

**9. Branch Office Information.** [NASD]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 Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. [NASD]FINRA shall advise ISE monthly of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

**10. Customer Complaints.** ISE shall forward to [NASD]FINRA copies of all customer complaints involving Dual Members received by ISE relating to [NASD]FINRA’s Regulatory Responsibilities under this Agreement. It shall be

[NASD]FINRA's responsibility to review and take appropriate action in respect to such complaints.

**11. Advertising.** [NASD]FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with [NASD]FINRA in accordance with [NASD]FINRA's filing procedures and is accompanied with any applicable filing fees set forth in [NASD]FINRA Rules. Such review shall be made in accordance with then applicable [NASD]FINRA rules and interpretations. The advertising of Dual Members shall be subject only to compliance with appropriate [NASD]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 either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

**13. Termination.** This Agreement may be terminated by ISE or [NASD]FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, 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 between the parties as to the operation of this Agreement, ISE and [NASD]FINRA 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 (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act between the [American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.] NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, 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 into on [January 14, 2004]February 12, 2019, and as may be amended from time to time or (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC approved by the

Commission on February 11, 2019 involving options-related market surveillance matters and such agreements as may be amended from time to time.

**17. Notification of Members.** ISE and [NASD]FINRA shall notify Dual 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.** Neither [NASD]FINRA nor ISE nor any of their respective directors, governors, officers or employees shall be liable to the 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 [NASD]FINRA or ISE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by [NASD]FINRA or ISE with respect to any of the responsibilities to be performed by each of 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, [NASD]FINRA and ISE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve ISE of any and all responsibilities with respect to matters allocated to [NASD]FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

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.

[NATIONAL ASSOCIATION OF  
SECURITIES DEALERS]FINANCIAL  
INDUSTRY REGULATORY  
AUTHORITY, INC.

By \_\_\_\_\_  
Name:  
Title:

[INTERNATIONAL SECURITIES  
EXCHANGE]NASDAQ ISE, LLC

By \_\_\_\_\_  
Name:  
Title:

NOTE: The entire existing table of rules should be deleted and replaced with the table below.

**EXHIBIT 1**

ISE CERTIFICATION OF COMMON RULES

ISE hereby certifies that the requirements contained in the rules listed below for ISE are identical to, or substantially similar to, the comparable [NASD]FINRA rules identified.

# Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from ISE, (ii) incorporations by reference to other ISE 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 ISE, (iv) prior written approval of ISE, and (v) payment of fees or fines to ISE.

<b><u>ISE RULE(S)</u></b>	<b><u>FINRA RULE(S)</u></b>
<u>General 3, Section 3(b) – Persons Associated with Members; General 4 – Nasdaq Stock Market General 4, Rule</u>	<u>FINRA Rule 1010 Electronic Filing Requirements for Uniform Forms; FINRA By-Laws Article IV, Sec. 1(c) Application for Membership; FINRA By-Laws, Article</u>

<u>1.1250 Electronic Filing Requirements for Uniform Forms incorporated by reference<sup>#</sup></u>	<u>V, Section 1 Qualification Requirements; FINRA By-Laws, Article V, Sec. 2 Application for Registration; and FINRA By-Laws Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification</u>
<u>General 4 – Nasdaq Stock Market General 4, Section 1.1240 Continuing Education Requirements incorporated by reference<sup>#</sup></u>	<u>FINRA Rule 1240 Continuing Education Requirements</u>
<u>Options 9, Section 1 Just and Equitable Principles of Trade<sup>1</sup></u>	<u>FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade; FINRA Rule 0140(a) Applicability</u>
<u>Options 9, Section 9(a)(1) Prevention of the Misuse of Material, Nonpublic Information<sup>#</sup></u>	<u>Section 15(g) of the Securities Exchange Act of 1934, and FINRA Rule 3110(b)(1), (d) Supervision</u>
<u>Options 9, Section 10 Disciplinary Action by Other Organizations<sup>#</sup></u>	<u>FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements; FINRA By-Laws, Article V, Section 2(c); and FINRA By-Laws, Article V, Section 3</u>
<u>Options 9, Section 21 Anti-Money Laundering Compliance Program<sup>#</sup></u>	<u>FINRA Rule 3310 Anti-Money Laundering Compliance Program</u>
<u>Options 10, Section 12 Statements of Financial Condition to Customers</u>	<u>Rule 17a-5 of the Securities Exchange Act of 1934</u>
<u>Options 10, Section 19 Transfer of Accounts<sup>#</sup></u>	<u>FINRA Rule 11870 Customer Account Transfer Contracts</u>
<u>Options 10, Section 23 Telemarketing</u>	<u>FINRA Rule 3230 Telemarketing</u>
<u>Options 6E, Section 1 Maintenance, Retention, and Furnishing of Books, Records and Other Information<sup>#</sup></u>	<u>FINRA Rule 4511(a) Books and Records - Requirements</u>

<sup>1</sup> FINRA shall not have Regulatory Responsibilities with respect to the Supplementary Material to ISE Options 9, Section 1. Responsibility for such shall remain with ISE.

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

SEA Rule 14e-4 – Prohibited Transactions in Connection with Partial Tender Offers<sup>^</sup>

<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 4-529 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 4-529. 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 and ISE. 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 4-529 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>12</sup> and Rule 17d-2(c) thereunder<sup>13</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 both FINRA and ISE. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because ISE 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, ISE and FINRA have allocated regulatory responsibility for those ISE 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

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<sup>12</sup> 15 U.S.C. 78q(d).

<sup>13</sup> 17 CFR 240.17d-2(c).

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, ISE will review the Certification at least annually, or more frequently if required by changes in either the rules of ISE or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add ISE rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete ISE 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 ISE rules that qualify as common rules.<sup>14</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, ISE also will provide FINRA with a current list of Common Members and will update the list no less frequently than once each quarter.<sup>15</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 ISE rules that are substantially similar to the rules of FINRA for Common Members of ISE and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as

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<sup>14</sup> See paragraph 2 of the Amended Plan.

<sup>15</sup> See paragraph 3 of the Amended Plan.

an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to ISE 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 ISE rule to the Certification that is not substantially similar to a FINRA rule; delete a ISE rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a ISE 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>16</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 effective. The primary purpose of the amendment is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, to reflect the name change of International Securities Exchange, LLC to Nasdaq ISE, LLC. 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>17</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.

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<sup>16</sup> 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.

<sup>17</sup> See supra note 11 (citing to Securities Exchange Act Release No. 55367).

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-529. 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. 4-529, between the FINRA and ISE, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that ISE is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-529.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(34).