

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55505; File No. 4-523)

March 22, 2007

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective a Revised Plan for Allocation of Regulatory Responsibilities Between NYSE Arca, Inc. and the National Association of Securities Dealers, Inc.

Pursuant to Sections 17(d)¹ and 11A(a)(3)(B)² of the Securities Exchange Act of 1934 (“Act”), the Securities and Exchange Commission (“Commission”) is hereby providing notice of filing and issuing an order granting approval and declaring effective a revised plan for the allocation of regulatory responsibilities dated February 9, 2007 (“Revised Plan”) that was filed pursuant to Rule 17d-2 under the Act³ by NYSE Arca, Inc. (“NYSE Arca”) and the National Association of Securities Dealers, Inc. (“NASD”) (together with the NYSE Arca, the “Parties”). The Revised Plan replaces and supersedes the agreement entered into between the Parties on July 25, 2006 (“July 2006 Plan”)⁴ in its entirety. The Revised Plan, which makes minor changes to the July 2006 Plan, does not fundamentally alter the allocation of regulatory responsibilities between the Parties.⁵ Accordingly, in addition to the regulatory responsibility it has under the Act, NASD shall retain the regulatory responsibilities allocated to it under the Revised Plan. At the same time, NYSE Arca continues to be relieved of those regulatory responsibilities allocated to NASD under the Revised Plan.

¹ 15 U.S.C. 78q(d).

² 15 U.S.C. 78k-1(a)(3)(B).

³ 17 CFR 240.17d-2.

⁴ See Securities Exchange Act Release Nos. 54224 (July 27, 2006), 71 FR 43823 (August 2, 2006) (notice) and 54394 (August 31, 2006), 71 FR 52827 (September 7, 2006) (order).

⁵ The text of the Revised Plan is available at the principal offices of NYSE Arca and NASD and at the Commission’s Public Reference Room.

I. Introduction

Section 19(g)(1) of the Act,⁶ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or registered 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)⁷ or 19(g)(2)⁸ of the Act. Section 17(d)(1) of the Act⁹ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO (“common members”).¹⁰ 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-1¹¹ and Rule 17d-2 under the Act.¹² Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, with respect to their

⁶ 15 U.S.C. 78s(g)(1).

⁷ 15 U.S.C. 78q(d).

⁸ 15 U.S.C. 78s(g)(2).

⁹ 15 U.S.C. 78q(d)(1).

¹⁰ 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).

¹¹ 17 CFR 240.17d-1. 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.

¹² 17 CFR 240.17d-2.

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. Upon effectiveness of a plan filed pursuant to Rule 17d-2, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

The Revised Plan, which makes minor changes to the July 2006 Plan (and replaces and supersedes the July 2006 Plan in its entirety), is intended to reduce regulatory duplication for firms that are common members of NYSE Arca and NASD. Except as noted immediately below, the Revised Plan retains the same allocation of regulatory responsibilities among the Parties with respect to common members as the July 2006 Plan. In particular, the Revised Plan: (1) eliminates paragraph 11 of the July 2006 Plan that allocated to NASD the responsibility to receive and act upon requests for extension of time pursuant to Federal Reserve Regulation T and Rule 15c3-3 under the Act, since the monitoring of such requirements is the obligation of a member's DEA as provided by Rule 17d-1 under the Act;¹³ (2) changes from "monthly" to

¹³ 17 CFR 240.17d-1. Further, NYSE Arca represents that it currently does not serve as the DEA for any firms that hold or carry customer accounts, and therefore does not currently perform any duties pursuant to Regulation T and Rule 15c3-3 with respect to considering requests for extension of time. See Telephone conversation between Greg O'Connor, Director, NYSE Group, Inc., and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on March 16, 2007. Additionally, Paragraph 2(c) of the July 2006 Plan, as well as the Revised Plan, provides that NYSE Arca retains full responsibility for the discharge of its DEA duties and obligations. Accordingly, NASD did not undertake any responsibilities pursuant to paragraph 11 of the July 2006 Plan and the Parties consider the deletion of paragraph 11 to be a non-material change. See id.

“upon request” the obligation of NASD to share information with NYSE Arca regarding notice of changes in allied members, partners, officers, registered personnel and other persons, and the opening, address change, and termination of main and branch offices and the names of branch office managers;¹⁴ and (3) makes other technical and formatting changes, such as renumbering paragraphs and reformatting headings.

Included in the Revised Plan is an attachment (“NYSE Arca Rules Certification for 17d-2 Agreement with NASD,” referred to herein as the “Certification”) that lists every NYSE Arca rule and federal securities law, rule and regulation thereunder for which, under the Revised Plan, NASD would bear responsibility for examining, and enforcing compliance by, common members. No changes to the Certification are proposed in the Revised Plan.

II. Discussion

The Commission finds that the Revised Plan is consistent with the factors set forth in Section 17(d) of the Act¹⁵ and Rule 17d-2(c) thereunder¹⁶ in that the Revised 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 Revised Plan makes minor changes to the July 2006 Plan and does not fundamentally alter the allocation of regulatory responsibilities between the Parties that was contained in the July 2006 Plan. Additionally, no changes to the Certification are proposed in the Revised Plan.

As was the case for the July 2006 Plan, the Commission continues to believe that the Revised Plan could reduce unnecessary regulatory duplication by allocating to NASD certain

¹⁴ See Paragraph 7 of the Revised Plan.

¹⁵ 15 U.S.C. 78q(d).

¹⁶ 17 CFR 240.17d-2(c).

responsibilities for common members that would otherwise be performed by both NYSE Arca and NASD. Accordingly, the Revised Plan should promote efficiency by reducing costs to common members. Furthermore, because NYSE Arca and NASD will coordinate their regulatory functions in accordance with the Revised Plan, the Revised Plan should promote investor protection.

The Commission is hereby declaring effective and approving a plan that, among other things, allocates regulatory responsibility to NASD for the oversight and enforcement of all NYSE Arca rules that are substantially similar to the rules of the NASD for common members of NYSE Arca and NASD.

III. Conclusion

This Order gives effect to the Revised Plan filed with the Commission in File No. 4-523. The Parties shall notify all members affected by the Revised Plan of their rights and obligations under the Revised Plan.

IT IS THEREFORE ORDERED, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the Revised Plan in File No. 4-523, between NYSE Arca and NASD, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

IT IS THEREFORE ORDERED that NYSE Arca is relieved of those responsibilities allocated to NASD under the Revised Plan in File No. 4-523.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(34).