

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58806; File No. 4-566)

October 17, 2008

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules

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”),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed pursuant to Rule 17d-2 of the Act,² by the American Stock Exchange LLC (“Amex”), BATS Exchange, Inc. (“BATS”), Boston Stock Exchange, Inc. (“BSE”), Chicago Board Options Exchange, Inc. (“CBOE”), Chicago Stock Exchange, Inc. (“CHX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), International Securities Exchange, LLC (“ISE”), The NASDAQ Stock Market, LLC (“NASDAQ”), National Stock Exchange, Inc. (“NSX”), New York Stock Exchange LLC (“NYSE”), NYSE Arca Inc. (“NYSE Arca”), NYSE Regulation, Inc. (acting under authority delegated to it by NYSE) (“NYSE Regulation”), and Philadelphia Stock Exchange, Inc. (“Phlx”) (collectively, “Participating Organizations” or “Parties”) concerning the surveillance, investigation, and enforcement of insider trading rules.

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ 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 Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ 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.⁸ 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

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ 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).

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

financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹

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.¹⁰ 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.

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

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

II. The Plan

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d-2.¹¹ The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common NYSE Members¹² or Common FINRA Members,¹³ as applicable, (collectively, "Common Members") for the surveillance, investigation, and enforcement of common insider trading rules ("Common Rules").¹⁴ The Plan assigns regulatory responsibility over Common NYSE Members to NYSE Regulation for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur. The Plan assigns regulatory responsibility over Common FINRA Members to FINRA for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NASDAQ-listed stocks and Amex-listed stocks, as well as any CHX solely-listed stock, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur.

¹¹ See Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4-566).

¹² Common NYSE Members include members of the NYSE and at least one of the Participating Organizations.

¹³ Common FINRA Members are members of FINRA and at least one of the Participating Organizations.

¹⁴ Common Rules are defined as: (i) federal securities laws and rules promulgated by the Commission pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading. See Exhibit A to the Plan.

III. Proposed Amendment to the Plan

On October 16, 2008, the Participating Organizations submitted a proposed amendment to the Plan. The purpose of the amendment is to: (1) add BATS as a participant to the Plan; (2) substitute CBOE as a participant for CBOE Stock Exchange, LLC; (3) clarify that CBOE's allocation of regulatory responsibilities under the Plan is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE; (4) clarify that ISE's allocation of regulatory responsibilities under the Plan is limited to the activities of the ISE Stock Exchange, LLC, a facility of ISE; and (5) add language to facilitate the addition of new SROs to the Plan where such new SROs do not assume regulatory responsibilities under the Plan. The amended agreement replaces the previous agreement in its entirety. The text of the proposed amendments to the Plan is as follows (additions are underlined; deletions are [bracketed]):

* * * * *

Agreement for the Allocation of Regulatory Responsibility of
Surveillance, Investigation and Enforcement for Insider Trading
pursuant to §17(d) of the Securities Exchange Act of 1934, 15
U.S.C. §78q (d), and Rule 17d-2 Thereunder

This agreement (the "Agreement") by and among the American Stock Exchange LLC ("Amex"), BATS Exchange, Inc. ("BATS"), Boston Stock Exchange, Inc., [CBOE Stock Exchange, LLC] Chicago Board Options Exchange, Inc. ("CBOE")^{†1}, Chicago Stock Exchange, Inc. ("CHX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), International

^{†1} CBOE's allocation of certain regulatory responsibilities to NYSE/FINRA under this Agreement is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE.

Securities Exchange, LLC (“ISE”)^{†2}, The NASDAQ Stock Market LLC (“NASDAQ”), National Stock Exchange, Inc., New York Stock Exchange, LLC (“NYSE”), NYSE Arca Inc. (“NYSE Arca”), NYSE Regulation, Inc. (pursuant to delegated authority) (“NYSE Regulation”), and Philadelphia Stock Exchange, Inc. (together, the “Participating Organizations”), is made pursuant to §17(d) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. §78q(d), and Securities and Exchange Commission (“SEC”) Rule 17d-2, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (“SROs”). Upon approval by the SEC, this Agreement shall amend and restate the agreement among the Participating Organizations (except BATS and CBOE, the latter of which replaces CBOE Stock Exchange, LLC) approved by the SEC on September 12, 2008.

* * * * *

27. Amendment.

a. _____ This Agreement may be amended [by any writing duly]to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, solely by an amendment executed by NYSE Regulation, FINRA and such new Participating Organization. All other Participating Organizations expressly consent to allow NYSE Regulation and FINRA to jointly add new Participating Organizations to the Agreement as provided above. NYSE Regulation and FINRA will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be made approved by each Participating Organization. [The addition of]All amendments, including adding a new Participating

^{†2} ISE’s allocation of certain regulatory responsibilities to NYSE/FINRA under this Agreement is limited to the activities of the ISE Stock Exchange, LLC, a facility of ISE.

Organization[to the Agreement will require an amendment. All such amendments], must be filed with and approved by the Commission before they become effective.

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EXHIBIT A: COMMON INSIDER TRADING RULES

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BATS Rule 3.1 Business Conduct of ETP Holders

BATS Rule 3.2. Violations Prohibited

BATS Rule 3.3. Use of Fraudulent Devices

BATS Rule 4.1 Requirements

BATS Rule 5.1. Written Procedures

BATS Rule 5.3 Records

BATS Rule 5.5 Chinese Wall Procedures

BATS Rule 12.4 Manipulative Transactions

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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/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-566 on the subject line.

Paper comments:

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

All submissions should refer to File Number 4-566. 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 Web site (<http://www.sec.gov/rules/other.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 inspection and copying in the Commission's Public Reference Room, 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 Amex, BATS, BSE, CBOE, CHX, FINRA, ISE, NASDAQ, NSX, NYSE, NYSE Arca, NYSE Regulation, and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-566 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act¹⁵ and Rule 17d-2 thereunder¹⁶ in that it is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and

¹⁵ 15 U.S.C. 78q(d).

¹⁶ 17 CFR 240.17d-2.

coordination among SROs, and removes impediments to and fosters the development of the national market system. The Commission continues to believe that the Plan, as proposed to be amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules over Common NYSE Members, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, to NYSE and over Common FINRA Members, with respect to NASDAQ-listed stocks, Amex-listed stocks, and any CHX solely-listed stock, to FINRA. Accordingly, the proposed Plan promotes efficiency by consolidating these regulatory functions in a single SRO based on the listing market for a stock, with regard to Common NYSE Members and Common FINRA Members.

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 add BATS as a participant to the Plan. By approving the amendment today, BATS can be included in the Plan prior to beginning operations as a national securities exchange.¹⁷ In addition, the amendment would facilitate the process of adding new participants to the Plan in the future. This amendment also makes technical changes to the Plan to clarify that CBOE's allocation of regulatory responsibilities under the Plan is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE, CBOE is a participant to the Plan instead of CBOE Stock Exchange, LLC, and ISE's allocation of regulatory responsibilities under the Plan is limited to the activities of the ISE Stock Exchange, LLC, a facility of ISE. By declaring it effective today, the amended Plan can become

¹⁷ See Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August).

effective and be implemented without undue delay. In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.¹⁸ Finally, 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 submitted to the Commission that is contained in File No. 4-566.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act,¹⁹ that the Plan, as amended, made by and among Amex, BATS, BSE, CBOE, CHX, FINRA, ISE, NASDAQ, NSX, NYSE, NYSE Arca, NYSE Regulation, and Phlx filed with the Commission pursuant to Rule 17d-2 on October 16, 2008 is hereby approved and declared effective.

IT IS FURTHER ORDERED that the Participating Organizations are relieved of those regulatory responsibilities allocated to NYSE and FINRA under the Plan in File No. 4-566.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Acting Secretary

¹⁸ See supra note 11.

¹⁹ 15 U.S.C. 78q(d).

²⁰ 17 CFR 200.30-3(a)(34).