

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55755; File No. 4-536)

May 14, 2007

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between the Chicago Board Options Exchange, Incorporated and the National Association of Securities Dealers, Inc.

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> granting approval and declaring effective an amended and restated plan for the allocation of regulatory responsibilities (“Plan”) that was filed pursuant to Rule 17d-2 under the Act<sup>2</sup> by the Chicago Board Options Exchange, Incorporated (“CBOE”) and the National Association of Securities Dealers, Inc. (“NASD”) (together with CBOE, the “Parties”) with respect to the CBOE Stock Exchange, LLC (“CBSX”), which is a facility of CBOE featuring a fully-automated marketplace for trading of non-option securities by CBOE members.<sup>3</sup>

Accordingly, NASD shall assume, in addition to the regulatory responsibility it has under the Act, the regulatory responsibilities allocated to it under the Plan as they relate to the CBSX. At the same time, CBOE is relieved of those regulatory responsibilities allocated to NASD under the Plan.

---

<sup>1</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78k-1(a)(3)(B), respectively.

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

<sup>3</sup> See Securities Exchange Act Release No. 55612 (April 10, 2007), 72 FR 19556 (April 18, 2007) (“Notice”). CBOE serves as the self-regulatory authority for CBSX.

## I. Introduction

Section 19(g)(1) of the Act,<sup>4</sup> among other things, requires every self-regulatory organization (“SRO”) that is 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) or 19(g)(2) of the Act.<sup>5</sup> Section 17(d)(1) of the Act<sup>6</sup> was intended, among other things, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO (“common members”).<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-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, 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

---

<sup>4</sup> 15 U.S.C. 78s(g)(1).

<sup>5</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

<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. 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.

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.

On April 10, 2007, the Commission issued notice of the Plan filed by CBOE and NASD.<sup>9</sup> The Commission received no comments on the Plan. The Plan is intended to reduce regulatory duplication in the examination of Dual Members<sup>10</sup> and in the filing and processing of certain registration and membership records as it relates to the CBSX by allocating to NASD certain examination and enforcement responsibilities with respect to CBSX. Included in the Plan is an attachment (the “CBOE Certification of Common Rules,” referred to herein as the “Certification”) that lists every CBOE rule applicable to CBSX,<sup>11</sup> and any federal securities law, rule, or regulation for which, under the Plan, NASD would bear responsibility for examining, and enforcing compliance by, common members.

## II. Discussion

The Commission finds that the proposed 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 Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and

---

<sup>9</sup> See Notice, *supra* note 3.

<sup>10</sup> See Section 1(c) of the Plan (defining Dual Member as “those CBOE members that are also members of NASD and the persons associated therewith”).

<sup>11</sup> As noted in the Certification, to the extent that any CBOE rule listed on the Certification makes reference to options, such rule shall be read to apply to equity securities as provided by CBOE Rule 53.6.

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

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

coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to NASD certain responsibilities for common members that would otherwise be performed by both CBOE and NASD. Accordingly, the proposed Plan promotes efficiency by reducing costs to common members. Furthermore, because CBOE and NASD will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, CBOE and NASD have allocated regulatory responsibility for those CBOE governing the operation of CBSX that are substantially similar to NASD rules in that examination for compliance with each applicable CBOE rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule ("Common Rules"). The Common Rules covered by the Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.<sup>14</sup> In addition, under the Plan, NASD would assume regulatory responsibility for any provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification.

The Plan further provides that NASD shall not assume regulatory responsibility, and CBOE will retain full responsibility, for: (1) surveillance and enforcement with respect to trading activities or practices involving CBOE's own marketplace, including without limitation

---

<sup>14</sup> CBOE has represented that, with respect to CBSX, there are no CBOE rules that are substantially similar to NASD rules that are within the scope of the Plan but not included in the Certification. See Telephone call between Richard Holley III, Special Counsel, Division of Market Regulation, Commission, and Lawrence J. Bresnahan, Vice President, Member Firm Regulation, CBOE, on May 11, 2007.

CBOE's rules relating to the rights and obligations of market makers; (2) registration pursuant to CBOE's applicable rules of associated persons (i.e., registration rules that are not Common Rules); (3) CBOE's duties as a DEA under Rule 17d-1 of the Act;<sup>15</sup> and (4) any rules of CBOE that do not qualify as Common Rules.

According to the Plan, CBOE will review the Certification, at least annually, or more frequently if required by changes in either the rules of CBOE or NASD, and, if necessary, submit to NASD an updated list of Common Rules to add CBOE rules not included on the then-current list of Common Rules that are substantially similar to NASD rules; delete CBOE rules included in the then-current list of Common Rules that are no longer substantially similar to NASD rules; and confirm that the remaining rules on the list of Common Rules continue to be CBOE rules that are substantially similar to NASD rules.<sup>16</sup> NASD will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, CBOE will also provide NASD with a current list of dual members and shall update the list no less frequently than once each quarter.<sup>17</sup>

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 CBOE rules applicable to CBSX that are substantially similar to the rules of NASD for Dual Members of CBOE and NASD. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to CBOE rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add a

---

<sup>15</sup> 17 CFR 240.17d-1.

<sup>16</sup> See Section 2 of the Plan.

<sup>17</sup> See Section 3 of the Plan.

CBOE rule to the Certification that is not substantially similar to an NASD rule; delete a CBOE rule from the Certification that is substantially similar to an NASD rule; or leave on the Certification a CBOE rule that is no longer substantially similar to an NASD rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act and noticed for public comment.<sup>18</sup>

The Plan also permits CBOE and NASD to terminate the Plan, subject to notice. The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d-2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.<sup>19</sup>

### III. Conclusion

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

IT IS THEREFORE ORDERED, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the Plan in File No. 4-536, between CBOE and NASD, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

---

<sup>18</sup> The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which NASD would bear responsibility under the Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Plan.

<sup>19</sup> The Commission notes that paragraph 13 of the Plan reflects the fact that NASD's responsibilities under the Plan will continue in effect until the Commission approves the termination of the Plan.

IT IS THEREFORE ORDERED that CBOE is relieved of those responsibilities allocated to the NASD under the Plan in File No. 4-536.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>20</sup> 17 CFR 200.30-3(a)(34).