

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58191 / July 18, 2008

Admin. Proc. File No. 3-12714

In the Matter of the Application of

BOSTON STOCK EXCHANGE, INC.,
CHICAGO BOARD OPTIONS EXCHANGE, INC.,
INTERNATIONAL SECURITIES EXCHANGE, LLC,
NASDAQ STOCK MARKET LLC,
NATIONAL STOCK EXCHANGE, INC.,
NYSE ARCA, INC., AND
NEW YORK STOCK EXCHANGE LLC

Petitioning Participants

c/o Steven J. Abrams, Esq.
Ingram Yuzek Gainen Carroll & Bertolotti, LLP
250 Park Avenue
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OPINION OF THE COMMISSION

CONSOLIDATED TAPE ASSOCIATION/CONSOLIDATED QUOTATION PLAN –
REVIEW OF NATIONAL MARKET SYSTEM PLANS ACTION PURSUANT TO
RULE 608(d) UNDER THE SECURITIES EXCHANGE ACT OF 1934

Jurisdiction to Review Action of Plan

A majority of the participants of the Consolidated Tape Association Plan and the Consolidated Quotation Plan seeks review of the failure of the American Stock Exchange, in its capacity as the Network B Administrator, to comply with a majority vote of the participants directing it to deduct certain legal expenses incurred in connection with a settlement prior to allocating the settlement proceeds among the participants. Held, the Commission declines to exercise its discretion to review this action under Rule 608(d) of the Securities Exchange Act of 1934, and the application for review is dismissed.

APPEARANCES:

Steven J. Abrams and Dean G. Yuzek, of Ingram Yuzek Gainen Carroll & Bertolotti, LLP, for Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., NYSE Arca, Inc., and New York Stock Exchange LLC.

George T. Simon and Dean M. Jeske, of Foley & Lardner LLP, for American Stock Exchange, LLC, in its capacity as the Network B Administrator under the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

Appeal filed: July 5, 2007

Last brief received: November 27, 2007

I.

The Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC, Nasdaq Stock Market LLC (“Nasdaq”), National Stock Exchange, Inc., NYSE Arca, Inc. (“NYSE Arca”), and New York Stock Exchange LLC (“NYSE”) (collectively, the “Petitioning Participants”), pursuant to Rule 608(d)(1) of Regulation NMS of the Securities Exchange Act of 1934, 1/ (formerly Exchange Act Rule 11Aa3-2(e)(1)), 2/ petition us to compel the American Stock Exchange, LLC (“AMEX”), in its capacity as the Network B Administrator under the Consolidated Tape Association (“CTA”) Plan and the Consolidated Quotation (“CQ”) Plan (collectively, the “Plans”), 3/ to comply with the directions that a majority of the CTA participants issued to

1/ 17 C.F.R. § 242.608(d)(1). Exchange Act Rule 608(d) provides that the “Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market system plan.” Exchange Act Rule 608(d)(1) provides that “[a]ny action taken or failure to act by any person in connection with an effective national market system plan (other than a prohibition or limitation of access reviewable by the Commission . . .) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby”

2/ In June 2005, Exchange Act Rule 11Aa3-2(e) was redesignated Exchange Act Rule 608(d) without any change in substance. See Regulation NMS, Securities Exchange Act Rel. No. 51808 (June 9, 2005), 85 SEC Docket 2264, 2338 (stating that, although Exchange Act Rule 608 renumbered Rule 11Aa3-2, the substance of the provision “remain[ed] largely intact”).

3/ The CTA is the policy-making body for the CTA Plan and administers the Consolidated Tape System, which makes available last sale transaction information for trades executed
(continued...)

AMEX. ^{4/} Those directions call for AMEX to reallocate certain settlement proceeds to the participants “net” of the legal expenses incurred in connection with certain litigation under the Plans. For the reasons set forth below, we decline to exercise our discretion to review this matter pursuant to Exchange Act Rule 608(d). ^{5/}

II.

Congress enacted the Securities Acts Amendments of 1975 ^{6/} to authorize the Commission to facilitate the establishment of a national market system that would employ communications systems to disseminate consolidated market information. ^{7/} Congress

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- ^{3/} (...continued)
in eligible securities. See, e.g., Cincinnati Stock Exch., 54 S.E.C. 857 (2000). The Consolidated Quotation System is the legal, operational, and administrative framework created pursuant to the CQ Plan for the collection, processing, and dissemination of quotation information for eligible securities. See Application Pursuant to Section 11A(a)(3)(B), Exchange Act Rel. No. 16518 (Jan. 22, 1980), 19 SEC Docket 367, 368; see also Order Directing Additional Briefs, Admin. Proc. File No. 10561 (Mar. 13, 2002) (settled CBOE case).
- ^{4/} There are eleven participants in the Plans, including the Petitioning Participants. The remaining four participants are AMEX, the Chicago Stock Exchange, Inc., the Philadelphia Stock Exchange, and Financial Industry Regulatory Authority, Inc. On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517. Because the events at issue here occurred before the consolidation, we use the designation NASD.
- ^{5/} See Am. Stock Exch., Inc., 54 S.E.C. 491, 497-99 (2000) (dismissing appeal and declining to exercise discretion under former Exchange Act Rule 11Aa3-2(e) to review action taken at CTA meeting concerning calculation of revenue generated from the sale of transaction information in derivative product known as “Diamonds”).
- ^{6/} Pub. L. No. 94-29, 89 Stat. 97.
- ^{7/} See, e.g., Regulation of Market Information Fees and Revenues, Exchange Act Rel. No. 42208 (Dec. 17, 1999), 71 SEC Docket 580, 581.

contemplated that a national market system would encourage both centralized trading and fair competition among markets. 8/

In 1978, various SROs filed with the Commission the CTA Plan and the CQ Plan. 9/ All of the SROs currently are participants in the CTA Plan and the CQ Plan. 10/ The Plans require participants to collect and report market information promptly to the Plan processors, who receive, consolidate, and disseminate it in accordance with the Plans. 11/

The SROs have developed four networks or systems to disseminate market information for different categories of securities. 12/ One of those networks, Network B, operates pursuant to the Plans and disseminates market information for certain securities that are admitted to dealings on the AMEX or regional exchanges but are not admitted to dealings on NYSE or Nasdaq. 13/ Each network has a member that is the day-to-day administrator of the network. 14/ AMEX is the network administrator designated by the Plans for Network B. 15/ AMEX enters into

8/ See Exchange Act Section 11A(a)(1)(C), 15 U.S.C. § 78k-1(a)(1)(C). See also Nasdaq Stock Mkt., LLC, Exchange Act Rel. No. 55909 (June 14, 2007), 90 SEC Docket 2553, 2554 (order accepting jurisdiction and establishing procedures). The Commission earlier had adopted a rule requiring every self-regulatory organization (“SRO”) to file a plan for collecting, processing, and disseminating on a consolidated basis reports of completed transactions in securities registered or admitted to trading on an exchange or over-the-counter. See Exchange Act Rel. No. 9850 (Nov. 8, 1972); Am. Stock Exch., 54 S.E.C. at 493; Nasdaq Stock Mkt., 90 SEC Docket at 2554-55.

9/ See Collection and Dissemination of Transaction Reports, Exchange Act Rel. No. 15250 (Oct. 20, 1978), 15 SEC Docket 1355, 1356; Dissemination and Display of Transaction Reports Quotation Information, Exchange Act Rel. No. 15251 (Oct. 20, 1978), 15 SEC Docket 1370, 1379.

10/ Regulation of Market Information Fees and Revenues, 71 SEC Docket at 582.

11/ Id. at 584.

12/ Id. at 582.

13/ Id. at 583. Network A also operates pursuant to the Plans. Id. Network A disseminates market information for certain securities that are admitted to dealings on the NYSE. Id.

14/ Id.

15/ CTA Plan Section I(t)(b); CQ Plan Section I(r)(b).

“arrangements on behalf of the Network B Participants so as to authorize vendors and other persons to receive and use CTA Network B information for purposes of assorted services.” 16/

The Plans and NASD rules set forth the terms and conditions under which market information is disseminated by the networks. 17/ For example, the Plans and NASD rules require that market information be disseminated exclusively to vendors and subscribers who have been approved by their respective administrators and who have contracted to receive such information. 18/ In accounting for these arrangements, the revenues derived from fees charged for a network’s market information are aggregated into a single pool. 19/ The network’s operating expenses are then paid directly out of the network’s revenues. 20/ After operating expenses are deducted, the network’s revenues are distributed to its participants in proportion to their share of the total transaction volume for the network. 21/ The participants are provided annually with audited financial statements of their finances. 22/

III.

In May 2004, AMEX learned that Edward D. Jones & Co. (“EDJ”) had under-reported its usage and dissemination of Network B market data and had failed to pay substantial usage fees to the network from 1988 to 2004. At the October 13, 2004 meeting of the CTA, AMEX notified the CTA participants of EDJ’s delinquent reporting and retroactive fee liability. AMEX reported that it would pursue a breach of contract claim against EDJ and also seek recovery of legal and arbitration expenses associated with the litigation. 23/

16/ CTA Plan Section IX(f).

17/ Regulation of Market Information Fees and Revenues, 71 SEC Docket at 584.

18/ Id.

19/ Id.

20/ Id.

21/ Id.

22/ Id.

23/ The Petitioning Participants filed a motion to introduce additional evidence pursuant to Rule 452 of our Rules of Practice, 17 C.F.R. § 201.452. The Petitioning Participants seek to introduce copies of (1) a statement of claim against EDJ that AMEX submitted to the American Arbitration Association; (2) two spreadsheets displaying calculations of the allocation of the EDJ settlement proceeds and associated legal expenses; and (3) minutes of additional CTA meetings addressing the allocation of the EDJ settlement proceeds and
(continued...)

In the fall of 2006, AMEX distributed to the participants audited financial statements for the years ending December 31, 2004 and 2005. Those statements noted that, “[i]f any revenues are recovered with respect to [the EDJ] matter, they will be distributed to the Plan Participants in accordance with the applicable share percentages in effect among the Plan Participants for each annual reporting period since 1988 for which underpayments are collected.” According to AMEX, “the EDJ legal [expenses] were included as Operating Expenses in [those] audited financial statements . . . which were provided to all Plan Participants.” Those financial statements, however, did not identify legal expenses nor any other expenses as separate line items under the broad category of “Operating Expenses.”

At a February 28, 2007 CTA meeting, the participants discussed a settlement offered by EDJ in connection with the arbitration that was scheduled to begin the following week. AMEX reported that EDJ had offered \$10.85 million to settle the dispute. AMEX asserted that acceptance of the EDJ settlement offer “would cancel the pending arbitration and eliminate further legal [expenses].” ^{24/} According to the minutes of that meeting, some participants sought a “breakdown of the recovery and its allocation” and insisted on reviewing the allocation with their respective managements before voting; however, AMEX asked for a vote “today,” with discussion of distribution of the settlement proceeds “later.” AMEX agreed to provide at some future date a schedule of the allocation of the settlement proceeds among the participants “based on yearly market share.” AMEX then moved to accept the \$10.85 million EDJ offer “to settle the entire dispute.” A majority of the participants voted to accept the offer, and EDJ paid the settlement amount to AMEX on March 5, 2007.

According to the minutes of the March 16, 2007 CTA meeting, the participants debated the allocation of the settlement proceeds. Nasdaq’s CTA representative asserted that the CTA Plan was unclear regarding the recovery of extraordinary costs but seemed to provide for the expensing of costs in the year in which they occurred. He maintained that the CTA Plan’s cost-expensing language did not cover the “special circumstances” of expensing legal costs associated with recovery of prior years’ usage fees because they were “more appropriately attributable” to the years in which the usage fees were incurred.

^{23/} (...continued)
 legal expenses. Rule 452 requires a showing that there were reasonable grounds for failure to adduce such evidence previously and that the additional evidence is material.

In support of their motion, the Petitioning Participants assert that they did not have the opportunity previously to supplement the record that AMEX produced because they were not asked to provide information for inclusion in the record. AMEX does not oppose the motion. We believe that the information supplied by the Petitioning Participants is material to our further understanding of the nature of the dispute and have determined to admit it.

^{24/} According to AMEX, those legal bills already exceeded \$2 million.

AMEX argued that the legal expenses were normal expenses and should not be deemed “extraordinary” by virtue of it being the first time that the CTA had actually incurred legal expenses to recover usage fees. AMEX maintained that the CTA Plan “clearly” provides for legal expenses to be categorized as operating expenses in the year in which the expenses occurred. AMEX stated that the \$10.85 million settlement amount covered the principal, interest, and administrative charges for the entire claim and that “it was not possible to separate the funds by year.” AMEX suggested that any deviation from that approach would require a plan amendment.

Nasdaq’s CTA representative moved to have CTA direct AMEX to allocate each participant’s share of those legal expenses in the same proportion as the amount the participant received from the EDJ settlement (the “March 16 motion”). AMEX objected that the motion would require a plan amendment. The resulting votes fell short of a majority and the March 16 motion failed to carry.

On March 19, 2007, AMEX distributed the EDJ settlement proceeds to the participants “based upon their applicable market share during the period of the claim and included as part of the first quarter 2007 distribution made to the [participants],” according to fiscal year 2006 audited financial statements. On April 3, 2007, the participants convened a telephone meeting to reassess the distribution of the EDJ settlement proceeds. The NYSE Arca representative reported that, based on “new information” from AMEX regarding the allocation of the legal costs relating to the EDJ settlement, allocating the legal expenses in the years in which they were incurred would be inequitable and inconsistent with the terms of the CQ Plan. She noted that AMEX had allocated to NYSE Arca \$1,244,000 in legal expenses and \$530,000 of the EDJ settlement proceeds, resulting in a \$714,000 loss to NYSE Arca. However, AMEX, as the Network B Administrator, allocated to AMEX, in its capacity as a participant, \$6,761,000 of the settlement proceeds, but required AMEX to pay only \$726,000 of the legal expenses. According to the minutes of that meeting, the AMEX representative responded that “the distribution was done in the same manner as previous distributions.” The record does not identify those “previous distributions.”

The NYSE Arca representative moved to apply the EDJ matter legal expenses and other costs associated with the negotiated settlement against the settlement dollars obtained prior to distribution to the participants, so as to ensure that no participant paid out-of-pocket costs for the settlement. AMEX objected to that approach. AMEX noted that the March 16 motion to distribute the settlement proceeds net of legal expenses did not carry; thus, AMEX instead had allocated the legal expenses based on the years in which the expenses were incurred. In response to AMEX’s objection, a “simplified” motion was made:

To reallocate legal expenses and deduct those [expenses] prior to the distribution of the settlement funds from the EDJ case.

A majority of the participants voted in favor of this motion (the “April 3 vote”). AMEX refused to recognize the vote and declared it “null and void.”

By letter dated June 4, 2007, AMEX notified the participants of its view that it could not comply with the April 3 vote because that motion would require AMEX “to reallocate expenses that were deducted from Net Income in prior years based upon the allocation of the EDJ settlement” and thus was “directly in conflict with [its] obligations under the CTA and CQ Plans.” AMEX explained that distributions made to the participants “are specifically tied to the audited financial statements” of the Plans and “there is no provision in either Plan for retroactively changing those distributions absent a possible restatement of the audited financials.” AMEX attached copies of the fiscal year 2004 and 2005 audited financial statements and stated that there was “no reserve established which would enable the [Plans] to reallocate EDJ related expenses deducted in those years based upon the allocation of any subsequent recovery.” AMEX stated that “the vote recently taken by the [participants] to reallocate expenses in prior years is inconsistent with the audited statements of” the Plans, “inconsistent with the [Plans themselves] and can only be effectuated by an amendment to these Plans, which, as you know, requires unanimous consent of all the [participants].” AMEX added that, although the proposed resolution would require some participants to make payments to other participants to reimburse them for expenses charged against their distributions in prior years, the Plans do not provide for such payments.

On June 5, 2007, AMEX circulated a spreadsheet showing the allocation of the EDJ settlement proceeds among the participants based on their yearly market share, as promised at the February 28, 2007 meeting. At a June 6, 2007 CTA meeting, the participants agreed that the April 3 vote directed AMEX to distribute the EDJ settlement proceeds after netting out the legal expenses relating to the legal proceeding, required those participants that had received excess distributions from the settlement to return the excess amounts to AMEX, and directed AMEX to distribute the returned funds to those participants “that were from the settlement.” AMEX again objected that such actions were inconsistent with the Plans. A majority of the participants approved a motion providing that each participant that owed money as set forth in AMEX’s spreadsheet would return such amount to AMEX, which was instructed to withhold future distributions of proceeds from any noncomplying participant until the balance owed was “reduced to zero.” AMEX reserved its right to contest the taking of that vote.

IV.

Exchange Act Rule 608(d) governs the Commission’s authority to hear appeals from action taken pursuant to a national market system plan, such as the CTA Plan or CQ Plan. ^{25/} Exchange Act Rule 608(d) provides that the “Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market

^{25/} See Am. Stock Exch., 54 S.E.C. at 496 (citing Exchange Act Rule 11Aa3-2, the predecessor of Exchange Act Rule 608(d)); see supra note 2.

system plan” 26/ Exchange Act Rule 608(d)(1) provides that “[a]ny action taken or failure to act by any person in connection with an effective national system plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to [other Exchange Act provisions]) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby” 27/

We held in American Stock Exchange that, despite the apparent conflict between the predecessors of Exchange Act Rule 608(d) and subsection 608(d)(1), “Commission review of appeals under [Exchange Act] Rule 11Aa3-2[,]” (the predecessor of Exchange Act Rule 608(d)), “is discretionary.” 28/ We concluded that the language “shall be subject to review” in Exchange Act Rule 11Aa3-2(e)(1), the predecessor of Exchange Act Rule 608(d)(1), “does not make Commission review of national market system plan action mandatory.” 29/

In American Stock Exchange, AMEX sought discretionary review of CTA action to exclude from the calculation of AMEX’s annual share of CTA revenue, transactions in a

26/ 17 C.F.R. § 242.608(d) (emphasis added); see also Am. Stock Exch., 54 S.E.C. at 496.

27/ 17 C.F.R. § 242.608(d)(1) (emphasis added).

28/ Am. Stock Exch., 54 S.E.C. at 498 (concluding that, based on the release proposing Exchange Act Rule 11Aa3-2, “the Commission believed that its obligation to review an appeal from national market system plan action would be triggered only in the event that the Commission exercised its discretion in the first instance to undertake such a review.”). See also Procedures and Requirements for National Market System Plans, Exchange Act Rel. No. 16410 (Dec. 7, 1979), 18 SEC Docket 1306, 1313 (proposing Exchange Act Rule 11Aa3-2).

29/ Am. Stock Exch., 54 S.E.C. at 497.

Exchange Act Section 11A(b)(5), 15 U.S.C. § 78k-1(b)(5), provides for mandatory Commission review of any prohibition or limitation on access to services offered by a registered securities information processor upon application of an aggrieved person. See also Nasdaq Stock Mkt., 90 SEC Docket 2553 (jurisdiction mandatory where potentially excessive new participant entry fee may have constituted a denial of access); Cincinnati Stock Exch., 54 S.E.C. 857, 860 (jurisdiction mandatory where imposition of market data display fees on Cincinnati Stock Exchange specialists limited their access to a registered securities information processor’s services). CTA is a registered securities information processor. Id. None of the parties contends that this matter implicates our mandatory jurisdiction.

derivative product known as Diamonds. ^{30/} We declined to review that matter because the issues raised by the appeal failed “to implicate any of the broad objectives of the national market system – the public interest, the protection of investors, or the maintenance of fair and orderly markets” nor did the “appeal concern action related to our role in facilitating the establishment of a national market system.” ^{31/} We concluded that the “appeal concern[ed] individual financial interests, and not the broad objectives of the national market system.” ^{32/} We stated that the “‘Commission’s responsibility under the [Exchange] Act is not to act as the arbiter of individual competitive interests but instead to further the objectives set forth . . . under the [Exchange] Act, including those relating to the enhancement of competition in the securities industry.’” ^{33/}

American Stock Exchange set forth the guidelines we use to exercise our discretionary jurisdiction under Exchange Act Rule 608(d). We have an abiding interest in the fair administration of the Plans and in policing against self-dealing to ensure that the Plans are operated in furtherance of the statutory objectives of the national market system. ^{34/} The Petitioning Participants have not persuaded us that those statutory objectives are implicated here.

Initially, we note that our inquiry in this matter is limited by the record assembled by AMEX and supplemented by the Petitioning Participants. The record consists primarily of selected minutes of CTA/CQ meetings between October 2004 and June 2007, audited annual financial statements for 2004-2006, selected correspondence, two spreadsheets, the arbitration claim that resulted in the settlement with EDJ, and composite copies of the CTA and CQ Plans. The minutes are not detailed, and there are no transcripts of the relevant meetings. As a result, our initial consideration of the case, which might have persuaded us to exercise our discretionary jurisdiction, has been hampered.

In support of their application, the Petitioning Participants assert that the “issues raised by this appeal pertain to the maintenance of fair and orderly markets, the removal of impediments to a national market system and the perfection of the mechanisms of a national market system, all objectives of the 1934 Act” and that “AMEX’s actions and failures allow the Commission to make each and every one of the findings” based on the statutory objectives. The Petitioning

^{30/} Am. Stock Exch., 54 S.E.C. at 491.

^{31/} Id. at 499 (dismissing appeal involving an “ordinary commercial dispute” between AMEX and the other participants).

^{32/} Id. at 500.

^{33/} Id. at 499-500 (quoting Procedures and Requirements for National Market System Plans, Exchange Act Rel. No. 17580 (Feb. 26, 1981), 22 SEC Docket 195, 198 (footnote omitted)).

^{34/} See 17 C.F.R. § 242.608(d).

Participants do not, however, articulate a nexus between the statutory policy and the issues raised by their appeal. They contend that AMEX failed to volunteer certain information about the settlement and allocation of its proceeds. They raise questions regarding whether the legal expenses should be characterized as ordinary or extraordinary expenses and the applicable time period over which the settlement proceeds and expenses should be allocated. As thus articulated, their concerns with respect to the allocation of the EDJ settlement and expenses involve an internal business controversy – a commercial dispute over the correct interpretation of the Plans that implicates neither the establishment or functioning of a national market system nor the Commission’s expertise in securities law. ^{35/} As we concluded in American Stock Exchange, we believe that resolution of such business disputes, without a satisfactory explanation of a clearer and closer connection to the statutory areas we are charged with supervising, should be left to the courts, which have experience in adjudicating such issues. ^{36/} Where the statutory objectives of the national market system are implicated, however, the Commission’s oversight of the administration of the Plans gives us a compelling interest in ensuring that the Network B administrator carries out its duties equitably and commensurately with those statutory objectives.

Although the Petitioning Participants mention that AMEX’s conduct is anti-competitive and invoke the Congressional public interest findings of Exchange Act § 11A(a)(1)(C)(ii) in favor of fair competition among exchange markets, ^{37/} they do not explain how the actions of AMEX burden competition and make no serious argument that the actions were anti-competitive. The Petitioning Participants also do not explain how their reference to anti-competitive behavior extends to an adverse effect on the functioning of the national market system, the public interest, the protection of investors, or the maintenance of fair and orderly markets. ^{38/}

^{35/} See Am. Stock Exch., 54 S.E.C. at 500.

^{36/} See id. (dismissing what was “fundamentally a contract dispute”).

^{37/} 15 U.S.C. § 78k-1(a)(1)(C)(ii).

^{38/} AMEX challenges this appeal on timeliness grounds, claiming that the Petitioning Participants filed their petition two months after the expiration of the thirty day period within which to seek review. The Petitioning Participants dispute the date on which that thirty day period began to toll. In light of our decision here, we do not reach the timeliness issue.

For the foregoing reasons, we decline to exercise our discretion to entertain the Petitioning Participants' appeal pursuant to Exchange Act Rule 608(d).

An appropriate order will issue. 39/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY);
Commissioner WALTER not participating.

Florence E. Harmon
Acting Secretary

39/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58191 / July 18, 2008

Admin. Proc. File No. 3-12174

In the Matter of the Application of

BOSTON STOCK EXCHANGE, INC.,
CHICAGO BOARD OPTIONS EXCHANGE, INC.,
INTERNATIONAL SECURITIES EXCHANGE, LLC,
NASDAQ STOCK MARKET LLC,
NATIONAL STOCK EXCHANGE, INC.,
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NEW YORK STOCK EXCHANGE LLC

Petitioning Participants

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ORDER DISMISSING APPLICATION FOR REVIEW OF NATIONAL MARKET SYSTEM
PLANS ACTION PURSUANT TO RULE 608(d) UNDER THE SECURITIES EXCHANGE
ACT OF 1934

On the basis of the Commission's opinion issued this day, it is

ORDERED that the Petition to Compel the Network B Administrator to Follow the
Direction of the CTA/CQ Plan Participants be, and it hereby is, dismissed.

By the Commission.

Florence E. Harmon
Acting Secretary