

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56148; File No. 4-544)

July 26, 2007

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

Notice is hereby given that the Securities and Exchange Commission (“SEC” or “Commission”) has issued an Order, pursuant to Sections 17(d) and 11A(a)(3)(B)¹ of the Securities Exchange Act of 1934 (“Act”), approving and declaring effective a plan for the allocation of regulatory responsibilities (“17d-2 Plan” or “Plan”) that was filed pursuant to Rule 17d-2 under the Act,² by the National Association of Securities Dealers, Inc. (“NASD”), the New York Stock Exchange LLC (“NYSE”), and NYSE Regulation, Inc. (“NYSE Regulation”) (collectively, the “Parties”).

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 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)⁴ or 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of

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

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

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 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.

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.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976) (adopting Rule 17d-1).

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 it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among the SROs, removes impediments to, and fosters 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.

II. The Proposed Plan

A. The Transaction

In November 2006, NASD and NYSE Group, Inc. (“NYSE Group”)¹¹ announced their plan to consolidate their member regulation operations into a single organization that would

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) (adopting Rule 17d-2).

¹¹ NYSE Group recently combined with Euronext N.V. (“Euronext”) to form a single, publicly traded holding company named NYSE Euronext. NYSE Group and Euronext became separate subsidiaries of NYSE Euronext. The corporate structure for the businesses of NYSE Group (including the businesses of the NYSE LLC and NYSE Arca, Inc., a registered national securities exchange) remained unchanged following the combination. Specifically, NYSE LLC remains a wholly-owned subsidiary of NYSE Group. NYSE Market remains a wholly-owned subsidiary of the NYSE LLC and conducts NYSE LLC’s business. NYSE Regulation remains a wholly-owned subsidiary of NYSE LLC and performs the regulatory responsibilities for NYSE LLC pursuant to a delegation agreement with NYSE LLC and many of the regulatory functions of NYSE Arca pursuant to a services agreement with NYSE Arca. See Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120).

provide member firm regulation for securities firms that conduct business with the public in the United States (the “Transaction”).¹² Pursuant to the Transaction, the member firm regulation and enforcement functions and employees from NYSE Regulation would be transferred to NASD,¹³ and the expanded NASD would adopt a new corporate name – the Financial Industry Regulatory Authority (“FINRA”).¹⁴ The consolidation is intended to streamline the broker-dealer regulatory system, combine technologies, and permit the establishment of a single set of rules and a single set of examiners with complementary areas of expertise within a single SRO.¹⁵

To effectuate the consolidation, NASD has submitted a proposed rule change to incorporate into FINRA’s rulebook certain existing NYSE rules that pertain to the regulation of member firm conduct (the “Incorporated NYSE Rules”).¹⁶ The Incorporated NYSE Rules will apply to members of FINRA that are also members of NYSE on or after the date of the closing of the Transaction (such common members are referred to as “Dual Members”).¹⁷

¹² Currently, both NASD and NYSE Regulation oversee the activities of U.S.-based broker-dealers doing business with the public, approximately 170 of which are members of both organizations.

¹³ Following the closing of the Transaction, NYSE Regulation will continue to oversee market surveillance and listed company compliance at the NYSE and NYSE Arca.

¹⁴ The closing of the Transaction and the consolidation of the member firm regulatory functions of the NASD and NYSE Regulation are subject to the execution of definitive agreements between NASD and NYSE Group, the Commission’s approval of certain proposed rule changes, and certain other additional regulatory approvals.

¹⁵ See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023) (proposing to amend the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation) (“By-Law Amendments Filing”).

¹⁶ See File No. SR-NASD-2007-054 (“Incorporation Filing”). The list of Incorporated NYSE Rules is set forth in Exhibit 5 of SR-NASD-2007-054.

¹⁷ See id. See also Proposed 17d-2 Plan (defining Dual Members as broker-dealer firms that are members of both the NYSE and FINRA on or after the closing date of the Transaction).

Consequently, to relieve NYSE of its responsibility to examine for, and enforce compliance with, the applicable NYSE rules, the Parties have entered into a joint plan for the allocation of regulatory responsibilities with respect to Dual Members, as discussed below.

Subsequent to the closing of the Transaction, FINRA intends to begin the process of consolidating its rule set applicable to member firms by reducing to one the two sets of rules (i.e., NASD rules and the Incorporated NYSE Rules) that are currently applicable to Dual Members.¹⁸

B. The Proposed Plan

On July 26, 2007, the Parties submitted the proposed 17d-2 Plan in connection with the proposed consolidation of the member regulation operations of NASD and NYSE Group. The Plan would reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA.¹⁹

Specifically, the Plan includes a list of all of those rules (the “Common Rules,” which are listed on the “List of Common Rules” attached as Exhibit 1 to the Plan) for which FINRA would assume examination, enforcement, and surveillance responsibilities under the Plan relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation.²⁰ The NYSE rules on the List of Common Rules are the same rules that are proposed

¹⁸ FINRA’s efforts to reduce regulatory duplication in this regard with respect to Dual Members by consolidating the two separate rule sets will constitute a proposed rule change and will be subject to Commission approval.

¹⁹ See Incorporation Filing, supra note 16; see also paragraph 2(a) of the proposed 17d-2 Plan.

²⁰ See Paragraph 1(a) of the proposed 17d-2 Plan.

by NASD to be incorporated into the FINRA rulebook, so that such rules will be common rules of both FINRA and NYSE for purposes of the 17d-2 Plan.²¹

Under the Plan, NYSE would retain full responsibility for: (i) examinations of Dual Member conduct covered by NYSE rules that are not Common Rules (“NYSE-only Rules”) and/or by federal laws or regulations; (ii) surveillance, investigation, and enforcement with respect to conduct relating to trading on or through the systems and facilities of NYSE and conduct otherwise covered by NYSE-only Rules, as well as surveillance, investigation, and enforcement with respect to whether such conduct may constitute a violation of federal laws or regulations; (iii) processing of applications for trading licenses or other indicia of membership in NYSE; (iv) qualification and registration of firm personnel to effect transactions or work on the floor of NYSE pursuant to NYSE’s applicable qualification and registration rules; and (v) the application of any Common Rule as it pertains to matters other than member firm regulation, including matters relating to the NYSE’s exclusive responsibility for the aforementioned areas (the “Non-Exclusive Common Rules”).²²

The text of the proposed 17d-2 Plan and the Exhibits thereto are as follows:

²¹ See Paragraph 2(a) of the proposed 17d-Plan.

²² See Paragraphs 2(d)(i)-(v) of the proposed 17d-2 Plan; see also infra text accompanying notes 29-30 (discussing the Non-Exclusive Common Rules).

**AGREEMENT BETWEEN NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC., NEW YORK STOCK EXCHANGE LLC, AND NYSE REGULATION, INC.**

PURSUANT TO

**SEC RULE 17d-2 PROMULGATED BY THE SECURITIES AND EXCHANGE
COMMISSION UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This Agreement, between and among National Association of Securities Dealers, Inc., a Delaware nonstock membership corporation (“NASD”), New York Stock Exchange LLC, a New York limited liability company (the “NYSE”), and NYSE Regulation, Inc., a New York not-for-profit corporation and an indirectly wholly-owned subsidiary of NYSE Group, Inc. (“NYSE Regulation”), is made this 26th day of July, 2007, pursuant to the provisions of Rule 17d-2 promulgated by the Securities and Exchange Commission (the “Commission”) under the Securities Exchange Act of 1934, as amended (the “Act”), which authorizes agreements between self-regulatory organizations for plans to reduce or eliminate regulatory duplication.

WHEREAS, NYSE Group, Inc., a Delaware corporation and direct wholly-owned subsidiary of NYSE Euronext (“NYSE Group”), NYSE Regulation and NASD intend to enter into an Asset Purchase Agreement (the “Purchase Agreement”), pursuant to which (i) NYSE Regulation will agree to transfer to NASD and NASD will agree to assume from NYSE Regulation, approximately 470 employees and related expenses and revenues from the following functions or groups of NYSE Regulation: (1) member firm regulation (including testing, continuing education and registration); (2) risk assessment; (3) arbitration; and (4) enforcement (except for the portion thereof that handles cases related to market surveillance and NYSE-only Rules (as defined herein) and/or related federal laws or regulations), and (ii) NASD will operate under a new name, Financial Industry Regulatory Authority, Inc. (“FINRA”); and

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement (collectively, the “Transaction”), the parties seek to reduce duplication in the regulation of broker-dealer firms that are members of both the NYSE and FINRA on or after the Effective Date, as defined herein, (“Dual Members”) and in the filing and processing of certain registration and membership records; and

WHEREAS, the parties intend that FINRA will perform various functions formerly performed by NYSE Regulation; and

WHEREAS, FINRA will perform certain of these functions pursuant to a Regulatory Services Agreement to be entered into between and among the parties, and will perform certain of these functions pursuant to this Agreement among the parties in conformity with the requirements of Section 17(d) of the Act and Rule 17d-2 promulgated thereunder; and

WHEREAS, the parties intend this Agreement to describe the functions to be performed by FINRA pursuant to Section 17(d) of the Act and Rule 17d-2 promulgated thereunder, and intend to file such with the Commission for its approval.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained hereinafter, and other good and valuable consideration, the parties hereby agree as follows:

1. Assumption of Regulatory Responsibilities.

(a) On the Effective Date, which shall be the closing date of the Transaction, provided that the Commission has approved this Agreement as of such closing date, FINRA will assume regulatory responsibilities for all Dual Members for the list of rules attached as Exhibit 1 (“Common Rules”) to this Agreement and made part hereof including examination, enforcement

and surveillance responsibilities for such Common Rules to the extent that such responsibilities involve member firm regulation (the “Regulatory Responsibilities”). This Agreement shall not become effective if the Transaction does not close.

(b) FINRA shall not charge NYSE for performing the Regulatory Responsibilities except for the reasonable notification expenses and travel and out-of-pocket expenses as provided in paragraphs 4(c) and 5.

2. Scope of Regulatory Responsibilities.

(a) Prior to the Effective Date, NASD shall submit a filing to the Commission adopting, as of the Effective Date, those NYSE rules listed in Exhibit 1 by incorporating into the FINRA rulebook in their entirety such NYSE rules in effect as of the Effective Date so that as of the Effective Date, the rules shall be Common Rules of both FINRA and the NYSE for purposes of this Agreement, Section 17(d) of the Act and Rule 17d-2 promulgated thereunder.

(b) Whenever either NYSE or FINRA proposes to make a change to the substance of any of the Common Rules, before filing such proposal with the SEC, it shall inform the other party to determine whether the other party will agree to promptly propose a conforming change to its version of the Common Rule. In the event the parties do not agree to propose conforming changes, the parties agree that they will file with the SEC for approval an amendment to this Agreement deleting such rule from the list of Common Rules, such amendment to be effective no earlier than the date of SEC approval of the change to the Common Rule proposed by the NYSE or FINRA, as the case may be.

(c) Common Rulebook. FINRA intends to create a single set of Rules to replace the FINRA NASD Rules and the NYSE Rules incorporated by FINRA. There is a substantial likelihood that each FINRA rule that would replace an as then-existing NYSE Rule incorporated by FINRA and

applicable to Dual Members will be substantially different from the then-existing NYSE Rule. In such case, pursuant to paragraph 2(b) above, NYSE would need to seek and obtain approval from the Commission to amend its corresponding Rule to conform to the new FINRA Rule.

(d) Notwithstanding anything contained in this Agreement to the contrary, NYSE shall retain regulatory responsibility for the following (collectively, the “Retained Responsibilities”):

- (i) Examinations of conduct or action by a Dual Member that is otherwise covered by NYSE rules that are not Common Rules (the “NYSE-only Rules”) and/or by related federal laws or regulations;
- (ii) Surveillance of, and investigation and enforcement with respect to, conduct or action undertaken in connection with trading on or through the systems and facilities of the NYSE, or conduct or actions by a Dual Member that are otherwise covered by NYSE-only Rules, additionally, in all such cases, surveillance, investigation and enforcement with respect to how such conduct may constitute a violation of applicable federal laws or regulations;
- (iii) Processing of applications for trading licenses or other indicia of membership in the NYSE, including without limitation applying NYSE’s rules relating to the rights and obligations of Dual Members that hold a trading license to effect transactions on the floor of the NYSE or through any systems or facilities of the NYSE;
- (iv) Qualification and registration of member firm personnel to effect transactions or work as Floor employees on the Floor of the NYSE, pursuant to the NYSE’s applicable rules regarding qualifications and registration; and

- (v) The application of any Common Rule as it pertains to matters other than member firm regulation, including matters relating to NYSE's exclusive responsibility for (i)-(iv) above (the "Non-Exclusive Common Rules"). The parties have identified the Non-Exclusive Common Rules, which are specifically designated on Exhibit 1, as those rules for which both NYSE and FINRA will bear responsibility when performing their respective regulatory responsibilities.

3. Violations. (a) Should FINRA become aware of potential violations of the NYSE-only Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA will promptly notify the NYSE of those potential violations, and such matters will be handled by NYSE.

(b) Should NYSE become aware of potential violations of Common Rules, discovered pursuant to the performance of the Retained Responsibilities, NYSE will promptly notify FINRA of those potential violations, and such matters will be handled by FINRA as provided in this Agreement.

4. Applications for, Qualification for, and Termination of, Membership. (a)(i) Dual Members subject to this Agreement will be required to submit to FINRA, and FINRA will be responsible for processing, and acting upon, all applications (each an "Application") submitted on behalf of the Dual Member and any individual associated with such Dual Member required to be approved by the rules of NYSE and FINRA (collectively, an "Applicant").

(ii) Promptly upon receipt of any complete Application, but in any event no later than seven (7) business days thereafter, FINRA shall advise NYSE of the qualifications and registration status of the Applicant required to be approved pursuant to the rules of NYSE and FINRA. The NYSE reserves the right to require additional qualifications or registrations prior to approving an Applicant as a member of the NYSE, pursuant to the process described in NYSE rules.

(b) FINRA shall promptly advise NYSE of information regarding changes in status of any person required to be approved pursuant to the rules of NYSE and FINRA that relates to a statutory disqualification, involuntary termination from employment or any other submission made to FINRA pursuant to NYSE Rule 351(a)-(c). The NYSE reserves the right to disqualify a member pursuant to the process described in NYSE rules.

(c) Dual Members will be required to send to FINRA all letters, termination notices or other material respecting persons required to be approved pursuant to the rules of NYSE and FINRA. When as a result of processing said submissions FINRA becomes aware of a statutory disqualification as defined in the Act with respect to a Dual Member or person associated with a Dual Member, FINRA will determine pursuant to Section 15A(g) or 6(c) of the Act the acceptability or continued acceptability of the person to whom such disqualification applies but will not make a determination regarding NYSE membership or participation, or association of a person with an NYSE member. FINRA shall advise NYSE in writing of its actions in this regard. NYSE shall, within 30 days of receiving such information from FINRA, determine whether to permit a Dual Member that has been determined to be statutorily disqualified by FINRA from becoming or remaining an NYSE member or a participant, or a person associated with a member. NYSE will advise FINRA of its decision. NYSE will reimburse FINRA for reasonable expenses incurred in notifying NYSE of FINRA's decision regarding a statutory disqualification under Section 15A(g) or Section 6(c) of the Act.

FINRA will 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 under the Common Rules.

5. Information Sharing. The parties agree to share information as follows:

(a) General.

(i) FINRA shall promptly furnish to the NYSE any information that FINRA determines indicates possible financial or operational problems that may affect the continued ability of any Dual Member to conduct business.

(ii) NYSE shall promptly furnish to FINRA any information that the NYSE determines indicates possible financial or operational problems that may affect the continued ability of any Dual Member to conduct business.

(b) Reports and Other Documents.

(i) FINRA shall upon request promptly make available to the NYSE at no cost any existing financial, operational, or related report filed with FINRA by a Dual Member, as well as any existing files, information on customer complaints, termination notices, copies of an examination report, examination workpapers, investigative material, enforcement referrals or other documents involving compliance with the federal securities laws and regulations and the rules of the parties by the Dual Member, or other documents in the possession of FINRA relating to the Dual Member as necessary to assist the NYSE in fulfilling the Retained Responsibilities.

(ii) NYSE shall upon request promptly make available to FINRA at no cost any existing files, information on customer complaints, termination notices, copies of an examination report, examination workpapers, investigative material, enforcement referrals or other documents involving compliance with the federal securities laws and regulations and the rules of the parties

by the Dual Member, or other documents in the possession of NYSE relating to the Dual Member as necessary to assist FINRA in fulfilling the self-regulatory responsibilities, obligations, and functions allocated to it under this Agreement.

(c) Third-party Complaints.

(i) If FINRA receives a copy of a complaint from any third-party or any report from a Dual Member pursuant to NYSE Rule 351, as incorporated by FINRA, relating to possible violations by a Dual Member or persons associated with a Dual Member that is not within the Regulatory Responsibilities of FINRA and is within the Retained Responsibilities of the NYSE, FINRA shall promptly forward to the NYSE copies of such complaints, and NYSE shall have responsibility to review and take any appropriate action with respect to such complaint.

(ii) If NYSE receives a copy of a complaint from any third-party relating to a Dual Member's activity or conduct that is within the Regulatory Responsibilities of FINRA or is otherwise within the scope of FINRA's regulatory jurisdiction, the NYSE shall promptly forward to FINRA copies of such complaints, and FINRA shall have responsibility to review and take any appropriate action with respect to such complaint.

(d) Information on Formal and Informal Discipline.

(i) FINRA shall promptly make available to the NYSE information on (1) formal disciplinary actions taken by FINRA involving a Dual Member or persons associated with a Dual Member; and (2) informal disciplinary actions taken by FINRA involving a Dual Member and such individuals identified to FINRA by NYSE that are employed by a Dual Member and who have been designated to effect transactions on the Floor of the NYSE or to work as Floor employees on the Floor of the NYSE, or to supervise such employees. For purposes of this paragraph (d)(i), informal disciplinary actions shall mean Letters of Caution.

(ii) The NYSE shall promptly make available to FINRA information on (1) formal disciplinary actions taken by NYSE involving a Dual Member or persons associated with a Dual Member; and (2) informal disciplinary actions taken by NYSE involving a Dual Member. For purposes of this paragraph (d)(ii), informal disciplinary actions shall mean Letters of Education, Letters of Admonition, and Summary Fines.

(e) Parties to Make Personnel Available as Witnesses.

(i) FINRA shall make its personnel available to the NYSE to serve as testimonial or non-testimonial witnesses as necessary to assist the NYSE in fulfilling the self-regulatory responsibilities retained by it under this Agreement. NYSE shall pay all reasonable travel and other out-of-pocket expenses incurred by FINRA's employees to the extent that the NYSE requires such employees to serve as a witness, and provide information or other assistance pursuant to this Agreement.

(ii) The NYSE shall make its personnel available to FINRA to serve as testimonial or non-testimonial witnesses as necessary to assist FINRA in fulfilling the Regulatory Responsibilities. FINRA shall pay all reasonable travel and other out-of-pocket expenses incurred by NYSE's employees to the extent that FINRA requires such employees to serve as a witness, and provide information or other assistance pursuant to this Agreement.

(f) Confidentiality. The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(g) No Waiver of Privilege. The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

(h) Periodic Meetings. The parties agree that they shall conduct regular joint meetings between them for the purposes of reporting on the conduct of the Regulatory Responsibilities and current investigations involving significant rule violations by a Dual Member, and identifying issues or concerns with respect to the regulation of Dual Members.

6. Arbitration of Disputes Under this Agreement.

(a) Regulatory Services Manager. NYSE and NASD hereby each appoint the employee identified on Exhibit 2 hereto as its respective Regulatory Services Manager (the “Regulatory Services Manager”) to, among other things, resolve disputes pursuant to Section 6(b) of this Agreement and oversee day-to-day management of the services and activities contemplated by this Agreement. On reasonable prior written notice to the other, NYSE and FINRA shall each have the right to replace its respective Regulatory Services Manager with an employee or officer with comparable knowledge, expertise and decision-making authority.

(b) Dispute Resolution. Except as otherwise expressly set forth in this Agreement, any dispute arising out of or relating to this Agreement shall be submitted for resolution to the Regulatory Services Managers. In the event the Regulatory Services Managers fail to resolve a dispute pursuant to this Section 6(b) within a reasonable time of receiving notice of such dispute from a party, then the parties shall refer the dispute to the employee identified on Exhibit 2 as its respective Senior Officer (the “Senior Officer”) and such Senior Officers shall attempt in good faith to conclusively resolve any such dispute. On reasonable prior written notice to the other, NYSE and FINRA shall each have the right to replace its respective Senior Officer with an

officer with comparable rank, knowledge, expertise and decision-making authority. If the Senior Officers are unable to resolve the dispute amicably within 30 days, the dispute will be resolved by binding arbitration between the parties as provided herein. Arbitration shall be conducted by a single arbitrator agreed upon by the parties in accordance with the arbitration rules of the American Arbitration Association (the “AAA”); provided, that, if the parties cannot agree on the identity of the arbitrator, then the arbitrator shall be chosen by the AAA in accordance with its rules. All arbitration hearings shall be conducted in New York, New York. Each party shall pay its own costs for the arbitration, with the cost of the arbitrator to be equally divided between the parties; provided, that the arbitrator may, in his or her discretion, award reasonable attorneys’ fees and expenses to the prevailing party. The arbitrator will have no authority to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. A judgment upon an award may be entered in any court having jurisdiction. No party or the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the other parties, other than to the Commission. Except as otherwise expressly set forth in this Agreement, the procedures set forth in this Section 6(b) must be satisfied as a condition precedent to a party commencing any arbitration in connection with any dispute arising hereunder. A party’s failure to comply with the preceding sentence shall constitute cause for the dismissal without prejudice of any such arbitration.

(c) Continuity of Services. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties will continue to perform their

respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 6(c) will interfere with a party's right to terminate this Agreement as set forth in this Agreement.

7. 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.

8. Limitation of Liability. None of the parties nor any of their respective directors, governors, officers, employees, affiliates or agents shall be liable to any other party or such party's directors, governors, officers, employees, affiliates or agents for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform its obligations under this Agreement, except as otherwise provided for under the Act or for any liability, loss or damage resulting from the gross negligence, willful misconduct, reckless disregard or breach of confidentiality by a party or its directors, governors, officers, employees, affiliates or agents. The parties understand and agree with each other that the Regulatory Responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any party to any other party with respect to any of the obligations to be performed by the parties hereunder.

9. Commission Approval. (a) The parties agree to file promptly this Agreement with the Commission for its review and approval. This Agreement shall be effective upon approval of the Commission, contingent upon the closing of the Transaction.

(b) If approved by the Commission, FINRA will notify Dual Members of the general terms of the Agreement and its impact on such members. The notice will be sent on behalf of both parties and, prior to being sent, NYSE will review and approve the notice.

10. Applicability of Certain Laws. Notwithstanding any provision hereof, this Agreement shall be subject to any applicable federal or state 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 statute, rule, order or agreement is inconsistent with one or more provisions of this Agreement, such statute, rule, order or agreement shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

11. Definitions. Unless otherwise defined in this Agreement, or unless the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Act and the rules and regulations promulgated by the Commission thereunder.

12. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

13. 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.

14. Termination. This Agreement may be terminated by NYSE or FINRA at any time upon the approval of the Commission after 180 days written notice to the other party.

15. General. The parties agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

16. Liaison and Notices. All questions regarding the implementation of this Agreement shall be directed to the persons identified in subsections (a), (b) and (c), as applicable, below. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

(a) if to NYSE Regulation:

NYSE Regulation, Inc.

20 Broad Street

New York, New York 10005

Telephone: (212) 656-3000

Facsimile: (212) 656-8101

Attention: General Counsel

Regulatory Services Manager

(b) if to New York Stock Exchange, LLC:

New York Stock Exchange, LLC

11 Wall Street

New York, NY 10005

Telephone: (212) 656-3000

Facsimile: (212) 656-8101

Attention: General Counsel

(c) if to FINRA:

Financial Industry Regulatory Authority, Inc.

1735 K Street, NW

Washington, DC 20006-1500

Telephone: (202) 728-8071

Facsimile: (202) 728-8075

Attention: General Counsel

Regulatory Services Manager

17. Relief from Regulatory Responsibility. Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d-2 thereunder, NASD and the NYSE jointly request the SEC, upon its approval of this Agreement, to relieve the NYSE of any and all responsibilities with respect to the matters

allocated to NASD or FINRA pursuant to this Agreement for purposes of Sections 17(d) and 19(g) of the Act.

18. Governing Law. This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts by or for the State of New York or the United States District Court for the Southern District of New York in connection with any action or proceeding relating to this Agreement.

19. Survival of Provisions. Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by FINRA, the payment of the price by the NYSE, and any termination of this Agreement shall survive and continue.

20. Prior Agreements. This Agreement is wholly separate from 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, Incorporated, the International Securities Exchange LLC, the National Association of Securities Dealers, Inc., the New York Stock Exchange, LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. 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 December 1, 2006, and as may be amended from time to time.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

By: _____

Name:

Title:

NEW YORK STOCK EXCHANGE, LLC

By: _____

Name:

Title:

NYSE REGULATION, INC.

By: _____

Name:

Title:

EXHIBIT 1

LIST OF COMMON RULES

As referenced in paragraph 2(d)(v) of the Agreement, rules designated with a “*” are Non-Exclusive Common Rules, and NYSE shall retain regulatory responsibility for these rules insofar as necessary to discharge its Retained Responsibilities.

<u>NYSE Rule</u>	<u>FINRA Rule</u>
*Rule 1 “The Exchange”	NYSE Rule 1 “The Exchange”
*Rule 2 “Member,” “Membership,” “Member Firm,” etc.	NYSE Rule 2 “Member,” “Membership,” “Member Firm,” etc.
*Rule 2A “Jurisdiction”	NYSE Rule 2A “Jurisdiction”
*Rule 2B No Affiliation between Exchange and any Member Organization	NYSE Rule 2B No Affiliation between Exchange and any Member Organization
*Rule 3 “Security”	NYSE Rule 3 “Security”
*Rule 4 “Stock”	NYSE Rule 4 “Stock”
*Rule 5 “Bond”	NYSE Rule 5 “Bond”
*Rule 6 “Floor”	NYSE Rule 6 “Floor”
*Rule 8 “Delivery”	NYSE Rule 8 “Delivery”
*Rule 9 “Branch Office Manager”	NYSE Rule 9 “Branch Office Manager”
*Rule 10 “Registered Representative”	NYSE Rule 10 “Registered Representative”
*Rule 11 Effect of Definitions	NYSE Rule 11 Effect of Definitions
*Rule 12 “Business Day”	NYSE Rule 12 “Business Day”
*Rule 134 Differences and Omissions –	NYSE Rule 134 Differences and Omissions –

<u>NYSE Rule</u>	<u>FINRA Rule</u>
Cleared Transactions	Cleared Transactions
Rule 176 Delivery Time	NYSE Rule 176 Delivery Time
Rule 177 Delivery Time – “Cash” Contracts	NYSE Rule 177 Delivery Time – “Cash” Contracts
Rule 180 Failure to Deliver	NYSE Rule 180 Failure to Deliver
Rule 282 Buy-in Procedures	NYSE Rule 282 Buy-in Procedures
Rule 283 Members Closing Contracts – Procedure	NYSE Rule 283 Members Closing Contracts – Procedure
Rule 285 Notice of Intention to Successive Parties	NYSE Rule 285 Notice of Intention to Successive Parties
Rule 286 Closing Portion of Contract	NYSE Rule 286 Closing Portion of Contract
Rule 287 Liability of Succeeding Parties	NYSE Rule 287 Liability of Succeeding Parties
Rule 288 Notice of Closing to Successive Parties	NYSE Rule 288 Notice of Closing to Successive Parties
Rule 289 Must Receive Delivery	NYSE Rule 289 Must Receive Delivery
Rule 290 Defaulting Party May Deliver After “Buy-In” Notice	NYSE Rule 290 Defaulting Party May Deliver After “Buy-In” Notice
Rule 291 Failure to Fulfill Closing Contract	NYSE Rule 291 Failure to Fulfill Closing Contract
Rule 292 Restrictions on Members’ Participation in Transaction to Close	NYSE Rule 292 Restrictions on Members’ Participation in Transaction to Close Defaulted

<u>NYSE Rule</u>	<u>FINRA Rule</u>
Defaulted Contracts	Contracts
Rule 293 Closing Contracts in Suspended Securities	NYSE Rule 293 Closing Contracts in Suspended Securities
Rule 294 Default in Loan of Money	NYSE Rule 294 Default in Loan of Money
Rule 296 Liquidation of Securities Loans and Borrowings	NYSE Rule 296 Liquidation of Securities Loans and Borrowings
Rule 311 Formation and Approval of Member Organizations	NYSE Rule 311 Formation and Approval of Member Organizations
Rule 312 Changes Within Member Organizations	NYSE Rule 312 Changes Within Member Organizations
Rule 313 Submission of Partnership Articles – Submission of Corporate Documents	NYSE Rule 312 Submission of Partnership Articles – Submission of Corporate Documents
Rule 319 Fidelity Bonds	NYSE Rule 319 Fidelity Bonds
Rule 321 Formation of Acquisition of Subsidiaries	NYSE Rule 321 Formation of Acquisition of Subsidiaries
Rule 322 Guarantees by, or Flow Through Benefits for Members or Member Organizations	NYSE Rule 322 Guarantees by, or Flow Through Benefits for Members or Member Organizations
*Rule 325 Capital Requirements Members Organizations	NYSE Rule 325 Capital Requirements Members Organizations

<u>NYSE Rule</u>	<u>FINRA Rule</u>
Rule 326(a) Growth Capital Requirement	NYSE Rule 326(a) Growth Capital Requirement
Rule 326(b) Business Reduction Capital Requirement	NYSE Rule 326(b) Business Reduction Capital Requirement
Rule 326(c) Business Reduction Capital Requirement	NYSE Rule 326(c) Business Reduction Capital Requirement
Rule 326(d) Reduction of Elimination of Loans and Advances	NYSE Rule 326(d) Reduction of Elimination of Loans and Advances
Rule 328 Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements	NYSE Rule 328 Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements
*Rule 342 Offices-Approval, Supervision and Control	NYSE Rule 342 Offices-Approval, Supervision and Control
Rule 343 Offices-Sole Tenancy, Hours, Display of Membership Certificates	NYSE Rule 343 Offices-Sole Tenancy, Hours, Display of Membership Certificates
Rule 344 Research Analysts and Supervisory Analysts	NYSE Rule 344 Research Analysts and Supervisory Analysts
Rule 345 Employees-Registration, Approval, Records	NYSE Rule 345 Employees-Registration, Approval, Records
Rule 345A Continuing Education for Registered Persons	NYSE Rule 345A Continuing Education for Registered Persons
Rule 346 Limitations - Employment and Association with Members and Member Organizations	NYSE Rule 346 Limitations - Employment and Association with Members and Member Organizations

<u>NYSE Rule</u>	<u>FINRA Rule</u>
*Rule 350 Compensation or Gratuities to Employees of Others	NYSE Rule 350 Compensation or Gratuities to Employees of Others
Rule 351 Reporting Requirements	NYSE Rule 351 Reporting Requirements
Rule 352 Guarantees, Sharing in Accounts, and Loan Arrangements	NYSE Rule 352 Guarantees, Sharing in Accounts, and Loan Arrangements
Rule 353 Rebates and Compensation	NYSE Rule 353 Rebates and Compensation
Rule 354 Reports to Control Persons	NYSE Rule 354 Reports to Control Persons
*Rule 375 Missing the Market	NYSE Rule 375 Missing the Market
Rule 382 Carrying Agreements	NYSE Rule 382 Carrying Agreements
Rule 387 COD Orders	NYSE Rule 387 COD Orders
*Rule 392 Notification Requirements for Offerings of Listed Securities	NYSE Rule 392 Notification Requirements for Offerings of Listed Securities
*Rule 401 Business Conduct	NYSE Rule 401 Business Conduct
Rule 401A Customer Complaints	NYSE Rule 401A Customer Complaints
Rule 402 Customer Protection-Reserves and Custody of Securities	NYSE Rule 402 Customer Protection-Reserves and Custody of Securities
Rule 404 Individual Members Not To Carry Accounts	NYSE Rule 404 Individual Members Not To Carry Accounts
Rule 405 Diligence as to Accounts	NYSE Rule 405 Diligence as to Accounts
Rule 405A Non-Managed Fee-Based Account Programs – Disclosure and	NYSE Rule 405A Non-Managed Fee-Based Account Programs – Disclosure and Monitoring

<u>NYSE Rule</u>	<u>FINRA Rule</u>
Monitoring	
Rule 406 Designation Of Accounts	NYSE Rule 406 Designation Of Accounts
*Rule 407 Transactions-Employees of Members, Member Organizations and the Exchange	NYSE Rule 407 Transactions-Employees of Members, Member Organizations and the Exchange
*Rule 407A Disclosure of All Member Accounts	NYSE Rule 407A Disclosure of All Member Accounts
Rule 408 Discretionary Power in Customers' Accounts	NYSE Rule 408 Discretionary Power in Customers' Accounts
Rule 409 Statements of Accounts to Customers	NYSE Rule 409 Statements of Accounts to Customers
Rule 409A SIPC Disclosures	NYSE Rule 409A SIPC Disclosures
*Rule 410 Records of Orders	NYSE Rule 410 Records of Orders
*Rule 411 Erroneous Reports	NYSE Rule 411 Erroneous Reports
Rule 412 Customer Account Transfer Contracts	NYSE Rule 412 Customer Account Transfer Contracts
Rule 413 Uniform Forms	NYSE Rule 413 Uniform Forms
*Rule 414 Index and Currency Warrants	NYSE Rule 414 Index and Currency Warrants
*Rule 416 Questionnaires and Reports	NYSE Rule 416 Questionnaires and Reports
*Rule 416A Member and Member Organization Profile Information Updates	NYSE Rule 416A Member and Member Organization Profile Information Updates and

<u>NYSE Rule</u>	<u>FINRA Rule</u>
and Quarterly Certifications Via The Electronic Filing Platform	Quarterly Certifications Via The Electronic Filing Platform
Rule 418 Audit	NYSE Rule 418 Audit
Rule 420 Reports of Borrowings and Subordinate Loans For Capital Purposes	NYSE Rule 420 Reports of Borrowings and Subordinate Loans For Capital Purposes
Rule 421 Periodic Reports	NYSE Rule 421 Periodic Reports
Rule 424 Reports of Options	NYSE Rule 424 Reports of Options
Rule 430 Partial Delivery of Securities to Customers on C.O.D. Purchases	NYSE Rule 430 Partial Delivery of Securities to Customers on C.O.D. Purchases
Rule 431 Margin Requirements	NYSE Rule 431 Margin Requirements
Rule 432 Daily Record of Required Margin	NYSE Rule 432 Daily Record of Required Margin
Rule 434 Required Submission of Requests for Extensions of Time for Customers	NYSE Rule 434 Required Submission of Requests for Extensions of Time for Customers
*Rule 435 Miscellaneous Prohibitions (Excessive Trading by Members)	NYSE Rule 435 Miscellaneous Prohibitions (Excessive Trading by Members)
Rule 436 Interest on Credit Balances	NYSE Rule 436 Interest on Credit Balances
*Rule 440 Books and Records	NYSE Rule 440 Books and Records
Rule 440A Telephone Solicitation	NYSE Rule 440A Telephone Solicitation
Rule 440F Public Short Sale Transactions Effected on the Exchange	NYSE Rule 440F Public Short Sale Transactions Effected on the Exchange

<u>NYSE Rule</u>	<u>FINRA Rule</u>
Rule 440G Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations	NYSE Rule 440G Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations
Rule 440I Records of Compensation Arrangements – Floor Brokerage	NYSE Rule 440I Records of Compensation Arrangements – Floor Brokerage
Rule 445 Anti-Money Laundering Compliance Program	NYSE Rule 445 Anti-Money Laundering Compliance Program
Rule 446 Business Continuity and Contingency Plans	NYSE Rule 446 Business Continuity and Contingency Plans
Rule 472 Communications with the Public	NYSE Rule 472 Communications with the Public
*Rule 477 Retention of Jurisdiction—Failure to Cooperate	NYSE Rule 477 Retention of Jurisdiction—Failure to Cooperate
Rule 700 Applicability, Definitions and References	NYSE Rule 700 Applicability, Definitions and References
Rule 704 Position Limits	NYSE Rule 704 Position Limits
Rule 705 Exercise Limits	NYSE Rule 705 Exercise Limits
Rule 707 Liquidation of Positions	NYSE Rule 707 Liquidation of Positions
Rule 709 Other Restrictions on Exchange Option Transactions and Exercises	NYSE Rule 709 Other Restrictions on Exchange Option Transactions and Exercises
Rule 720 Registration of Options Principals	NYSE Rule 720 Registration of Options

<u>NYSE Rule</u>	<u>FINRA Rule</u>
	Principals
Rule 721 Opening of Accounts	NYSE Rule 721 Opening of Accounts
Rule 722 Supervision of Accounts	NYSE Rule 722 Supervision of Accounts
Rule 723 Suitability	NYSE Rule 723 Suitability
Rule 724 Discretionary Accounts	NYSE Rule 724 Discretionary Accounts
Rule 725 Confirmations	NYSE Rule 725 Confirmations
Rule 726 Delivery of Options Disclosure Document and Prospectus	NYSE Rule 726 Delivery of Options Disclosure Document and Prospectus
Rule 727 Transactions with Issuers	NYSE Rule 727 Transactions with Issuers
Rule 728 Registered Stock	NYSE Rule 728 Registered Stock
Rule 730 Statement of Accounts	NYSE Rule 730 Statement of Accounts
Rule 732 Customer Complaints	NYSE Rule 732 Customer Complaints
Rule 780 Exercise of Option Contracts	NYSE Rule 780 Exercise of Option Contracts
Rule 781 Allocation of Exercise Assignment Notices	NYSE Rule 781 Allocation of Exercise Assignment Notices
Rule 791 Communications to Customers	NYSE Rule 791 Communications to Customers

EXHIBIT 2

For purposes of this Agreement, the Regulatory Services Managers required under paragraph 6 shall be:

For NYSE Regulation:

Susan Axelrod
Chief of Staff
NYSE Regulation, Inc.
11 Wall Street
New York, NY 10005
(212) 656-2347 (phone)
(212) 656-5788 (fax)

For NASD/FINRA:

James F. Price, Jr.
Vice President, Business & Exchange Solutions
FINRA
9509 Key West Avenue
Rockville, MD 20850-3329
(240) 386-4608 (phone)
(240) 386-5139 (fax)

For purposes of this Agreement, the Senior Officers required under paragraph 6 shall be:

For NYSE Regulation:

Richard G. Ketchum
Chief Regulatory Officer

NYSE Regulation, Inc.
20 Broad Street
New York, NY 10005
(212) 656-2789 (phone)
(212) 656-5809 (fax)

For NASD/FINRA:

Stephen I. Luparello
Senior Executive Vice President
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-6947 (phone)
(202) 728-8075 (fax)

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 17d-2 Plan is consistent with the Act. 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 4-544 on the subject line.

Paper comments:

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

All submissions should refer to File Number 4-544. 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 am and 3:00 pm. Copies of the Plan also will be available for inspection and copying at the principal offices of NASD and NYSE. 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 4-544 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act²³ and Rule 17d-2(c) thereunder²⁴ in that the Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and

²³ 15 U.S.C. 78q(d).

²⁴ 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 Plan will reduce unnecessary regulatory duplication by fostering cooperation and coordination between NYSE and FINRA, and will thereby remove impediments to the development of the national market system. In particular, the Plan will allocate to FINRA certain responsibilities for Dual Members that would otherwise be performed by both NYSE and FINRA following the closing of the Transaction. Accordingly, the Plan promotes efficiency by reducing costs to Dual Members. Furthermore, because NYSE and FINRA will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection and the public interest.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and opportunity for comment, declare a plan, or any part of a plan, effective.²⁵ In this instance, the Commission believes that appropriate notice and comment can take place after the proposed Plan is effective. The purpose of the 17d-2 Plan is to allocate regulatory responsibilities for certain member conduct rules from NYSE to FINRA in connection with the proposed consolidation of NYSE Regulation's and NASD's member regulation operations.²⁶ As discussed above, for an interim period while FINRA develops a single rulebook to apply to all Dual Members, it has adopted into its rulebook the Incorporated NYSE Rules, and it is those exact same rules that constitute the List of Common Rules covered by the 17d-2 Plan. As such, the NYSE rules covered by the 17d-2 Plan for which FINRA will assume regulatory responsibilities will, at least initially, be identical to the Incorporated NYSE Rules on FINRA's own rulebook. Thus, the Plan will benefit Dual Members by avoiding duplicative regulation by two separate SROs of identical

²⁵ Id.

²⁶ See By-Law Amendments Filing, supra note 15.

rules. The Commission, therefore, believes it is appropriate to herein declare effective the proposed 17d-2 Plan, so that it may be effective upon the closing of the Transaction.

The Commission notes that, under the proposed Plan, NYSE and NASD have allocated regulatory responsibility for the Common Rules to the extent that such responsibilities involve member firm regulation.²⁷ The Plan further sets forth those areas for which NYSE will retain full regulatory responsibility, including: examinations of Dual Member conduct covered by NYSE-only Rules and/or by federal laws or regulations; surveillance, investigation, and enforcement with respect to conduct relating to trading on or through the systems and facilities of NYSE and conduct otherwise covered by NYSE-only Rules, as well as whether such conduct may constitute a violation of federal laws or regulations; processing of applications for trading licenses or other membership in NYSE; and qualification and registration of firm personnel to effect transactions or work on the Floor of NYSE pursuant to its unique rules.²⁸

The Commission notes that the proposed Plan also provides that NYSE will retain regulatory responsibility for the application of any Common Rule as it pertains to matters other than member firm regulation, including matters relating to the NYSE's exclusive retained responsibilities as set forth in the Plan and noted above (the "Non-Exclusive Common Rules").²⁹

²⁷ See infra text accompanying notes 29-30 (discussing those Common Rules that are deemed to be Non-Exclusive Common Rules, for which NYSE will retain certain regulatory responsibilities).

²⁸ See Paragraphs 2(d)(i)-(iv) of the proposed 17d-2 Plan.

²⁹ See Paragraph 2(d)(v) of the proposed 17d-2 Plan and the List of Common Rules. Because NYSE will retain responsibility for all rules related to market regulation, as well as Common Rules as they pertain to matters other than member regulation, the Commission staff believes that the proposed Plan does not adversely affect NYSE's ability to ensure compliance with the outstanding undertakings contained in two recent settlement orders relating to trading violations by certain NYSE floor members. See Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934, Making Findings, Ordering Compliance with Undertakings, and Imposing a Censure and Cease-and-Desist Order, File No. 3-

The Non-Exclusive Common Rules are specifically annotated in the List of Common Rules and include those rules for which FINRA and NYSE will each bear their respective regulatory responsibilities, consistent with the scope of the 17d-2 Plan. Notably, such rules are “non-exclusive” in the sense that they have aspects that may relate to member firm regulation (for which FINRA would assume regulatory responsibility) and aspects that may relate to matters other than member firm regulation (for which the NYSE would retain regulatory responsibility).³⁰ Accordingly, both NYSE and FINRA will bear responsibility for the application of each Non-Exclusive Common Rule as it relates to their particular regulatory responsibilities.

According to the Plan, whenever either NYSE or FINRA wishes to make a change to the substance of any Common Rule, before filing such proposed rule change with the Commission, it will inform the other party of the intended change to determine whether the other party will propose a conforming change to its version of the Common Rule. If the Parties do not agree to propose conforming changes, the Parties agree to file with the Commission an amendment to the 17d-2 Plan to delete such rule from the list of Common Rules.³¹ Similarly, the Parties anticipate that when FINRA creates a consolidated rulebook, it is likely that the new FINRA rules that would replace existing Incorporated NYSE Rules might be substantially different from the then-existing NYSE rules. In such case, the NYSE would need to submit a proposed rule change and

11892, Release No. 34-51524 (April 12, 2005); and Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Ordering Compliance with Undertakings, File No. 3-9925, Release No. 34-41574 (June 29, 1999).

³⁰ For example, a Non-Exclusive Common Rule may contain multiple provisions, certain of which relate to matters of NYSE’s retained responsibilities under the Plan, such as trading-related provisions.

³¹ See Paragraph 2(b) of the Plan.

seek approval from the Commission to amend its corresponding rule to conform to the new FINRA rule.³²

Additionally, the Commission notes that, since the Plan allocates regulatory responsibility to FINRA for the oversight and enforcement of all NYSE rules on the list of Common Rules to the extent that such responsibilities involve member firm regulation, any additions to, deletions from, or other changes to the List of Common Rules pursuant to the aforementioned provisions or otherwise would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.

The Plan permits NYSE and FINRA to terminate the Plan at any time, subject to 180 days written notice to the other party. 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, and approved by, the Commission.³³

Finally, the Plan also requires the Parties to share information on a number of matters. Specifically, the Parties must provide information to one another relating to possible financial or operational problems that may affect the ability of any Dual Member to conduct business and must also, upon request, make available to one another certain reports and documents set forth in the Plan, such as existing files, copies of examination reports, examination work papers, or investigative materials. Further, the Parties must promptly provide one another with copies of third-party complaints that relate to the other party's regulatory responsibilities under the Plan.

³² See Paragraph 2(c) of the Plan. Further, the Parties thereafter would need to consider whether any amendments to the Plan or the List of Common Rules are required.

³³ The Commission notes that paragraph 14 of the Plan reflects the fact that Commission approval of any termination of the Plan is required.

The Parties also must promptly share information relating to any formal disciplinary actions or informal disciplinary actions taken involving a Dual Member or other certain individuals. The Commission believes that the information sharing provisions contained in the Plan further foster cooperation and coordination between NYSE and FINRA, thereby promoting investor protection and removing impediments to the development of a national market system.

V. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-544. 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. 4-544, between NASD, NYSE, and NYSE Regulation filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

IT IS THEREFORE ORDERED that NYSE is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-544.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Florence E. Harmon
Deputy Secretary

³⁴ 17 CFR 200.30-3(a)(34).