Web site to Carol A. Gallagher at (301) 415–5905 or by e-mail to *CAG@nrc.gov.*

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

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Requests for technical information about Draft Regulatory Guide DG–1145 may be directed to the NRC Project Manager, Eric Oesterle, at (301) 415–1365 or *ERO1@nrc.gov.*

Comments would be most helpful if received by October 21, 2006. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 1st day of September, 2006.

For the U.S. Nuclear Regulatory Commission.

Charles E. Ader,

Acting Director, Division of Risk Assessment and Special Projects, Office of Nuclear Regulatory Research.

[FR Doc. E6–14865 Filed 9–6–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54394; File No. 4–523]

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

August 31, 2006.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Sections 17(d)[1] and 11A(a)(3)(B)[2] of the Securities Exchange Act of 1934 (''Act''), granting approval and declaring effective a revised amended and restated plan for the allocation of regulatory responsibilities (''Plan'')[3] that was filed pursuant to Rule 17d–2 under the Act[4] by NYSE Arca, Inc.[5] (''NYSE Arca'') and the National Association of Securities Dealers, Inc. (''NASD'') (together with the NYSE Arca, the ''Parties'').

Accordingly, NASD shall assume, in addition to the regulatory responsibility it has under the Act, the regulatory responsibilities allocated to it under the Plan. At the same time, NYSE Arca is relieved of those regulatory responsibilities allocated to NASD under the Plan.

I. Introduction

Section 19(g)(1) of the Act,[6] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or registered securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[7] or 19(g)(2)[8] of the Act. Section 17(d)(1) of the Act[9] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO (''common members'').[10] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1[11] and Rule 17d–2 under the Act.[12] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] On January 20, 2006, the Parties submitted an amended and restated 17d–2 plan for review and approval by the Commission. On July 25, 2006, the Parties submitted a revised amended and restated plan (''Plan''), which was noticed for public comment. *See infra* note 13.

[4] 17 CFR 240.17d–2.

[5] NYSE Arca, Inc. was formerly called the Pacific Exchange, Inc. (''PCX''). On March 6, 2006, PCX filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the PCX, as well as several other related entities, to reflect Archipelago Holdings, Inc.'s (''Archipelago'') recent acquisition of PCX and the merger of the New York Stock Exchange, Inc. with Archipelago. *See* Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006).

[6] 15 U.S.C. 78s(g)(1).

[7] 15 U.S.C. 78q(d).

[8] 15 U.S.C. 78s(g)(2).

[9] 15 U.S.C. 78q(d)(1).

[10] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[11] 17 CFR 240.17d–1. Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.

[12] 17 CFR 240.17d–2.

coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Upon effectiveness of a plan filed pursuant to Rule 17d–2, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

On August 2, 2006, the Commission published notice of the Plan filed by NYSE Arca and NASD.[13] The Commission received no comments on the Plan. The Plan is intended to replace and supersede the current 17d–2 plan between NASD and NYSE Arca and all prior amendments thereto in their entirety,[14] and is intended to reduce regulatory duplication for firms that are common members of NYSE Arca and NASD. The text of the Plan allocates regulatory responsibilities among the Parties with respect to common members. Included in the Plan is an attachment (''NYSE Arca Rules Certification for 17d–2 Agreement with NASD,'' referred to herein as the ''Certification'') that lists every NYSE Arca rule and Federal securities law and rule and regulation thereunder for which, under the Plan, NASD would bear responsibility for examining, and enforcing compliance by, common members.

II. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act[15] and Rule 17d–2(c) thereunder[16] in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan could reduce unnecessary regulatory duplication by allocating to NASD certain responsibilities for common members that would otherwise be performed by both NYSE Arca and NASD. Accordingly, the proposed Plan promotes efficiency by reducing costs to common members. Furthermore, because NYSE Arca and NASD will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, NYSE Arca and NASD have allocated regulatory responsibility for all NYSE Arca rules that are substantially similar to NASD rules in that NYSE Arca's rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a dual member's activity, conduct, or output in relation to such rule (''Common Rules''). These Common Rules are specifically listed in the Certification.[17] In addition, the NASD would assume regulatory responsibility for any provisions of the Federal securities laws and the rules and regulations thereunder that are set forth in the Certification.[18]

The Plan further provides that NASD shall not assume regulatory responsibility, and NYSE Arca will retain full responsibility, for: (1) Surveillance and enforcement with respect to trading activities or practices involving NYSE Arca's own marketplace; (2) registration pursuant to NYSE Arca's applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); (3) NYSE Arca's duties as a DEA under Rule 17d–1 of the Act;[19] and (4) any rules of NYSE Arca that do not qualify as Common Rules, except that NASD shall be responsible for such rules with respect to any broker-dealer subsidiary of Archipelago. With respect to broker-dealer subsidiaries of Archipelago, apparent violations of any NYSE Arca rules by any broker-dealer subsidiary of Archipelago will be processed by NASD, and NASD will conduct any enforcement proceedings. The effect of these provisions is that regulatory oversight and enforcement responsibilities for Archipelago Securities, L.L.C., which acts as the outbound router for the NYSE Arca Marketplace, will be vested with NASD. These provisions should help avoid any potential conflicts of interest that could arise if NYSE Arca was primarily responsible for regulating its affiliated outbound router.[20]

According to the Plan, NYSE Arca will perform a review of the Certification, at least annually, or more frequently if required by changes in either the rules of NYSE Arca or NASD, to add NYSE Arca rules not included on the then-current list of Common Rules that are substantially similar to NASD rules (*i.e.*, new rules that qualify as Common Rules or existing rules that have been amended so that they now qualify as Common Rules); delete NYSE Arca rules included in the then-current list of Common Rules that are no longer substantially similar to NASD rules (*i.e.*, amended rules that cease to be Common Rules); and confirm that the remaining rules on the list of Common Rules continue to be NYSE Arca rules that are substantially similar to NASD rules. NASD will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. The Commission is hereby declaring effective and approving a plan that, among other things, allocates regulatory responsibility to NASD for the oversight and enforcement of all NYSE Arca rules that are substantially similar to the rules of the NASD for common members of NYSE Arca and

[13] See Securities Exchange Act Release No. 54224 (July 27, 2006), 71 FR 43823.

[14] The Parties currently operate pursuant to a 17d-2 plan in which the NASD assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the ''current NASD–NYSE Arca 17d–2 plan''). *See* Securities Exchange Act Release Nos. 14095 (October 25, 1977), 42 FR 57198 (November 1, 1977) (File No. 4–267) (notice of 1977 Agreement); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (File No. 4–267) (order granting temporary approval); 15722 (April 12, 1979), 44 FR 23616 (April 20, 1979) (File No. 4–267) (extension of time to file amendments); 15941 (June 21, 1979) (File No. 4–267), SEC Docket, Vol. 17, no. 14, page 995 (July 3, 1979) (further extension of time to file required amendments); 16462 (January 2, 1980), 45 FR 2121 (January 10, 1980) (File No. 4–267) (order granting temporary approval); 16591 (February 20, 1980), 45 FR 12573 (February 26, 1980) (File No. 4–267) (notice of 1980 Amendment); 16719 (April 2, 1980), 45 FR 23841 (April 8, 1980) (File No. 4–267) (order granting temporary approval); and 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (File No. 4–267) (approval order).

[15] 15 U.S.C. 78q(d).

[16] 15 U.S.C. 78q(d) and 17 CFR 240.17d–2(c).

[17] NYSE Arca has represented that there are no NYSE Arca rules that are substantially similar to NASD rules that are not included in the Certification. *See* Telephone call between Janet Angstadt, Acting General Counsel, NYSE Arca, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on August 24, 2006. Further, the Certification notes that, with respect to several of the NYSE Arca rules, NYSE Arca will be responsible for any significant difference between its rule and the comparable NASD rule, until such time that amendments to such rule(s) may be filed with and approved by the Commission. NYSE Arca has represented that it shortly intends to file the proposed rule changes necessary to conform the entirety of these rules to the corresponding NASD rules. *See id.*

[18] As proposed currently, there is only one Federal securities law rule listed on the Certification—Rule 200 of Regulation SHO, 17 CFR 242.200.

[19] 17 CFR 240.17d–1.

[20] This provision was a condition in the Commission's approval of a proposed rule change submitted by the PCX (the predecessor to NYSE Arca) relating to the acquisition of PCX Holdings, Inc. by Archipelago. *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90). In that filing, PCX committed to amend the current NASD–NYSE Arca 17d–2 plan within 90 days of the Commission's approval of that filing. The 90-day requirement was subsequently extended three times. *See* Securities Exchange Act Release Nos. 52995 (December 21, 2005), 70 FR 77232 (December 29, 2005); 53545 (March 23, 2006), 71 FR 16183 (March 30, 2006); and 54046 (June 26, 2006), 71 FR 37965 (July 3, 2006).

NASD. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to NYSE Arca rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should NYSE Arca or NASD decide to add a NYSE Arca rule to the Certification that is not substantially similar to an NASD rule; delete a NYSE Arca rule from the Certification that is substantially similar to an NASD rule; or leave on the Certification a NYSE Arca rule that is no longer substantially similar to an NASD rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.

As noted above, NYSE Arca and NASD have also set forth in the Certification the Federal securities laws, and the rules and regulations thereunder, for which NASD will bear responsibility under the Plan for examining, and enforcing compliance by, common members. The Commission notes that any changes to this list of Federal securities laws, and the rules and regulations thereunder, would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.

The Plan also permits NYSE Arca and NASD to terminate the Plan, subject to notice, for various reasons. The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d–2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.[21]

III. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–523. 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. 4–523, between NYSE Arca and NASD, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

[21] The Commission notes that paragraphs 3 and 13 of the Plan reflect the fact that NASD's responsibilities under the Plan will continue in effect until the Commission approves the termination of the Plan.

It is therefore ordered that NYSE Arca is relieved of those responsibilities allocated to the NASD under the Plan in File No. 4–523.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–14784 Filed 9–6–06; 8:45 am]

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[22] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54389]

Order Granting an Exemption for Qualified Contingent Trades From Rule 611(a) of Regulation NMS Under the Securities Exchange Act of 1934

August 31, 2006.

I. Introduction

Pursuant to Rule 611(d)[1] of Regulation NMS[2] under the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''Commission''), by order, may exempt from the provisions of Rule 611 of Regulation NMS (''Rule 611'' or ''Rule''), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] As discussed below, the Commission is exempting each NMS stock component of certain qualified contingent trades (as defined below) from Rule 611(a) of Regulation NMS.

II. Background

The Commission adopted Regulation NMS in June 2005.[4] Rule 611 addresses intermarket trade-throughs of quotations in NMS stocks.[5] The Rule applies only to quotations that are immediately accessible through automatic execution.

The Securities Industry Association (''SIA'') has requested that the Commission exempt certain qualified contingent trades from Rule 611(a) of Regulation NMS.[6] According to the SIA Exemption Request, a contingent trade ''is a multi-component trade involving orders for a security and a related derivative, or, in the alternative, orders for related securities, that are executed at or near the same time.''[7] The SIA notes that the economics of a contingent trade are based on the relationship between the prices of the security and the related derivative or security, and that the execution of one order is contingent upon the execution of the other order. The SIA states that the sought-after spread or ratio between the relevant instruments is known and specified at the time of the order, and this spread or ratio stands regardless of the prevailing price at the time of execution. Therefore, the parties to these transactions are focused on the spread or ratio between the transaction prices for each of the component instruments, rather than on the absolute price of any single component instrument. Because the focus of such trades is on the relative prices of the component instruments, the price of a component of a particular trade may or may not correspond to the prevailing market price of the security. For contingent trades, the parties to the trade will not execute one side of the trade without the other component or components being executed in full (or in ratio) and at the specified spread or ratio.[8]

The SIA states that contingent trades play an important role in the investment and trading strategies of investors. They are the mechanism through which large institutional and broker-dealer proprietary traders enter and exit the market for many securities, including those that are involved in a merger, those representing different classes of shares of the same issuer, those with convertible securities that are related to the common stock, and those with actively traded equity derivatives such as options.[9] The SIA believes that, as a general rule, the market view on what constitutes an appropriate spread or

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for Commission to grant exemptions from provisions of Exchange Act and rules thereunder).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[5] An ''NMS stock'' means any security or class of securities, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(46) and (47).

[6] Letter to Nancy M. Morris, Secretary, Commission, from Andrew Madoff, SIA Trading Committee, SIA, dated June 21, 2006 (''SIA Exemption Request'').

[7] SIA Exemption Request at 2.

[8] *See* SIA Exemption Request at 2.

[9] *See* SIA Exemption Request at 2. In an appendix to its letter, the SIA provided detailed discussions of three types of contingent trades, namely, a risk or merger arbitrage transaction, a convertible security transaction, and a stock option transaction, and how these trades would be affected by Rule 611. *See* SIA Exemption Request at 8–12.