

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: January 3, 2007.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E7-546 Filed 1-16-07; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 16, 2007:

A Closed Meeting will be held on Thursday, January 18, 2007 at 2 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (8), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Thursday, January 18, 2007 will be:

Formal orders of investigation; Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings of an enforcement nature; A regulatory matter regarding a financial institution; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

January 11, 2007.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 07-147 Filed 1-11-07; 4:25 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-38; File No. S7-02-07]

### Privacy Act of 1974: Notice of Alteration to Two Existing Systems of Records

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed alteration to two existing systems of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission proposes to alter the Privacy Act system of records: "Personnel Management Employment and Staffing Files (SEC-39)", which was previously identified in the *Federal Register* at 41 FR 41591 on September 22, 1976, 50 FR 37750 on September 17, 1985 and 62 FR 47884 on September 11, 1997.

Also, the Commission is proposing to make changes to its system of records "Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards (SEC-46)", originally published at 63 FR 37423, July 10, 1998.

**DATES:** *Effective Date:* The changes will become effective February 26, 2007 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received.

*Comment Date:* To be assured of consideration, comments should be received on or before February 16, 2007.

**ADDRESSES:** 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](mailto:rule-comments@sec.gov). Please include File Number S7-02-07 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number S7-02-07. This file number should be included on the subject line if e-mail is used. To help us 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>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Barbara A. Stance, Chief Privacy Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-7, Alexandria, VA 22312-2413, (202) 551-7209.

**SUPPLEMENTARY INFORMATION:** The Commission proposes to alter the system of records, "Personnel Management Employment and Staffing Files (SEC-39)." As described in the original notice, the system contains information on applicants for SEC employment, and present and past employees. This notice is published to alter the system of records by adding two new routine uses, (1) to disclose information in connection with organizational directories or similar records for internal management purposes, and (2) to Commission contractors or their authorized employees, and other Federal agencies for the purpose of assisting the Commission in the efficient administration of its programs; by changing the name of the system manager to the Office of Human Resources; and by changing the address for submitting requests for record notification, access and contesting to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

The Commission also proposes to alter the system of records, "Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards

(SEC-46).” As described in the original notice, the system is designed to permit access to Commission facilities by Commission employees, members of the press, contractors and consultants. This notice is published to modify the system of records by changing the system name from Identification Cards, Press Passes and Proximity Access Control Cards to Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards; by changing the system location from the Office of Administrative and Personnel Management to the Office of Administrative Services; by adding three new routine uses, (1) to disclose information to other Federal agencies to verify the identity and status of the PIV Card holder, (2) to Commission contractors or their authorized employees, and other Federal agencies for the purpose of assisting the Commission in the efficient administration of its programs, and (3) in connection with organizational directories or similar records for internal management purposes; by changing the system manager and address to the Office of Administrative Services, Security Branch, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1627; by changing the address for submitting requests for record notification, access and contesting to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100; and by expanding the record source categories to include volunteers, on-site business owners or clients, employees of other Federal agency and visitors. This notice is also altered to incorporate requirements of Homeland Security Presidential Directive 12 (HSPD-12) by expanding the categories and individuals covered by the system to include volunteers, tenants and employees of other Federal agencies; by clarifying and expanding the categories of records in the system, adding a note explaining that, to the extent that the Commission has records of a personnel investigative nature that come from the Office of Personnel Management or its contractors, they are covered by OPM/CENTRAL-9, Personnel Investigative Records, and not this system notice; and by expanding the authority for maintenance of the system and the purpose statement to include reference to HSPD-12.

The Commission has submitted a report of the altered systems of records to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government

Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A-130, “Federal Agency Responsibilities for Maintaining Records About Individuals,” as amended on February 20, 1996 (61 FR 6435).

Accordingly, the Commission is altering the systems of records to read as follows:

#### **SEC-39**

##### **SYSTEM NAME:**

Personnel Management Employment and Staffing Files.

##### **SYSTEM LOCATION:**

Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-1, Alexandria, VA 22312-2413.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records are maintained on applicants for SEC employment and present and past employees.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

The system of records includes the following category of records:

(a) Applicant files (Computerized applications, Standard Forms 171 and resumes, attorney supplements to applications, applicant correspondence and evaluations, and summer employment files);

(b) Official personnel folders (Office of Human Resources files);

(c) Service record cards;

(d) Merit promotion posting files, including supervisory appraisals for jobs advertised under SEC Merit Promotion Program;

(e) Request to Office of Personnel Management for Schedule C personnel actions;

(f) Chronological copies of personnel actions (Standard Forms 50);

(g) Office of Personnel Management clerk-typist and clerk-steno examination papers for applicants tested under SEC's delegated recruiting authority;

(h) Division/Office/Region employee record cards or electronic media; and

(i) Regional Office employee files, including copies of applications and notifications of personnel action (Standard Forms 50) on the employee concerned.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 CFR, parts 213, 293, 302, and 335; 5 U.S.C. 3109 and Civil Service Regulations promulgated thereunder.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and the information contained in these records may be used or disclosed as follows:

1. Records in category (a) above are used by SEC staff to make referrals to supervisors or administrative assistants in offices with vacancies for which applicants may be considered. Offices may retain copies of applications/resumes and evaluations of candidates they interview whom they feel may be contenders for employment offers later in the year.

2. SEC staff uses records in category (b) above for (i) retention of official personnel documents; (ii) verification of employment; (iii) determination of qualifications for jobs and eligibility for training; and (iv) processing of personnel actions.

3. SEC staff uses records in category (c) above for (i) computation of personnel strength of divisions/offices; (ii) verification of employment for credit checks or job applications; and (iii) recording of personnel actions processed.

4. SEC staff uses records in category (d) above to maintain records required by the Office of Personnel Management of competitive promotion actions, including (i) records to determine how an announcement for a particular job reads; (ii) records for statistical reports; and (iii) records for program effectiveness studies (to send questionnaires to supervisors who made selections under the program, for example). Supervisory appraisals are scored and used in determining employee's overall standing among all applicants for the job; they are sent to selecting supervisors for review if the employee is certified for consideration (interview).

5. SEC staff uses records in category (e) above to identify Office of Personnel Management control numbers for Schedule C positions and to aid in preparing new submissions.

6. SEC staff uses records in category (f) above for statistical reports.

7. SEC staff forwards records in category (g) above to the Office of Personnel Management at the end of each month if the applicant is not hired; if applicant is hired, records are retained for one year and then destroyed.

8. SEC staff uses records in category (h) above to monitor personnel actions concerning their staffs (i.e., date of employee's last promotion, employee's position description number, etc.) and to record date personnel action requests

and reports were forwarded to the Office of Personnel.

9. SEC Regional Offices use records in category (i) above as a reference in preparing personnel actions requests on employees, determining employee eligibility for training or career development counseling and for back-up data in preparing award nominations, etc.

10. Any of the records described above may be used by the Commission in connection with any action or proceeding brought by an employee before another agency or a court of law to review personnel action taken by the Commission or the failure by the Commission to take action.

11. In any proceeding where the Federal securities laws are in issue or in which the Commission or past or present members of its staff is a party or otherwise involved in an official capacity.

12. To a Federal, State or local governmental authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

13. To a Federal, State or local governmental authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

14. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

15. To aid in responding to inquiries from an employee, Member of Congress, the press or others concerning personnel action taken with respect to a specified employee or employees.

16. Records in this system may, at the discretion of the Commission's staff, be disclosed to any person during the course of any inquiry or investigation conducted by the Commission staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of inquiry.

17. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

18. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

19. To Commission contractors or their authorized employees, and other Federal agencies, as necessary, for the purpose of assisting the Commission in the efficient administration of its programs. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

20. The information contained in this system may be used by the Commission in connection with organizational directories or similar records for internal management purposes.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in electronic or paper form.

**RETRIEVABILITY:**

Records are indexed by name.

**SAFEGUARDS:**

Records in categories (a)-(g) are pulled and re-filed by Office of Human Resources staff only and that Office is locked each evening. Access to official Personnel Folders is limited to employee concerned, his/her supervisors and administrative assistant, supervisors/administrative assistants considering him/her for a job or employee's designated representative; access by other individuals on official business is on a need-to-know basis as approved by the Associate Executive Director, Office of Human Resources. Personnel folders are locked in the Diebold file each evening. Division/Office Directors and Regional Directors are responsible for keeping employee record cards, electronic media or employee files (Regional Offices only) under lock and for assuring confidentiality. The national office in

Washington, DC has a 24-hour security guard.

**RETENTION AND DISPOSAL:**

Records in category (a) are retained six months and then destroyed. Records in category (b) are forwarded to Federal Records Center 30 days after the employee leaves the SEC by retirement, resignation or death or forwarded to agency to which employee transfers as soon as new agency requests them. Records in category (c) are retained indefinitely. Records in category (d) are retained two years and then destroyed. Records in category (e) are retained indefinitely. Records in category (f) are retained five years and then destroyed. Records in category (g) are sent to the Office of Personnel Management at the end of the month if the applicant is hired. If the applicant is not hired, records are retained one year and then destroyed. Records in category (h) are retained indefinitely. Records in category (i) are retained while employee is assigned to office and forwarded to new SEC office if he/she transfers or destroyed if employee leaves the SEC.

**SYSTEM MANAGER(S) AND ADDRESS:**

Associate Executive Director, Office of Human Resources, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-1, Alexandria, VA 22312-2413.

**NOTIFICATION PROCEDURE:**

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

**RECORD ACCESS PROCEDURES:**

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20579-5100.

**CONTESTING RECORD PROCEDURES:**

See Record Access Procedures above.

**RECORD SOURCE CATEGORIES:**

Records in category (a) are obtained from applicant concerned and interviewer evaluating the applicant. Records in category (b) are obtained from employee and supervisors concerned. Records in category (c) are obtained from official personnel folder of the employee concerned. Records in category (d) are obtained from employees applying for job and their supervisors. Records in category (e) are

obtained from employees and supervisors concerned. Records in category (f) are obtained from employees and supervisors concerned. Records in category (g) are obtained from applicant. Records in category (h) are obtained from official personnel actions, employees and supervisors concerned. Records in category (i) are obtained from official personnel actions, employees and supervisors concerned.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

None.

**SEC-46****SYSTEM NAME:**

Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards.

**SYSTEM LOCATION:**

Securities and Exchange Commission, Office of Administrative Services, 100 F Street, NE., Washington, DC 20549-1627.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Commission employees, members of the press, contractors, volunteers, tenants, and consultants or employees of other Federal agencies who require access to Commission facilities for extended periods of time.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include Government Personal Identity Verification (PIV) Card (The SEC PIV Card provider is the General Services Administration (GSA), and the full list of card fields maintained in the GSA system is covered by the GSA system of records, GSA-GOVT-7, Personal Identity Verification Identity Management System (PIV IDMS). The SEC system of records contains the following: name, date of birth, weight, height, color of hair and eyes, photograph, employee record number, card chip number, authorized access rights, date of issuance, date of return, date background investigation completed, whether eligible for an SEC Special Credential [SEC Form 990], and date of expiration); SEC Form 980, Headquarters and Field Office Access Card (name, date of birth, weight, height, color of hair and eyes, photograph, employee record number, card chip number, authorized access rights, date of issuance, and date of expiration); SEC Form 980A, Day Pass (date, name, organization, and authorized by); SEC Form 990, Special Credential (signature of authorizing official, photograph, control number, date of issuance and date of expiration); SEC Form 2355, On-Site Business &

Registered Client ID (name, requesting officer, name of company or organization, control number, identification number, date of issue, expiration date, relationship to business, date of birth, color of hair and eyes, height, weight, photograph, and authorized access rights); SEC Form 725, Identification/Access Control Card Worksheet (various personal characteristics); and local facility access card (name, authorized access rights, card number, date issued and date of expiration, company/agency name and SEC division/office).

**Note:** The extent to which the Commission has records of a personnel investigative nature that come from the Office of Personnel Management (OPM) or its contractors, they are covered by OPM/CENTRAL-9, Personnel Investigations Records, and not this system notice.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended; Homeland Security Presidential Directive 12 (HSPD-12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004.

**PURPOSE(S):**

This system is primarily designed to permit access according to authorized access rights to Commission facilities by Commission employees, contractors, consultants, volunteers, tenants, members of the press, and employees of other Federal agencies (only if they require access to Commission facilities for extended periods of time). This system also provides the status indicator of the PIV Cards to a separate secure database as required by Homeland Security Presidential Directive (HSPD)-12 so that other Federal agencies may verify the identity and current status of the PIV cardholder.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

These records and information contained in these records may be disclosed as follows:

1. To the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Commission becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;
2. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court;
3. To a Federal, State, or local agency, in response to its requests, in

connection with the hiring or retention of an employee, the issuance of a security clearance, or the conducting of a security or background investigation of an individual, to the extent that the information is relevant and necessary to the requesting agency;

4. To the Office of Inspector General for investigating allegations of abuse, should it occur;

5. To other Federal agencies to verify the identity and status of the PIV Card holder;

6. To Commission contractors or their authorized employees, and other Federal agencies, as necessary, for the purpose of assisting the Commission in the efficient administration of its programs. These contractors will be required to maintain Privacy Act safeguards with respect to such records; and

7. In connection with organizational directories or similar records for internal management purposes.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Records are stored in electronic media and in paper files.

**RETRIEVABILITY:**

Records may be retrieved by the employee's name or identification number.

**SAFEGUARDS:**

Records are safeguarded by restricted computer passwords, locked file cabinets, and safes.

**RETENTION AND DISPOSAL:**

Records are maintained in a computerized database and paper. Electronic records, identification cards, and passes are destroyed three months after expiration, revocation, or return to issuing office, as provided in the National Archives and Records Administration's General Records Schedule No. 11, Item 4.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of Administrative Services, Security Branch, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1627.

**NOTIFICATION PROCEDURE:**

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

**RECORD ACCESS PROCEDURES:**

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

**CONTESTING RECORDS PROCEDURES:**

See record access procedures above.

**RECORD SOURCE CATEGORIES:**

The issuing official, Commission employee, contractor, volunteer, on-site business owner or client, employee of other Federal agency, visitor, or press member being issued the identification/access card provides the information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Dated: January 11, 2007.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-547 Filed 1-16-07; 8:45 am]

**BILLING CODE 8011-01-P**

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55057; File No. 4-529]

**Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the International Securities Exchange, LLC and the National Association of Securities Dealers, Inc.**

January 8, 2007.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> notice is hereby given that on December 20, 2006, the International Securities Exchange, LLC ("ISE") and the National Association of Securities Dealers, Inc. ("NASD") (together with the ISE, the "Parties") filed with the Securities and Exchange Commission ("Commission") an amended and restated plan for the allocation of regulatory responsibilities. The Commission is publishing this notice to solicit comments on the amended and restated 17d-2 plan from interested persons.

**I. Introduction**

Section 19(g)(1) of the Act,<sup>3</sup> among other things, requires every self-regulatory organization ("SRO")

registered as either a national securities exchange or registered national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)<sup>4</sup> or Section 19(g)(2)<sup>5</sup> of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>6</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>7</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>8</sup> Rule 17d-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.<sup>9</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including

sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>10</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

**II. Proposed Plan**

The Parties currently operate pursuant to a 17d-2 plan in which NASD has assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the "current NASD-ISE 17d-2 Plan").<sup>11</sup> On September 28, 2006, the Commission approved a proposed rule change submitted by ISE relating to the adoption of rules to govern its electronic trading system for equities.<sup>12</sup> In that filing, ISE represented that it would enter into a 17d-2 agreement with NASD to delegate to NASD all regulatory oversight and enforcement responsibilities with respect to the ISE's outbound routing facility pursuant to applicable laws.<sup>13</sup>

On December 20, 2006, the Parties submitted an amended and restated 17d-2 plan for review by the Commission. The amended and restated 17d-2 plan, which would replace and supersede the current NASD-ISE 17d-2 Plan and all prior amendments thereto in their entirety, is intended to reduce regulatory duplication for firms that are

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

<sup>11</sup> See Securities Exchange Act Release Nos. 42668 (April 11, 2000), 65 FR 21048 (April 19, 2000) (File No. 4-431) (notice of filing); and 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (File No. 4-431) (order).

<sup>12</sup> See Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR-ISE-2006-48).

<sup>13</sup> See *id.* at 71 FR 58654.

<sup>4</sup> 15 U.S.C. 78q(d).

<sup>5</sup> 15 U.S.C. 78s(g)(2).

<sup>6</sup> 15 U.S.C. 78q(d)(1).

<sup>7</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

<sup>8</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

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

<sup>1</sup> 15 U.S.C. 78q(d).

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

<sup>3</sup> 15 U.S.C. 78s(g)(1).