

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its equity transaction fees effective November 1, 2007. Member Organizations are currently charged a transaction fee of \$.0004 per share on at the opening and at the opening only orders<sup>3</sup> in equity securities (excluding ETFs) whether they are providing or taking liquidity. Under the proposed amendment, Member Organizations will no longer be charged this fee.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act<sup>4</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>3</sup> NYSE Rule 13 defines an at the opening or at the opening only order as a market or limited price order which is to be executed on the opening trade of the stock on the Exchange or, if the Exchange opens the stock on a quote, the opening trade in the stock on another market center to which such order or part thereof has been routed in compliance with Regulation NMS, and any such order or portion thereof not so executed is to be treated as cancelled.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-100 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 SR-NYSE-2007-100. 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/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 SR-NYSE-2007-100 and should be submitted on or before November 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-21983 Filed 11-8-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56731; File No. 4-551]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

November 1, 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 October 30, 2007, the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NYSE Arca, Inc. ("NYSE Arca"), and the Philadelphia Stock

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

Exchange, Inc. ("Phlx") (collectively, "Participants") filed with the Securities and Exchange Commission ("Commission") a plan for the allocation of regulatory responsibilities. The Commission is publishing this notice to solicit comments on the 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 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. The Plan

The proposed plan is intended to reduce regulatory duplication for brokers or dealers that are members of two or more of the Participants by allocating regulatory responsibility for certain options-related market surveillance matters among the Participants.<sup>11</sup> Under the plan, a Participant will serve as the Designated Options Surveillance Regulator ("DOSR") for each common member

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

<sup>11</sup> The proposed plan is wholly separate from the multiparty options agreement made pursuant to Rule 17d-2 by and among the Amex, BSE, CBOE, ISE, NASD (n/k/a FINRA), the New York Stock Exchange LLC, NYSE Arca, and Phlx involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct of 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. See Securities Exchange Act Release Nos. 55145 (January 22, 2007), 72 FR 3882 (January 26, 2007) (File No. S7-966) (notice) and 55532 (March 26, 2007), 72 FR 15729 (April 2, 2007) (File No. S7-966) (order).

assigned to it and will assume regulatory responsibility with respect to that common member's compliance with applicable common rules for certain accounts. As proposed, the plan currently is limited to review of expiring exercise declarations pursuant to the common rules listed in proposed Exhibit A. The full text of the proposed 17d-2 plan is as follows:

\* \* \* \* \*

### **AGREEMENT BY AND AMONG THE American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934**

This agreement (this "Agreement"), by and among the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NYSE Arca, Inc. ("Arca"), and the Philadelphia Stock Exchange, Inc. ("PHLX"), is made this 10th day of October, 2007, pursuant to section 17(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 17d-2 thereunder ("Rule 17d-2"), which allows for a joint plan among self-regulatory organizations ("SROs") to allocate regulatory obligations with respect to brokers or dealers that are members of two or more of the parties to this Agreement ("Common Members"). The Amex, BSE, CBOE, ISE, FINRA, Arca, and PHLX are collectively referred to herein as the "Participants" and individually, each a "Participant." This Agreement shall be administered by a committee known as the Options Surveillance Group (the "OSG" or "Group"), as described in section V hereof. Unless defined in this Agreement or the context otherwise requires, the terms used herein shall have the meanings assigned thereto by the Exchange Act and the rules and regulations thereunder.

WHEREAS, the Participants desire to eliminate regulatory duplication with respect to SRO market surveillance of Common Member<sup>1</sup> activities with

<sup>1</sup> In the case of the BSE, members are those persons who are Options Participants (as defined in the Boston Options Exchange LLC Rules).

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

<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).

regard to certain common rules relating to listed options ("Options"); and

WHEREAS, for this purpose, the Participants desire to execute and file this Agreement with the Securities and Exchange Commission (the "SEC" or "Commission") pursuant to Rule 17d-2.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Participants agree as follows:

I. Except as otherwise provided in this Agreement, each Participant shall assume Regulatory Responsibility (as defined below) for the Common Members that are allocated or assigned to such Participant in accordance with the terms of this Agreement and shall be relieved of its Regulatory Responsibility as to the remaining Common Members. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Surveillance Regulator ("DOSR") for each Common Member that is allocated to it in accordance with Section VII.

II. As used in this Agreement, the term "Regulatory Responsibility" shall mean surveillance, investigation and enforcement responsibilities relating to compliance by the Common Members with such Options rules of the Participants as the Participants shall determine are substantially similar and shall approve from time to time, insofar as such rules relate to market surveillance (collectively, the "Common Rules"). For the purposes of this Agreement the list of Common Rules is attached as Exhibit A hereto, which may only be amended upon unanimous written agreement by the Participants. The DOSR assigned to each Common Member shall assume Regulatory Responsibility with regard to that Common Member's compliance with the applicable Common Rules for certain accounts.<sup>2</sup> A DOSR may perform its Regulatory Responsibility or enter an agreement to transfer or assign such responsibilities to a national securities exchange registered with the SEC under section 6(a) of the Exchange Act or a national securities association registered with the SEC under section 15A of the Exchange Act. A DOSR may not transfer or assign its Regulatory Responsibility to an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products.

<sup>2</sup> Certain accounts shall include customer ("C" as classified by the Options Clearing Corporation ("OCC")) and firm ("F" as classified by OCC) accounts, as well as other accounts, such as market maker accounts as the Participants shall, from time to time, identify as appropriate to review.

The term "Regulatory Responsibility" does not include, and each Participant shall retain full responsibility with respect to:

(a) Surveillance, investigative and enforcement responsibilities other than those included in the definition of Regulatory Responsibility;

(b) any aspects of the rules of a Participant that are not substantially similar to the Common Rules or that are allocated for a separate surveillance purpose under any other agreement made pursuant to Rule 17d-2. Any such aspects of a Common Rule will be noted as excluded on Exhibit A.

III. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, or more frequently if required by changes in the rules of a Participant, each Participant shall submit to the other Participants, through the Chair of the OSG, an updated list of Common Rules for review. This updated list may add Common Rules to Exhibit A, shall delete from Exhibit A rules of that Participant that are no longer identical or substantially similar to the Common Rules, and shall confirm that the remaining rules of the Participant included on Exhibit A continue to be identically or substantially similar to the Common Rules. Within 30 days from the date that each Participant has received revisions to Exhibit A from the Chair of the OSG, each Participant shall confirm in writing to the Chair of the OSG whether that Participant's rules listed in Exhibit A are Common Rules.

IV. Apparent violation of another Participant's rules discovered by a DOSR, but which rules are not within the scope of the discovering DOSR's Regulatory Responsibility, shall be referred to the relevant Participant for such action as is deemed appropriate by that Participant. Notwithstanding the foregoing, nothing contained herein shall preclude a DOSR in its discretion from requesting that another Participant conduct an investigative or enforcement proceeding ("Proceeding") on a matter for which the requesting DOSR has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Additionally, nothing in this Agreement shall prevent another Participant on whose market potential violative activity took place from conducting its own Proceeding on a matter. The Participant conducting the Proceeding shall advise the assigned DOSR. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses

necessary to assist another Participant in a Proceeding.

V. The OSG shall be composed of one representative designated by each of the Participants (a "Representative"). Each Participant shall also designate one or more persons as its alternate representative(s) (an "Alternate Representative"). In the absence of the Representative, the Alternate Representative shall assume the powers, duties and responsibilities of the Representative. Each Participant may at any time replace its Representative and/or its Alternate Representative to the Group.<sup>3</sup> A majority of the OSG shall constitute a quorum and, unless otherwise required, the affirmative vote of a majority of the Representatives present (in person, by telephone or by written consent) shall be necessary to constitute action by the Group. The Group will have a Chair, Vice Chair and Secretary. A different Participant will assume each position on a rotating basis for a one-year term. In the event that a Participant replaces a Representative who is acting as Chair, Vice Chair or Secretary, the newly appointed Representative shall assume the position of Chair, Vice Chair, or Secretary (as applicable) vacated by the Participant's former Representative. In the event a Participant cannot fulfill its duties as Chair, the Participant serving as Vice Chair shall substitute for the Chair and complete the subject unfulfilled term. All notices and other communications for the OSG are to be sent in care of the Chair and, as appropriate, to each Representative.

VI. The OSG shall determine the times and locations of Group meetings, provided that the Chair, acting alone, may also call a meeting of the Group in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior to the meeting date. Representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VII. No less frequently than every two years, in such manner as the Group deems appropriate, the OSG shall allocate Common Members that conduct an Options business among the Participants ("Allocation"), and the Participant to which a Common Member is allocated will serve as the DOSR for that Common Member. Any Allocation shall be based on the following principles, except to the extent all

<sup>3</sup> A Participant must give notice to the Chair of the Group of such a change.

affected Participants consent to one or more different principles:

(a) The OSG may not allocate a Common Member to a Participant unless the Common Member is a member of that Participant.

(b) To the extent practicable, Common Members that conduct an Options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants, provided that no Common Members shall be allocated to FINRA. For example, if sixteen Common Members that conduct an Options business are members only of three Participants, none of which is FINRA, those Common Members shall be allocated among the three Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members. If, in the previous example, one of the three Participants is FINRA, the sixteen Common Members would be allocated evenly between the remaining Participants, so that the two non-FINRA Participants would be allocated eight Common Members each.

(c) To the extent practicable, Allocation shall take into account the amount of Options activity conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participants of which they are members. Allocation will also take into account similar allocations pursuant to other plans or agreements to which the Common Members are party to maintain consistency in oversight of the Common Members.<sup>4</sup>

(d) To the extent practicable, Allocation of Common Members to Participants will be rotated among the applicable Participants such that a Common Member shall not be allocated to a Participant to which that Common Member was allocated within the previous two years. The assignment of DOSRs pursuant to the Allocation is attached as Exhibit B hereto, and will be updated from time to time to reflect Common Member Allocation changes.

(e) The Group may reallocate Common Members from time to time, as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOSR, the DOSR shall promptly inform the Group, which shall review the matter and allocate the Common Member to another Participant.

(g) A DOSR may request that a Common Member to which it is assigned be reallocated to another Participant by giving 30 days written notice to the Chair of the OSG. The Group, in its discretion, may approve such request and reallocate the Common Member to another Participant.

(h) All determinations by the Group with respect to Allocation shall be made by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any Allocation relating to a Common Member unless the Common Member is a member of such Participant.

VIII. Each DOSR shall conduct routine surveillance reviews to detect violations of the applicable Common Rules by each Common Member allocated to it with a frequency (daily, weekly, monthly, quarterly, semi-annually or annually as noted on Exhibit A) not less than that determined by the Group. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOSR.

At each meeting of the OSG, each Participant shall be prepared to report on the status of its surveillance program for the previous quarter and any period prior thereto that has not previously been reported to the Group. In the event a DOSR believes it will not be able to complete its Regulatory Responsibility for its allocated Common Members, it will so advise the Group in writing promptly. The Group will undertake to remedy this situation by reallocating the subject Common Members among the remaining Participants. In such instance, the Group may determine to impose a regulatory fee for services provided to the DOSR that was unable to fulfill its Regulatory Responsibility.

IX. Each Participant will, upon request, promptly furnish a copy of the report or applicable portions thereof relating to any investigation made pursuant to the provisions of this Agreement to each other Participant of which the Common Member under investigation is a member.

X. Each Participant will routinely populate a common database, to be accessed by the Group relating to any formal regulatory action taken during the course of a Proceeding with respect to the Common Rules concerning a Common Member.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to any Participant to the

attention of that Participant's Representative, to the Participant's principal place of business or by e-mail at such address as the Representative shall have filed in writing with the Chair.

XII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any of the Participants may agree that one or more will compensate the other(s) for costs incurred.

XIII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Group. Each Participant will notify the Common Members that have been allocated to it that such Participant will serve as DOSR for that Common Member.

XIV. This Agreement shall be effective upon approval of the Commission. This Agreement may only be amended in writing duly approved by each Participant. All amendments to this Agreement, excluding changes to Exhibits A and B, must be filed with and approved by the Commission.

XV. Any Participant may manifest its intention to cancel its participation in this Agreement at any time upon providing written notice to (i) the Group six months prior to the date of such cancellation, or such other period as all the Participants may agree, and (ii) the Commission. Upon receipt of the notice the Group shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the canceling Participant was the DOSR. The canceling Participant shall retain its Regulatory Responsibility and other rights, privileges and duties pursuant to this Agreement until the Group has completed the reallocation as described above, and the Commission has approved the cancellation.

XVI. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, or such other period as all the Participants may agree. Such termination will become effective upon Commission approval.

XVII. Participation in the Group shall be strictly limited to the Participants and no other party shall have any right to attend or otherwise participate in the Group except with the unanimous

<sup>4</sup> For example, if one Participant was allocated a Common Member by another regulatory group that Participant would be assigned to be the DOSR of that Common Member, unless there is good cause not to make that assignment.

approval of all Participants. Notwithstanding the foregoing, any national securities exchange registered with the SEC under Section 6(a) of the Act or any national securities association registered with the SEC under section 15A of the Act may become a Participant to this Agreement provided that: (i) Such applicant has adopted rules substantially similar to the Common Rules, and received approval thereof from the SEC; (ii) such applicant has provided each Participant with a signed statement whereby the applicant agrees to be bound by the terms of this Agreement to the same effect as though it had originally signed this Agreement and (iii) an amended agreement reflecting the addition of such applicant as a Participant has been filed with and approved by the Commission.

XVIII. This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d-2 by and among the Amex, BSE, CBOE, ISE, NASD, the New York Stock Exchange,

LLC, Arca and PHLX 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.

**Limitation of Liability**

No Participant nor the Group nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Regulatory Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other Participants or its respective

directors, governors, officers, employees or representatives. No warranties, express or implied, are made by the Participants, individually or as a group, or by the OSG with respect to any Regulatory Responsibility to be performed hereunder.

**Relief From Responsibility**

Pursuant to section 17(d)(1)(A) of the Exchange Act and Rule 17d-2, the Participants join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Participants that are party to this Agreement and are not the DOSR as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOSR.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

**EXHIBIT A.—COMMON RULES**

SRO	Description of rule	Exchange rule number	Frequency of review
Violation I: Expiring Exercise Declarations (EED)—For Listed Equity Options Expiring: The Third Saturday Following the third Friday of a Month, Quarterly, AND for Listed FLEX Options.			
Amex .....	Exercise of Options Contracts .....	Amex Rule 980 .....	At Expiration.
BOX .....	Exercise of Options Contracts .....	BOX Rule 7.1 .....	At Expiration.
CBOE .....	Exercise of Options Contracts .....	CBOE Rule 11.1 .....	At Expiration.
FINRA .....	Exercise of Options Contracts .....	NASD Rule 2860 .....	At Expiration.
ISE .....	Exercise of Options Contracts .....	ISE Rule 1100 .....	At Expiration.
NYSEArca .....	Exercise of Options Contracts .....	NYSEArca Rule 6.24 .....	At Expiration.
PHLX .....	Exercise of Equity Options Contracts .....	PHLX Rule 1042 .....	At Expiration.

**III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action**

Pursuant to section 17(d)(1) of the Act<sup>12</sup> and Rule 17d-2 thereunder,<sup>13</sup> after November 30, 2007, the Commission may, by written notice, declare the plan submitted by the Amex, BSE, CBOE, ISE, FINRA, NYSE Arca and the Phlx, File No. 4-551, to be effective if the Commission finds that the plan, or any part thereof, is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities

transactions and in conformity with the factors set forth in section 17(d) of the Act.

**IV. Solicitation of Comments**

In order to assist the Commission in determining whether to approve the 17d-2 plan, interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4-551 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 4-551. 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

<sup>12</sup> 15 U.S.C. 78q(d)(1).

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

Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of Amex, BSE, CBOE, ISE, FINRA, NYSE Arca and the Phlx. 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 4-551 and should be submitted on or before November 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-21980 Filed 11-8-07; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Worcester County, MD

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed bridge project in Worcester County, Maryland. The purpose of the EIS is to provide information and analyses for decisions on the project in accordance with the policies and purposes of the National Environmental Policy Act.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel W. Johnson, Environmental Program Leader, Federal Highway Administration, City Crescent Building, 10 South Howard Street, Suite 2450, Telephone: (410) 779-7154.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Maryland State Highway Administration, U.S. Army Corps of Engineers, US Environmental Protection Agency, US Coast Guard, Maryland Department of the Environment, US Fish and Wildlife Service, and National Marine Fisheries Service will prepare an Environmental Impact Statement (EIS) for roadway improvements which address operational inadequacies, safety concerns, and structural deficiencies of the US 50 crossing of the Sinepuxent Bay, Worcester County, MD.

The study will also address the need to safely accommodate the navigational needs of boaters, pedestrian and bicycle traffic, and the recreational needs of fishermen. Pedestrians, fishermen, and cyclists currently share a narrow five-foot sidewalk along the existing bridge, which creates potential conflicts among the various users. Finally, the study will investigate aesthetic enhancements to any crossing representative of a coastal gateway resort.

Alternatives under consideration include taking no action and four build alternatives with various options for a new bridge or bridge reconstruction. Under all of these alternatives, the existing bridge would be retained for possible use by pedestrians, cyclists and fisherman. The bridge is eligible for inclusion in the National Register of Historic Places.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local government agencies, and to private organizations and citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. It is anticipated that a Public Hearing will be held in the Spring of 2008. A Draft EIS will be available for public and agency review and comment prior to the Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of the hearing. A Scoping Meeting was held in March of 2005, and Open House Public Workshops were held in Ocean City in June and October of 2005, June of 2006 and May/June of 2007, to solicit opinions and ideas on proposed improvements from local citizens.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Issued on: November 5, 2007.

**Daniel W. Johnson,**  
*Environmental Program Leader, Baltimore, Maryland.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on the Newberg Dundee Transportation Improvement Project (Tier 1), Oregon 99W: Yamhill County, OR

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

**SUMMARY:** This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project, the Newberg Dundee Transportation Improvement Project (Tier 1), Oregon 99W, extending approximately 11 miles from the eastern terminus east of Newberg in the Rex Hill area, to the western terminus where Oregon 99W intersects with OR18 (McDougal Corner) west of Dundee, near Dayton in the County of Yamhill, State of Oregon. The Federal actions, taken as a result of a tiered environmental review process under the National Environmental Policy Act, 42 U.S.C. 4321-4351 (NEPA), and implementing regulations on tiering, 40 CFR 1502.20, 40 CFR 1508.28, and 23 CFR part 771, determined certain issues related to the proposed project. Those Tier 1 decisions will be used by Federal agencies in subsequent proceedings, including decisions whether to grant licenses, permits, and approvals for the highway project. Tier 1 decisions also may be relied upon by State and local agencies in proceedings on the proposed project.

**DATES:** By this notice, the FHWA is advising the public that it has made decisions that are subject to 23 U.S.C. 139(I)(1) and are final within the meaning of that law. A claim seeking judicial review of the Tier 1 Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before May 7, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Ms. Michelle Eraut, Environmental Program Manager, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301; telephone 503-587-4716. You may also contact Ms. Lisa Ansell, Project Manager, Oregon Department of Transportation, 885 Airport Road SE., Building P, Salem,

<sup>14</sup> 17 CFR 200.30-3(a)(34).