interim standards are intended to update and clarify the auditing standards in light of SFAS No. 154 and SFAS No. 162. In particular, these updates and clarifications are intended to enhance the clarity of auditor reporting on accounting changes and corrections of misstatements by distinguishing between these events.

III. Discussion

The Commission received three comment letters in response to its request for comments on Auditing Standard No. 6 and conforming amendments. The comment letters came from three registered public accounting firms.[4] All three commenters expressed support for the Commission's approval of the proposed standard.

As noted above, the PCAOB's proposed amendment to AU section 431 deletes a reference to Rule 301 of the AICPA's Code of Professional Conduct—a rule the PCAOB did not adopt as part of its original interim standards. Similar to comments made to the PCAOB during its comment period, one commenter believed concerns exist that the Board's action in removing a reference to a rule the PCAOB did not adopt might be construed as minimizing the auditor's responsibilities for maintaining the confidentiality of client information. The commenter requested that the Commission encourage the PCAOB to adopt a rule establishing the auditor's responsibility with respect to maintaining the confidentiality of client information.

In its adopting release, the PCAOB discussed the concerns the comments raised about client confidentiality and noted its awareness of many auditors' legal or professional obligations to maintain the confidentiality of client information, and made reference to the confidentiality requirements included in the provisions of the Uniform Accountancy Act and the provisions of the International Federation of Accountants' Code of Ethics for Professional Accountants. The PCAOB also noted that its decision to omit Rule 301 from its interim standards was based on a determination that incorporation of that rule was not necessary to fulfill the Board's mandate under Section 103(a)(1) and (3) of the Act at that time, and that it did not reflect a decision that auditor confidentiality requirements imposed by other authorities were inappropriate. Similarly, in amending AU section 431, the PCAOB noted that it seeks neither to modify nor detract from existing confidentiality requirements.

The Commission agrees with the Board's proposed action to remove from its interim standards a reference to a rule it did not adopt. However, the Commission encourages the PCAOB to develop and adopt a rule addressing the auditor's responsibility with respect to maintaining the confidentiality of client information.[5]

IV. Conclusion

On the basis of the foregoing, the Commission finds that proposed Auditing Standard No. 6 and the Conforming Amendments are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that proposed Auditing Standard No. 6, *Evaluating Consistency of Financial Statements*, and Conforming Amendments (File No. PCAOB–2008–01) be and hereby are approved.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22015 Filed 9–19–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58536; File No. 4–566]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc.

September 12, 2008.

On August 12, 2008, the American Stock Exchange LLC (''Amex''), Boston Stock Exchange, Inc. (''BSE''), CBOE Stock Exchange, LLC (''CBOE''), Chicago Stock Exchange, Inc. (''CHX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market, LLC (''NASDAQ''), National Stock Exchange, Inc. (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE Arca Inc. (''NYSE Arca''), NYSE Regulation, Inc. (acting under authority delegated to it by NYSE) (''NYSE Regulation''), and Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participating Organizations'' or ''Parties'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] a proposed plan for the allocation of regulatory responsibilities (''Plan''). The Plan was published for comment on August 18, 2008.[3] The Commission received no comments on the Plan. This order approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Act,[4] 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)[5] or Section 19(g)(2)[6] of the Act.

Section 17(d)(1) of the Act[7] 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'').[8] 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

[4] Deloitte and Touche LLP, Grant Thornton LLP, and PricewaterhouseCoopers LLP.

[5] One commenter also noted that the adoption of Auditing Standard No. 6 would cause existing published PCAOB Staff Questions and Answers to require updating. The Commission encourages the PCAOB to ensure that its guidance is up to date with its current standards and presumes the PCAOB will update these Questions and Answers once these amendments are approved.

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

[2] 17 CFR 240.17d–2.

[3] *See* Securities Exchange Act Release No. 58350 (August 13, 2008), 73 FR 48248 (File No. 4–566) (''Notice'').

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d).

[6] 15 U.S.C. 78s(g)(2).

[7] 15 U.S.C. 78q(d)(1).

[8] *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).

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.[9] 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.[10] 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 broker dealers' 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.[11] 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 designed to eliminate regulatory duplication by allocating regulatory responsibility over Common NYSE Members[12] or Common FINRA Members,[13] as applicable, (collectively, ''Common Members'') for the surveillance, investigation, and enforcement of common insider trading rules (''Common Rules'').[14] The Plan assigns regulatory responsibility over Common NYSE Members to NYSE Regulation for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur. The Plan assigns regulatory responsibility over Common FINRA Members to FINRA for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NASDAQ-listed stocks and Amex-listed stocks, as well as any CHX solely-listed stock, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur. The full text of the Plan and Exhibits A, B, and C thereto can be found in the Notice.

In addition to the Plan, the Participating Organizations have entered into two regulatory services agreements that address investigation and enforcement in situations that involve trading in equity securities by non-Common Members, as Rule 17d–2 covers only situations involving Common Members. The first agreement is between NYSE Regulation (acting as the regulatory services provider), FINRA, and each of the exchanges (''NYSE Regulation Agreement''). The second agreement is between FINRA (acting as the regulatory services provider), NYSE Regulation, and each of the exchanges (''FINRA Agreement''). The agreements provide for the investigation and enforcement of suspected insider trading against broker-dealers and their associated persons that (i) are not Common Members of NYSE in the case of insider trading in NYSE-listed stocks and NYSE–Arca listed stocks; or (ii) are not Common Members of FINRA in the case of insider trading in NASDAQ-listed stocks, Amex-listed stocks, and any CHX solely-listed stock.

Under the agreements, NYSE Regulation and FINRA, respectively, will provide to the exchanges ''Core Services'' related and limited to the investigation and enforcement activities for non-Common Members where these activities relate to insider trading of equity securities listed on the NYSE or NYSE Arca in the case of the NYSE Regulation Agreement, and to the insider trading of equity securities listed on the Nasdaq or Amex, and any CHX solely-listed security in the case of the FINRA Agreement. The Core Services provided under the agreements are rendered (a) only upon completion of a surveillance review under the 17d–2 Plan, and (b) at the request of the relevant exchange. Pursuant to the Plan, NYSE Regulation and FINRA will conduct surveillance, investigation, and enforcement for insider trading for Common NYSE Members and Common FINRA Members, respectively. Surveillance for non-Common Members is excluded from the Plan and remains the responsibility of the SROs in which such non-Common Members maintain membership. However, due to the nature of insider trading surveillance technology and processes, the surveillance conducted by NYSE Regulation and FINRA will encompass non-Common Members as the surveillance function does not differentiate between Common and non-Common Members. Accordingly, the investigation and enforcement services performed under the agreements will arise from surveillance undertaken by NYSE Regulation and FINRA.

III. 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 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 should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules over Common NYSE Members, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, to NYSE and over Common FINRA Members, with respect to NASDAQ-listed stocks, Amex-listed stocks, and any CHX solely-listed stock,

[9] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[10] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[11] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[12] Common NYSE Members include members of the NYSE and at least one of the Participating Organizations.

[13] Common FINRA Members are members of FINRA and at least one of the Participating Organizations.

[14] Common Rules are defined as: (i) Federal securities laws and rules promulgated by the Commission pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading. *See* Exhibit A to the Plan.

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

[16] 17 CFR 240.17d–2.

to FINRA. Accordingly, the proposed Plan promotes efficiency by consolidating these regulatory functions in a single SRO based on the listing market for a stock, with regard to Common NYSE Members and Common FINRA Members.

In addition, the Commission notes that the Plan provides that the costs for insider trading surveillance would be shared among the Participating Organizations based on their relative trade volume, subject to certain minimum payment amounts for smaller markets. Modifications to the fees assessed the Participating Organizations pursuant to the cost allocation methodologies established in the Plan do not require an amendment to the Plan; however, any modifications to the cost allocation methodologies would require approval by the Commission. The Commission believes that the Plan provides a reasonable method to allocate among the Parties expenses reasonably incurred by the SRO having regulatory responsibilities under the Plan.[17]

The Commission also notes that because under Rule 17d–2 regulatory responsibility may be allocated from one SRO to another SRO only for Common Members, the Participating Organizations have entered into two regulatory services agreements with NYSE Regulation and FINRA, respectively, to address investigation and enforcement of suspected insider trading involving members who are neither Common NYSE Members nor Common FINRA Members.[18] The Commission is neither approving nor disapproving the terms of the regulatory services agreements. However, the Commission does note that under these regulatory services agreements the ultimate responsibility and primary liability for self-regulatory obligations would remain with each exchange and association, rather than the SRO retained to perform such functions.

IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–566. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act,[19] that the Plan in File No. 4–566 by and among Amex, BSE, CBOE, CHX, FINRA, ISE, NASDAQ, NSX, NYSE, NYSE Arca, NYSE Regulation, and Phlx filed pursuant to Rule 17d–2 is hereby approved and declared effective.

It is further ordered that the Participating Organizations are relieved of those regulatory responsibilities allocated to NYSE and FINRA under the Plan in File No. 4–566.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

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[17] 17 CFR 240.17d–2(b).

[18] Members only of the NYSE would be the responsibility of NYSE; members only of FINRA would be the responsibility of FINRA.

[19] 15 U.S.C. 78q(d).

[20] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58547; File No. SR–BSE–2008–45]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Amend By-Laws

September 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2008, the Boston Stock Exchange (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its by-laws to make certain changes that the Exchange committed to make in SR–BSE–2008–23.[3] The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, and is also available at *http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008); Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (May 8, 2008) (SR–BSE–2008–23).

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 and discussed any comments it received on 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

On August 29, 2008, the Exchange was acquired by The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). In SR–BSE–2008–23, the Exchange's filing seeking approval of this acquisition, the Exchange committed that it would, immediately following closing of the acquisition, seek Board of Directors and Commission approval for several changes to its By-Laws. The changes, which were requested by Commission staff, could not be included in SR–BSE–2008–23 because Article XX of the Exchange's former Constitution, which was replaced by the new By-Laws at the closing, provided that the Exchange's members must approve amendments to the Exchange's Constitution. The Exchange's members voted, on December 7, 2007, to approve the By-Laws as originally submitted in SR–BSE–2008–23, and it would have been impracticable and unduly expensive to seek a second member vote for approval of these additional changes prior to closing. The changes in question are as follows:

• In Article I, the Exchange is amending the definition of ''Voting Date'' to make it clear that the Exchange Board of Directors must annually select a Voting Date for the selection of Member Representative Directors, although a vote will actually occur on that date only if members have nominated candidates for election other than those nominated by the Exchange's Member Nominating Committee. Accordingly, the amended definition reads: '' 'Voting Date' means the date selected by the Board on an annual basis, on which Exchange Members may vote with respect to Member Representative Directors in the event of a Contested Vote.''