

on net asset value. Expenses of \$82,245 incurred in connection with the liquidation were paid by Ameristock Corporation, applicant's investment adviser.

Filing Dates: The application was filed on October 14, 2008, and amended on December 1, 2008.

Applicant's Address: 1320 Harbor Bay Parkway, Suite 145, Alameda, CA 94502.

Fortis Growth Fund Inc. [File No. 811-848]; Fortis Income Portfolios Inc. [File No. 811-2341]; Fortis Money Portfolios Inc. [File No. 811-2943]; Fortis Tax-Free Portfolios Inc. [File No. 811-3498]; Fortis Advantage Portfolios Inc. [File No. 811-5355]; Fortis Worldwide Portfolios Inc. [File No. 811-6297]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On February 15, 2002, each applicant transferred its assets to The Hartford Mutual Funds II, Inc., based on net asset value.

Applicants incurred no expenses in connection with the reorganizations.

Filing Dates: The application was filed on July 8, 2008, and amended on September 30, 2008, and November 11, 2008.

Applicants' Address: PO Box 2999, Hartford, CT 06104-2999.

Enterprise Accumulation Trust [File No. 811-5543]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders approved the merger of applicant's fund on June 28, 2004, and applicant distributed its assets on July 9, 2004. The fund surviving the merger is EQ Advisors Trust. AXA Equitable Life Insurance Company and MONY Life Insurance Company paid the \$968,124 incurred in connection with the merger.

Filing Date: The application was filed on February 9, 2006.

Applicant's Address: Atlanta Financial Center, 3343 Peachtree Road, NE., Suite 450, Atlanta, Georgia 30326-1022.

Variable Investment Trust [File No. 811-8392]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, applicant had no shareholders and thus qualified for an exclusion from the definition of "investment company" in Section 3(c)(1) of the 1940 Act.

Filing Dates: The application was filed on June 30, 2008, and amended and restated on December 1, 2008.

Applicant's Address: 3001 Summer Street, Stamford, Connecticut 06904.

The American Separate Account 5 [File No. 811-10409]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company as part of a liquidation. Applicant has distributed all of its assets to the fund's shareholders, has no assets or liabilities, and has incurred no expenses in connection with the liquidation. Applicant is not now engaged, nor does it intend to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on August 8, 2008.

Applicant's Address: 6 International Drive, Suite 190, Rye Brook, NY 10573.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-30855 Filed 12-29-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59133]

Order Granting Application for a Temporary Conditional Exemption Pursuant to Section 36(a) of the Exchange Act by the International Securities Exchange, LLC Relating to the Acquisition by International Securities Exchange Holdings, Inc. of an Electronic Communications Network

December 22, 2008.

I. Introduction

On December 3, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Rule 0-12¹ under the Securities Exchange Act of 1934 ("Exchange Act"), an application for an exemption under Section 36(a)(1) of the Exchange Act² from the rule filing requirements of Section 19(b) of the Exchange Act³ with respect to the acquisition by International Securities Exchange Holdings, Inc. ("ISE Holdings"), the parent of ISE, of an equity interest in Direct Edge Holdings, LLC ("DE

Holdings").⁴ DE Holdings is the sole owner of Direct Edge ECN LLC ("DECN"), a registered broker-dealer and electronic communications network ("ECN"). This order grants the request for temporary exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for Temporary Conditional Exemption From Section 19(b) Rule Filing Requirements

On December 3, 2008, the ISE requested that the Commission grant a temporary exemption, subject to certain conditions, under Section 36 of the Exchange Act from the rule filing procedures of Section 19(b) of the Exchange Act in connection with ISE Holdings' acquisition of an equity interest in DE Holdings and the operation of DECEN as a facility of ISE.⁵

According to the Exemption Request, on August 22, 2008, ISE Holdings, DE Holdings, ISE Stock Exchange, LLC ("ISE Stock"), a Delaware limited liability company that operates a marketplace for the trading of U.S. cash equity securities by Equity Electronic Access Members ("Equity EAMs") of ISE (the "Facility"),⁶ and certain other parties entered into a Transaction Agreement whereby, among other things: (1) ISE Holdings will purchase a 31.54% equity interest in DE Holdings, the sole owner of DECEN, a registered broker-dealer and ECN; and (2) ISE Stock will merge into Maple Merger Sub, a wholly-owned subsidiary of DE Holdings ("Merger Sub"), which will operate the Facility following the closing of the transaction (the "Closing"). After the Closing, the Facility will continue to be a facility of ISE.

DECEN's current relationship with ISE is limited to participating in ISE as an Equity EAM of ISE, and DECEN displays its limit orders on the Facility in the same manner as other ECNs that display their limit orders on the Facility. Neither ISE Holdings nor ISE currently has an ownership interest in DECEN. After the Closing, DECEN will continue to operate as an ECN and to submit limit orders to the Facility for display and execution.

Following the Closing, DECEN also will become a facility, as defined in Section 3(a)(2) of the Exchange Act, of ISE

⁴ See letter from Michael J. Simon, General Counsel and Secretary, ISE, to Florence Harmon, Acting Secretary, Commission, dated December 3, 2008 ("Exemption Request").

⁵ See Section 3(a)(2) of the Exchange Act, 15 U.S.C. 78c3(a)(2) (definition of "facility").

⁶ ISE Stock operates the Facility under the rules of the ISE as a facility, as defined in Section 3(a)(2) of the Exchange Act, of ISE.

¹ 17 CFR 240.0-12.

² 15 U.S.C. 78mm(a)(1).

³ 15 U.S.C. 78s(b).

because it will be an affiliate of ISE used for the purpose of effecting and reporting securities transactions. Specifically, (1) DECN will continue to operate as an ECN and will continue to submit its limit orders to the Facility for display and execution;⁷ and (2) DECN will become an affiliate of ISE through ISE Holdings' equity interest in DE Holdings. Because DECN will be a facility of ISE, ISE would be obligated, under Section 19(b) of the Exchange Act, to file with the Commission proposed rules governing the operation of DECN's systems and subscriber fees. In its Exemption Request, ISE states that if the Commission does not grant the exemption, ISE will be forced to terminate DECN's operations upon Closing because DECN may not operate as a facility of ISE without the ISE's filing with the Commission proposed rules governing the operation of DECN's systems and subscriber fees.⁸ ISE also stated that it would be unduly burdensome and inefficient to require DECN's operating rules to be separately subjected to the Section 19(b) rule filing and approval process because DECN would operate only temporarily as a facility of ISE while the Commission considers the Form 1 Applications, as discussed below.

In its Exemption Request, ISE noted that DECN's average daily "touched" volume in U.S. listed equity securities accounts for 10% of the average daily U.S. traded volume in such securities.⁹ Accordingly, ISE believes that the termination of DECN's operations potentially could harm investors, disrupt the functioning of an orderly market, and eliminate a point of access to the markets.¹⁰

ISE noted, further, that DE Holdings has been engaged with the Commission in the filing of two Form 1 applications (the "Form 1 Applications") to register two of DE Holdings' wholly-owned subsidiaries (the "Exchange Subsidiaries") as national securities exchanges.¹¹ According to ISE, DECN intends to file a "Cessation of Operations Report" with the Commission and to cease operations as an ECN shortly following any Commission approval of the Form 1

Applications.¹² Also, according to the ISE, approval of the Form 1 Applications would allow the Exchange Subsidiaries to operate in place of DECN.¹³ Because DECN would cease to operate as an ECN if the Commission approves the Form 1 Applications, ISE expects that DECN would operate as a facility of ISE for a relatively brief period of time.¹⁴

ISE has asked the Commission to exercise its authority under Section 36 of the Exchange Act and grant the ISE a temporary, 180-day exemption from the Section 19(b) rule filing requirements that would apply to DECN as a facility of ISE. The temporary exemption would commence immediately upon the Closing and would allow DECN to continue to operate following the Closing, subject to certain conditions, while DE Holdings prepares the Form 1 Applications. ISE believes that the temporary exemption will help to ensure an orderly transition from DECN to the proposed Exchange Subsidiaries.¹⁵

ISE stated, in addition, that the exemption will not diminish the Commission's ability to monitor ISE and DECN. In this regard, ISE noted that to the extent that ISE makes changes to its systems, including the Facility, during the exemption period, or thereafter, it remains subject to Section 19(b) and thus obligated to file proposed rule changes with the Commission.¹⁶ Further, in the Exemption Request, ISE committed to satisfying certain conditions, which are outlined below. For example, as a condition to the exemption, ISE will be required to submit proposed rule changes with respect to any material changes to DECN's functions during the exemption period.¹⁷ ISE noted, however, that neither ISE nor DECN anticipates any material changes to DECN's functionality during the exemption period.¹⁸

¹² *Id.*

¹³ *Id.* If the Commission approves the Form 1 Applications, each of the Exchange Subsidiaries would be registered as a national securities exchange under Section 6 of the Exchange Act. In addition, following any Commission approval of the Form 1 Applications and the Exchange Subsidiaries' commencement of operations as national securities exchanges, DE Holdings would no longer operate DECN as an ECN and the Facility would cease operations.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Exemption Request at 3.

¹⁷ *Id.*

¹⁸ See Exemption Request at note 3.

III. Order Granting Temporary Conditional Section 36 Exemption

In 1996, Congress gave the Commission greater flexibility to regulate trading systems, such as DECN, by granting the Commission broad authority to exempt any person from any of the provisions of the Exchange Act and to impose appropriate conditions on their operation.¹⁹ Specifically, NSMIA added Section 36(a)(1) to the Exchange Act, which provides that "the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."²⁰ In enacting Section 36, Congress indicated that it expected that "the Commission will use this authority to promote efficiency, competition and capital formation."²¹ It particularly intended to give the Commission sufficient flexibility to respond to changing market and competitive conditions:

The Committee recognizes that the rapidly changing marketplace dictates that effective regulation requires a certain amount of flexibility. Accordingly, the bill grants the SEC general exemptive authority under both the Securities Act and the Securities Exchange Act. This exemptive authority will allow the Commission the flexibility to explore and adopt new approaches to registration and disclosure. It will also enable the Commission to address issues relating to the securities markets more generally. For example, the SEC could deal with the regulatory concerns raised by the recent proliferation of electronic trading systems, which do not fit neatly into the existing regulatory framework.²²

In 2004, the Commission exercised its Section 36 exemptive authority to grant a temporary exemption, subject to certain conditions, from the Section 19(b) rule filing requirements in connection with the acquisition by The Nasdaq Stock Market, Inc. ("Nasdaq") of Brut, LLC, the operator of the Brut

¹⁹ 15 U.S.C. 78mm(a). Section 36 of the Exchange Act was enacted as part of the National Securities Markets Improvements Act 1996, Public Law No. 104-290 ("NSMIA").

²⁰ 15 U.S.C. 78mm(a)(1).

²¹ H.R. Rep. No. 104-622, 104th Cong., 2d Sess. 38 (1996).

²² S. Rep. No. 104-293, 104th Cong., 2d Sess. 15 (1996).

⁷ In its Exemption Request, ISE stated that it would be impracticable for DECN to display its limit orders other than on the Facility. See Exemption Request at 3.

⁸ See Exemption Request at 3.

⁹ Average daily touched volume includes trades matched on DECN and orders routed to other market centers for execution. See Exemption Request at note 4 and accompanying text.

¹⁰ See Exemption Request at 3.

¹¹ See Exemption Request at 2.

ECN.²³ ISE's requested relief for a temporary exemption from the Section 19(b) rule filing requirements in connection with ISE Holdings' acquisition of an equity interest in DE Holdings is subject to certain conditions, as set forth below, that are substantially similar to the conditions included in the Nasdaq Order.

Section 19(b)(1) of the Exchange Act requires a self-regulatory organization ("self-regulatory organization" or "SRO"), including ISE, to file with the Commission its proposed rule changes accompanied by a concise general statement of the basis and purpose of the proposed rule change. Once a proposed rule change has been filed with the Commission, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless approved by the Commission by order, unless the rule change is within the class of rule changes that are effective upon filing pursuant to Section 19(b)(3)(A) of the Act.²⁴

Section 19(b)(1) of the Exchange Act defines the term "proposed rule change" to mean "any proposed rule or rule change in, addition to, or deletion from the rules of [a] self-regulatory organization." Pursuant to Section 3(a)(27) and 3(a)(28) of the Exchange Act, the term "rules of a self-regulatory organization" means (1) the constitution, articles of incorporation, bylaws and rules, or instruments corresponding to the foregoing, of an SRO, and (2) such stated policies, practices and interpretations of an SRO (other than the Municipal Securities Rulemaking Board) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules. Rule 19b-4(b) under the Exchange Act,²⁵ defines the term "stated policy, practice, or interpretation" to mean generally "any material aspect of the operation of the facilities of the self-regulatory organization or any statement made available to the membership, participants, or specified persons thereof that establishes or changes any standard, limit, or guideline with respect to rights and obligations of specified persons or the meaning, administration, or enforcement of an existing rule."

The term "facility" is defined in Section 3(a)(2) of the Exchange Act, with respect to an exchange, to include "its premises, tangible or intangible property whether on the premises or not, any right to use such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service."

In its Exemption Request, ISE acknowledged that following the Closing, DECN will become a facility of ISE because it will be an affiliate of ISE used for the purpose of effecting and reporting securities transactions.²⁶ Specifically, (1) DECN will continue to operate as an ECN and will continue to submit limit orders to the Facility, a facility of ISE, for display and execution; and (2) DECN will become an affiliate of ISE through ISE Holdings' equity interest in DE Holdings.²⁷ Absent an exemption, Section 19(b) of the Exchange Act and Rule 19b-4 thereunder would require ISE to file proposed rules with the Commission to allow ISE to operate DECN as a facility.

ISE noted in its Exemption Request that DE Holdings is preparing Form 1 Applications for the Exchange Subsidiaries and that DECN would cease operations as an ECN shortly after any Commission approval of the Form 1 Applications and the Exchange Subsidiaries' commencement of operations as national securities exchanges.²⁸ Accordingly, ISE expects that DECN would operate as a facility of ISE for a relatively brief period of time.²⁹

The Commission believes that it is appropriate to issue a temporary exemption, subject to the conditions described below, to allow DECN to operate as a facility of ISE without being subject to the rule filing requirements of Section 19(b) of the Exchange Act for a temporary period.³⁰ Accordingly, the Commission has determined to grant ISE's request for a temporary exemption, subject to certain conditions, for a period not to exceed 180 days from the date of the Closing. The Commission finds that the temporary conditional exemption from the provisions of

Section 19(b) of the Exchange Act is appropriate in the public interest and is consistent with the protection of investors. In particular, the Commission believes that the temporary exemption should help promote efficiency and competition in the market by allowing DECN to continue to operate as an ECN for a limited period of time while DE Holdings prepares the Form 1 Applications. In this regard, the Commission notes ISE's belief that it would be unduly burdensome and inefficient to require DECN's operating rules to be separately subjected to the Section 19(b) rule filing and approval process because DECN would operate only temporarily as a facility of ISE while the Commission considers the Form 1 Applications.³¹ To provide the Commission with the opportunity to review and act upon any proposal to change DECN's fees or to make material changes to DECN's operations as an ECN during the period covered by the temporary exemption, as well as to ensure that the Commission's ability to monitor ISE and DECN is not diminished by the temporary exemption, the Commission is imposing the following conditions while the temporary exemption is in effect.³² The Commission believes such conditions are necessary and appropriate in the public interest for the protection of investors. Therefore, the Commission is granting to ISE a temporary exemption, pursuant to Section 36 of the Exchange Act, from the rule filing requirements imposed by Section 19(b) of the Exchange Act as set forth above, provided that ISE and DECN comply with the following conditions:

(1) DECN remains a registered broker-dealer under Section 15 of the Exchange Act³³ and continues to operate as an ECN;

(2) DECN operates in compliance with the obligations set forth under Regulation ATS;

(3) DECN and ISE continue to operate as separate legal entities;

(4) ISE files a proposed rule change under Section 19 of the Exchange Act³⁴ if any material changes are sought to be made to DECN's operations. A material change would include any changes to a stated policy, practice, or interpretation regarding the operation of DECN or any other event or action relating to DECN that would require the filing of a

²⁶ See Exemption Request at 1.

²⁷ See Exemption Request at 1-2.

²⁸ See Exemption Request at 2.

²⁹ *Id.*

³⁰ In granting this relief, the Commission makes no finding regarding whether ISE's operation of DECN as a facility would be consistent with the Exchange Act.

³¹ In addition, the Commission notes that the rules governing the operation of the Exchange Subsidiaries will be subjected to public comment and Commission review and approval as part of the exchange registration process.

³² See Exemption Request at 3.

³³ 15 U.S.C. 78o.

³⁴ 15 U.S.C. 78s.

²³ See Securities Exchange Act Release No. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) ("Nasdaq Order").

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(b).

proposed rule change by an SRO or an SRO facility;³⁵

(5) ISE files a proposed rule change under Section 19 of the Exchange Act if DECN's fee schedule is sought to be modified; and

(6) ISE treats DECN the same as other ECNs that participate in the Facility, and, in particular, ISE does not accord DECN preferential treatment in how DECN submits orders to the Facility or in the way its orders are displayed or executed.³⁶

In addition, the Commission notes that the Financial Industry Regulatory Authority is currently the Designated Examining Authority for DECN.

For the reasons discussed above, the Commission finds that the temporary conditional exemptive relief requested by ISE is appropriate in the public interest and is consistent with the protection of investors.

It is ordered, pursuant to Section 36 of the Exchange Act,³⁷ that the application for a temporary conditional exemption is granted for a period of 180 days following the Closing, as defined above.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-30860 Filed 12-29-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59134; File No. 4-574]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between the International Securities Exchange, LLC and the Financial Industry Regulatory Authority, Inc.

December 22, 2008.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Sections 17(d)¹ and 11A(a)(3)(B)² of the Securities Exchange

³⁵ See Section 19(b) of the Exchange Act and Rule 19b-4 thereunder. The Commission notes that a material change would include, among other things, changes to DECN's operating platform; the types of securities traded on DECN; DECN's types of subscribers; or the reporting venue for trading that takes place on DECN. The Commission also notes that any rule filings must set forth the operation of the DECN facility sufficiently so that the Commission and the public are able to evaluate the proposed changes.

³⁶ See Exemption Request at 3.

³⁷ 15 U.S.C. 78mm.

¹ 15 U.S.C. 78q(d).

² 15 U.S.C. 78k-1(a)(3)(B).

Act of 1934 ("Act"), approving and declaring effective a plan for the allocation of regulatory responsibilities ("Plan") that was filed pursuant to Rule 17d-2 under the Act³ by the International Securities Exchange, LLC ("ISE") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with ISE, the "Parties").⁴

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

I. Introduction

Section 19(g)(1) of the Act,⁵ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or registered securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁶ or 19(g)(2)⁷ of the Act. Section 17(d)(1) of the Act⁸ 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").⁹ 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-1¹⁰ and Rule 17d-2¹¹ under the Act. Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, with

³ 17 CFR 240.17d-2.

⁴ See Securities Exchange Act Release No. 59003 (November 24, 2008), 73 FR 72873 (December 1, 2008) ("Notice").

⁵ 15 U.S.C. 78s(g)(1).

⁶ 15 U.S.C. 78q(d).

⁷ 15 U.S.C. 78s(g)(2).

⁸ 15 U.S.C. 78q(d)(1).

⁹ 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).

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

¹¹ 17 CFR 240.17d-2.

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. Upon effectiveness of a plan filed pursuant to Rule 17d-2, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

On December 1, 2008, the Commission published notice of the Plan filed by ISE and FINRA.¹² The Commission received no comments on the Plan. The Plan is separate from the agreement made pursuant to Rule 17d-2 between ISE and FINRA entered into on December 20, 2006 (the "Foundation Plan").¹³ This Plan supplements the Foundation Plan by delineating regulatory responsibilities between the Parties, including responsibility for ISE rules, with respect to Direct Edge ECN, LLC ("DE ECN"), which is a common member of FINRA and ISE, and which also is affiliated with ISE.¹⁴

The text of the Plan allocates regulatory responsibilities among the Parties with respect to DE ECN, which is a common member. Included in the Plan is an attachment (the "ISE

¹² See Notice, *supra* note 4.

¹³ See Securities Exchange Act Release No. 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007). Pursuant to the Foundation Plan, FINRA has assumed certain inspection, examination, and enforcement responsibility for common members, including ISE Route LLC, the outbound Router Member, with respect to certain applicable laws, rules, and regulations.

¹⁴ On November 17, 2008, the Commission published notice of a proposed rule change by the ISE relating to the proposed acquisition by ISE Holdings, Inc., the parent of ISE, of an equity interest in Direct Edge Holdings LLC ("Direct Edge") in exchange for cash and the ISE's equities trading facility, ISE Stock Exchange, LLC ("ISE Stock"). After such transaction, (1) Direct Edge, through a subsidiary, will own and operate ISE Stock as a facility of ISE and (2) ISE Holdings will have a 31.54% equity interest in Direct Edge, which wholly owns and operates an Electronic Access Member of ISE, DE ECN. Recognizing the potential for conflicts of interest in instances where an exchange is affiliated with one of its members, ISE proposed ISE Rule 312(b), which imposes several conditions and limitations to the affiliation between ISE and DE ECN, one of which is that ISE enter into a 17d-2 plan with a non-affiliated self-regulatory organization to regulate and oversee the activities of DE ECN. The Plan is intended to satisfy this condition. See Securities Exchange Act Release No. 58918 (November 7, 2008), 73 FR 67909 (November 17, 2008).