Ongoing Review of Partner Countries' Policy Performance

The Board also reviewed the policy performance of countries that are implementing compacts. These countries do not need to be reselected each year in order to continue implementation. Once MCC makes a commitment to a country through a compact agreement, MCC does not consider the country for reselection on an annual basis during the term of its compact. The Board emphasized the need for all partner countries to continue to improve their environment. If it is determined that a country has demonstrated a significant policy reversal, MCC can hold it accountable by applying MCC's Suspension and Termination Policy.

Selection To Initiate the Compact Process

The Board also authorized MCC to invite Benin and El Salvador to submit a proposal for a second compact, as described in section 609 of the Act (22 U.S.C. 7708).

Submission of a proposal is not a guarantee that MCC will finalize a compact with an eligible country. Any MCA assistance provided under section 605 of the Act (22 U.S.C. 7704) will be contingent on the successful negotiation of a mutually agreeable compact between the eligible country and MCC, approval of the compact by the Board, and the availability of funds.

[FR Doc. 2011–32733 Filed 12–21–11; 8:45 am]

BILLING CODE 9211–03–P

PENSION BENEFIT GUARANTY CORPORATION

Premium Changes Based On Recharacterization of Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Policy statement.

SUMMARY: This policy statement addresses PBGC's policy on accepting and responding to amended premium filings based on recharacterization of contributions. Recharacterization of contributions refers to a situation in which contributions originally designated as being for the plan year in which they were made are retroactively redesignated as being for the preceding plan year. This makes plan assets for the current year higher, and the plan's variable-rate premium lower, than originally reported. Such recharacterization seeks not to correct a factual error but to change a valid designation and is not an appropriate basis for an amended premium filing or premium refund.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*klion.catherine@pbgc.gov*), Manager, or Deborah C. Murphy (*murphy.deborah@pbgc.gov*), Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026; (202) 326–4024. (TTY and TDD users may call the Federal relay service toll free at 1–(800) 877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION:

The Pension Benefit Guaranty Corporation (PBGC) administers the pension insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under sections 4006 and 4007 of ERISA, plans covered by title IV must pay premiums to PBGC. For single-employer plans, premiums include an amount (the variable-rate premium, or VRP) based on unfunded vested benefits (the excess, if any, of the value of vested benefits over the value of plan assets).

A contribution made to a pension plan during the first eight-and-a-half months of a plan year may be characterized as being either for the current year (the plan year in which it is made) or for the prior year (the preceding plan year). The characterization affects when the contribution is first reflected in plan assets. If a contribution is characterized as being for the prior year, it is treated as a receivable (which increases plan assets) as of the beginning of the current year and thus reduces any VRP for the current year. If a contribution is characterized as being for the current year, it does not increase plan assets as of the beginning of the current year and thus does not affect VRP for the current year.

The year for which a contribution is made is designated on Schedule SB (formerly Schedule B) (actuarial information) to the annual report for the plan on IRS/DOL/PBGC Form 5500. PBGC has received a number of amended premium filings, showing increased assets and decreased VRP, supported by amended Schedules SB (or B) that reflect recharacterization of contributions, and submitted with a view to obtaining premium refunds. PBGC has in practice accepted such amended filings and granted the refunds. Upon further consideration of the matter, however, PBGC has concluded that in general, such amendments should be rejected and the associated premium refunds denied.

Permitting the amendment of premium filings gives filers a way to correct mistakes in the data reported in the filings. Where the correction of erroneous data results in a lower premium, it is appropriate to refund the amount of the overpayment. However, recharacterization of a contribution does not correct a mistake; rather, it seeks to undo a valid designation of the year for which the contribution was made. Thus, it is not an appropriate basis for amending the relevant premium filing and claiming a refund.[1]

PBGC's consideration of amended premium filings takes into account the facts and circumstances of each case. In general, however, as explained above, PBGC's policy will be to reject amended filings and deny refunds based on recharacterization of contributions.

For questions about premium filings, contact Robert Callahan (*callahan.robert@pbgc.gov*) or Bill O'Neill (*oneill.bill@pbgc.gov*), Financial Operations Department; (202) 346–4067.

Issued in Washington, DC, this 16th day of December, 2011.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–32804 Filed 12–21–11; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65991; File No. 4–566]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc. Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules

December 16, 2011.

Notice is hereby given that the Securities and Exchange Commission

[1] The same principles would apply to an amended filing made with a view to obtaining a credit against the next year's premium.

(''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed pursuant to Rule 17d–2 of the Act,[2] by and among BATS Exchange, Inc. (''BATS''), BATS Y-Exchange, Inc. (''BYX''), Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), the Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., (''NASDAQ OMX BX''), NASDAQ OMX PHLX LLC, (''NASDAQ OMX PHLX''), The NASDAQ Stock Market LLC (''Nasdaq''), National Stock Exchange, Inc. (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca'') (each a ''Participating Organization'' and collectively, ''Participating Organizations'' or ''parties'').

I. Introduction

Section 19(g)(1) of the Act,[3] 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)[4] or Section 19(g)(2)[5] 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[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] 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.[8] 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.[9] 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.[10] 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

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common FINRA Members[12] (collectively ''Common Members'') for the surveillance, investigation, and enforcement of common insider trading rules (''Common Rules'').[13] 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 Listed Stocks (as defined in the Plan), irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur.

III. Proposed Amendment to the Plan

On November 3, 2011, the Participating Organizations submitted an amendment to the Plan. The proposed amendment was submitted to reflect the addition of BATS as a Listing Market (as defined in the Plan) and to expand the coverage of Listed Stocks to include an equity security that is listed on BATS.[14] Other similar conforming amendments were made to reflect this addition. The Participating Organizations also amended the Plan to update the contact information and SRO rules that are covered by the Agreement. In addition, the Participating Organizations entered into a regulatory services agreement that addresses investigation and enforcement in situations involving Insider Trading by non-Common FINRA Members. The text of the proposed amended 17d–2 plan is as follows (except for paragraph headings, which are *italicized,* additions are *italicized;* deletions are [bracketed]):

* * * * *

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

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *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).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

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

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

[11] *See* Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008). *See also* Securities Exchange Act Release Nos. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); 61919 (April 15, 2010), 75 FR 21051 (April 22, 2010); 63103 (October 14, 2010), 75 FR 64755 (October 20, 2010); and 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011).

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

[13] 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.

[14] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (Order approving proposed rule change to adopt rules for the qualification, listing and delisting of companies on BATS).

Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(d), and Rule 17d–2 Thereunder

This agreement (the ''Agreement'') by and among BATS Exchange, Inc. (''BATS''), BATS Y-Exchange, Inc. (''BYX''), Chicago Board Options Exchange, Inc. (''CBOE'') *, Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc. (''NASDAQ OMX BX''), NASDAQ OMX PHLX LLC (''NASDAQ OMX PHLX''), The NASDAQ Stock Market LLC (''NASDAQ''), National Stock Exchange, Inc. (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca'') (each a ''Participating Organization'' and together, the ''Participating Organizations''), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the ''Act''), 15 U.S.C. 78q(d), and Securities and Exchange Commission (''SEC'') Rule 17d–2, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (''SROs''). Upon approval by the SEC, this Agreement shall amend and restate the agreement among the Participating Organizations approved by the SEC on [October 14, 2010] *January 21, 2011.*

Whereas, the Participating Organizations desire to: (a) Foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; and (d) eliminate duplication in their regulatory surveillance, investigation and enforcement of insider trading;

Whereas, the Participating Organizations are interested in allocating to FINRA regulatory responsibility for Common FINRA Members (as defined below) for surveillance, investigation and enforcement of Insider Trading (as defined below) in Listed Stocks (as defined below) irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur in violation of Common Insider Trading Rules (as defined below);

Whereas, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC a plan for the above stated purposes (this Agreement, also known herein as the ''Plan'') pursuant to the provisions of § 17(d) of the Act, and SEC Rule 17d–2 thereunder, as described below; and

Whereas, the Participating Organizations will also enter into a Regulatory Services Agreement (the ''Insider Trading RSA''), of even date herewith, to provide for the investigation and enforcement of suspected Insider Trading against broker-dealers, and their associated persons, that are not Common FINRA Members in the case of Insider Trading in Listed Stocks.

Now, therefore, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement, or the context otherwise requires, the terms used in this Agreement will have the same meaning they have under the Act, and the rules and regulations thereunder. As used in this Agreement, the following terms will have the following meanings:

a. ''Rule'' of an ''exchange'' or an ''association'' shall have the meaning defined in Section 3(a)(27) of the Act.

b. ''Common FINRA Members'' shall mean members of FINRA and at least one of the Participating Organizations.

c. ''Common Insider Trading Rules'' shall mean (i) the federal securities laws and rules thereunder promulgated by the SEC pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading, as provided on Exhibit A to this Agreement.

d. ''Effective Date'' shall have the meaning set forth in paragraph 28.

e. ''Insider Trading'' shall mean any conduct or action taken by a natural person or entity related in any way to the trading of securities by an insider or a related party based on or on the basis of material non-public information obtained during the performance of the insider's duties at the corporation, or otherwise misappropriated, that could be deemed a violation of the Common Insider Trading Rules.

f. ''Intellectual Property'' will mean any: (1) Processes, methodologies, procedures, or technology, whether or not patentable; (2) trademarks, copyrights, literary works or other works of authorship, service marks and trade secrets; or (3) software, systems, machine-readable texts and files and related documentation.

g. ''Plan'' shall mean this Agreement, which is submitted as a Plan for the allocation of regulatory responsibilities of surveillance for insider trading pursuant to § 17(d) of the Act, 15 U.S.C. 78q(d), and SEC Rule 17d–2.

h. ''Listed Stock(s)'' shall mean NYSE Listed Stock(s), NASDAQ Listed Stock(s), NYSE Amex Listed Stock(s), NYSE Arca Listed Stock(s*), BATS Listed Stock(s)* or CHX Solely Listed Stock(s).

i. ''NYSE Listed Stock'' shall mean an equity security that is listed on the NYSE.

j. ''NASDAQ Listed Stock'' shall mean an equity security that is listed on NASDAQ.

k. ''NYSE Amex Listed Stock'' shall mean an equity security that is listed on NYSE Amex.

l. ''NYSE Arca Listed Stock'' shall mean an equity security that is listed on NYSE Arca.

m. *''BATS Listed Stock'' shall mean an equity security that is listed on BATS.*

n. ''CHX Solely Listed Stock'' shall mean an equity security that is listed only on the CHX.

[n]*o.* ''Listing Market'' shall mean NYSE Amex, NASDAQ, NYSE, [or] NYSE Arca *or BATS,* but not CHX.

2. *Assumption of Regulatory Responsibilities.* On the Effective Date of the Plan, FINRA will assume regulatory responsibilities for surveillance, investigation and enforcement of Insider Trading by broker-dealers, and their associated persons, for Common FINRA Members with respect to Listed Stocks, irrespective of the marketplace(s) maintained by the Participant Organizations on which the relevant trading may occur in violation of the Common Insider Trading Rules (''Regulatory Responsibilities'').

3. *Certification of Insider Trading Rules.*

a. *Initial Certification.* By signing this Agreement, the Participating Organizations, other than FINRA, hereby certify to FINRA that their respective lists of Common Insider Trading Rules contained in Exhibit A hereto are correct, and FINRA hereby confirms that such rules are Common Insider Trading Rules as defined in this Agreement.

b. *Yearly Certification.* Each year following the commencement of operation of this Agreement, or more frequently if required by changes in the rules of the Participating Organizations, each Participating Organization shall submit a certified and updated list of Common Insider Trading Rules to

* CBOE's allocation of certain regulatory responsibilities to FINRA under this Agreement is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE.

FINRA for review, which shall (i) add Participating Organization rules not included in the then-current list of Common Insider Trading Rules that qualify as Common Insider Trading Rules as defined in this Agreement; (ii) delete Participating Organization rules included in the current list of Common Insider Trading Rules that no longer qualify as Common Insider Trading Rules as defined in this Agreement; and (iii) confirm that the remaining rules on the current list of Common Insider Trading Rules continue to be Participating Organization rules that qualify as Common Insider Trading Rules as defined in this Agreement. FINRA shall review each Participating Organization's annual certification and confirm whether FINRA agrees with the submitted certified and updated list of Common Insider Trading Rules by each of the Participating Organizations.

4. *No Retention of Regulatory Responsibility.* The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by FINRA under the terms of this Agreement.

5. *Dually Listed Stocks.* Stocks that are listed on more than one Participating Organization shall be designated as an NYSE Listed Stock, a NASDAQ Listed Stock, an NYSE Arca Listed Stock or an NYSE Amex Listed Stock based on the applicable transaction reporting plan for the equity security as set forth in paragraph 1.b. of Exhibit B.

6. *Fees.* FINRA shall charge Participating Organizations for performing the Regulatory Responsibilities, as set forth in the Schedule of Fees, attached as Exhibit B.

7. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

8. *Exchange Committee; Reports.*

a. *Exchange Committee.* The Participating Organizations shall form a committee (the ''Exchange Committee''), which shall act on behalf of all of Participating Organizations in receiving copies of the reports described below and in reviewing issues that arise under this Agreement. Each Participating Organization shall appoint a representative to the Exchange Committee. The Exchange Committee representatives shall report to their respective executive management bodies regarding status or issues under this Agreement. The Participating Organizations agree that the Exchange Committee will meet regularly up to four (4) times a year, with no more than one meeting per calendar quarter. At these meetings, the Exchange Committee will discuss the conduct of the Regulatory Responsibilities and identify issues or concerns with respect to this Agreement, including matters related to the calculation of the cost formula and accuracy of fees charged and provision of information related to the same. The SEC shall be permitted to attend the meetings as an observer.

b. *Reports.* FINRA shall provide the reports set forth in Exhibit C hereto and any additional reports related to this Agreement reasonably requested by a majority vote of all representatives to the Exchange Committee at each Exchange Committee meeting, or more often as the Participating Organizations deem appropriate, but no more often than once every quarterly billing period.

9. *Customer Complaints.* If a Participating Organization receives a copy of a customer complaint relating to Insider Trading or other activity or conduct that is within FINRA's Regulatory Responsibilities as set forth in this Agreement, the Participating Organization shall promptly forward to FINRA, as applicable, a copy of such customer complaint.

10. *Parties to Make Personnel Available as Witnesses.* Each Participating Organization shall make its personnel available to FINRA to serve as testimonial or non-testimonial witnesses as necessary to assist FINRA in fulfilling the Regulatory Responsibilities allocated under this Agreement. FINRA shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that FINRA requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

11. *Market Data; Sharing of Work-Papers, Data and Related Information.*

a. *Market Data.* FINRA shall obtain raw market data necessary to the performance of regulation under this Agreement from (a) the Consolidated Tape Association (''CTA'') as the exclusive securities information processor (''SIP'') for all NYSE Listed Stocks, NYSE Amex Listed Stocks, NYSE Arca Listed Stocks, *BATS Listed Stocks* and CHX Solely Listed Stocks and (b) the NASDAQ Unlisted Trading Privileges Plan as the exclusive SIP for all NASDAQ Listed Stocks.

b. *Sharing.* A Participating Organization shall make available to FINRA information necessary to assist FINRA in fulfilling the Regulatory Responsibilities assumed under the terms of this Agreement. Such information shall include any information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member (''Regulatory Information''). This Regulatory Information shall be used by FINRA solely for the purposes of fulfilling its Regulatory Responsibilities.

c. *No Waiver of Privilege.* The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

d. *Intellectual Property.*

(i) *Existing Intellectual Property.* FINRA is and will remain the owner of all right, title and interest in and to the proprietary Intellectual Property it employs in the provision of regulation hereunder (including the SONAR and Stock Watch systems), and any derivative works thereof. To the extent certain elements of FINRA's systems, or portions thereof, may be licensed or leased from third parties, all such third party elements shall remain the property of such third parties, as applicable. Likewise, any other Participating Organization is and will remain the owner of all right, title and interest in and to its own existing proprietary Intellectual Property.

(ii) *Enhancements to Existing Intellectual Property or New Developments.* In the event FINRA (a) makes any changes, modifications or enhancements to its Intellectual Property for any reason, or (b) creates any newly developed Intellectual Property for any reason, including as a result of requested enhancements or new development by the Exchange Committee (collectively, the ''New IP''), the Participating Organizations acknowledge and agree that FINRA shall

be deemed the owner of the New IP created by it (and any derivative works thereof), and shall retain all right, title and interest therein and thereto, and each other Participating Organization hereby irrevocably assigns, transfers and conveys to FINRA without further consideration all of its right, title and interest in or to all such New IP (and any derivative works thereof).

(iii) *Fees for New IP.* FINRA will not charge the Participating Organizations any fees for any New IP created and used by FINRA; provided, however, that FINRA will be permitted to charge fees for software maintenance work performed on systems used in the discharge of its duties hereunder.

12. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of Common FINRA Members as any party, in its sole discretion, shall deem appropriate or necessary.

13. *Dispute Resolution Under this Agreement.*

a. *Negotiation.* The parties to this Agreement will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the parties shall refer the dispute to binding arbitration.

b. *Binding Arbitration.* All claims, disputes, controversies, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the parties will be resolved through binding arbitration. Unless otherwise agreed by the parties, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in the city of New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney.

14. *Limitation of Liability.* As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except (a) as otherwise provided for under the Act, (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization, (c) in instances of a breach of confidentiality obligations owed to another Participating Organization, or (d) in the case of any Participating Organization paying fees hereunder, for any payments due. The Participating Organizations understand and agree that the Regulatory Responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

15. *SEC Approval.*

a. The parties agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of this Agreement and of its impact on their members.

16. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) Confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

17. *Assignment.* No Participating Organization may assign this Agreement without the prior written consent of all the other Participating Organizations, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign this Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of any other party.

18. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. *Termination.*

a. Any Participating Organization may cancel its participation in this Agreement at any time, provided that it has given 180 days written notice to the other Participating Organizations (or in the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose), and provided that such termination has been approved by the SEC. The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

b. The Regulatory Responsibilities assumed under this Agreement by FINRA may be terminated by FINRA against any Participating Organization as follows. The Participating Organization will have thirty (30) days from receipt to satisfy the invoice. If the Participating Organization fails to satisfy the invoice within thirty (30) days of receipt (''Default''), FINRA will notify the Participating Organization of the Default. The Participating Organization will have thirty (30) days from receipt of the Default notice to satisfy the invoice.

c. FINRA will have the right to terminate the Regulatory Responsibilities assumed under this Agreement if a Participating Organization has Defaulted in its obligation to pay the invoice on more than three (3) occasions in any rolling twenty-four (24) month period.

20. *Intermarket Surveillance Group (''ISG'').* In order to participate in this Agreement, all Participating Organizations to this Agreement must be members of the ISG.

21. *General.* The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

22. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the

persons identified below, as applicable. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

* * * * *

23. *Confidentiality.* The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement. No party shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement, as defined by paragraph 11, above.

24. *Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d–2 thereunder, the Participating Organizations jointly and severally request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations, jointly and severally, of any and all responsibilities with respect to the matters allocated to FINRA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

25. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

26. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by FINRA, the payment of the Fees by the Participating Organizations, and any expiration of this Agreement shall survive and continue.

27. *Amendment.*

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, solely by an amendment executed by FINRA and such new Participating Organization. All other Participating Organizations expressly consent to allow FINRA to add new Participating Organizations to this Agreement as provided above. FINRA will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be approved by each Participating Organization. All amendments, including adding a new Participating Organization, must be filed with and approved by the SEC before they become effective.

28. *Effective Date.* The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and SEC Rule 17d–2 thereunder.

29. *Counterparts.* This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the parties.

* * * * *

Exhibit A: Common Insider Trading Rules

1. Securities Exchange Act of 1934 Section 10(b), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 10b–5 (as it pertains to insider trading), which states that:

Rule 10b–5—Employment of Manipulative and Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

a. To employ any device, scheme, or artifice to defraud,

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

2. Securities Exchange Act of 1934 Section 17(a), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 17a–3 (as it pertains to insider trading).

3. The following SRO Rules as they pertain to violations of insider trading:

FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)

FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

FINRA NASD Rule 3010 (Supervision)

FINRA NASD Rule 3110(a) and (c) (Books and Records; Financial Condition)

[NYSE Rule 401(a) (Business Conduct)]

[NYSE Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others)]

[NYSE Rule 440 (Books and Records)]

NYSE Rule 342 (Offices—Approval, Supervision and Control)

NYSE Rule 440 (Books and Records)

NYSE Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)

NYSE Rule 2010 (Standards of Commercial Honor and Principles of Trade)

NYSE Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

NYSE Amex Equities Rule 342 (Offices—Approval, Supervision and Control)

NYSE Amex Equities Rule 440 (Books and Records)

NYSE Amex Equities Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)

NYSE Amex Equities Rule 2010 (Standards of Commercial Honor and Principles of Trade)

NYSE Amex Equities Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

[NYSE Amex Cons. Art. II Sec. 3 Confidential Information]

[NYSE Amex Cons. Art. V Sec. 4 Suspension or Expulsion (b), (h), (i), (j) and (r)]

[NYSE Amex Cons. Art. XI Sec. 4 Controlled Corporations and Associations—Responsibility for Corporate Subsidiary; Duty to Produce Books]

[NYSE Amex Rule 3 General Prohibitions and Duty to Report (d), (h) (j) and (l)]

[NYSE Amex Rule 3 AEMI General Prohibitions and Duty to Report (d) and (h)]

[NYSE Amex Rule 16 Business Conduct]

[NYSE Amex Rule 320 Offices—Approval, Supervision and Control]

[NYSE Amex Rule 324 Books and Records]

NASDAQ OMX Rule 2110 (Standards of Commercial Honor and Principles of Trade)

NASDAQ OMX Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NASDAQ OMX Rule 3010 (Supervision)
NASDAQ OMX Rule 3110 (a) and (c) (Books and Records; Financial Condition)
CHX Article 8, Rule 3 (Fraudulent Acts)
CHX Article 9, Rule 2 (Just & Equitable Trade Principles)
CHX Article 11, Rule 2 (Maintenance of Books and Records)
CHX Article 6, Rule 5 (Supervision of Registered Persons and Branch and Resident Offices)
CBOE Rule 4.1 (Practices inconsistent with just and equitable principles)
CBOE Rule 4.2 (adherence to law)
CBOE Rule 4.7 (Manipulation)
CBOE Rule 4.18 (Prevention of the misuse of material non public information)
NASDAQ OMX PHLX Rule 707 (Conduct Inconsistent with Just and Equitable Principles of Trade)
NASDAQ OMX PHLX Rule 748 (Supervision)
NASDAQ OMX PHLX Rule 760 (Maintenance, Retention and Furnishing of Books, Records and Other Information)
NASDAQ OMX PHLX Rule 761 (Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse or Material Nonpublic Information)
NASDAQ OMX PHLX Rule 782 (Manipulative Operations)
NYSE Arca Equities Rule 2.24 (ETP Books and Records)
NYSE Arca *Equities* Rule 6.3 (Prevention of the Misuse of Material, Nonpublic Information)
NYSE Arca *Equities* Rule 6.2(b) *(*Prohibited Acts (J&E)*)*
NYSE Arca *Equities* Rule 6.1 *(*Adherence to Law*)*
NYSE Arca *Equities* Rule 6.18 *(*Supervision*)*
NYSE Arca *Equities* Rule 9.1(c) *(*Office Supervision*)*
NYSE Arca *Equities* Rule 9.2(b) *(*Account Supervision*)*
NYSE Arca *Equities* Rule 9.2(c) *(*Customer Records*)*
NYSE Arca Equities Rule 2010 (Standards of Commercial Honor and Principles of Trade)
NYSE Arca Equities Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
[NYSE Arca Rule 9.17 Books and Records]
NSX Rule 3.1 *(*Business Conduct of ETP Holders*)*
NSX Rule 3.2 *(*Violations Prohibited*)*
NSX Rule 3.3 *(*Use of Fraudulent Devices*)*
NSX Rule 4.1 *(*Requirements*)*
NSX Rule 5.1 *(*Written Procedures*)*
NSX Rule 5.3 *(*Records*)*
NSX Rule 5.5 *(*Chinese Wall Procedures*)*
NASDAQ OMX BX Rule 2110 (Standards of Commercial Honor and Principles of Trade)
NASDAQ OMX BX Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NASDAQ OMX BX Rule 3010 (Supervision)
NASDAQ OMX BX Rule 3110 (a) and (c) (Books and Records; Financial Condition)
BATS Rule 3.1 *(*Business Conduct of Members*)*
BATS Rule 3.2 *(*Violations Prohibited*)*
BATS Rule 3.3 *(*Use of Fraudulent Devices*)*
BATS Rule 4.1 *(*Requirements*)*
BATS Rule 5.1 *(*Written Procedures*)*
BATS Rule 5.3 *(*Records*)*
BATS Rule 5.5 *(*Prevention of the Misuse of Material, Non-Public Information*)*
BATS Rule 12.4 *(*Manipulative Transactions*)*
BYX Rule 3.1 *(*Business Conduct of ETP Holders*)*
BYX Rule 3.2 *(*Violations Prohibited*)*
BYX Rule 3.3 *(*Use of Fraudulent Devices*)*
BYX Rule 4.1 *(*Requirements*)*
BYX Rule 5.1 *(*Written Procedures*)*
BYX Rule 5.3 *(*Records*)*
BYX Rule 5.5 *(*Prevention of the Misuse of Material, Non-Public Information*)*
BYX Rule 12.4 *(*Manipulative Transactions*)*
EDGA 3.1 *(*Business Conduct of Members*)*
EDGA 3.2 *(*Violations Prohibited*)*
EDGA 3.3 *(*Use of Fraudulent Devices*)*
EDGA 4.1 *(*Requirements*)*
EDGA 5.1 *(*Written Procedures*)*
EDGA 5.3 *(*Records*)*
EDGA 5.5 *(*Prevention of *M*[m]isuse of *M*[m]aterial, *N*[n]onpublic *I*[i]nformation*)*
EDGA 12.4 *(*Manipulative Transactions*)*
EDGX 3.1 *(*Business Conduct of Members*)*
EDGX 3.2 *(*Violations Prohibited*)*
EDGX 3.3 *(*Use of Fraudulent Devices*)*
EDGX 4.1 *(*Requirements*)*
EDGX 5.1 *(*Written Procedures*)*
EDGX 5.3 *(*Records*)*
EDGX 5.5 *(*Prevention of *M*[m]isuse of *M*[m]aterial, *N*[n]onpublic *I*[i]nformation*)*
EDGX 12.4 *(*Manipulative Transactions*)*

Exhibit B: Fee Schedule

1. *Fees.* FINRA shall charge each Participating Organization a Quarterly Fee in arrears for the performance of FINRA's Regulatory Responsibilities under the Plan (each, a ''Quarterly Fee,'' and together, the ''Fees'').

a. *Quarterly Fees.*

(1) Quarterly Fees for each Participating Organization will be charged by FINRA according to the Participating Organization's ''Percentage of Publicly Reported Trades'' occurring over three-month billing periods. The ''Percentage of Publicly Reported Trades'' shall equal a Participating Organization's number of reported Listed Stock trades during the relevant period (the ''Numerator''), divided by the total number of all Listed Stock trades for the same period (the ''Denominator''). For purposes of clarification, ADF and Trade Reporting Facility (''TRF'') activity will be included in the Denominator. Additionally, with regard to TRFs, TRF trade volume will be charged to FINRA. Consequently, for purposes of calculating the Quarterly Fees, the volume for each Participant Organization's TRF will be calculated separately (that is, TRF volume will be broken out from the Participating Organization's overall Percentage of Publicly Reported Trades) and the fees for such will be billed to FINRA in accordance with paragraph 1a.(2), rather than to the applicable Participating Organization.

(2) The Quarterly Fees shall be determined by FINRA in the following manner for each Participating Organization:

(a) Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 1.0%, the Quarterly Fee shall be $6,250, per quarter (''Static Fee'');

(b) Less than 2.0% but No Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 2.0% but no less than 1.0%, the Quarterly Fee shall be $18,750, per quarter (''Static Fee'');

(c) 2.0% or Greater: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is 2.0% or greater, the Quarterly Fee shall be the amount equal to the Participating Organization's Percentage of Publicly Reported Trades multiplied by FINRA's total charge (''Total Charge'') for its performance of Regulatory Responsibilities for the relevant three-month billing period.

(3) Increases in Static Fees. FINRA will re-evaluate the Quarterly Fees on an annual basis during the annual budget process outlined in paragraph 1.c. below. During each annual re-evaluation, FINRA will have the discretion to increase the Static Fees by a percentage no greater than the percentage increase in the Final Budget

over the preceding year's Final Budget. Any changes to the Static Fees shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

(4) Increases in Total Charges. Any change in the Total Charges (whether a Final Budget increase or any mid year change) shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

b. *Source of Data.* For purposes of calculation of the Percentage of Publicly Reported Trades for each Participating Organization, FINRA shall use (a) the Consolidated Tape Association (''CTA'') as the exclusive securities information processor (''SIP'') for all NYSE Listed Stocks, NYSE Amex Listed Stocks, NYSE Arca Listed Stocks, *BATS Listed Stocks* and CHX Solely Listed Stocks, and (b) the Unlisted Trading Privileges Plan as the exclusive SIP for NASDAQ Listed Stocks.

c. *Annual Budget Forecast.* FINRA will notify the Participating Organizations of the forecasted costs of its insider trading program for the following calendar year by close of business on October 15 of the then-current year (the ''Forecasted Budget''). FINRA shall use best efforts to provide as accurate a forecast as possible. FINRA shall then provide a final submission of the costs following approval of such costs by its Board of Governors (the ''Final Budget''). Subject to paragraph 1d. below, in the event of a difference between the Forecasted Budget and the Final Budget, the Final Budget will govern.

d. *Increases in Fees over Five Percent.*

(1) In the event that any proposed increase to Fees by FINRA for a given calendar year (which increase may arise either during the annual budgetary forecasting process or through any mid-year increase) will result in a cumulative increase in such calendar year's Fees of more than five percent (5%) above the preceding calendar year's Final Budget (a ''Major Increase''), then senior management of any Participating Organization (a) that is a Listing Market or (b) for which the Percentage of Publicly Reported Trades is then currently twenty percent (20%) or greater, shall have the right to call a meeting with the senior management of FINRA in order to discuss any disagreement over such proposed Major Increase. By way of example, if FINRA provides a Final Budget for 2011 that represents an 4% increase above the Final Budget for 2010, the terms of this paragraph 1.d.(1) shall not apply; if, however, in April of 2011, FINRA notifies the Exchange Committee of an increase in Fees that represents an additional 3% increase above the Final Budget for 2010, then the increase shall be deemed a Major Increase, and the terms of this paragraph 1.d.(1) shall become applicable (i.e., 4% and 3% represents a cumulative increase of 7% above the 2010 Final Budget).

(2) In the event that senior management members of the involved parties are unable to reach an agreement regarding the proposed Major Increase, then the matter shall be referred back to the Exchange Committee for final resolution. Prior to the matter being referred back to the Exchange Committee, nothing shall prohibit the parties from conferring with the SEC. Resolution shall be reached through a vote of no fewer than all Participating Organizations seated on the Exchange Committee, and a simple majority shall be required in order to reject the proposed Major Increase.

e. *Time Tracking.* FINRA shall track the time spent by staff on insider trading responsibilities under this Agreement; however, time tracking will not be used to allocate costs.

2. *Invoicing and Payment.* FINRA shall invoice each Participating Organization for the Quarterly Fee associated with the regulatory activities performed pursuant to this Agreement during the previous three-month billing period within forty five (45) days of the end of such previous 3-month billing period. A Participating Organization shall have thirty (30) days from date of invoice to make payment to FINRA on such invoice. The invoice will reflect the Participating Organization's Percentage of Publicly Reported Trades for that billing period.

3. *Disputed Invoices; Interest.* In the event that a Participating Organization disputes an invoice or a portion of an invoice, the Participating Organization shall notify FINRA in writing of the disputed item(s) within fifteen (15) days of receipt of the invoice. In its notification to FINRA of the disputed invoice, the Participating Organization shall identify the disputed item(s) and provide a brief explanation of why the Participating Organization disputes the charges. FINRA may charge a Participating Organization interest on any undisputed invoice or the undisputed portions of a disputed invoice that a Participating Organization fails to pay within thirty (30) days of its receipt of such invoice. Such interest shall be assessed monthly. Interest will mean one and one half percent per month, or the maximum allowable under applicable law, whichever is less.

4. *Taxes.* In the event any governmental authority deems the regulatory activities allocated to FINRA to be taxable activities similar to the provision of services in a commercial context, the other Participating Organizations agree that they shall bear full responsibility, on a joint and several basis, for the payment of any such taxes levied on FINRA, or, if such taxes are paid by FINRA directly to the governmental authority, the other Participating Organizations agree that they shall reimburse FINRA for the amount of any such taxes paid.

5. *Audit Right; Record Keeping.*

a. *Audit Right.*

(i) Once every rolling twelve (12) month period, FINRA shall permit no more than one audit (to be performed by one or more Participating Organizations) of the Fees charged by FINRA to the Participating Organizations hereunder and a detailed cost analysis supporting such Fees (the ''Audit''). The Participating Organization or Organizations that conduct this Audit will select a nationally-recognized independent auditing firm (or may use its regular independent auditor, providing it is a nationally-recognized auditing firm) (''Auditing Firm'') to act on its, or their behalf, and will provide reasonable notice to other Participating Organizations of the Audit. FINRA will permit the Auditing Firm reasonable access during FINRA's normal business hours, with reasonable advance notice, to such financial records and supporting documentation as are necessary to permit review of the accuracy of the calculation of the Fees charged to the Participating Organizations. The Participating Organization, or Organizations, as applicable, other than FINRA, shall be responsible for the costs of performing any such audit.

(ii) If, through an Audit, the Exchange Committee determines that FINRA has inaccurately calculated the Fees for any Participating Organization, the Exchange Committee will promptly notify FINRA in writing of the amount of such difference in the Fees, and, if applicable, FINRA shall issue a reimbursement of the overage amount to the relevant Participating Organization(s), less any amount owed by the Participating Organization under any outstanding, undisputed invoice(s). If such an Audit reveals that any Participating Organization paid less than what was required pursuant to the Agreement, then that Participating Organization shall promptly pay FINRA the difference between what the Participating Organization owed pursuant to the Agreement and what that Participating Organization

originally paid FINRA. If FINRA disputes the results of an Audit regarding the accuracy of the Fees, it will submit the dispute for resolution pursuant to the dispute resolution procedures in paragraph 13 of the Agreement.

(iii) In the event that through the review of any supporting documentation provided during the Audit, any one or more Participating Organizations desire to discuss with FINRA the supporting documentation and any questions arising therefrom with regard to the manner in which regulation was conducted, the Participating Organization(s) shall call a meeting with FINRA. FINRA shall in turn notify the Exchange Committee of this meeting in advance, and all Participating Organizations shall be welcome to attend (the ''Fee Analysis Meeting''). The parties to this Agreement acknowledge and agree that while FINRA commits to discuss the supporting documentation at the Fee Analysis Meeting, FINRA shall not be subject, by virtue of the above Audit rights or any discussions during the Fee Analysis Meeting or otherwise, to any limitation whatsoever, other than the Increase in Fee provisions set forth in paragraph 1.d. of this Exhibit, on its discretion as to the manner and means by which it conducts its regulatory efforts in its role as the SRO primarily liable for regulatory decisions under this Agreement. To that end, no disagreement among the Participating Organizations as to the manner or means by which FINRA conducts its regulatory efforts hereunder shall be subject to the dispute resolution procedures hereunder, and no Participating Organization shall have the right to compel FINRA to alter the manner or means by which it conducts its regulatory efforts. Further, a Participating Organization shall not have the right to compel a rebate or reassessment of fees for services rendered, on the basis that the Participating Organization would have conducted regulatory efforts in a different manner than FINRA in its professional judgment chose to conduct its regulatory efforts.

b. *Record Keeping.* In anticipation of any audit that may be performed by the Exchange Committee under paragraph 5.a. above, FINRA shall keep accurate financial records and documentation relating to the Fees charged by it under this Agreement.

Exhibit C: Reports

FINRA shall provide the following information in reports to the Exchange Committee, which information covers activity occurring under this Agreement:

1. *Alert Summary Statistics:* Total number of surveillance system alerts generated by quarter along with associated number of reviews and investigations. In addition, this paragraph shall also reflect the number of reviews and investigations originated from a source other than an alert. A separate table would be presented for NYSE Listed Stock, NYSE Amex Listed Stock, NYSE Arca Listed Stock, NASDAQ Listed Stock, *BATS Listed Stock* and CHX Solely Listed Stock trading activity.

2008	Surveillance alerts	Investigations
1st Quarter		
2nd Quarter		
3rd Quarter		
4th Quarter		
2008 Total		

2. *Aging of Open Matters:* Would reflect the aging for all currently open matters for the quarterly period being reported. A separate table would be presented for NYSE Listed Stock, NYSE Amex Listed Stock, NYSE Arca Listed Stock, NASDAQ Listed Stock, *BATS Listed Stock* and CHX Solely Listed Stock trading activity.

Example:

	Surveillance alerts	Investigations
0–6 months		
6–9 months		
9–12 months		
12+ months		
Total		

3. *Timeliness of Completed Matters:* Would reflect the total age of those matters that were completed or closed during the quarterly period being reported. FINRA will provide total referrals to the SEC.

Example:

	Surveillance Alerts	Investigations
0–6 months		
6–9 months		
9–12 months		
12+ months		
Total		

4. *Disposition of Closed Matters:* Would reflect the disposition of those matters that were completed or closed during the quarterly period being reported. A separate table would be presented for NYSE Listed Stock, NYSE Amex Listed Stock, NYSE Arca Listed Stock, NASDAQ Listed Stock, *BATS Listed Stock* and CHX Solely Listed Stock trading activity.

Example:

	Surveillance YTD	Investigations YTD
No Further Review		
Letter of Caution/Admonition/Fine		
Referred to Legal/Enforcement		
Referred to SEC/SRO		
Merged		
Other		
Total		

5. *Pending Reviews.* In addition to the above reports, the Chief Regulatory Officer (CRO) (or his or her designee) of any Participating Organization that is also a Listing Market (including CHX) may inquire about pending reviews involving stocks listed on that Participating Organization's market. FINRA will respond to such inquiries from a CRO; provided, however, that (a) the CRO must hold any information provided by FINRA in confidence and (b) FINRA will not be compelled to provide information in contradiction of any mandate, directive or order from the SEC, US Attorney's Office, the Office of any State Attorney General or court of competent jurisdiction.

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IV. Solicitation of Comments

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/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number 4–566 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–566. This file number should be included on the subject line if email 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 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 Web site viewing and printing 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 the plan also will be available for inspection and copying at the principal offices of BATS, BYX, CBOE, CHX, EDGA, EDGX, FINRA, NASDAQ OMX BX, NASDAQ OMX Phlx, NASDAQ, NSX, NYSE, NYSE Amex, and NYSE Arca. 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 4–566 and should be submitted on or before January 12, 2012.

V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act [15] and Rule 17d–2 [16] thereunder in that it 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. The Commission continues to believe that the Plan, as amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules to FINRA. Accordingly, the proposed amendment to the Plan promotes efficiency by consolidating these regulatory functions in a single SRO. Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The purpose of the amendment is to amend the Plan to reflect that BATS has adopted rules for the qualification, listing, and delisting of companies on BATS. Accordingly, the amendment expands the coverage of Listed Stocks to include an equity security that is listed on BATS. The Commission believes that the amended Plan should become effective without undue delay in order to reflect the expanded coverage to BATS-listed securities.

In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.[17] Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–566.

It is therefore ordered, pursuant to Section 17(d) of the Act,[18] that the Plan, as amended, is hereby approved and declared effective.

It is further ordered that the Participating Organizations are relieved of those regulatory responsibilities allocated to FINRA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32753 Filed 12–21–11; 8:45 am]

BILLING CODE 8011–01–P

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

[16] 17 CFR 240.17d–2

[17] *See supra* note 11.

[18] 15 U.S.C. 78q(d).

[19] 17 CFR 200.30–3(a)(34)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65968; File No. SR–ISE–2011–83]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 15, 2011.

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 December 2, 2011, International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') 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 change from interested persons.

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

The ISE proposes to amend its rules relating to a pilot program to quote and to trade certain options in pennies (''Penny Pilot Program''). The text of the proposed rule change is as follows, with deletions in [brackets] and additions are *underlined:*

Rule 710. Minimum Trading Increments

(a) The Board may establish minimum trading increments for options traded on the Exchange. Such changes by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Rule 710 within the meaning of subparagraph (3)(A) of Section 19(b) of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1) If the options contract is trading at less than $3.00 per option, $.05; and

(2) If the options contract is trading at $3.00 per option or higher, $.10.

(b) Minimum trading increments for dealings in options contracts other than those specified in paragraph (a) may be fixed by the Exchange from time to time for options contracts of a particular series.

(c) Notwithstanding the above, the Exchange may trade in the minimum variation of the primary market in the underlying security.

Supplementary Material to Rule 710

.01 Notwithstanding any other provision of this Rule 710, the Exchange will operate

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

[2] 17 CFR 240.19b–4.