

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available  
From: Securities and Exchange  
Commission, Office of Filings and  
Information Services, Washington, DC  
20549.

#### Extension:

Form N-2; SEC File No. 270-21; OMB  
Control No. 3235-0026.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Form N-2 (17 CFR 239.14 and 274.11a-1) under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Closed-End Management Investment Companies." Form N-2 is the form used by closed-end management investment companies ("closed-end funds") to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Investment Company Act") and to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"). The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N-2 also permits closed-end funds to provide investors with a prospectus containing information required in a registration statement prior to the sale or at the time of confirmation of delivery of securities. The form also may be used by the Commission in its regulatory review, inspection, and policy-making roles.

The Commission estimates that there are 140 initial registration statements and 60 post-effective amendments to initial registration statements filed on Form N-2 annually and that the average number of portfolios referenced in each initial filing and post-effective amendment is 1. The Commission further estimates that the hour burden for preparing and filing a post-effective amendment on Form N-2 is 116.5 hours per portfolio. The total annual hour burden for preparing and filing post-

effective amendments is 6,990 hours (60 post-effective amendments x 1 portfolios x 116.5 hours per portfolio). The estimated annual hour burden for preparing and filing initial registration statements is 79,478 hours (140 initial registration statements x 1 portfolios x 567.7 hours per portfolio). The total annual hour burden for Form N-2, therefore, is estimated to be 86,468 hours (6,990 hours + 79,478 hours).

The information collection requirements imposed by Form N-2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: [nfraser@omb.eop.gov](mailto:nfraser@omb.eop.gov); and (ii) Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: November 17, 2008.

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-28428 Filed 11-28-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59003; File No. 4-574]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the International Securities Exchange, LLC and the Financial Industry Regulatory Authority, Inc.

November 24, 2008.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> notice is hereby given that on November 21, 2008, the International Securities Exchange, LLC ("ISE") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together

with the ISE, the "Parties") filed with the Securities and Exchange Commission ("Commission") a plan for the allocation of regulatory responsibilities (the "17d-2 Plan"). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

#### I. Introduction

Section 19(g)(1) of the Act,<sup>3</sup> among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or registered national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)<sup>4</sup> or Section 19(g)(2)<sup>5</sup> of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

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

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>8</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>9</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member

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

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

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

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

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

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

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

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

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

belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

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

## II. Proposed Plan

On August 22, 2008, ISE Holdings, Inc., the parent of ISE, agreed to acquire an equity interest in Direct Edge Holdings LLC ("Direct Edge") by contributing cash and the ISE's equities trading facility, ISE Stock Exchange, LLC ("ISE Stock"). After such transaction, (1) Direct Edge, though a subsidiary, will own and operate ISE Stock as a facility<sup>11</sup> 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 the ISE, Direct Edge ECN LLC ("DE ECN"). DE ECN currently routes, and will continue to route, orders into ISE Stock. Recognizing that the Commission has previously expressed concern regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with one of its members, and

(2) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis the other non-affiliated members, the ISE submitted a proposed rule change to amend ISE Rule 312 to permit the proposed affiliation subject to several conditions and limitations, including that a condition that the Exchange shall enter into a plan with a non-affiliated self-regulatory organization to regulate and oversee the activities of DE ECN, pursuant to Rule 17d-2 under the Act.<sup>12</sup>

On November 21, 2008, the Parties submitted the 17d-2 Plan for review by the Commission. The text of the 17d-2 Plan, which is separate from the agreement made pursuant to Rule 17d-2 of the Act between FINRA and ISE entered into on December 20, 2006, delineates regulatory responsibilities between the Parties, including responsibility for ISE rules, with respect to DE ECN, which is a common member. Included in the 17d-2 Plan is an attachment ("ISE Certification of Common Rules," referred to herein as the "Certification") that lists every ISE rule and the federal securities laws and rules and regulations thereunder for which, under the 17d-2 Plan, the FINRA would bear responsibility for overseeing and enforcing with respect to DE ECN. In particular, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by DE ECN and persons associated therewith, with the rules of ISE that are substantially similar to the rules of FINRA ("Common Rules"), as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification.<sup>13</sup> Under the 17d-2 Plan, ISE would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving ISE's own marketplace; registration pursuant to its unique rules (i.e., non-common rules); its duties as a Designated Examining Authority pursuant to Rule 17d-1 under the Act; and any rules that are not substantially similar to the rules of FINRA, except for ISE rules for any ISE member that operates as a facility,<sup>14</sup> acts as an inbound router for the ISE, and is a member of the ISE and FINRA

("Inbound Router Member").<sup>15</sup> For purposes of the proposed 17d-2 Plan, DE ECN would qualify as the sole Inbound Router Member. Accordingly, FINRA would be allocated regulatory responsibility for DE ECN.

The text of the 17d-2 Plan is as follows:

Agreement Between Financial Industry Regulatory Authority, Inc. and International Securities Exchange LLC Pursuant to Rule 17d-2 Under the Securities Exchange Act of 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. ("FINRA") and the International Securities Exchange LLC ("ISE"), is made this 21st day of November, 2008 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d-2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and ISE may be referred to individually as a "party" and together as the "parties."

*Whereas*, ISE desires to eliminate conflicts of interest that would exist if ISE were to regulate Direct Edge ECN LLC ("DE ECN"), an affiliate and member of ISE, which operates two order delivery electronic communication networks ("ECNs") that route inbound orders to ISE.

*Whereas*, ISE and FINRA desire to reduce duplication in the examination of their Dual Members (as defined herein); and

*Whereas*, FINRA and ISE desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

*Now, therefore*, in consideration of the mutual covenants contained hereinafter, FINRA and ISE hereby agree as follows:

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

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

<sup>11</sup> See Section 3(a)(2) of the Act (defining "facility"). 15 USC 78c(a)(2).

<sup>12</sup> See Securities Exchange Act Release No. 58918 (November 7, 2008), 73 FR 67909 (November 17, 2008).

<sup>13</sup> See paragraph 2 of the 17d-2 plan. The Commission notes that there are currently no federal securities law rules listed on the Certification.

<sup>14</sup> See Section 3(a)(2) of the Act (defining "facility"). 15 USC 78c(a)(2).

<sup>15</sup> Apparent violations of such ISE rules by any Inbound Router Member will be processed by, and enforcement proceedings will be conducted by, the FINRA. See paragraphs 2(d) and 5 of the 17d-2 Plan. As of the date of this Agreement, Direct Edge ECN LLC is the only Inbound Router Member.

(a) “*ISE Rules*” or “*FINRA Rules*” shall mean the rules of the ISE or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “*Common Rules*” shall mean the ISE Rules that are substantially similar to the applicable FINRA Rules in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member’s activity, conduct, or output in relation to such rule; provided, however, Common Rules shall not include the application of the SEC, ISE or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. approved by the Commission on October 17, 2008.

(c) “*Dual Members*” shall mean those ISE members that are also members of FINRA and the associated persons therewith, but for purposes of this Agreement is limited to DE ECN and its associated persons.

(d) “*Effective Date*” shall have the meaning set forth in paragraph 13.

(e) “*Enforcement Responsibilities*” shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA’s Code of Procedure and sanctions guidelines.

(f) “*Regulatory Responsibilities*” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for DE

ECN, which is a Dual Member. Attached as Exhibit 1 to this Agreement and made part hereof, ISE furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA rule (the “*Certification*”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of ISE or FINRA, ISE shall submit an updated list of Common Rules to FINRA for review which shall add ISE Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete ISE Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be ISE Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement.

Notwithstanding anything herein to the contrary, it is explicitly understood that the term “*Regulatory Responsibilities*” does not include, and ISE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “*Retained Responsibilities*”) the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving ISE’s own marketplace, including without limitation ISE’s rules relating to the rights and obligations of market makers;

(b) Registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) Any ISE Rules that are not Common Rules, except for ISE Rules for any ISE member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an inbound router for the ISE and is a member of the ISE and FINRA (“*Inbound Router Member*”) as provided in paragraph 5. As of the date of this Agreement, Direct Edge ECN LLC is the only Inbound Router Member.

3. No Charge. There shall be no charge to ISE by FINRA for performing the

Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide ISE with ninety (90) days advance written notice in the event FINRA decides to impose any charges to ISE for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, ISE shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA’s Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

4. Reassignment of Regulatory Responsibilities. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

#### 5. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any ISE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify ISE of those apparent violations for such response as ISE deems appropriate. With respect to apparent violations of any ISE Rules by any Inbound Router Members, FINRA shall not make referrals to ISE pursuant to this paragraph 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(b) In the event that ISE becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, ISE shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules, FINRA Rules, federal securities laws, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on ISE, ISE may in its discretion assume

concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

6. Continued Assistance.

(a) FINRA shall make available to ISE all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Inbound Router Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish ISE any information it obtains about Inbound Router Members which reflects adversely on their financial condition. ISE shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Inbound Router Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) 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. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) 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.

7. Statutory Disqualifications. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to an Inbound Router Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep ISE advised of its actions in this regard for such subsequent proceedings as ISE may initiate.

8. Branch Office Information. FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Inbound Router Members and any other applications required of Inbound Router Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise ISE of the opening, address change and termination of branch and main offices of Inbound Router Members and the names of such branch office managers.

9. Customer Complaints. ISE shall forward to FINRA copies of all customer complaints involving Inbound Router Members received by ISE relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Inbound Router Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules. Such review shall be made in accordance with then applicable FINRA Rules and interpretations. The advertising of Inbound Router Members shall be subject only to compliance with appropriate FINRA Rules and interpretations.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Inbound Router Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement shall terminate on the earlier of (a) the date on which DE ECN ceases operations as a facility of ISE, or (b) the date on which the Commission approves termination of this Agreement after one (1) year's written notice by ISE or FINRA to the other party or such shorter period as may be agreed to by the parties, except as provided in paragraph 3.

13. Effective Date. This Agreement shall be effective upon approval of the Commission.

14. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, ISE and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this

Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 14 shall interfere with a party's right to terminate this Agreement as set forth herein.

15. Separate Agreement. This Agreement is wholly separate from the Agreement made pursuant to Rule 17d-2 of the Securities Exchange Act of 1934 between Financial Industry Regulatory Authority, Inc. and the International Securities Exchange LLC entered into on December 20, 2006, and as may be amended from time to time.

16. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

17. Limitation of Liability. Neither FINRA nor ISE nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or ISE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or ISE with respect to any of the responsibilities to be performed by each of them hereunder.

18. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and ISE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve ISE of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. 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.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

### Exhibit 1

#### ISE Certification of Common Rules

ISE hereby certifies that the requirements contained in the rules listed below for ISE are identical to, or

substantially similar to, the comparable FINRA (NASD) Rules identified.

ISE Rule(s)	FINRA (NASD) Rule(s)
408. Prevention of the Misuse of Material, Nonpublic Information .....	NASD Rule 3010(a)(2) Supervision*.
409. Disciplinary Action .....	NASD Rule 3070(a)(1) and (a)(10) Reporting Requirements.
604. Continuing Education for Registered Persons .....	NASD Rule 1120 Continuing Education Requirements.
622. Transfer of Accounts .....	NASD Rule 11870 Customer Account Transfer Contracts.
624. Brokers' Blanket Bonds .....	NASD Rule 3020 Fidelity Bonds.
626. Telephone Solicitation .....	NASD Rule 2212 Telemarketing.
1400. Maintenance, Retention, and Furnishing of Books, Records and Other Information.	NASD Rule 3110(a) Books and Records—Requirements*.
2114. Doing Business with the Public <sup>1</sup> .....	NASD Rules 2310 Recommendations to Customers (Suitability); 2320 Best Execution and Interpositioning; 2330 Customers' Securities or Funds; 2340 Customer Account Statements; 2341 Margin Disclosure Statement; 2350 Broker/Dealer Conduct on the Premises of Financial Institutions; 2360 Approval Procedures for Day-Trading Accounts; 2361 Day-Trading Risk Disclosure Statement; 2370 Borrowing From or Lending to Customers.

<sup>1</sup> In connection with the approval of ISE Rule 2114, the Commission noted that since the ISE is requiring Equity EAMs that do business with the public to become members of FINRA, those ISE members are required to comply with FINRA (NASD) rules that govern the practice of members when doing business with the public. The Commission noted that, among other things, these members would be obligated to comply with these listed FINRA (NASD) Rules. See Exchange Act Release No. 54401 (September 1, 2006), 71 FR 53483 (September 11, 2006) (Order Granting Accelerated Approval of SR-ISE-2006-53).

\*FINRA shall not have any Regulatory Responsibilities under this Agreement for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc. Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. as approved by the Commission on October 17, 2008.

\* \* \* \* \*

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

Pursuant to Section 17(d)(1) of the Act<sup>16</sup> and Rule 17d-2 thereunder,<sup>17</sup> on or after December 22, 2008, the Commission may, by written notice, declare the plan submitted by ISE and FINRA, File No. 4-574, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

### IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the 17d-2 Plan and to relieve ISE of the responsibilities which would be assigned to FINRA, 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-574 on the subject line.

#### Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number 4-574. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE and FINRA. 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 4-574 and should be submitted on or before December 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-28381 Filed 11-28-08; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>16</sup> 15 U.S.C. 78q(d)(1).

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

<sup>18</sup> 17 CFR 200.30-3(a)(34).