

Commission, c/o Shirley Martinson,  
6432 General Green Way, Alexandria,  
VA 22312; or send an e-mail to:  
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Dated: October 16, 2008.

**J. Lynn Taylor,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange  
Commission, Office of Investor  
Education and Advocacy,  
Washington, DC 20549-0213.

#### Extension:

Rule 17a-7; SEC File No. 270-238; OMB  
Control No. 3235-0214.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-7 (17 CFR 270.17a-7) (the "rule") under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act") is entitled "Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof." It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies ("funds"), that are affiliated persons ("first-tier affiliates") or affiliated persons of affiliated persons ("second-tier affiliates"), or between a fund and a first- or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a-7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund's board of directors to establish procedures reasonably designed to ensure that the rule's conditions have been satisfied. The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund

enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.<sup>1</sup> The Commission's examination staff uses these records to evaluate for compliance with the rule.

While most funds do not commonly engage in transactions covered by rule 17a-7, the Commission staff estimates that nearly all funds have adopted procedures for complying with the rule.<sup>2</sup> Of the approximately 3891 currently active funds, the staff estimates that virtually all have already adopted procedures for compliance with rule 17a-7. This is a one-time burden, and the staff therefore does not estimate an ongoing burden related to the policies and procedures requirement of the rule for funds.<sup>3</sup> The staff estimates that there are approximately 150 new funds that register each year, and that each of these funds adopts the relevant policies and procedures. The staff estimates that it takes approximately 4 hours to develop and adopt these policies and procedures, as follows; 3 hours spent by a compliance attorney, and 1 hour collectively spent by the board of directors. Therefore, the total annual burden related to developing and adopting these policies and procedures would be approximately 600 hours.<sup>4</sup>

Of the 3891 existing funds, the staff assumes that approximately 25% (or 973), enter into transactions affected by rule 17a-7 each year (either by the fund directly or through one of the fund's series), and that the same percentage (25%, or 38 funds) of the estimated 150 funds that newly register each year will also enter into these transactions, for a total of 1011<sup>5</sup> companies that are affected by the recordkeeping requirements of rule 17a-7. These funds must keep records of each of these transactions, and the board of directors must quarterly determine that all

relevant transactions were made in compliance with the company's policies and procedures. The rule generally imposes a minimal burden of collecting and storing records already generated for other purposes.<sup>6</sup> The staff estimates that the burden related to making these records and for the board to review all transactions would be 3 hours annually for each respondent, (2 hours spent by compliance attorneys and 1 hour spent by the board of directors)<sup>7</sup> or 3033 total hours each year.<sup>8</sup>

Based on these estimates, the staff estimates the combined total annual burden hours associated with rule 17a-7 is 3633 hours.<sup>9</sup> The staff also estimates that there are approximately 1161 respondents and 8238 total responses.<sup>10</sup>

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 17a-7 is necessary to obtain the benefits of the rule. Responses 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.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

<sup>6</sup> Commission staff believes that rule 17a-7 does not impose any costs associated with record preservation in addition to the costs that funds already incur to comply with the record preservation requirements of rule 31a-2 under the Act. Rule 31a-2 requires companies to preserve certain records for specified periods of time.

<sup>7</sup> The staff estimates that funds that rely on rule 17a-7 annually enter into an average of 8 rule 17a-7 transactions each year. The staff estimates that the compliance attorneys of the companies spend approximately 15 minutes per transaction on this recordkeeping, and the board of directors spends a total of 1 hour annually in determining that all transactions made that year were done in compliance with the company's policies and procedures.

<sup>8</sup> This estimate is based on the following calculation: (3 hours × 1011 companies = 3033 hours).

<sup>9</sup> This estimate is based on the following calculations: (600 hours + 3033 hours = 3633 total hours).

<sup>10</sup> This estimate is based on the following calculations: (150 newly registered funds + 1011 funds that engage in rule 17a-7 transactions = 1161); (1011 funds that engage in rule 17a-7 transactions × 8 times per year = 8088); (8088 + 150 = 8238 responses).

<sup>1</sup> The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

<sup>2</sup> Unless stated otherwise, these estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives.

<sup>3</sup> Based on our reviews and conversations with fund representatives, we understand that funds rarely, if ever, need to make changes to these policies and procedures once adopted, and therefore we do not estimate a paperwork burden for such updates.

<sup>4</sup> This estimate is based on the following calculations: (4 hours × 150 = 600 hours).

<sup>5</sup> This estimate is based on the following calculation: (973 + 38 = 1011).

minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to 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).

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**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58806; 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 the American Stock Exchange LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., 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. Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules**

October 17, 2008.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed pursuant to Rule 17d-2 of the Act,<sup>2</sup> by the American Stock Exchange LLC ("Amex"), BATS Exchange, Inc. ("BATS"), Boston Stock Exchange, Inc. ("BSE"), Chicago Board Options Exchange, Inc. ("CBOE"), Chicago Stock Exchange, Inc. ("CHX"), Financial Industry Regulatory

Authority, Inc. ("FINRA"), International Securities Exchange, LLC ("ISE"), The NASDAQ Stock Market, LLC ("NASDAQ"), National Stock Exchange, Inc. ("NSX"), New York Stock Exchange LLC ("NYSE"), NYSE Arca Inc. ("NYSE Arca"), NYSE Regulation, Inc. (acting under authority delegated to it by NYSE) ("NYSE Regulation"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participating Organizations" or "Parties") concerning the surveillance, investigation, and enforcement of insider trading rules.

## **I. Introduction**

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

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

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>8</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by

the Act, or by Commission or SRO rules.<sup>9</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

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

## **II. The Plan**

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d-2.<sup>11</sup> The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common NYSE Members<sup>12</sup> or Common FINRA Members,<sup>13</sup> as applicable, (collectively,

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

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

<sup>11</sup> See Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4-566).

<sup>12</sup> Common NYSE Members include members of the NYSE and at least one of the Participating Organizations.

<sup>13</sup> Common FINRA Members are members of FINRA and at least one of the Participating Organizations.

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

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

<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.