

allocation of regulatory responsibilities relating to options-related sales practices ("ISE/NASD Options-related Sales Practice 17d-2 Plan"). On May 1, 2003, NASD and ISE filed Amendment No. 1 to the ISE/NASD Options-related Sales Practice 17d-2 Plan.<sup>3</sup>

## I. Introduction

Section 19(g)(1) of the Act,<sup>4</sup> among other things, requires every national securities exchange and registered securities association ("SRO") 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) or 19(g)(2) of the Act.<sup>5</sup> 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"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>6</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>7</sup> Rule 17d-1, adopted on April 20, 1976,<sup>8</sup> authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with financial responsibility requirements imposed by the Act, or by Commission or SRO rules. 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 applicable financial responsibility rules.

On its face, Rule 17d-1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the 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 other areas, on October 28, 1976, the Commission adopted Rule 17d-2 under the Act.<sup>9</sup> This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to 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 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 8, 1983, the Commission approved a plan for allocating regulatory responsibility pursuant to Rule 17d-2 for certain options-related sale practice matters ("Options-related Sales Practice 17d-2 Plan").<sup>10</sup> Under this plan, the SRO to whom a firm was designated was responsible for conducting options-related sales practice examinations and investigating options-related customer complaints and terminations for cause of associated persons; the designated SRO was also known as the firm's "Designated Options Examining Authority" or "DOEA." Under the Options-related Sales Practice Plan, only the AMEX, CBOE, NASD and NYSE were DOEAs. On May 23, 2000,

the Commission approved an Amendment to the Options-related Sales Practice Plan that added ISE as a participant.<sup>11</sup> On November 8, 2002, the Commission approved another Amendment that replaced the Options-related Sale Practice Plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner ("Revised Options-related Sales Practice 17d-2 Plan").<sup>12</sup> The current proposed plan between ISE and NASD transfers to the NASD all the regulatory responsibilities for each common member allocated to the ISE under the Revised Options-related Sales Practice 17d-2 Plan.

The text of the proposed ISE/NASD Options-related Sales Practice 17d-2 Plan is as follows:

### **Agreement Between the National Association of Securities Dealers, Inc., and the International Securities Exchange, Pursuant to Section 17(d) and Rule 17d-2**

This agreement (Agreement) pursuant to section 17(d) of the Securities Exchange Act of 1934 (Act) and Rule 17d-2 thereunder is by and between the National Association of Securities Dealers, Inc. (NASD), a Delaware Corporation registered as a national securities association subject to regulation by the Securities and Exchange Commission under the Act, whose principal offices are located at 1735 K Street, NW., Washington, DC 20006, and the International Securities Exchange, Inc. (ISE), a New York corporation whose principal place of business is located at 60 Broad Street, New York, NY 10004 (NASD and ISE are collectively referred to as Parties).

In consideration of the mutual covenants contained hereafter, and in consideration of other valuable consideration, NASD and ISE hereby agree as follows:

1. *Term.* This Agreement shall be effective on the date the SEC approves this Agreement under section 17(d) (Effective Date).

2. *Entities.* ISE is a self-regulatory organization (SRO), as defined in section 3(a)(26) of the Act. NASD is a registered securities association, as defined in section 15A of the Act and an SRO, and is responsible for fulfilling

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated April 30, 2003. Amendment No. 1 deleted paragraphs 5.1 and 5.2 of the ISE/NASD Options-related Sale Practice 17d-2 Plan filed on January 7, 2003.

<sup>4</sup> 15 U.S.C. 78s(g)(1).

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

<sup>6</sup> 15 U.S.C. 78q(d). See also Securities Acts 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>7</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

<sup>8</sup> Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

<sup>9</sup> Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

<sup>10</sup> Securities Exchange Act Release No. 20158, 48 FR 41256 (September 14, 1983). The participation in this plan were the American Stock Exchange LLC ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Midwest Stock Exchange, Inc., NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.

<sup>11</sup> Securities Exchange Act Release No. 42816 (May 23, 2000); 65 FR 34759 (May 31, 2000). This Amendment also updated the corporate names of the AMEX, the Midwest Stock Exchange (now known as the Chicago Stock Exchange, Inc.), and the Pacific Stock Exchange Incorporated (now known as the Pacific Exchange, Inc.).

<sup>12</sup> Securities Exchange Act Release No. 46800, 67 FR 69774 (November 19, 2002).