

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62000; File No. 4-596)

April 29, 2010

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

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Sections 17(d)<sup>1</sup> and 11A(a)(3)(B)<sup>2</sup> of the Securities Exchange Act of 1934 (“Act”), approving and declaring effective a plan for the allocation of regulatory responsibilities (“17d-2 Plan”) that was filed pursuant to Rule 17d-2<sup>3</sup> under the Act by the International Securities Exchange, LLC (“ISE”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together with ISE, the “Parties”).

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

I. Introduction

Section 19(g)(1)<sup>4</sup> of the Act, among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or registered securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless

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

<sup>2</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>3</sup> 17 CFR 240.17d-2.

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

the SRO is relieved of this responsibility pursuant to Section 17(d)<sup>5</sup> or 19(g)(2)<sup>6</sup> of the Act. Section 17(d)(1)<sup>7</sup> of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO (“common members”). 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. Rule 17d-2<sup>8</sup> permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, 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. Upon effectiveness of a plan filed pursuant to Rule 17d-2, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

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<sup>5</sup> 15 U.S.C. 78q(d).

<sup>6</sup> 15 U.S.C. 78s(g)(2).

<sup>7</sup> 15 U.S.C. 78q(d)(1).

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

## II. Ballista Securities LLC

On June 5, 2009, ISE Holdings, Inc. (“ISE Holdings”), the parent of ISE, entered into a Membership Purchase Agreement with Optifreeze LLC (“Optifreeze”). ISE Holdings acquired membership interests in Optifreeze by contributing cash to the capital of Optifreeze. As a result of the purchase, ISE Holdings has an 8.57% membership interest in Optifreeze, which wholly-owns and operates an Electronic Access Member of the ISE, Ballista Securities LLC (“Ballista”). The ownership interest of ISE Holdings in Ballista is subject to the conditions set forth in the Commission’s approval order relating to ISE Holdings’ purchase of Optifreeze.<sup>9</sup>

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 enter into a plan with a non-affiliated self-regulatory organization to regulate and oversee the activities of Ballista, pursuant to Rule 17d-2 under the Act.<sup>10</sup>

On March 19, 2010, the Parties submitted the proposed 17d-2 Plan to the Commission. On April 13, 2010, the Commission published notice of the Plan filed by ISE and FINRA in the Federal Register.<sup>11</sup> The Commission received no comments on the Plan. The text of the Plan

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<sup>9</sup> See Securities Exchange Act Release No. 60598 (September 1, 2009), 74 FR 46280 (September 8, 2009).

<sup>10</sup> See Securities Exchange Act Release No. 60382 (July 24, 2009), 74 FR 38068 (July 30, 2009).

<sup>11</sup> See Securities Exchange Act Release No. 61853 (April 6, 2010), 75 FR 18925 (April 13, 2010).

allocates regulatory responsibilities among the Parties with respect to Ballista, which is a common member. Included in the Plan is an attachment (the “ISE Rules Certification for 17d-2 Agreement with FINRA,” referred to herein as the “Certification”) that lists every ISE rule and federal securities law and rule and regulation thereunder for which, under the Plan, FINRA would bear responsibility for examining, and enforcing compliance by, Ballista.

### III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d)<sup>12</sup> of the Act and Rule 17d-2(c)<sup>13</sup> thereunder in that the proposed Plan 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. Among other things, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain responsibilities for Ballista, a common member, that would otherwise be performed by both ISE and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to Ballista. Furthermore, because FINRA will be responsible for regulating Ballista instead of ISE, the plan should promote investor protection and help avoid any potential conflicts of interest that could arise if ISE was primarily responsible for regulating Ballista, with which ISE is affiliated.

The Commission notes that, under the Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Ballista and persons associated therewith, with all applicable rules. Specifically, FINRA would assume examination and enforcement responsibility relating to compliance by Ballista and persons associated therewith, with the rules of ISE that are substantially similar to the rules of FINRA, as well as any provisions of the

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<sup>12</sup> 15 U.S.C. 78q(d).

<sup>13</sup> 17 CFR 240.17d-2(c).

federal securities laws and the rules and regulations thereunder delineated in the Exhibit 1 to the 17d-2 Plan (“Common Rules”). In addition, under the Plan, FINRA would assume regulatory responsibility, with respect to Ballista, for all other ISE rules that do not qualify as Common Rules, as discussed below, on account of Ballista’s status as an “Inbound Router Member.”

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., registration rules that are not 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 acts as an inbound router for ISE and is a member of both ISE and FINRA (“Inbound Router Member”).<sup>14</sup> For purposes of the proposed 17d-2 Plan, Ballista would meet the definition of the term “Inbound Router Member” as it is used in the plan.<sup>14</sup> The effect of these provisions is that regulatory oversight and enforcement responsibilities for Ballista would be vested with FINRA. These provisions should help avoid any potential conflicts of interest that could arise if ISE was primarily responsible for regulating Ballista, with which ISE is affiliated.

#### IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-596. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

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<sup>14</sup> Apparent violations of such ISE rules by any Inbound Router Member will be processed by, and enforcement proceedings will be conducted by, FINRA.

<sup>14</sup> ISE’s other Inbound Router Member, Direct Edge ECN LLC, is not addressed by this 17d-2 Plan, but is instead addressed in a similar manner under a separate, stand-alone plan. See Securities Exchange Act Release No. 59134 (December 22, 2008), 73 FR 79943 (December 30, 2008) (File No. 4-574) (order declaring effective the 17d-2 plan concerning Direct Edge ECN LLC)

IT IS THEREFORE ORDERED, pursuant to Sections 17(d) of the Act, that the Plan in File No. 4-596, between ISE and FINRA, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

IT IS THEREFORE ORDERED that ISE is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-596.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(34).