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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70053; File No. 4-663)

July 26, 2013

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 Financial Industry Regulatory Authority, Inc. and Topaz Exchange, LLC

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 17d-2 thereunder,² notice is hereby given that on June 21, 2013, Topaz Exchange, LLC (“Topaz”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together with Topaz, the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a plan for the allocation of regulatory responsibilities, dated June 21, 2013 (“17d-2 Plan” or the “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,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) or Section 19(g)(2) of the Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-

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) and 15 U.S.C. 78s(g)(2), respectively.

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 Act⁵ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ 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.⁷ 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.⁸ 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

⁵ 15 U.S.C. 78q(d)(1).

⁶ 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).

⁷ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁸ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

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.⁹ 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 appropriate 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

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both Topaz and FINRA.¹⁰ Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “Topaz Certification of Common Rules,” referred to herein as the “Certification”) that lists every

⁹ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹⁰ The proposed 17d-2 Plan refers to these common members as “Dual Members.” See Paragraph 1(c) of the proposed 17d-2 Plan.

Topaz rule for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to Topaz members that are also members of FINRA and the associated persons therewith (“Dual Members”).

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of Topaz that are substantially similar to the applicable rules of FINRA,¹¹ as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (“Common Rules”). In the event that a Dual Member is the subject of an investigation relating to a transaction on Topaz, the plan acknowledges that Topaz may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.¹²

Under the Plan, Topaz would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving Topaz’s own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any Topaz rules that are not Common Rules.¹³

¹¹ See paragraph 1(b) of the proposed 17d-2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d-2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either Topaz rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that Topaz shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

¹² See paragraph 6 of the proposed 17d-2 Plan.

¹³ See paragraph 2 of the proposed 17d-2 Plan.

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

AGREEMENT BETWEEN
FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND
TOPAZ EXCHANGE, LLC PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (“FINRA”) and Topaz Exchange, LLC (“Topaz”), is made this 21st day of June, 2013 (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 Topaz may be referred to individually as a “party” and together as the “parties.”

WHEREAS, FINRA and Topaz desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and Topaz 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 Topaz 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:

(a) “Topaz Rules” or “FINRA Rules” shall mean the rules of Topaz 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 Topaz 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.

(c) “Dual Members” shall mean those Topaz members that are also members of FINRA and the associated persons therewith.

(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 Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, Topaz 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 Topaz Rules or FINRA Rules, Topaz shall submit an updated list of Common Rules to FINRA for review which shall add Topaz Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete Topaz 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 Topaz 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 Topaz shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the “Retained Responsibilities”):

(a) surveillance and enforcement with respect to trading activities or practices involving Topaz's own marketplaces, including without limitation

Topaz'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 Topaz Rules that are not Common Rules.

3. Dual Members. Prior to the Effective Date, Topaz shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to Topaz by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide Topaz with ninety (90) days advance written notice in the event FINRA decides to impose any charges to Topaz for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, Topaz 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.

5. 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 effective 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.

6. Notification of Violations. In the event that FINRA becomes aware of apparent violations of any Topaz Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify Topaz of those apparent violations for such response as Topaz deems appropriate. In the event Topaz becomes aware of apparent violations of the Common Rules, discovered pursuant to the performance of the Retained Responsibilities, Topaz shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of all the Common Rules 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 Topaz, Topaz may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance. FINRA shall make available to Topaz all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish Topaz any information it obtains about Dual Members which reflects adversely on their financial

condition. It is understood that such information is of an extremely sensitive nature and, accordingly, Topaz acknowledges and agrees to take all reasonable steps to maintain its confidentiality. Topaz shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the Topaz Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise Topaz of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the Topaz Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual 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 Topaz advised of its actions in this regard for such subsequent proceedings as Topaz may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) meets the Topaz requirements for general membership or for specified categories of membership or participation in Topaz, such as (A) Primary Market Maker Membership (“PMM”); (B) Competitive Market Maker Membership (“CMM”); (C) Electronic Access Membership (“EAM”) (or any similar type of Topaz membership or participation that is created after this Agreement is executed); or (ii) meets the Topaz requirements to be associated with, or employed by, a Topaz member or participant in any capacity, such as a Designated Trading Representative (“DTR”) (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of Topaz, or a person associated with, or requesting association with, a member or participant of Topaz.

9. 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 Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise Topaz of the opening, address change and

termination of branch and main offices of Dual Members and the names of such branch office managers.

10. Customer Complaints. Topaz shall forward to FINRA copies of all customer complaints involving Dual Members received by Topaz 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.

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 Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by Topaz or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as may be agreed by the parties), except as provided in paragraph 4.

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, Topaz and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. 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.

15. Separate Agreement. This Agreement is wholly separate from (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, the New York Stock Exchange, LLC, the NYSE MKT LLC, the NYSE Arca Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., and the NASDAQ OMX PHLX, LLC approved by the Commission on December 5, 2012 involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants or (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange, LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc. and Miami International Securities Exchange, LLC, approved by the Commission on December 5, 2012 involving options-related market surveillance matters and such agreements as may be amended from time to time.

16. Notification of Members. Topaz and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. 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.

18. Limitation of Liability. Neither FINRA nor Topaz 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 Topaz 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 Topaz with respect to any of the responsibilities to be performed by each of them hereunder.

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. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and Topaz join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve Topaz 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.

IN WITNESS WHEREOF, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC.

By _____

Name:

Title:

TOPAZ EXCHANGE LLC

By _____

Name:

Title:

EXHIBIT 1

TOPAZ CERTIFICATION OF COMMON RULES

Topaz hereby certifies that the requirements contained in the rules listed below for Topaz are identical to, or substantially similar to, the comparable FINRA Rules or SEC Rules identified.

TOPAZ RULE	FINRA or SEC RULE¹
408(a)(1) Prevention of the Misuse of Material, Nonpublic Information	Section 15(f) of the Securities Exchange Act of 1934
409 Disciplinary Action ²	FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements
604 Continuing Education for Registered Persons	FINRA Rule 1250 Continuing Education Requirements
614 Statements of Financial Condition to Customers	Rule 17a-5 of the Securities Exchange Act of 1934
622 Transfer of Accounts	FINRA rule 11870 Customer Account Transfer Contracts
626 Telephone Solicitation	FINRA Rule 3230 Telemarketing
1400(a) Maintenance, Retention, and Furnishing of Books, Records and Other Information ³	FINRA Rule 4511(a) Books and Records - Requirements

¹ Topaz will be responsible for any significant differences between its rules and the comparable FINRA rule identified, until such time amendments to such rule(s) may be approved.

² FINRA shall not have Regulatory Responsibilities regarding the requirement to notify Topaz; responsibility for such requirement remains with Topaz.

³ FINRA shall not have Regulatory Responsibilities regarding the requirement to “keep current and preserve such books and records as the Exchange may prescribe;” responsibility for such requirement remains with Topaz.

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

Pursuant to Section 17(d)(1) of the Act¹⁴ and Rule 17d-2 thereunder,¹⁵ after [insert date 15 days from publication in the Federal Register], the Commission may, by written notice, declare the plan submitted by Topaz and FINRA, File No. 4-663, 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 proposed 17d-2 Plan and to relieve Topaz 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/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-663 on the subject line.

Paper comments:

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

¹⁴ 15 U.S.C. 78q(d)(1).

¹⁵ 17 CFR 240.17d-2.

All submissions should refer to File Number 4-663. 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 website (<http://www.sec.gov/rules/other.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 website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the plan also will be available for inspection and copying at the principal offices of Topaz 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 4-663 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

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¹⁶ 17 CFR 200.30-3(a)(34).