

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 4-566 and should be submitted on or before November 13, 2008.

## V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act<sup>15</sup> and Rule 17d-2 thereunder<sup>16</sup> in that it 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. The Commission continues to believe that the Plan, as proposed to be amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules over Common NYSE Members, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, to NYSE and over Common FINRA Members, with respect to NASDAQ-listed stocks, Amex-listed stocks, and any CHX solely-listed stock, to FINRA. Accordingly, the proposed Plan promotes efficiency by consolidating these regulatory functions in a single SRO based on the listing market for a stock, with regard to Common NYSE Members and Common FINRA Members.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add BATS as a participant to the Plan. By approving the amendment today, BATS can be included in the Plan prior to beginning operations as a national securities exchange.<sup>17</sup> In addition, the amendment would facilitate the process of adding new participants to the Plan in the future. This amendment also makes technical changes to the Plan to clarify that CBOE's allocation of regulatory responsibilities under the Plan is limited to the activities of the CBOE Stock Exchange, LLC, a facility of

CBOE, CBOE is a participant to the Plan instead of CBOE Stock Exchange, LLC, and ISE's allocation of regulatory responsibilities under the Plan is limited to the activities of the ISE Stock Exchange, LLC, a facility of ISE. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay. In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.<sup>18</sup> Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

## VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4-566.

*It is therefore ordered*, pursuant to Section 17(d) of the Act,<sup>19</sup> that the Plan, as amended, made by and among Amex, BATS, BSE, CBOE, CHX, FINRA, ISE, NASDAQ, NSX, NYSE, NYSE Arca, NYSE Regulation, and Phlx filed with the Commission pursuant to Rule 17d-2 on October 16, 2008 is hereby approved and declared effective.

*It is further ordered* that the Participating Organizations are relieved of those regulatory responsibilities allocated to NYSE and FINRA under the Plan in File No. 4-566.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2804 / 803-180]

### WLD Enterprises, Inc.; Notice of Application

October 17, 2008.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

*Applicant:* WLD Enterprises, Inc. ("Applicant").

*Relevant Advisers Act Sections:* Exemption requested under section

202(a)(11)(G) of the Advisers Act from section 202(a)(11) of the Advisers Act.

*Summary of Application:* Applicant requests that the Commission issue an order declaring it, existing and future Pool Advisory Entities, as defined below, and their respective employees acting within the scope of their employment, to be persons not within the intent of section 202(a)(11) of the Advisers Act, which defines the term "investment adviser."

**DATES: Filing Dates:** The application was filed on January 27, 2005, and an amended and restated application was filed on October 17, 2008.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2008 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicant, WLD Enterprises, Inc., c/o Shelley Marciano, 401 East Las Olas Boulevard, Suite 2200, Ft. Lauderdale, Florida 33301.

**FOR FURTHER INFORMATION CONTACT:** Vivien Liu, Senior Counsel, or David W. Blass, Assistant Director, at (202) 551-6787 (Office of Investment Adviser Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 100 F Street, NE., Washington DC 20549-0102 (telephone (202) 551-5850).

### Applicant's Representations

1. The Applicant was organized as a Florida corporation to provide services to Mr. William Horvitz and his descendants and is wholly owned by Mr. William Horvitz's two children. It operates as a "family office" for Mr. William Horvitz, his wife Norma Horvitz, and their lineal descendants (including by adoption), and such lineal descendants' spouses, two step-children

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

<sup>16</sup> 17 CFR 240.17d-2.

<sup>17</sup> See Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August).

<sup>18</sup> See *supra* note 11.

<sup>19</sup> 15 U.S.C. 78q(d).

<sup>20</sup> 17 CFR 200.30-3(a)(34).

of Mr. William Horvitz's son, such step-children's spouses and their children, one of Mr. William Horvitz's brothers, such brother's spouse, his two children and four grandchildren, and the spouses of these children and grandchildren (collectively, the "Horvitz Family" or "Family").

2. Applicant provides services exclusively to: (i) The members of the Horvitz Family; (ii) private charitable foundations established exclusively by members of the Horvitz Family ("Private Foundations"); (iii) trusts that exist exclusively for the benefit of members of the Horvitz Family and Private Foundations ("Family Trusts"); (iv) pooled investment vehicles that have been created exclusively for the benefit of, and are wholly owned by, Family members, Family Trusts, or Private Foundations ("Family Investment Entities"), except that certain key employees, as described below, are permitted to invest in these Family Investment Entities; and (v) solely for the purpose of investing in the Family Investment Entities, several executive level employees of the Applicant who have significant involvement with the investment advisory process ("Key Employees") or revocable trusts established for the benefit of Key Employees ("Key Employee Trusts"). The members of the Horvitz Family, the Private Foundations, the Family Trusts, the Family Investment Entities, and solely with respect to investments in Family Investment Entities, the Key Employees and the Key Employee Trusts, are referred to collectively as the "Family Clients."

3. Applicant provides both advisory services and non-advisory services to Family Clients, which include asset allocation advice, investment due diligence, recordkeeping assistance, federal and state tax advice, and coordination of professional relationships with accountants, attorneys and unaffiliated investment advisers. Applicant provides advisory services to Family Clients directly, or indirectly through persons that manage Family Investment Entities or Family Trusts ("Pool Advisory Entities"). All Pool Advisory Entities are wholly owned and controlled by the Applicant, the Horvitz Family, or Family Trusts.

4. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant further represents that it is not listed in any phone book as an investment adviser and does not (i) have a publicly accessible Web site, (ii) engage in any advertising, (iii) attend investment management-related conferences as a

vendor, and (iv) conduct any marketing activities.

5. Applicant represents that it and the Pool Advisory Entities do not and will not solicit or accept investment advisory clients from the public.

6. Applicant represents that it does not operate with the purpose of generating a profit. It charges fees only to pay its operating expenses and the salaries of the professionals it employs.

7. Applicant represents that it has provided each member of the Family who is not a lineal descendant (including by adoption) of Mr. William Horvitz and his wife Norma Horvitz or such lineal descendant's spouse written disclosure describing the material terms of this Application and the material legal effects associated with a Commission Order as a result of this Application, and has received written consent from these Family members.

8. Applicant acknowledges that the Order, if granted, would not affect any legal obligation (other than those under the Advisers Act) relating to the services it and the Pool Advisory Entities provide to their clients, including without limitation any applicable state fiduciary obligation.

#### **Applicant's Legal Analysis**

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. \* \* \*

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides several exemptions from this registration requirement.

3. Applicant represents that it currently relies on the registration exemption provided in section 203(b)(3) of the Advisers Act for advisers that have less than 15 clients. The Applicant anticipates that this exemption will soon be unavailable to it as the number of Family Clients grows. Applicant also represents that it is not prohibited from registering with the Commission under section 203A(a) because it has assets under management of \$25,000,000 or more.

4. Applicant requests that the SEC declare it, the existing and future Pool Advisory Entities, and their respective employees acting within the scope of their employment, to be persons not

within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring that it, the Pool Advisory Entities, or their respective employees acting within the scope of their employment be registered under the Advisers Act because they offer and provide investment advisory services only to Family Clients.

#### **Applicant's Conditions**

1. The Applicant and all the existing and future Pool Advisory Entities will offer and provide advisory services only to Family Clients and will not hold themselves out to the public as investment advisers.

2. Members of the Horvitz Family will at all times comprise a majority of the Board of Directors of the Applicant.

3. The Applicant and all the existing and future Pool Advisory Entities will at all times be owned, directly or indirectly, exclusively by one or more members of the Horvitz Family.

4. All the existing and future Family Investment Entities: (a) Are excepted from the definition of "investment company" under section 3(c)(1) or section 3(c)(7) of the Investment Company Act of 1940, and (b) are owned and controlled exclusively by the Applicant, the Pool Advisory Entities, or the Family Clients.

5. If any Key Employee who owns an interest in any Family Investment Entity, directly or through a Key Employee Trust, is no longer employed by the Applicant or a Pool Advisory Entity or is no longer a Key Employee, his interest in such Family Investment Entity and/or Key Employee Trust will be limited to his investment at the time of termination (or at the time that he no longer is a Key Employee) together with reinvestment of accretions or distributions on that interest.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Lynn Taylor,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58807; File No. 4-568]

### **Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for BATS Exchange, Inc.**

October 17, 2008.

On August 29, 2008, the BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities