

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52401; File No. 4-429]

### Joint Industry Plan; Notice of Filing of Joint Amendment No. 16 to the Intermarket Option Linkage Plan Relating to the Definition of Firm Customer Quote Size and Restrictions on Sending Certain Principal Acting as Agent Orders

September 9, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2005, April 26, 2005, April 26, 2005, April 27, 2005, May 27, 2005 and June 2, 2005, the International Securities Exchange, Inc. ("ISE"), American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Incorporated ("CBOE"), Pacific Exchange, Inc. ("PCX"), Boston Stock Exchange, Inc. ("BSE"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "Participants") respectively submitted to the Securities and Exchange Commission ("Commission") Joint Amendment No. 16 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan").<sup>3</sup> The Joint Amendment proposes to modify the definitions of Firm Customer Quote Size ("FCQS")<sup>4</sup> and remove certain restrictions on sending secondary Principal Acting as Agent orders ("P/A Orders")<sup>5</sup> through the Intermarket Option Linkage ("Linkage"). The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan Joint Amendment.

#### I. Description and Purpose of the Amendment

The purpose of the Joint Amendment is to modernize the definition of FCQS. At the time the Linkage Plan was drafted, options quote sizes were not disseminated through the Options Price

Reporting Authority ("OPRA") and most Participants employed automatic execution systems that guaranteed automatic fills on orders less than a certain contract size (which was generally a static number). As such, the FCQS was calculated based on the number of contracts the sending or receiving Participant guaranteed it would automatically execute. Now that all options exchanges disseminate dynamic quotes with size, the Participants believe that it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the Participant receiving the P/A Order.

The other purpose of the Joint Amendment is to eliminate a 15-second wait period for sending a secondary P/A Order pursuant to Section 7(a)(ii)(B)(1)(b) of the Linkage Plan. That section governs the manner in which a P/A Order larger than the FCQS can be broken into smaller P/A Orders. It provides that an initial P/A Order can be sent to the Participant disseminating the National Best Bid or Offer ("NBBO") for the FCQS, and that if the NBBO market continues to disseminate the same price after 15 seconds from the execution of the initial P/A Order, a secondary P/A Order can be sent for at least the lesser of (i) the size of the disseminated quote; (ii) 100 contracts; or (iii) the remainder of the customer order underlying the P/A Orders. The Participants propose to eliminate the 15-second wait because the dynamic quotes with size now employed by the Participants obviate the need for a manual quote refresh period for P/A Orders.

#### II. Implementation of the Plan Amendment

The Participants intend to make the proposed Joint Amendment to the Linkage Plan reflected in this filing effective when the Commission approves the Joint Amendment.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint Amendment to the Linkage Plan is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-429 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 4-429. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, PCX, and Phlx. 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 4-429 and should be submitted on or before October 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**  
Secretary.

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<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, PCX, and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> Section 2(11) of the Linkage Plan.

<sup>5</sup> Section 2(16)(a) of the Linkage Plan.

<sup>6</sup> 17 CFR 200.30-3(a)(29).