

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52413; File No. 4-429]

### Joint Industry Plan; Order Approving Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to a "Trade and Ship" Exception to the Definition of "Trade-Through" and a "Book and Ship" Exception to the Locked Markets Provision

September 13, 2005.

#### I. Introduction

On April 13, 2005, April 22, 2005, April 26, 2005, April 27, 2005, May 5, 2005, and June 2, 2005, the International Securities Exchange ("ISE"), the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Pacific Exchange, Inc. ("PCX"), the Boston Stock Exchange, Inc. ("BSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") an amendment ("Joint Amendment No. 15") to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").<sup>1</sup> In Joint Amendment No. 15, the Participants propose to add a "trade and ship" exception to the definition of "Trade-Through"<sup>2</sup> and a "book and ship" exception to the locked markets provision of the Linkage Plan.<sup>3</sup> The proposed amendment to the Linkage Plan was published in the **Federal Register** on August 9, 2005.<sup>4</sup> No comments were received on the proposed amendment. This order approves the proposed amendment to the Linkage Plan.

#### II. Description and Purpose of the Proposed Amendment

The purpose of Joint Amendment No. 15 is to provide that: (i) A Participant

<sup>1</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the Amex, the CBOE, and the ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, the PCX, and the 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 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>2</sup> See Section 2(29) of the Linkage Plan.

<sup>3</sup> Specified in Section 7(a)(i)(C) of the Linkage Plan.

<sup>4</sup> See Securities Exchange Act Release No. 52167 (July 29, 2005), 70 FR 46224.

may trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if a Linkage Order<sup>5</sup> is sent contemporaneously to each Participant disseminating the NBBO to satisfy all interest at the NBBO price; and (ii) a Participant may book an order that would otherwise lock another Participant if a Linkage Order is sent contemporaneously to such other Participant to satisfy all interest at the lock price and only the remaining portion of the order is booked. Under the proposed trade and ship provision, any execution received from the market disseminating the NBBO must (pursuant to agency obligations) be reassigned to the customer order underlying the Linkage Order that would be sent to trade with the market disseminating the NBBO.

#### III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan seeking to add a trade and ship exception to the definition of Trade-Through and a book and ship exception to the locked markets provision of the Linkage Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act<sup>6</sup> and Rule 11Aa3-2 thereunder,<sup>7</sup> in that the proposed amendment should facilitate the ability of Participants' members to execute their customer orders in a timely manner and potentially could decrease the incidence of Trade-Throughs and locked markets in the options market.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act<sup>8</sup> and Rule 11Aa3-2 thereunder,<sup>9</sup> that the proposed Joint Amendment No. 15 is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

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

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 240.11Aa3-2.

<sup>8</sup> 15 U.S.C. 78k-1.

<sup>9</sup> 17 CFR 240.11Aa3-2.

<sup>10</sup> 17 CFR 200.30-3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting Federal Register Citation of Previous Announcement: [To Be Published]

**STATUS:** Open Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Wednesday, September 21, 2005.

**CHANGE IN THE MEETING:** Additional item.

The following item has been added to the Open Meeting scheduled for Wednesday, September 21, 2005:

In addition, the Commission will consider whether to propose interpretive guidance and solicit comment regarding the scope of "brokerage and research services" within Section 28(e) of the Securities Exchange Act of 1934. The interpretive release is designed to provide guidance to securities industry participants on money managers' use of client commission dollars to pay for research and brokerage services under Section 28(e). The release also reminds industry participants of the statutory requirements for client commission arrangements under Section 28(e).

For further information, please contact Jo Anne Swindler, Assistant Director, at (202) 551-5750; Patrick M. Joyce, Special Counsel, at (202) 551-5758; Stanley C. Macel, IV, Special Counsel, at (202) 551-5755; or Marlon Quintanilla Paz, Special Counsel, at (202) 551-5756, at the Office of Enforcement Liaison and Institutional Trading, Division of Market Regulation.

Commissioner Glassman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: September 15, 2005.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-18816 Filed 9-16-05; 12:04 pm]

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