

imposed in connection with the Reorganization.

5. The Boards, including a majority of the Independent Trustees, determined that participation in the Reorganization is in the best interests of each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered a number of factors, including: (a) The terms and conditions of the Reorganization; (b) the potential administrative benefits and savings that may be achieved from the simplified structure; (c) the tax-free nature of the reorganization; (d) the compatibility of the investment objectives, policies and restrictions among the Funds; and (e) the greater likelihood of asset growth that potentially may result from a more familiar structure and the greater economies of scale that can be achieved from such asset growth, including without limitation lower management fees that take effect at certain asset level breakpoints. The Funds will bear the expenses associated with the Reorganization, as determined by the Board of each Fund.

6. The consummation of the Reorganization is subject to various conditions, including: (a) The approval of the Reorganization by the shareholders of each Acquired Fund; (b) completion of all filings with, and receipt of all necessary approvals from, the Commission; and (c) delivery of legal opinions regarding the federal tax consequences of the Reorganization. The Reorganization Plan for an Acquired Fund may be terminated at any time prior to the Closing Date if the Board of either that Acquired Fund or the Acquiring Fund determines in good faith that the Reorganization is not in the best interests of the shareholders. Applicants agree not to make any changes to the Reorganization Plan that materially affect the application without prior approval of the Commission staff.

7. A prospectus/proxy statement was filed with the Commission on June 26, 2000, and was mailed to the Acquired Fund shareholders beginning the week of August 28, 2000. The shareholders of the Acquired Funds considered and approved the Reorganization on October 31, 2000.<sup>1</sup>

#### Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an

<sup>1</sup> Three of the Acquired Funds did not obtain sufficient votes to approve their respective Reorganization. On November 13, 2000, the Boards of these three Acquired Funds voted to approve the Reorganizations, pursuant to authority granted in the Funds' Declarations of Trust.

affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and, thus, the Reorganization may be prohibited by section 17(a).

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants state that they may not rely on rule 17a-8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that more than 5% of the outstanding shares of certain Funds is held beneficially or of record by either NBMI, Neuberger Berman, or individual Neuberger Berman officers and/or directors of affiliated entities of such individuals. Applicants also state that certain third parties are the record owners of 5% or more of each of two Funds. Under section 2(a)(3)(A) of the Act, NBMI, Neuberger Berman and these individuals/entities could be deemed "affiliated persons" of the Funds whose shares they own. Applicants further state that certain Funds may be deemed affiliated persons of affiliated persons of one another because each owns 5% or more of the outstanding voting securities of the same Master Fund. Thus, each of the Acquired Funds might be deemed to be an affiliated person of an affiliated person of an Acquiring Fund for reasons other than those set forth in rule 17a-8.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are

reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to complete the proposed Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching. Applicants also state that the Boards, including all of the Independent Trustees, found that participation in the Reorganization is in the best interests of each Fund and that interests of the existing shareholders will not be diluted as a result of the Reorganization. Applicants further state that the Reorganization will be based on the Funds' relative NAVs.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43574, File No. 4-429]

### Joint Industry Plan; Order Approving an Amendment To the Options Intermarket Linkage Plan to Add the Pacific Exchange, Inc. as a Participant

November 16, 2000.

#### I. Introduction

On September 20, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") in accordance with section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> a proposed amendment to the Options Intermarket Linkage Plan ("Linkage Plan")<sup>3</sup> to become a

<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 American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

participant to the Linkage Plan. Notice of filing and an order granting temporary effectiveness of the proposal through January 18, 2001 was published in the **Federal Register** on September 29, 2000.<sup>4</sup> The Commission did not receive any comments on the proposal. This order approves the proposed amendment on a permanent basis.

## II. Discussion

The current participants to the Linkage Plan are the Amex, CBOE, ISE, PCX, and Philadelphia Stock Exchange, Inc. ("Phlx").<sup>5</sup> The proposed amendment to the Linkage Plan would add the PCX as a participant to the Linkage Plan on a permanent basis. The PCX has submitted a signed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding the admission of new participants. Sections 4(c) and 5(c)(ii) of the Linkage Plan provide for the admission of new participants, in which eligible exchanges<sup>6</sup> may become a party to the plan by: (i) Executing a copy of the plan, as then in effect; (ii) effecting an amendment to the plan reflecting the addition of the new participant's name and obtaining the Commission's approval of the plan as amended to reflect the new participant; and (iii) paying the applicable fee.

After careful review, the Commission finds that the proposed Linkage Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission believes that the proposed amendment, which permits the PCX to become a participant to the Linkage Plan, is consistent with Congress' goal, as set forth in section 11A(a)(1)(D) of the Act,<sup>7</sup> in which Congress found that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information

available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. The Commission believes the proposed amendment to include PCX as a participant in the Linkage Plan is also consistent with Rule 11Aa3-2<sup>8</sup> under the Act in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by allowing the linked markets to more easily access better prices available on the participant exchanges. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow the PCX to become a participant in the Linkage Plan. The Commission finds, therefore, that approving the proposed Linkage Plan amendment is appropriate and consistent with section 11A of the Act.<sup>9</sup>

## III. Conclusion

*It Is Therefore Ordered*, pursuant to section 11A(a)(3)(B) of the Act<sup>10</sup> and Rule 11Aa3-2 thereunder,<sup>11</sup> that the proposed Linkage Plan amendment is approved and the PCX is authorized to act jointly with the other participants to the Linkage Plan in planning, developing, operating, or regulating the intermarket linkage plan as a means of facilitating a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43573, File No. 4-429]

### Joint Industry Plan; Order Approving an Amendment to the Options Intermarket Linkage Plan to Add the Philadelphia Stock Exchange, Inc. as a Participant

November 16, 2000.

## I. Introduction

On September 20, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the

Securities and Exchange Commission ("SEC" or "Commission") in accordance with section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> a proposed amendment to the Options Intermarket Linkage Plan ("Linkage Plan")<sup>3</sup> to become a participant to the Linkage Plan. Notice of filing and an order granting temporary effectiveness of the proposal through January 18, 2001 was published in the **Federal Register** on September 29, 2000.<sup>4</sup> The Commission did not receive any comments on the proposal. This order approves the proposed amendment on a permanent basis.

## II. Discussion

The current participants to the Linkage Plan are the Amex, CBOE, ISE, Pacific Exchange, Inc. ("PCX"), and Phlx.<sup>5</sup> The proposed amendment to the Linkage Plan would add the Phlx as a participant to the Linkage Plan on a permanent basis. The Phlx has submitted a signed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding the admission of new participants. Sections 4(c) and 5(C)(ii) of the Linkage Plan provide for the admission of new participants, in which eligible exchanges<sup>6</sup> may become a party to the plan by: (i) Executing a copy of the plan, as then in effect; (ii) effecting an amendment to the plan reflecting the addition of the new participant's name and obtaining the Commission's approval of the plan as

<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 American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

<sup>4</sup> See Securities Exchange Act Release No. 43311 (September 20, 2000), 65 FR 58584.

<sup>5</sup> On September 20, 2000, the Commission approved the PCX as a participant to the Linkage Plan on a temporary basis. See Securities Exchange Act Release No. 43310 (September 20, 2000), 65 FR 58583 (September 29, 2000). The Commission notes that it is concurrently approving a proposed amendment approving the Phlx as a participant to the Linkage Plan on a permanent basis. See Securities Exchange Act Release No. 43574 (November 16, 2000).

<sup>6</sup> The Linkage Plan defines an "eligible exchange" as national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is a participant in the Options Clearing Corporation and a party to the Options Price Reporting Authority Plan for Reporting of Consolidated Last Sale Reports and Quotation Information.

<sup>4</sup> See Securities Exchange Act Release No. 43310 (September 20, 2000), 65 FR 58583.

<sup>5</sup> On September 20, 2000, the Commission approved the Phlx as a participant to the Linkage Plan on a temporary basis. See Securities Exchange Act Release No. 43311 (September 20, 2000), 65 FR 58584 (September 29, 2000). The Commission notes that it is concurrently approving a proposed amendment approving the Phlx as a participant to the Linkage Plan on a permanent basis. See Securities Exchange Act Release No. 43573 (November 16, 2000).

<sup>6</sup> The Linkage Plan defines as "eligible exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is a participant in the Options Clearing Corporation and a party to the Options Price Reporting Authority Plan for Reporting of Consolidated Last Sale Reports and Quotation Information.

<sup>7</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>8</sup> 17 CFR 240.11Aa3-2.

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>11</sup> 17 CFR 240.11Aa3-2.

<sup>12</sup> 17 CFR 200.30-3(a)(29).