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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45795; File No. 4-429]

Joint Industry Plan; Notice of Filing of Joint Amendments Nos. 2 and 3 to the Options Intermarket Linkage Plan Relating to Satisfaction of Trade-Throughs, the Procedures for Handling Multiple Principal Orders, Restrictions on Withdrawal, and an Implementation Timetable

April 22, 2002.

Pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 11Aa3-2 thereunder,² notice is hereby given that on November 20, 2001, November 21, 2001, December 10, 2001, December 10, 2001, and December 26, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx"), International Stock Exchange LLC ("ISE"), Chicago Board Options Exchange, Inc. ("CBOE"), Pacific Exchange, Inc. ("PCX"), and American Stock Exchange LLC ("AMEX") (collectively, the "Participants"), respectively, filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment ("Joint Amendment No. 2") to the Options

Intermarket Linkage Plan.³ In addition, on April 5, 2002, April 9, 2002, April 15, 2002, April 15, 2002 and April 16, 2002, CBOE, ISE, Phlx, PCX, and Amex, respectively, filed with the Commission an additional amendment ("Joint Amendment No. 3") to the Linkage Plan. In Joint Amendment No. 2, the Participants propose to alter the manner in which Participants achieve satisfaction of trade-throughs, to change the procedures for handling multiple principal orders that one Participant sends to another Participant, and to make other nonsubstantive revisions to the Linkage Plan. In Joint Amendment No. 3, the Participants propose to change the process by which a participant may withdraw from the Linkage Plan, to incorporate a specific implementation timetable into the Linkage Plan, to require each participant to provide the Commission with a detailed project plan and status reports regarding implementation of such project plan, and to conform two provisions of the Linkage Plan to Joint Amendment No. 2. The Commission is publishing this notice to solicit comments from interested persons on Joint Amendments Nos. 2 and 3.

I. Description and Purpose of the Proposed Amendments

A. Proposed Joint Amendment No. 2

The primary purpose of Joint Amendment No. 2 is to effect two substantive changes to the Linkage Plan. In addition, the proposed amendment corrects certain typographical errors in the Linkage Plan and simplifies the language of certain of the Linkage Plan's provisions.

In the first substantive change, the proposed amendment would alter the manner in which the Participants achieve satisfaction of trade-throughs. The Linkage Plan now requires that a Participant lodge a complaint when it identifies a trade-through on another exchange. That complaint must specify the verifiable number of customer contracts at the disseminated quotation that were traded-through. The exchange that traded through then responds to the

³ On July 28, 2000, the Commission approved a national market system plan ("Linkage Plan") for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001, the Commission approved an amendment to the Linkage Plan. See Securities Exchange Act Release No. 44482, 66 FR 35470 (July 5, 2001).

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 240.11Aa3-2.

complaint, either by claiming an exemption from liability or by addressing the trade-through. If such exchange elects to satisfy the Participant traded-through, it would send a Satisfaction Order (as defined in the Linkage Plan) to the Participant that sent the complaint.

The proposed amendment would simplify that procedure by combining the complaint and satisfaction process. If a Participant identifies a trade-through on another exchange, that Participant would send a Satisfaction Order to the exchange that traded-through for the number of verifiable customer contracts at the disseminated quotation. The exchange receiving that order either can fill the order, claim an exemption from liability, or take the other action currently permitted under the Linkage Plan (such as correcting the price of the transaction to a price that would not be a trade-through). Due to the uncertainty as to whether a Participant will receive an execution of the Satisfaction Order, the proposed amendment would permit the Participant that sent the Satisfaction Order to reject any execution it receives if the customer order(s) underlying the Satisfaction Order had been executed or canceled while the Satisfaction Order was pending.⁴

The second substantive effect of the proposed amendment would be to change the procedures for handling multiple Principal Orders (as defined in the Linkage Plan) that one Participant sends to another Participant. Currently, the Linkage Plan provides that if a market maker on a Participant sends a Principal Order for automatic execution (that is, an order for up to 10 contracts) to another exchange, there are limits and prohibitions on any market maker from that Participant sending additional Principal Orders to the same exchange in the same options class. Subject to certain exceptions, a Participant cannot send another Principal Order for automatic execution for 15 seconds, and for the following 45 seconds it can only send Principal Orders larger than the automatic execution size.

The Participants represent that as they began developing the Linkage, they recognized that implementing this provision would be extremely difficult. Thus, the Participants propose to place the responsibility for monitoring this activity on the receiving, not the sending, Participant. Proposed amended Section 7(a)(ii)(C) of the Linkage Plan states that if a Participant received a

second Principal Order for automatic execution from a Participant within 15 seconds, it could reject such order. Similarly, for the next 45 seconds, the receiving Participant could deny automatic execution to any Principal Orders it receives from the same Participant. The same exceptions to these provisions contained in the current Linkage Plan would continue to apply. The Participants represent that they believe that this provision would simplify the development of the Linkage, while continuing to provide the same protections as currently provided in the Linkage Plan.⁵

B. Proposed Joint Amendment No. 3

The primary purpose of proposed Joint Amendment No. 3 is to make two substantive changes to the Linkage Plan. In addition, the proposed amendment conforms two provisions of the Linkage Plan to Joint Amendment No. 2.

First, the proposed amendment would change the process by which a Participant withdraws from the Linkage Plan. Currently, a Participant must only provide 30 days written notice to the other Participants and the facilities manager to withdraw from the Linkage Plan. The proposed amendment would restrict withdrawal from the Linkage Plan by requiring Participants to effect an amendment to the Linkage Plan, which would be subject to Commission approval. The Participant would be required to state how it plans to accomplish, by alternate means, the goals of the Linkage Plan regarding limiting trade-throughs of prices on other exchanges trading the same options classes. A Participant would be permitted to propose such an amendment unilaterally, and approval of the other Participants would not be required.⁶

Second, the proposed amendment would incorporate into the Linkage Plan a specific implementation timetable. The Participants propose to implement the Linkage in two phases: The first phase would be limited to those aspects of the plan providing for automatic execution, and the second phase would provide all other Linkage functionality. The proposal would require the Participants to begin full intermarket testing of phase 1 no later than December 1, 2002, and testing of phase 2 no later than March 1, 2003. The Participants would be required to implement the functionality of phase 1 and phase 2 as soon as practical after successful testing, and no later than

February 1, 2003 and April 30, 2003, respectively.⁷

In addition, proposed Joint Amendment No. 3 would require each Participant to provide the Commission with a detailed project plan and monthly status reports regarding implementation of such project plan.⁸

Lastly, proposed Joint Amendment No. 3 would conform two Linkage Plan provisions to Joint Amendment No. 2 by replacing references to trade-through complaints with references to Satisfaction Orders.⁹

II. Implementation of the Plan Amendments

The Participants propose to make the proposed amendments to the Linkage Plan reflected in this filing effective when the Commission approves the amendments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Linkage Plan amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed Linkage Plan amendments that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendments 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 at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the Amex, CBOE, ISE, Phlx, and PCX. All submissions should refer to File No. 4-429 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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⁷ See Proposed § 12(a) of the Linkage Plan.

⁸ See Proposed § 12(b) of the Linkage Plan.

⁹ See proposed changes to § 8(c) of the Linkage Plan.

¹⁰ 17 CFR 200.30-3(a)(29).

⁴ See proposed changes to the definitions of "Satisfaction Order" and "Reference Price," and § 8(c) of the Linkage Plan.

⁵ See proposed changes to § 7(a)(ii)(C) and (D) of the Linkage Plan.

⁶ See Proposed § 4(d) of the Linkage Plan.