

certainly regarding the dates by which an intermarket linkage in the options market will be available. Finally, the submission by the exchanges to the Commission of detailed project plans and monthly status reports will enhance the Commission's ability to continue monitoring the Participants' progress in achieving full implementation of the Linkage Plan within the established timetables.

Accordingly, *It is ordered*, pursuant to section 11A of the Act,<sup>15</sup> and Rule 11Aa3-2 thereunder,<sup>16</sup> that the proposed Joint Amendments No. 2 and 3 to the Options Intermarket Linkage Plan are approved.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46003; File No. S7-17-00]

### Order Granting Temporary Exemption for Broker-Dealers from the Trade-Through Disclosure Rule

May 30, 2002.

In July 2000, the Commission approved an intermarket linkage plan, in which all five options exchanges<sup>1</sup> are currently participants ("Linkage Plan").<sup>2</sup> Also in July 2000, the Commission proposed, and in November 2000 adopted, Rule 11Ac1-7 ("Trade-Through Disclosure Rule") under the Securities Exchange Act of 1934 ("Exchange Act").<sup>3</sup>

The Trade-Through Disclosure Rule requires a broker-dealer to disclose to a customer when the customer's order for a listed option is executed at a price

inferior to the best-published quote ("intermarket trade-through"), and to disclose the better published quote available at that time. However, a broker-dealer is not required to disclose to its customer an intermarket trade-through if the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published price. In addition, broker-dealers are not required to provide the disclosure required by the rule if the customer's order is executed as part of a block trade. Once implemented, the Linkage Plan would reasonably limit intermarket trade-throughs on each of the options markets,<sup>4</sup> provided that the Options Exchanges remain participants in the Linkage Plan.<sup>5</sup> Under these circumstances, broker-dealers effecting transactions on options exchanges that participate in the Linkage Plan would be excepted from the disclosure requirements of the Trade-Through Disclosure Rule.

To date, the options exchanges have taken steps to implement the Linkage Plan. Specifically, the options exchanges have selected The Options Clearing Corporation ("OCC") to be the linkage provider and have worked closely with OCC to develop the technical requirements related to the linkage's central core or "hub" to and from which all linkage orders would be routed. The Options Exchanges have informed the Commission that they are completing the process of evaluating their internal systems to determine the extent of modification necessary to integrate their systems into the central hub and beginning to modify those systems.

The Commission has twice extended the compliance date of the Trade-Through Disclosure Rule for broker-dealers, most recently until April 1, 2002, because of its reluctance to

impose on broker-dealers the costs of complying with the disclosure requirements of the rule while the Options Exchanges are working to implement the Linkage Plan, which would render such disclosures unnecessary.<sup>6</sup>

In addition, on March 27, 2002, the Commission issued an Order temporarily exempting for 90 days broker-dealers from compliance with the Trade-Through Disclosure Rule.<sup>7</sup> At that time, the Commission stated that it would consider a further extension of the 90-day temporary exemption at the time it considered a proposal to repeal the Trade-Through Disclosure Rule, which it directed the staff to develop.<sup>8</sup> Today, the Commission has separately proposed a repeal of the Trade-Through Disclosure Rule.<sup>9</sup>

Today, the Commission also approved amendments to the Linkage Plan, proposed by the Options Exchanges on April 15, 2002, that permit an exchange to withdraw from participation in the Linkage Plan only if it can satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting intermarket trade-throughs of prices on other markets.<sup>10</sup> The amendment also requires the Options Exchanges to implement the linkage in two phases by specified dates.<sup>11</sup> As a result of the Commission's approval of the amendments to the Linkage Plan, the principal purpose of the Trade-Through Disclosure Rule "to require customers' orders to be executed on exchanges that participate in a linkage that limits intermarket trade-throughs or, in the alternative, to provide customers with additional information about the execution of their orders" has been accomplished.

The Commission, therefore, believes it is appropriate in the public interest and consistent with the protection of investors at this time to temporarily

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

<sup>16</sup> [16]: 17 CFR 240.11Aa3-2.

<sup>1</sup> The exchanges currently trading options are the American Stock Exchange ("Amex"), the Chicago Board Options Exchange ("CBOE"), the International Securities Exchange ("ISE"), the Pacific Exchange ("PCX"), and the Philadelphia Stock Exchange ("Phlx") (collectively, "Options Exchanges").

<sup>2</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). The Linkage Plan approved by the Commission in July 2000 is the plan filed by the Amex, CBOE, and ISE. Subsequently, the PCX and Phlx joined the Linkage Plan. See Securities Exchange Act Release Nos. 43310 (September 20, 2000), 65 FR 58583 (September 29, 2000) (approving an amendment to the Linkage Plan adding the PCX as a participant); and 43311 (September 20, 2000), 65 FR 58584 (September 29, 2000) (approving an amendment to the Linkage Plan adding the Phlx as a participant).

<sup>3</sup> 17 CFR 240.11Ac1-7. See also Securities Exchange Act Release Nos. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000); and 43085 (July 28, 2000), 65 FR 47918 (August 4, 2000).

<sup>4</sup> The Commission approved an amendment to the previously-approved Linkage Plan that would permit broker-dealers executing orders on participating exchanges to satisfy the exception to the disclosure requirements of the Trade-Through Disclosure Rule. Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

<sup>5</sup> The Commission today is approving an amendment to the Linkage Plan proposed by the options exchanges that deletes the provision that permits any participant to withdraw after 30 days written notice and requires, instead, that a participant wishing to withdraw from the Linkage Plan must first satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting trade-throughs of prices on other markets. Securities Exchange Act Release No. 46001 (May 30, 2002).

<sup>6</sup> See Securities Exchange Act Release Nos. 44078 (March 15, 2001), 66 FR 15792 (March 21, 2001); and 44852 (September 26, 2001), 66 FR 50103 (October 2, 2001).

<sup>7</sup> Securities Exchange Act Release No. 45654 (March 27, 2002), 67 FR 15637 (April 2, 2002).

<sup>8</sup> *Id.*

<sup>9</sup> Securities Exchange Act Release No. 46002 (May 30, 2002).

<sup>10</sup> Securities Exchange Act Release No. 46001 (May 30, 2002).

<sup>11</sup> *Id.* The first phase will comprise those elements of the linkage that are necessary to send and receive orders required under the Linkage Plan to be automatically executed by the exchange receiving the order. The Options Exchanges will begin full intermarket testing of the first phase by December 1, 2002, and will implement this phase no later than February 1, 2003. The second phase will comprise the remaining elements of the linkage. The exchanges will begin testing of this second phase by March 1, 2003, and will implement this phase no later than April 30, 2003.

exempt until January 1, 2003 broker-dealers from the requirements of the Trade-Through Disclosure Rule while the Commission receives and considers comments on the proposed repeal of the Trade-Through Disclosure Rule.

Accordingly, *It is ordered*, pursuant to section 36 of the Act,<sup>12</sup> that broker-dealers are exempt from compliance with the Trade-Through Disclosure Rule until January 1, 2003.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SELECTIVE SERVICE SYSTEM

### Solicitation of Public Comments on Agency Information Quality Guidelines for Ensuring Information Quality

**AGENCY:** Selective Service System.

**ACTION:** Notice; request for public comment.

These are the Information Quality Guidelines required by the Office of Management and Budget (OMB) in implementing section 515(a) of the Treasury and Government Appropriations Act for Fiscal Year 2001, Public Law 106-554, section 515, 114 Stat. 2763, 2763A-153 (2000), reprinted at 44 U.S.C.A. 3516 Historical and Statutory Notes ("Data Quality Act").

#### I. Background

1. The Data Quality Act requires the development of government-wide standards on the quality of governmental information disseminated to the public. It directs the Director of OMB to issue guidelines under the Paperwork Reduction Act (PRA), 44 U.S.C. 3504(d)(1) and 3516, providing guidance to Federal agencies "for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the provisions of [the PRA]." The Data Quality Act states that OMB guidelines shall apply to sharing by agencies of and access to information disseminated by agencies (section 515(b)(1)); requires agencies to issue their own guidelines (section 515(b)(2)(A)); and requires agencies to establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by an agency that does not comply with OMB guidelines (section 515(b)(2)(B)).

Finally, the statute requires periodic reports by agencies to OMB concerning the number of complaints filed and how the complaints were handled (section 515(b)(2)(C)).

2. OMB's guidelines implementing the Data Quality Act require each agency to publish in the **Federal Register** a notice of the availability of the agency's draft information quality guidelines. After considering public comment, agencies are required to provide OMB with appropriately revised draft guidelines by July 1, 2002. Finally, by October 1, 2002, agencies must publish in the **Federal Register** a notice that the agency's final guidelines are available on the Internet. In accordance with these requirements, the Selective Service System (hereafter identified as the SSS) makes available its Draft Information Quality Guidelines, set forth in Appendix A, for public review and comment between June 1, 2002 to June 28, 2002.

#### II. Summary of the Proposed Guidelines

1. SSS' draft guidelines substantially follow the provisions of the *OMB Guidelines*. First, the *OMB Guidelines* interpret many key statutory terms, such as "information," "disseminate," "quality," "objectivity," "utility," and "integrity."

2. SSS also proposes procedures for reviewing and substantiating the quality, objectivity, utility, and integrity of information before it is disseminated by the SSS. SSS seeks comment on whether any variations may be necessary because of the nature of the SSS' practice and procedures.

3. The Data Quality Act and *OMB Guidelines* require that SSS establishes an administrative mechanism to allow affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the OMB or SSS guidelines. SSS' proposal provides that initial complaints are to be filed with a central office in the SSS that assigns the complaint to the Office where the information dissemination product in question originated. The Data Quality Act permits only "affected persons" to file complaints. SSS therefore proposes requiring that an information quality complaint contain a description of how a person is affected by the information dissemination product alleged to violate OMB or SSS guidelines.

4. The *OMB Guidelines* require that agencies set time limits for action on complaints. SSS proposes that the relevant Office should respond to initial complaints within 60 days. As provided in the *OMB Guidelines*, the Office

handling the initial complaint will respond in a manner appropriate to the nature and extent of the complaint. Inconsequential, trivial, or frivolous complaints may require no response at all. SSS may also reject complaints made in bad faith or without justification. SSS proposes that if a complaint requires corrective action, the appropriate level of correction shall occur within 60 days of the decision on the complaint. The *OMB Guidelines* require that persons who do not agree with the initial decision be afforded the opportunity to seek administrative review of that decision. The proposed procedures provide that applications for review should be presented to the Selective Service System for determination. SSS' proposed procedures provide that action on applications for review should occur within 120 days. Where warranted, the SSS may deny applications for review without providing reasons. SSS seeks comment on the proposed procedures.

#### III. Procedural Matters and Ordering Paragraphs

1. *Comment Filing.* The *OMB Guidelines* require that upon consideration of public comments and after appropriate revision, SSS must submit a draft of final agency guidelines to OMB by July 1, 2002. Interested parties may file written comments on or before June 28, 2002.

2. Parties interested in commenting on these Draft Information Quality Guidelines must submit written comments on or before June 28, 2002. Hand-delivered or messenger-delivered comments, including comments sent by mail must be addressed to Selective Service System, Office of Public and Congressional Affairs, 1515 Wilson Blvd., Arlington, Virginia, 22209-2425. This location is open 8 a.m. to 5:30 p.m.

3. Parties wishing to submit written comments by electronic mail should address them to [Information@sss.gov](mailto:Information@sss.gov) with a subject line that notes that this electronic communication contains comments on the SSS's Draft Information Quality Guidelines.

4. All relevant and timely comments will be considered before these guidelines are finalized.

5. *Ex Parte.* This proceeding is deemed exempt for purposes of the *ex parte* rules.

6. *Further Information.* For further information, contact the Selective Service System, Office of Public & Congressional Affairs, 1515 Wilson Blvd., Arlington, Virginia, 22209-2425 or by e-mail to [Information@sss.gov](mailto:Information@sss.gov).

<sup>12</sup> 15 U.S.C. 78mm.