

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47027; File No. 4-429]

### Joint Industry Plan; Notice of Filing of Amendment to the Options Intermarket Linkage Plan To Provide a Process for Potential New Options Exchanges To Have Interim Access to Linkage Information

December 18, 2002.

Pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on November 8, 2002, November 14, 2002, November 15, 2002, November 26, 2002, and December 6, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx"), International Securities Exchange LLC ("ISE"), Chicago Board Options Exchange, Inc. ("CBOE"), American Stock Exchange LLC ("Amex"), and Pacific Exchange, Inc. ("PCX") (collectively the "Participants") respectively submitted to the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 5 to the Options Intermarket Linkage Plan (the "Linkage Plan").<sup>3</sup> The amendment proposes to provide a process for potential new options exchanges to have interim access to Linkage information to help such exchanges prepare to join the Linkage. The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan amendment.

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

Currently, the Plan allows a new exchange to join the Linkage by executing the Plan, filing an amendment to the Plan including themselves as a participant, and paying the then-applicable participation fee. Thus, the Plan provides new entrants with the ability to join the Linkage unilaterally, without requiring any action by the current Participants.

However, before an exchange can join the Linkage, it first must be a participant exchange in The Options Clearing

Corporation and be a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").<sup>4</sup> This effectively requires that the applicant exchange have effective rules for the trading of options approved by the Commission. While this is a reasonable requirement for full participation in the Linkage, the Participants acknowledge that this structure does not recognize that exchanges proposing to develop an options market reasonably need access to Linkage information, particularly technical information, in order to build their market and prepare for Linkage participation. The proposed amendment will provide conditional interim access to Linkage information.

The Participants anticipate that a new entrant will require the existing Participants to spend considerable time working with an applicant on both technical and policy issues. Accordingly, the proposed amendment includes certain requirements as a safeguard to limit access to serious applicants fully committed to pursuing the development of an options market. Specifically, an applicant will have access to Linkage documentation, testing and other necessary Linkage facilities upon the Commission having published for comment the applicant's proposed rules governing the trading of standardized options. The applicant also must affirm that it is seriously pursuing the establishment of an options market and must pay a refundable deposit towards the participation fee. Once an applicant is granted interim access, such access will remain in effect for one year. If the applicant has not yet joined the Linkage after this time period, it can request an additional period of access, and the Linkage participants will not unreasonably deny such a request.

<sup>4</sup> OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k-1, and rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange ("CBOE"), the International Securities Exchange ("ISE"), the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

#### II. Implementation of the Plan Amendment

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

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Linkage Plan amendment is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Linkage Plan amendment that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendment 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 January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-32531 Filed 12-24-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47029; File No. SR-ISE-2002-19]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, Inc., Relating to Rules Governing the Intermarket Linkage

December 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on

<sup>5</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<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 request by the Phlx and PCX, 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) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).