

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

"E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission."

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as A by placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as 1 through 5. After the current amended language, the following new section B is added to read:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Utah at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment.

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests

therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States."

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

#### "Article IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in the production of such byproduct material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation and or long-term surveillance and maintenance of such byproduct material:

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site."

This amendment shall become effective on [date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done in Rockville, Maryland, in triplicate, this [day] day of [month, year].

For the United States Nuclear Regulatory Commission.

[insert Chairman's name], *Chairman*.

Done in Salt Lake City, Utah, in triplicate, this [day] day of [month, year].

For the State of Utah.

Olene S. Walker, *Governor*.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49198; File No. 4-429]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Intermarket Linkage Plan To Add Boston Stock Exchange, Inc., as a Participant

February 5, 2004.

Pursuant to Section 11A(a)(3) 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 February 5, 2004, the Boston Stock Exchange, Inc. ("BSE") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Options Intermarket Linkage Plan ("Linkage Plan").<sup>3</sup> The amendment proposes to add the BSE as a Participant<sup>4</sup> to the Linkage Plan. 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

The current Participants in the Linkage Plan are Amex, CBOE, ISE, Phlx, and PCX. The proposed amendment to the Linkage Plan would add the BSE as a Participant in the Linkage Plan. The BSE has submitted a signed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding new Participants. Section 4(c) of the Linkage Plan provides for the admission of new Participants.

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

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

<sup>3</sup> On July 28, 2000, the Commission approved the Linkage Plan, which was 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). Subsequently, on September 20, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Exchange, Inc. ("PCX") were added as participants in the Linkage Plan. See Securities Exchange Act Release Nos. 43311, 65 FR 58584 (September 29, 2000) and 43310, 65 FR 58583 (September 29, 2000) (temporary approval orders); see also Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (final approval orders).

<sup>4</sup> The term "Participant" is defined as an Eligible Exchange whose participation has become effective pursuant to Section 4(c) of the Linkage Plan.

Specifically an Eligible Exchange<sup>5</sup> may become a Participant in the Linkage Plan by: (i) Executing a copy of the Linkage Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Linkage Plan, (iii) effecting an amendment to the Linkage Plan, as specified in Section 5(c)(ii) of the Linkage Plan; and (iv) paying the applicable new Participant fee.<sup>6</sup>

Section 5(c)(ii) of the Linkage Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Linkage Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Linkage Plan with the only change being the addition of the new participant's name in Section 4(a) of the Linkage Plan, (b) submit the executed Linkage Plan to the Commission, (c) and pay the then current new participant fee.<sup>7</sup> The Linkage Plan then provides that such an amendment will be effective at the later of either the amendment being approved by the Commission or otherwise becoming effective pursuant to Section 11A of the Act and the payment of the new Participant fee.

## II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Linkage Plan amendment has become effective pursuant to Rule 11Aa3-2(c)(3)(iii)<sup>8</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraphs (b)(1) and (c)(2) of Rule 11Aa3-2,<sup>9</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and

<sup>5</sup> The Linkage Plan defines an "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) a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII) and (b) a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1). The Commission has granted BSE an exemption from satisfying the requirements to be a Participant Exchange in OCC and a party to OPRA to be considered an Eligible Exchange. See Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to George W. Mann, Jr., Executive Vice President and General Counsel, BSE, dated February 4, 2004 ("Exemption Letter").

<sup>6</sup> The Commission has granted BSE a temporary exemption from the new Participant fee requirement. See Exemption Letter.

<sup>7</sup> *Id.*

<sup>8</sup> 17 CFR 240.11Aa3-2(c)(3)(iii).

<sup>9</sup> 17 CFR 240.11Aa3-2(b)(1) and (c)(2).

perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment is 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. 4-429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of BSE. All submissions should refer to File No. 4-429 and should be submitted by March 15, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49199; File No. 4-443]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the OLPP to Add Boston Stock Exchange, Inc., as a Plan Sponsor

February 5, 2004.

Pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934

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

("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") an amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("OLPP").<sup>3</sup> The amendment proposes to add the BSE as a Plan Sponsor<sup>4</sup> of the OLPP. The Commission is publishing this notice to solicit comments from interested persons on the proposed OLPP amendment.

## I. Description and Purpose of the Amendment

The proposed amendment to the OLPP would add the BSE as a Plan Sponsor to the OLPP. Section 7 of the OLPP provides that Eligible Exchanges<sup>5</sup> may be admitted as new Plan Sponsors by: (a) Executing a copy of the OLPP; (b) providing each then-current Plan Sponsor with a copy of such executed OLPP; and (c) effecting an amendment to the OLPP by submitting such executed OLPP to the Commission. To become a Plan Sponsor, an amendment to the OLPP may be effected by a new Eligible Exchange executing a copy of the OLPP, as then in effect, (with the only change being the addition of the new Plan Sponsor's name in section 9) and submitting such executed OLPP to the SEC. Such amendment will be effective when it has been approved by

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

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

<sup>3</sup> On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), International Securities Exchange LLC ("ISE"), Options Clearing Corporation ("OCC"), Philadelphia Stock Exchange, Inc. ("Phlx"), and Pacific Exchange, Inc. ("PCX"). See Securities Exchange Act Release No. 34-44521, 66 FR 36809 (July 13, 2001).

<sup>4</sup> A national securities exchange may become a Plan Sponsor if it satisfies the requirements of Section 7 of the OLPP. The current Plan Sponsors are Amex, CBOE, ISE, OCC, Phlx, and PCX.

<sup>5</sup> The OLPP defines an "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 has effective rules for the trading option contracts issued and cleared by the OCC approved in accordance with the provisions of the Act and the rules and regulations thereunder and is a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information. The Commission has granted BSE an exemption from these requirements for qualifying as an Eligible Exchange. See Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to George W. Mann, Jr., Executive Vice President and General Counsel, BSE, dated February 4, 2004.