I. Description and Purpose of the Amendment

A P/A Order is an order for the principal account of a market maker that is authorized to represent customer orders, reflecting the terms of a related unexecuted customer order for which the market maker is acting as agent.[4] The FCQS is the minimum size for which a Participant must provide an execution in its automatic execution system for a P/A Order, if the Participant's auto-ex system is available.

Currently, the Linkage Plan provides a market maker with two ways to handle P/A Orders that are larger than the FCQS. First, the market maker may send a P/A Order larger than the FCQS representing the entire customer order for manual processing at the receiving Participant. Second, the market maker may send an initial P/A Order for up to the FCQS. If the market maker then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

The proposed Amendment addresses the handling of P/A orders if the market maker chooses the second alternative, the sending of multiple P/A Orders. As currently drafted, the Linkage Plan does not recognize the possibility that a Participant's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, the proposed Amendment specifies that a market maker sending a second P/A Order may limit such order to the lesser of: the remaining size of the customer order; 100 contracts; or the size of the receiving Participant's disseminated quotation.

In addition, the Participants believe that there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a market maker must send the entire order to one Participant or can send orders to multiple Participants, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. The Amendment proposes to clarify the Linkage Plan to specify that a market maker may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size of the customer order or 100 contracts. However, a market maker may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

Finally, the proposed Amendment modifies the provisions of the Linkage Plan relating to the time period within which a receiving Participant must inform the sending Participant of the amount of the order executed and the amount, if any, that was canceled, and the time period for which a sending Participant must wait while the receiving Participant continues to disseminate the same price at the national best bid or offer before sending a second P/A Order. Currently, the applicable time period for each such circumstance is 15 seconds. The proposed Amendment would permit the Options Linkage Authority to determine different applicable time periods for both circumstances, subject to approval by the Commission.

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 amendment to the Linkage Plan is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number 4–429 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to Joint Amendment No. 10 to File Number 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, PCX and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to Joint Amendment No. 10 to File Number 4–429 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

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[4] Section 2(16)(a) of the Linkage Plan.

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49691; File No. 4–429]

Joint Industry Plan; Notice of Filing of Joint Amendment No. 11 to the Options Intermarket Linkage Plan Relating to the Handling of Satisfaction Orders

May 12, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on February 18, 2004, March 1, 2004, March 23, 2004, April 20, 2004, April 23, 2004, and April 28, 2004, the International Securities Exchange, Inc. (''ISE''), the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Pacific Exchange, Inc. (''PCX''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 11'') to the Plan for the Purpose of Creating and Operating an Intermarket

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

Option Linkage (''Linkage Plan'').[3] In proposed Joint Amendment No. 11, the Participants propose to change the manner in which the Participants and their members process Satisfaction Orders[4] sent to them following a Trade-Through.[5] The Commission is publishing this notice to solicit comments from interested persons on the proposed Joint Amendment No. 11 to the Linkage Plan.

I. Description and Purpose of the Amendment

The purpose of proposed Joint Amendment No. 11 is to change the manner in which the Participants process Satisfaction Orders following a Trade-Through. Pursuant to the Linkage Plan, if a disseminated quote that is traded through represents a customer order, a member representing that order may send a Satisfaction Order.[6] Upon receipt of the Satisfaction Order, the member that initiated the Trade-Through can either fill the Satisfaction Order, or cause the price of the transaction that constituted the Trade-Through to be corrected to a price at which a Trade-Through would not have occurred.[7] While the Participants believe this process generally works well, the experience with the Options Intermarket Linkage (''Linkage'') to date has led the Participants to agree to three changes to Satisfaction Order processing.

First, the Linkage Plan currently permits a Participant to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through).[8] The amendment proposes that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Plan currently permits a Participant that sends a Satisfaction Order through Linkage to reject the receiving Participant's execution of the Satisfaction Order (a ''fill'') within 30 seconds of being notified of the fill if the customer order that underlies the Satisfaction Order either has been executed on the sending exchange or has been canceled while the Satisfaction Order is being processed.[9] The proposed amendment would clarify that the customer order must be cancelled or executed prior to the receipt of the Satisfaction Order fill report. However, if the order is filled or canceled, there is currently no requirement in the Linkage Plan for the Participant that sent the Satisfaction Order to cancel it while it is still pending execution on another market. The Participants believe that this aspect of the Linkage Plan leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the amendment proposes a requirement that a Participant cancel a pending Satisfaction Order that it sent through Linkage if the underlying customer order is filled or canceled.

Third, as noted above, a Participant can reject a Satisfaction Order fill if the underlying customer order is executed or cancelled while the Satisfaction Order is pending. However, it is possible that the member that initiated the Satisfaction Order could decide to trade against the customer order before the member receives a notice from another Participant that the Satisfaction Order has been filled. In this case, the Participants believe that it would be inappropriate to reject the fill. Accordingly, the proposed amendment would provide that a Participant may not reject the fill of the Satisfaction Order when the underlying customer order has been executed against the member that initiated the Satisfaction Order.

II. Implementation of the Plan Amendment

The Participants propose to make the 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 Joint Amendment No. 11 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–429 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to Joint Amendment No. 11 to File Number 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Participants. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to Joint Amendment No. 11 to File Number 4–429 and should be submitted on or before June 9, 2004.

[3] On July 28, 2000, the Commission approved a national market system 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 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, February 3, 2003, June 25, 2003, and January 29, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37689 (June 25, 2003); and 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

[4] A ''Satisfaction Order'' is an order sent through the Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[5] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Section 2(29) of the Linkage Plan.

[6] *See* Section 7(a)(ii)(D) & 8(c)(ii)(B)(2) of the Linkage Plan.

[7] *See* Section 8(c)(ii)(A) of the Linkage Plan.

[8] *See* Section 8(c)(ii)(B) of the Linkage Plan.

[9] *See* Section 8(c)(ii)(C) of the Linkage Plan.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11261 Filed 5–18–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49692; File No. 4–429]

Joint Industry Plan; Notice of Filing of Joint Amendment No. 12 to the Options Intermarket Linkage Plan Relating to the Limitation in Liability for Filling Satisfaction Orders Sent Through the Linkage at the End of the Trading Day

May 12, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on April 26, 2004, April 26, 2004, May 5, 2004, May 7, 2004, May 7, 2004, and May 11, 2004, the International Securities Exchange, Inc. (''ISE''), the Pacific Exchange, Inc. (''PCX''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Chicago Board Options Exchange, Inc. (''CBOE'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 12'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In proposed Joint Amendment No. 12, the Participants propose to extend the pilot provision limiting Trade-Through[4] liability at the end of the trading day for an additional seven months, until January 31, 2005, and to increase the limitation on liability from 10 contracts to 25 contracts. The Commission is publishing this notice to solicit comments from interested persons on the proposed Joint Amendment No. 12.

I. Description and Purpose of the Amendment

The Participants are proposing to extend for an additional seven months, until January 31, 2005, the pilot provision in the Linkage Plan[5] that limits Trade-Through liability at the end of the trading day. The Participants are also seeking to increase the limitation on Trade-Through liability for each Satisfaction Order[6] that is sent via Linkage at the end of the trading day from 10 contracts to 25 contracts during the extended pilot period.

The Participants originally proposed a 10-contract limitation on liability during the last seven minutes of the trading day as a one-year pilot in Joint Amendment No. 4 to the Plan.[7] In Joint Amendment No. 4, the Participants represented that members of various exchanges had raised concerns regarding their obligation to fill Satisfaction Orders (which they receive when an options exchange disseminating a better price complains about a Trade-Through) at the close of trading in the underlying security. Specifically, members expressed concern that they may not have time to hedge the positions they acquire.[8] Thus, the Participants proposed to limit liability for Trade-Throughs for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class to the filling of 10 contracts per Participant, per transaction. The Participants represented that they believed that the proposal would protect small customer orders, yet establish a reasonable limit for their members' liability. Further, the Participants represented that the proposal would not affect a member's potential liability under an exchange's disciplinary rule for engaging in a pattern or practice of trading through other markets under Section 8(c)(i)(C) of the Linkage Plan.

In the order approving Joint Amendment No. 4, Commission stated that in the event the Participants chose to seek permanent approval of this limitation, the Participants must provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the ''Report'').[9] In a subsequent amendment to the Linkage Plan for the purpose of extending the pilot, Joint Amendment No. 8, the Participants represented that if they were to seek to make the limitations on Trade-Throughs permanent, they would submit the Report to the Commission no later than March 31, 2004.[10] With respect to the Report, the Participants represented in Joint Amendment No. 8 that they planned to submit individual Reports regarding the requested data as it pertained to their own exchange. They further represented that these Reports would detail the number of Trade-Throughs in the last seven minutes and the rest of the day, as well as the number and size of Satisfaction Orders that would have been filled absent the current exemption. In addition, the Participants represented that the Reports would provide information on the extent to which the exchange's members hedged their options trading during the day as part of their overall risk management. Finally, the Participants represented that they would make every effort to provide specific information regarding hedging activity at the end of the trading day.[11]

Following the extension of the pilot program, certain Participants provided the Commission with portions of the information required in the Report, but were unable to provide sufficient information to enable the Commission to evaluate whether permanent approval would be appropriate. Extending the pilot through January 31, 2005 would allow the limitation to continue in

[10] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system 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 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, February 3, 2003, June 25, 2003, and January 29, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37689 (June 25, 2003); and 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

[4] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the national best bid and offer in an options series calculated by a Participant. *See* Section 2(29) of the Linkage Plan.

[5] *See* Section 8(c)(ii)(B)(2)(c) of the Linkage Plan.

[6] A ''Satisfaction Order'' is an order sent through the Linkage to notify a Participants of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[7] The Commission approved the pilot on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving ''Joint Amendment No. 4''). The Commission subsequently extended the pilot until June 30, 2004. *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving ''Joint Amendment No. 8'').

[8] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

[9] *See supra* note 7.

[10] *See* Securities Exchange Act Release No. 49010 (December 30, 2003), 69 FR 706 (January 6, 2004) (Notice of Filing Joint Amendment No. 8).

[11] *Id.*