

DATES: The comment period ends December 31, 2003. Comments received after this date will be considered if it is practical to do so, but the staff is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. You may also provide comments via the NRC's Operator Licensing Web site (<http://www.nrc.gov/reactors/operator-licensing.html>) or the NRC's Public Electronic Reading Room (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/#comments>). Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. S. Guenther by telephone at (301) 415-1056, or by e-mail at sxg@nrc.gov.

Dated at Rockville, Maryland, this 23rd day of January 2003.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Chief, Equipment and Human Performance Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47274; File No. 4-429]

Joint Industry Plan; Order Approving Joint Amendment No. 5 to the Options Intermarket Linkage Plan To Provide a Process for Potential New Options Exchanges To Have Interim Access to Linkage Information

January 29, 2003.

I. Introduction

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, Inc. ("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") in accordance with section 11A of the Securities Exchange

Act of 1934 ("Act")¹ and rule 11Aa3-2 thereunder,² a proposed amendment to the Options Intermarket Linkage Plan (the "Plan").³ 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 Plan.

The proposed amendment to the Plan was published in the **Federal Register** on December 26, 2002.⁴ No comments were received on the proposed amendment. This order approves the proposed amendment to the Plan.

II. Description of the Proposed 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 if that exchange is already a participant in The Options Clearing Corporation and is a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").⁵ Proposed Amendment No. 5 will provide conditional interim access to Linkage information by permitting an applicant to have access to Linkage documentation, testing and other necessary Linkage facilities once the Commission has published for comment the applicant's proposed rules governing the trading of standardized options.

Proposed Amendment No. 5 also requires that the applicant affirm that it is seriously pursuing the establishment

of an options market and 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.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Plan is consistent with section 11A of the Act⁶ and rule 11Aa3-2 thereunder,⁷ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets.

The current provisions of the Plan effectively require that an applicant exchange have rules for the trading of options approved by the Commission before it can become a participant in the Linkage. While the Commission believes that this is a reasonable requirement for full participation in the Linkage, this structure does not recognize that an entity proposing to develop an options market reasonably needs access to Linkage information, particularly technical information, in order to build its market and prepare for Linkage participation. The proposed Amendment will provide an applicant with conditional interim access to Linkage information before it is able to meet the requirements for full participation.

The Commission recognizes, however, that new entrants to the Linkage will require the existing Participants to expend time and resources working with an applicant on both technical and policy issues. Therefore, the Commission believes that it is reasonable to place requirements on applicants that act as a safeguard to limit access to serious applicants fully committed to pursuing the development of an options market.

To this end, Amendment No. 5 proposes that in order to be eligible for interim access to the Linkage, proposed rules governing the trading of standardized options of an applicant must be published for comment by the Commission and the applicant must affirm that it is seriously pursuing the establishment of an options market. An applicant also must pay a refundable

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 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).

⁴ See Securities Exchange Act Release No. 47027 (December 18, 2002), 67 FR 78834.

⁵ 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 AMEX, CBOE, ISE, PCX, and Phlx. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 240.11Aa3-2.