

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-54343; File No. 4-429)**

**August 21, 2006**

**Joint Industry Plan; Order Approving Joint Amendment No. 19 to the Intermarket Option Linkage Plan to Modify the Manner in which the Fee Applicable to New Participants Is Calculated**

**I. Introduction**

On February 17, 2006, March 16, 2006, April 12, 2006, April 18, 2006, May 2, 2006, and May 22, 2006, International Securities Exchange, Inc. (“ISE”), Philadelphia Stock Exchange, Inc. (“Phlx”), Chicago Board Options Exchange, Incorporated (“CBOE”), Boston Stock Exchange, Inc. (“BSE”), American Stock Exchange LLC (“Amex”), and NYSE Arca, Inc. (collectively, “Participants”)<sup>1</sup> respectively submitted to the Securities and Exchange Commission (“Commission”) Joint Amendment No. 19 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Linkage Plan”) pursuant to Section 11A of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 608 of Regulation NMS.<sup>3</sup> In the Joint Amendment, the Participants propose to modify the manner in which the fee applicable to new Participants is calculated.<sup>4</sup> The proposed Joint Amendment was published in the Federal Register on June 22,

---

<sup>1</sup> A “Participant” is an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. See Section 2(24) of the Linkage Plan

<sup>2</sup> 15 U.S.C. 78k-1.

<sup>3</sup> 17 CFR 242.608. 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 separate requests by the Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE, 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 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> See Section 11(b) of the Linkage Plan.

2006.<sup>5</sup> No comments were received on the proposal. This order approves Joint Amendment No. 19 to the Linkage Plan.

## **II. Description and Purpose of the Amendment**

The purpose of Joint Amendment No. 19 is to modify the manner in which the fee applicable to new Participants is calculated. The participation fee is determined by the Participants and is assessed in connection with an Eligible Exchange<sup>6</sup> becoming a new Participant. The Joint Amendment provides that in determining the amount of the participation fee, the Participants shall consider one or both of the following: (i) the portion of costs previously paid by the Participants for the development, expansion, and maintenance of Linkage<sup>7</sup> facilities which, under generally accepted accounting principles, could have been treated as capital expenditures and, if so treated, would have been amortized over the five years preceding the admission of the new Participant (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life); and (ii) previous participation fees paid by other new Participants. These standards are substantially consistent with the participation fee standards contained in the Consolidated Tape Association / Consolidated Quotation Plans (“CTA/CQ Plans”).<sup>8</sup> Further, the Participants would no longer be required to calculate the participation fee at least once a year. Instead, the participation fee would be calculated at the time an Eligible Exchange seeks to become a Participant.

---

<sup>5</sup> See Securities Exchange Act Release No. 54001 (June 15, 2006), 71 FR 35960.

<sup>6</sup> See Section 2(6) of the Linkage Plan.

<sup>7</sup> See Section 2(14) of the Linkage Plan.

<sup>8</sup> See Section III(c)(2) of the CTA Plan.

### **III. Discussion**

After careful consideration, the Commission finds that the proposed Joint Amendment to the Linkage Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed Joint Amendment is consistent with Section 11A of the Act and Rule 608 thereunder, in that the revised participation fee calculation methodology appears reasonably designed to provide specific, objective factors for determining entrance fees for new Participants. The Commission also believes that the proposed new standards, if appropriately employed by the Participants, should foster a fair and reasonable method for determining a Linkage participation fee amount.<sup>9</sup> In making this finding the Commission notes that the proposal prescribes participation fee standards that are substantially similar to those standards already in place on the CTA/CQ Plans.<sup>10</sup>

---

<sup>9</sup> The Commission notes that the amount of the participation fee would be determined in discussions among the Participants and each Eligible Exchange seeking to become a Participant in light of the participation fee standards enumerated in the Linkage Plan.

<sup>10</sup> See Section III(c)(2) of the CTA Plan. See Securities Exchange Act Release No. 51391 (March 17, 2005), 70 FR 15132 (March 24, 2005) (SR-CTA/CQ-2004-01) (Order approving amendment to the CTA/CQ Plans implementing new participant fees).

**IV. Conclusion**

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act<sup>11</sup> and Rule 608 thereunder,<sup>12</sup> that proposed Joint Amendment No. 19 to the Linkage Plan is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris  
Secretary

---

<sup>11</sup> 15 U.S.C. 78k-1.

<sup>12</sup> 17 CFR 242.608.

<sup>13</sup> 17 CFR 200.30-3(a)(29).