

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-52657; SR-Amex-2005-047; SR-BSE-2005-39; SR-CBOE-2005-68; SR-ISE-2005-42; SR-PCX-2005-104; SR-Phlx-2005-27)

October 24, 2005

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC; a Proposed Rule Change by the Boston Stock Exchange, Inc.; a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated; a Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc.; a Proposed Rule Change by the Pacific Exchange, Inc.; and a Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Definition of Firm Customer Quote Size and Limitations on Sending Secondary P/A Orders

I. Introduction

On April 26, 2005, April 28, 2005, August 29, 2005, August 31, 2005, September 7, 2005, and September 13, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx”), the American Stock Exchange LLC (“Amex”), the Chicago Board Options Exchange, Incorporated (“CBOE”), the International Securities Exchange, Inc. (“ISE”), the Pacific Exchange, Inc. (“PCX”), and the Boston Stock Exchange, Inc. (“BSE”) (collectively, the “Options Exchanges”), respectively, filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed rule changes to amend each of their respective rules governing the operation of the intermarket option linkage (“Linkage”) to conform with a proposed amendment³ to the Plan for the Purpose of Creating and Operating

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52401 (September 9, 2005), 70 FR 54781 (September 16, 2005) (File No. 4-429) (“Amendment No. 16”).

an Intermarket Option Linkage (“Linkage Plan”).⁴ Each of the Exchanges is proposing: (i) to amend the definition of “Firm Customer Quote Size” (“FCQS”)⁵ to provide automatic executions for Principal Acting as Agent Orders (“P/A Orders”)⁶ sent via Linkage up to the full size of an Options Exchange’s disseminated quotation; and (ii) to eliminate a 15-second waiting period between the sending of P/A Orders.

Phlx submitted Amendment No. 1 to its proposed rule change on September 2, 2005.⁷ ISE submitted Amendment No. 1 to its proposed rule change on September 7, 2005.⁸ Amex submitted Amendment No. 1 to its proposed rule change on September 12, 2005.⁹

⁴ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option 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, PCX, 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 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).

⁵ See Section 2(11) of the Linkage Plan; Amex Rule 940(b)(7); Chapter XII; Section 1(g) of BOX’s Rules; CBOE Rule 6.80(9); ISE Rule 1900(7); PCX Rule 6.92(a)(10); and Phlx Rule 1083(g).

⁶ See Section 2(16)(a) of the Linkage Plan; Amex Rule 940(b)(10)(i); Chapter XII; Section 1(j)(i) of BOX’s Rules; CBOE Rule 6.80(12)(i); ISE Rule 1900(10)(i); PCX Rule 6.92(a)(12)(i); and Phlx Rule 1083(k)(i).

⁷ In its Amendment No. 1, the Phlx made clarifying changes to the proposed rule text relating to the availability of Options Exchanges’ automatic execution systems.

⁸ In its Amendment No. 1, the ISE made technical corrections to the proposed rule change.

⁹ In its Amendment No. 1, the Amex made clarifying changes to the proposed rule text relating to the availability of Options Exchanges’ automatic execution systems.

Notice of: (i) Amex's proposed rule change, as amended; (ii) BSE's proposed rule change; (iii) CBOE's proposed rule change; (iv) ISE's proposed rule change, as amended; and (v) PCX's proposed rule change were published in the Federal Register on September 20, 2005.¹⁰ Notice of Phlx's proposed rule change, as amended, was published in the Federal Register on September 21, 2005.¹¹ No comments were received on the proposed rule changes. This order approves the proposed rule changes, as amended.

II. Description of the Proposals

The purpose of the proposed rule changes is to amend each of the Options Exchanges' rules governing the operation of the Linkage to conform with Amendment No. 16 to the Linkage Plan.¹² In general, the proposed rule changes will modify the rules of each of the Options Exchanges in two respects. First, the definition of FCQS will be amended to reflect that all Options Exchanges disseminate dynamic option quotes with size. Specifically, each of the Option Exchanges proposes to amend its rules so that the FCQS is calculated based on the size of the disseminated quotation of the Options Exchange receiving the P/A Order. Secondly, the proposed rule changes will eliminate a 15-second waiting period for sending a subsequent P/A Order currently provided for in

¹⁰ Securities Exchange Act Release Nos. 52428 (September 14, 2005), 70 FR 55186 (September 20, 2005) (SR-Amex-2005-047); 52429 (September 14, 2005), 70 FR 55191 (September 20, 2005) (SR-BSE-2005-39); 52424 (September 14, 2005), 70 FR 55193 (September 20, 2005) (SR-CBOE-2005-68); 52410 (September 14, 2005), 70 FR 55198 (September 20, 2005) (SR-ISE-2005-42); and 52427 (September 14, 2005), 70 FR 55201 (September 20, 2005) (SR-PCX-2005-104).

¹¹ Securities Exchange Act Release No. 52425 (September 14, 2005), 70 FR 55443 (September 21, 2005) (SR-Phlx-2005-27).

¹² Amendment No. 16 to the Linkage Plan is approved separately today by the Commission. See Securities Exchange Act Release No. 52656 (October 24, 2005).

each of the Option Exchange's rules. Finally, the proposed rule changes will clarify the conditions under which automatic execution is required in response to P/A Orders.

III. Discussion

After careful review, the Commission finds that the proposed rule changes, as amended, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.¹³ In particular, the Commission finds that the proposed rule changes, as amended, are consistent with the provisions of Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that national securities exchanges' rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule changes should facilitate the conformity of the Options Exchanges' rules to Amendment No. 16 to the Linkage Plan. Further, the Commission believes that the Options Exchanges' proposal to calculate FCQS on the basis of the size of the disseminated quotation of the Options Exchange receiving the P/A Order is appropriate and should facilitate the use of the Linkage for the Options Exchanges. This change proposed by the Options Exchanges, coupled with the proposed elimination of the 15-second waiting period for sending a subsequent P/A Order, should facilitate investors' intermarket access to superior prices disseminated by Options Exchanges other than the one to which the order was initially sent.

¹³ In approving these proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule changes (SR-Amex-2005-047; SR-BSE-2005-39; SR-CBOE-2005-68; SR-ISE-2005-42; SR-PCX-2005-104; SR-Phlx-2005-27), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz
Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).