

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58630; File No. 4-443)

September 24, 2008

Joint Industry Plan; Order Granting Permanent Approval to Amendment No. 2 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options

I. Introduction

On August 12, 2008, August 18, 2008, August 15, 2008, August 13, 2008, August 8, 2008, August 14, 2008, August 14, 2008, and August 18, 2008, the American Stock Exchange LLC (“Amex”), the Boston Stock Exchange, Inc. (“BSE”), Chicago Board Options Exchange, Incorporated (“CBOE”), the International Securities Exchange, LLC (“ISE”), The NASDAQ Stock Market LLC (“Nasdaq”), NYSE Arca Inc. (“NYSE Arca”), the Philadelphia Stock Exchange, Inc. (“Phlx”), and the Options Clearing Corporation (“OCC”) respectively, filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 11A of the Securities Exchange Act¹ of 1934 (“Act”) and Rule 608 thereunder,² Amendment No. 2 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (“the Options Listing Procedures Plan” or “OLPP”).³ Amendment No. 2 would provide a uniform minimum volume threshold per

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ On July 6, 2001, the Commission approved the OLPP, which was originally proposed by the Amex, CBOE, ISE, OCC, Phlx, and Pacific Exchange, Inc. (k/n/a NYSE Arca). See Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, BSE was added as a sponsor to the OLPP. See Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, Nasdaq was added as a sponsor to the OLPP. See Securities Exchange Act Release No. 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008).

underlying class to qualify for the introduction of a new expiration year of Long-term Equity Anticipation securities (“LEAP” or “LEAPS”) options.

On August 19, 2008, the Commission issued notice of and approved Amendment No. 2 on a temporary basis not to exceed 120 days, and solicited comment on the proposal.⁴ The Commission received no comment letters in response to the Temporary Approval Order. This order approves Amendment No. 2 on a permanent basis.

II. Description of the Proposal

Currently, Plan Sponsors may list a new LEAP expiration year at the appropriate time without any consideration as to the activity level of the class of options. Amendment No. 2 proposes to apply a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAP options.

By agreeing to a minimum volume threshold per underlying class to qualify for an additional year of LEAP series, the Plan Sponsors intend to mitigate the number of option series available for trading. It is intended that this will in turn mitigate quote traffic, because Participants will not be submitting quotes in the not-listed series. The Plan Sponsors have agreed on a minimum volume threshold of 1,000 contracts national average daily volume in the preceding three calendar months (excluding volume in LEAP and FLEX series) to qualify for the introduction of a new LEAP expiration year.⁵

⁴ See Securities Exchange Act Release No. 58385 (August 19, 2008), 73 FR 50375 (August 26, 2008) (“Temporary Approval Order”).

⁵ The Plan Sponsors represented that, in 2007, if this proposal had been in effect, the industry would not have added a new expiration year in 550 underlying securities, which would have reduced the overall number of listed series (LEAP and non-LEAP series) by 8%. These LEAP series generated only .43% of industry trading volume in a typical (non-expiration) sample week.

The Amendment does not restrict the introduction of a new LEAP expiration year in Index options, or in classes that have had options products trading at any exchange for less than six months. In addition, it also does not restrict, for a particular options class, the introduction of new LEAP series with an expiration year that has already been introduced by at least one Exchange.

III. Discussion

After careful review, the Commission finds that Amendment No. 2 is consistent with the requirements of the Act and the rules and regulations thereunder.⁶ Specifically, the Commission finds that Amendment No. 2 to the OLPP is consistent with Section 11A of the Act⁷ and Rule 608 thereunder⁸ in that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Specifically, the Commission believes that by adopting a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year for LEAP series, the options exchanges should reduce the number of option series available for trading, and thus may reduce increases in the options quote rate because market participants would not be submitting quotes in the not-yet-available LEAP series. Accordingly, the Commission believes that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve Amendment No. 2 to the OLPP on a permanent basis.

⁶ In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 242.608.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,⁹ and Rule 608 thereunder,¹⁰ that proposed Amendment No. 2 to the OLPP be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Acting Secretary

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 242.608.

¹¹ 17 CFR 200.30-3(a)(29).