

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-44177; File No. 4-208)

April 12, 2001

Joint Industry Plan; Order Approving Plan Establishing Procedures under Rule 11Ac1-5 by the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, Cincinnati Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange

I. Introduction

On February 20, 2001, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 (“Exchange Act”),¹ the American Stock Exchange LLC (“Amex”), Boston Stock Exchange, Inc. (“BSE”), Chicago Stock Exchange, Inc. (“CHX”), Cincinnati Stock Exchange, Inc. (“CSE”), National Association of Securities Dealers, Inc. (“NASD”), New York Stock Exchange, Inc. (“NYSE”), Pacific Exchange, Inc. (“PCX”) and Philadelphia Stock Exchange, Inc. (“Phlx”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed plan (“Plan”) for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Exchange Act Rule 11Ac1-5.² On February 27, 2001, the Plan was published for comment in the Federal Register.³ The Commission received one comment on the Plan.⁴ Pursuant to Section 11A of the Exchange Act⁵ and Rule 11Aa3-2 thereunder,⁶ this Order approves the Plan as proposed.

¹ 17 CFR 240.11Aa3-2.

² 17 CFR 240.11Ac1-5.

³ Securities Exchange Act Release No. 43992 (February 21, 2001), 66 FR 12571.

⁴ Letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC, dated March 27, 2001.

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 240.11Aa3-2.

II. Background

On November 17, 2000, the Commission adopted Rule 11Ac1-5, which requires public disclosure of order execution information.⁷ Under the Rule, all “market centers”⁸ that trade national market system securities are required to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. On March 9, 2001, the Commission extended the initial compliance date of Rule 11Ac1-5 from April 2, 2001 to May 1, 2001.⁹ Paragraph (b)(2) of the Rule directs the self-regulatory organizations (“SROs”) that trade national market system securities to act jointly in establishing procedures for market centers to follow in making their monthly reports available to the public in a uniform, readily accessible, and usable electronic format. The Plan sets forth these procedures.

III. Summary of Plan

The full text of the Plan is set forth in the Appendix and should be referred to for all details of Plan procedures. In general, each market center required by the Rule to make monthly reports available to the public must prepare such reports in the form of electronic data files that meet the requirements set forth in Sections V and VI of the Plan. Section V, for example, provides that market center files must be in standard, pipe-delimited ASCII format, and Section VI(a) sets forth the 26 fields of information that market center files must include (in order), as well as formatting instructions for the fields. A market center must make its files available for

⁷ Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414.

⁸ The term “market center” is defined in Rule 11Ac1-5(a)(14) as “any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.”

⁹ Securities Exchange Act Release No. 44060 (March 9, 2001), 66 FR 15028.

downloading on an Internet site (“Download Site”) in accordance with the provisions set forth in Section VII of the Plan (e.g., the site must be free of charge and readily accessible to the public).

Under Section VIII of the Plan, each market center must make arrangements with a single SRO that is a Participant in the Plan to act as the market center’s “Designated Participant.” A market center must notify its Designated Participant of a hyperlink to the market center’s Download Site. Finally, each Participant SRO will maintain an Internet site that includes a comprehensive list of links (“Link Site”) where the files can be obtained for all of the market centers for which the Participant functions as a Designated Participant. As a result, anyone who wishes to download all files for a month can be assured that, if they visit the Internet sites of all Participants, they will find hyperlinks to all files for the month.

IV. Discussion

The Commission finds that the Plan is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, and in furtherance of the purposes of the Exchange Act.¹⁰ In particular, the Commission finds that the Plan is consistent with the requirements of Section 11A of the Act, and Rule 11Aa3-2 thereunder. The Plan establishes appropriate procedures for market centers to follow in making their monthly reports required pursuant to Exchange Act Rule 11Ac1-5, available to the public in a uniform, readily accessible, and usable electronic format. The Plan will promote uniform public disclosure of order execution information by all market centers. The information will be made available in a format that allows market participants and other interested parties to gather and

¹⁰ In approving the Plan, the Commission has considered the Plan’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

analyze the information and to produce summaries that respond to the needs of investors and the public.

As noted above, the Commission received one comment letter on the Plan. In its letter, Amex did not comment on any specific provisions of the Plan, which, as Amex noted, is limited to logistical instructions on how to format and deliver information required by Rule 11Ac1-5. The letter instead raised concerns that the statistics required by the Rule would be misinterpreted and also asserted that the Rule is an insufficient response to industry concerns regarding market fragmentation and competition. These matters, however, relate to the policy implications of the Rule itself, rather than the procedures for making information available to the public that are established by the Plan. The Commission addressed these policy issues at length when adopting Rule 11Ac1-5.¹¹

Moreover, many of Amex's concerns were based on its assumption that "top line" summary statistics (e.g., general statistics that encompass all types of securities and all sizes and types of orders) would often be the prevailing measures used to compare execution quality among market centers. The Rule, however, requires market centers to generate statistics for specific subcategories of order type and order size in individual securities (e.g., market orders for 100-499 shares in a particular corporate stock). In this respect, the Rule recognizes that order executions can vary substantially among different types and sizes of orders. For example, the price improvement and speed of execution statistics for large market orders at any particular market center may materially differ from such statistics for small market orders (smaller orders

¹¹ See Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (adopting Rule 11Ac1-5), section II, "Disclosure as Minimum Step Necessary to Address Market Fragmentation."

typically receiving more price improvement and faster executions). The Rule will facilitate incisive analyses of execution quality that reflect the important factor of order size and do not simply lump all sizes in one statistic.

V. Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 11Aa3-2 under the Exchange Act,¹² that the Plan submitted by the Amex, BSE, CHX, CSE, NASD, NYSE, PCX, and Phlx is approved.

By the Commission.

Jonathan G. Katz
Secretary

¹² 17 CFR 240.11Aa3-2.

APPENDIX – TEXT OF PLAN

The Participants submit to the SEC this Plan establishing procedures for market centers to follow in making available to the public the monthly reports required by Rule 11Ac1-5 in a uniform, readily accessible, and usable electronic form. The Participants developed this Plan pursuant to paragraph (b)(2) of the Rule, which directs the Participants to act jointly in establishing such procedures.

I. Definitions

(a) “Designated Participant” means the Participant with which each market center has made the arrangements set forth in Section VIII of the Plan.

(b) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(c) “Participant” means a party to the Plan.

(d) “Plan” means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(e) “Rule” means Rule 11Ac1-5 under the Exchange Act.

(f) “SEC” means the United States Securities and Exchange Commission.

(g) All terms defined in paragraph (a) of the Rule shall have the same meaning when used in the Plan, unless otherwise specified.

II. Parties

(a) List of Parties

The parties to the Plan are as follows:

American Stock Exchange LLC (“Amex”), registered as a national securities exchange under the Exchange Act and having its principal place of business at 86 Trinity Place, New York, New York 10006.

Boston Stock Exchange, Inc. (“BSE”), registered as a national securities exchange under the Exchange Act and having its principal place of business at 100 Franklin Street, Boston, Massachusetts 02110.

Chicago Stock Exchange, Inc. (“CHX”), registered as a national securities exchange under the Exchange Act and having its principal place of business at 440 South LaSalle Street, Chicago, Illinois 60605.

Cincinnati Stock Exchange, Inc. (“CSE”), registered as a national securities exchange under the Exchange Act and having its principal place of business at 440 South LaSalle Street, Suite 2600, Chicago, Illinois 60605.

National Association of Securities Dealers, Inc. (“NASD”), registered as a national securities association under the Exchange Act and having its principal place of business at 1735 K Street, N.W., Washington, D.C. 20006.

New York Stock Exchange, Inc. (“NYSE”), registered as a national securities exchange under the Exchange Act and having its principal place of business at 11 Wall Street, New York, New York 10005.

Pacific Exchange, Inc. (“PCX”), registered as a national securities exchange under the Exchange Act and having its principal place of business at 301 Pine Street, San Francisco, California 94104.

Philadelphia Stock Exchange, Inc. (“Phlx”), registered as a national securities exchange under the Exchange Act and having its principal place of business at 1900 Market Street, Philadelphia, Pennsylvania 19103.

(b) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance by its members with the provisions of the Plan.

(c) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (i) executing a copy of the Plan, as then in effect; (ii) providing each then-current Participant with a

copy of such executed Plan; and (iii) effecting an amendment to the Plan as specified in Section III(b) of the Plan.

III. Amendments to Plan

(a) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (A) sets forth the change, addition, or deletion; (B) is executed on behalf of each Participant; and (C) is approved by the SEC or otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2 thereunder.

(b) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(a) of the Plan and the new Participant's single-digit code in Section VI(a)(1) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment will be effective when it is approved by the SEC or otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2 thereunder.

(c) Advisory Committee on Plan Amendments

(1) Each Participant shall select from its staff one individual to represent such Participant as a member of an Advisory Committee on Plan Amendments ("Advisory Committee"), together with a substitute for such individual. Such substitute may participate in deliberations of the Advisory Committee and shall be considered a voting member thereof only

in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Advisory Committee.

(2) The Advisory Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Advisory Committee may deem appropriate. Any recommendation for an amendment to the Plan from the Advisory Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for rulemaking under Exchange Act Rule 11Aa3-2.

IV. Overview of Plan Procedures

Any market center required by the Rule to make monthly reports available to the public shall prepare such reports in the form of electronic data files that meet the requirements set forth in Sections V and VI of the Plan. A market center shall make its files available for downloading on an Internet site in accordance with the provisions set forth in Section VII of the Plan. In accordance with Section VIII of the Plan, each market center¹ shall make arrangements with a single Participant to act as the market center's Designated Participant. A market center shall notify its Designated Participant of a hyperlink to the Internet site where its files can be downloaded. Each Participant will maintain an Internet site that includes a comprehensive list of links where the files can be obtained for all of the market centers for which the Participant functions as a Designated Participant.

¹ An entity that acts as a market maker in different trading venues (e.g., as specialist on an exchange and as an OTC market maker) would be considered as a separate market center under the Rule for each of those trading venues. Consequently, the entity should arrange for a Designated Participant for each market center/trading venue (e.g., an exchange for its specialist trading and an association for its OTC trading).

V. File Type, Compression, and Naming

Files shall be prepared in standard, pipe-delimited (“|”) ASCII format and compressed using standard Zip compression. Uncompressed files shall be named according to the following convention: “[file identification code][six-digit date code (yyyymm)].dat”. A market center will use the file identification code assigned to it pursuant to Section VIII of the Plan. The date code shall refer to the calendar month of trading for the market center report contained in the file. Compressed files will be named according to the same convention, except that the extension will be “.zip”.

VI. File Structure

(a) Order and Format of Fields

(1) The first field in a file shall be the code identifying the Participant that is acting as Designated Participant for the market center under Section VIII of the Plan. The Participant identification codes are as follows: Amex – “A”; BSE – “B”; CHX – “M”; CSE – “C”; NASD – “T”; NYSE – “N”; PCX – “P”; Phlx – “X”.

(2) The next field in a file shall be the code identifying the market center, as assigned by a Designated Participant pursuant to Section VIII of the Plan.

(3) The next field in a file shall be the six-digit code identifying the date of the calendar month of trading for the market center report contained in the file (“yyyymm”).

(4) The next field in a file shall be the symbol assigned to an individual security under the national market system plan pursuant to which the consolidated best bid and offer for such security are disseminated on a current and continuous basis.

(5) The next field in a file shall be the code for the one of the five types of order by which the Rule requires a market center to categorize its report. The order type codes are as follows: market orders – “11”; marketable limit orders – “12”; inside-the-quote limit orders – “13”; at-the-quote limit orders – “14”; near-the-quote limit orders – “15”.

(6) The next field in a file shall be the code for one of the four order size buckets by which the Rule requires a market center to categorize its report. The order size codes are as follows: 100-499 shares – “21”; 500-1999 shares – “22”; 2000-4999 shares – “23”; 5000 or more shares – “24”.

(7) The next field in a file shall be the number of covered orders, as specified in paragraph (b)(1)(i)(A) of the Rule.

(8) The next field in a file shall be the cumulative number of shares of covered orders, as specified in paragraph (b)(1)(i)(B) of the Rule.

(9) The next field in a file shall be the cumulative number of shares of covered orders cancelled prior to execution, as specified in paragraph (b)(1)(i)(C) of the Rule.

(10) The next field in a file shall be the cumulative number of shares of covered orders executed at the receiving market center, as specified in paragraph (b)(1)(i)(D) of the Rule.

(11) The next field in a file shall be the cumulative number of shares of covered orders executed at any other venue, as specified in paragraph (b)(1)(i)(E) of the Rule.

(12) The next field in a file shall be the cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt, as specified in paragraph (b)(1)(i)(F) of the Rule.

(13) The next field in a file shall be the cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt, as specified in paragraph (b)(1)(i)(G) of the Rule.

(14) The next field in a file shall be the cumulative number of shares of covered orders executed from 30 to 59 seconds after the time of order receipt, as specified in paragraph (b)(1)(i)(H) of the Rule.

(15) The next field in a file shall be the cumulative number of shares of covered orders executed from 60 to 299 seconds after the time of order receipt, as specified in paragraph (b)(1)(i)(I) of the Rule.

(16) The next field in a file shall be the cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt, as specified in paragraph (b)(1)(i)(J) of the Rule.

(17) The next field in a file shall be the average realized spread for executions of covered orders, as specified in paragraph (b)(1)(i)(K) of the Rule. The amount shall be expressed in dollars and carried out to four decimal places.

(18) The next field in a file shall be the average effective spread for executions of covered orders, as specified in paragraph (b)(1)(ii)(A) of the Rule. The amount shall be expressed in dollars and carried out to four decimal places.

(19) The next field in a file shall be the cumulative number of shares of covered orders executed with price improvement, as specified in paragraph (b)(1)(ii)(B) of the Rule.

(20) The next field in a file shall be, for shares executed with price improvement, the share-weighted average amount per share that prices were improved, as specified in paragraph

(b)(1)(ii)(C) of the Rule. The amount shall be expressed in dollars and carried out to four decimal places.

(21) The next field in a file shall be, for shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution, as specified in paragraph (b)(1)(ii)(D) of the Rule. The period shall be expressed in number of seconds and carried out to one decimal place.

(22) The next field in a file shall be the cumulative number of shares of covered orders executed at the quote, as specified in paragraph (b)(1)(ii)(E) of the Rule.

(23) The next field in a file shall be, for shares executed at the quote, the share-weighted average period of time from the time of order receipt to the time of order execution, as specified in paragraph (b)(1)(ii)(F) of the Rule. The period shall be expressed in number of seconds and carried out to one decimal place.

(24) The next field in a file shall be the cumulative number of shares of covered orders executed outside the quote, as specified in paragraph (b)(1)(ii)(G) of the Rule.

(25) The next field in a file shall be, for shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote, as specified in paragraph (b)(1)(ii)(H) of the Rule. The amount shall be expressed in dollars and carried out to four decimal places.

(26) The next field in a file shall be, for shares executed outside the quote, the share-weighted average period of time from the time of order receipt to the time of order execution, as specified in paragraph (b)(1)(ii)(I) of the Rule. The period shall be expressed in number of seconds and carried out to one decimal place.

(b) Records

Files shall have separate records for each combination of security, order type, and order size by which a market center must categorize its report under the Rule (a maximum of 20 records for each individual security).² The end of each record shall be designated by a carriage return line feed. If there are no orders on which a market center must report during a month for a specific combination of security, order type, and order size, no record for such combination need be displayed. If there is no data for a particular field within a record (e.g., the Rule does not require such information for inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders), the field shall be left empty.

VII. Internet Sites for Downloading Market Center Files

A market center shall make its compressed files available for downloading (via FTP) at a single page on an Internet site that is free of charge and readily accessible to the public.³ A market center shall make available on such page the files containing at least the three most recent monthly reports of the market center.

VIII. Functions of Designated Participant

² For each individual security, there are five order types that could each be broken down into four size buckets.

³ A market center can maintain its own Internet site at which its files can be downloaded or arrange for another person to maintain the Internet site at which the market center's files can be downloaded (as well as potentially the files of other market centers).

Each market center shall be responsible for arranging with a single Participant to act as the market center's Designated Participant.⁴ The functions of a Designated Participant are as follows.

(a) Assignment of Market Center and File Identification Codes

A Designated Participant shall assign a unique market center identification code to each market center for which it acts as Designated Participant. If an individual market center's report will be included in a file that contains only that market center's report, the file identification code for the file shall be the same as the market center identification code. If an individual market center's report will be included in a file that contains any additional market center's report (e.g., if the reports for all of an exchange's specialists are included in a single file), the Designated Participant also shall assign a separate file identification code for such file. All Designated Participants will act jointly to assure that no market center or file is assigned a code that previously has been assigned (e.g., by circulating advance notice to all Participants of codes that have been assigned).

(b) Maintenance of Market Center Identification Files

A Designated Participant shall create and maintain a market center identification file (in standard, pipe-delimited (“|”) ASCII format) for each calendar month. Such file shall contain fields setting forth, in order, (A) the identification code for the Designated Participant (as set forth in Section VI(a)(1) of the Plan); (B) all market center identification codes that the Designated Participant has assigned for the month, (C) the full name of the market center (in

⁴ See note 1 above for treatment of an entity that acts as a market maker in more than one trading venue and therefore would arrange for a Designated Participant for each market center/trading venue under the Rule.

upper case), and (D) the file identification code applicable to each market center (if different from the market center identification code). A Designated Participant shall make at least the three most recent market center identification files available for downloading (via FTP) on an Internet site that is free of charge and easily accessible to the public.

(c) Maintenance of Internet Site with Links to Download Sites

A market center shall notify its Designated Participant of the hyperlink to the location where the market center's files can be downloaded in accordance with Section VII of the Plan. A Designated Participant shall maintain a comprehensive list of the hyperlinks provided by its market centers at the same location at which market center identification files can be downloaded in accordance with Section VIII(b) of the Plan. As a result, anyone who wishes to download all files for a month can be assured that, if they visit the Internet sites of all Participants, they will find hyperlinks to all files for the month.

(d) Change of Designated Participant

A market center may change the identity of its Designated Participant only by arranging with another Participant to act as a replacement. The Participant that has agreed to act as a replacement Designated Participant shall provide written notice of the change to all other Participants, as well as make such notice available on the Internet site maintained by the replacement Designated Participant under Section VIII(b) of the Plan. The notice shall specify both the past and new market center identification code and file identification code for the market center, or state that the codes have not changed. The change shall not be effective until 30 days after the date of the written notice.

IX. Internet References to Information Required by Rule

When referring to information on Internet sites that the Rule requires to be made available to the public, market centers and Designated Participants shall use the phrase “Disclosure of SEC-Required Order Execution Information.”

X. Specifying Regular Trading Hours Under the Rule

With respect to the meaning of the term “regular trading hours” under paragraph (a)(19) of the Rule, the Participant who maintains the primary listing for a national market system security shall specify the regular trading hours for such security if they are to be other than the time between 9:30 a.m. and 4:00 p.m. Eastern Time. To effect a specification of regular trading hours under this Section X, a Participant shall submit a proposed rule change to the SEC under Section 19 of the Exchange Act. A Participant may specify as regular trading hours for a security only those times when the Participant itself is trading the security.

XI. Withdrawal from Plan

If a Participant ceases to be subject to the Rule or obtains SEC approval for another means of complying with the Rule, such Participant may withdraw from the Plan at any time on not less than 30 days’ prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

XII. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the 20th day of February 2001 by each of the parties hereto.