SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53940; File No. 4-516)

June 5, 2006

Joint Industry Plan; Order Approving Options Regulatory Surveillance Authority Plan by the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) and Philadelphia Stock Exchange, Inc.

I. Introduction

On January 31, 2006, pursuant to Rule 608 under the Securities Exchange Act of 1934 ("Act"),[1] the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.)[2] and Philadelphia Stock Exchange, Inc. (collectively, "Exchanges") filed with the Securities and Exchange Commission ("Commission") the Options Regulatory Surveillance Authority Plan, a plan providing for the joint surveillance, investigation and detection of insider trading on the markets maintained by the Exchanges ("ORSA Plan").[3]

On April 10, 2006, a detailed summary of the ORSA Plan was published for comment in the Federal Register.[4] The Commission received no comments on the ORSA Plan. This Order

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1 17 CFR 242.608.

2 On March 6, 2006, the Pacific Exchange, Inc. ("PCX") filed with the Commission a proposed rule change, which was effective upon filing, to change the name of PCX, as well as several other related entities, to reflect the recent acquisition of PCX Holdings, Inc., the parent company of PCX, by Archipelago Holdings, Inc. ("Archipelago") and the merger of the New York Stock Exchange, Inc. with Archipelago. See File No. SR-PCX-2006-24. All references herein have been changed to reflect these transactions.

3 The Exchanges initially filed the ORSA Plan with the Commission on May 5, 2005. The Exchanges filed revised versions of the ORSA Plan on July 6, 2005 and September 29, 2005.

4 See Securities Exchange Act Release No. 53589 (April 4, 2006), 71 FR 18120. The full text of the plan was made available to interested persons on the Commission's Web site.

approves the ORSA Plan as proposed pursuant to Section 11A of the Act[5] and Rule 608 thereunder.[6]

II. Summary of the ORSA Plan

The purpose of the ORSA Plan is to permit the Exchanges to act jointly in the administration, operation, and maintenance of a regulatory system for the surveillance, investigation, and detection of the unlawful use of undisclosed, material information in trading on one or more of their markets. By sharing the costs of these regulatory activities and by sharing the regulatory information generated under the ORSA Plan, the Exchanges believe they will be able to enhance the effectiveness and efficiency with which they regulate their respective markets and the national market system for options. The Exchanges also believe that the ORSA Plan will avoid duplication of certain regulatory efforts on the part of the Exchanges.

A. Policy Committee

The ORSA Plan provides for the establishment of a Policy Committee, on which each Exchange will have one representative and one vote. The Policy Committee is responsible for overseeing the operation of the ORSA Plan and for making all policy decisions pertaining to the ORSA Plan, including, among other things, the following:

1. determining the extent to which regulatory, surveillance, and investigative functions will be conducted on behalf of the Exchanges;
2. making all determinations pertaining to contracts with (i) persons who provide goods and services under the ORSA Plan, including parties to the ORSA Plan who provide such goods and services, and (ii) parties to the ORSA Plan and other

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5 15 U.S.C. 78k-1.

6 17 CFR 242.608.

self-regulatory organizations who engage in regulatory, surveillance, or investigative activities under the ORSA Plan;

3. reviewing and approving surveillance standards and other parameters to be used by self-regulatory organizations who perform regulatory and surveillance functions under the ORSA Plan; and

4. determining budgetary and financial matters.

All decisions by the Policy Committee, except as otherwise indicated, will be by majority vote, subject to any required approval of the Commission. Disputes arising in connection with the operation of the ORSA Plan will be resolved by the Policy Committee acting by majority vote.

B. Delegation of Functions

The ORSA Plan permits the Exchanges, as and to the extent determined by the Policy Committee, to delegate all or part of the regulatory and surveillance functions under the ORSA Plan (other than the Policy Committee's own functions) to one or more Exchanges or other self-regulatory organizations. The Policy Committee has determined to delegate the operation of the surveillance and investigative facility contemplated by the ORSA Plan to CBOE. The Exchanges have entered into a Regulatory Services Agreement ("RSA") with CBOE, as service provider, pursuant to which CBOE will perform certain regulatory and surveillance functions under the ORSA Plan and use its automated insider trading surveillance system to perform these functions on behalf of the Exchanges.

Although CBOE will be delegated responsibility for these activities, the ORSA Plan specifically provides that each Exchange will remain responsible for the regulation of its market and for bringing enforcement proceedings whenever it appears that persons subject to its

regulatory jurisdiction may have violated the Exchange's own rules, the Act, or the rules of the Commission thereunder.

C. Review of Service Provider

The Policy Committee must periodically, but not less frequently than annually, review the performance of persons to whom regulatory and surveillance activities have been delegated under the ORSA Plan. The Policy Committee must evaluate whether such activities have been performed by the service provider in a reasonably acceptable manner consistent with any contract governing the performance of such services and whether the costs of such services are reasonable. If the Policy Committee determines that the performance of delegated activities is not reasonably acceptable or that the costs are unreasonable, the Policy Committee may terminate the delegation of activities to such persons subject to applicable contractual terms.

D. Potential Insider Trading Violations

When in the course of performing regulatory and surveillance functions the Exchanges acting under the ORSA Plan, or a self-regulatory organization to whom such functions have been delegated, obtain information indicating that there may have been an insider trading violation by members or associated persons of one or more of the Exchanges, the Exchanges or such delegatee will promptly inform all such parties of the relevant facts. The Exchanges acting jointly will not have authority to take disciplinary action against members or associated persons of any individual Exchange. All such authority will remain that of the Exchanges acting in their individual capacities.

E. Other Regulatory or Surveillance Functions

The ORSA Plan permits the Exchanges to provide for the joint performance of any other regulatory or surveillance functions or activities that the Exchanges determine to bring within the scope of the ORSA Plan, but any determination to expand the functions or activities under the

ORSA Plan would require an amendment to the ORSA Plan subject to Commission approval and the requirements for amendments described below.

F. Allocation of Costs

The costs under the ORSA Plan to be allocated among the Exchanges will consist of all costs duly incurred by any Exchange as a direct result of its performing regulatory or surveillance functions under the ORSA Plan, together with any amounts charged under the ORSA Plan (or charged to any Exchange authorized to incur such charges under the ORSA Plan) by any other person for goods or services provided under the ORSA Plan. The costs incurred by CBOE in developing the insider trading surveillance system to be used by CBOE as the ORSA Plan service provider will be borne by CBOE without reimbursement. Costs incurred by CBOE in maintaining and upgrading its system going forward will be allocated among the Exchanges, provided that such costs have been authorized by the Exchanges.

Costs in each calendar quarter will be allocated among the Exchanges in accordance with a three element formula: (i) fifty percent of costs will be allocated equally among the Exchanges (with a pro rata adjustment for any exchange that was not an Exchange for the entire calendar quarter); (ii) twenty-five percent of costs will be allocated among the Exchanges in accordance with their respective contract volume market shares during the calendar quarter; and (iii) twenty-five percent of costs will be allocated among the Exchanges in accordance with their respective numbers of classes of securities options traded at any time during the calendar quarter.

G. New Parties to the ORSA Plan; Participation Fee

Any other self-regulatory organization that maintains a market for the trading of securities options in accordance with rules approved by the Commission may become a party to the ORSA Plan, subject to agreeing to the terms and conditions of the ORSA Plan, agreeing to the terms and conditions of any contract pursuant to which the parties to the ORSA Plan have

delegated regulatory and surveillance functions under the ORSA Plan, and payment of a participation fee.

The participation fee will be an amount determined by a majority of the Exchanges to be fair and reasonable compensation for the costs incurred in developing and maintaining the facilities used under the ORSA Plan and in providing for participation by the new party. In determining the amount of the participation fee, the Exchanges must consider the following factors:

1. The portion of costs previously paid for the development, expansion and maintenance of facilities used under the ORSA Plan which, under generally accepted accounting principles, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new party;
2. an assessment of costs incurred and to be incurred, if any, to accommodate the new party, which are not otherwise required to be paid by the new party; and
3. previous participation fees paid by other new parties.

If the Exchanges and a new party cannot agree on the amount of the participation fee, the matter will be subject to review by the Commission.

A self-regulatory organization that does not maintain a market for the trading of securities options may become a party to the ORSA Plan, and a self-regulatory organization that ceases to maintain such a market may continue to be a party to the ORSA Plan, only if permitted by a majority of the other parties.

H. Term and Termination

The ORSA Plan will remain in effect for so long as there are two or more parties to the ORSA Plan. Any Exchange may withdraw from the ORSA Plan at any time on not less than six

months prior written notice to each of the other parties. Any Exchange withdrawing from the ORSA Plan will remain liable for its proportionate share of costs allocated to it for the period during which it was a party, but it will have no further obligations under the ORSA Plan or to any of the other Exchanges with respect to the period following the effectiveness of its withdrawal. The right of an Exchange to participate in joint regulatory services under the ORSA Plan is not transferable without the consent of the other Exchanges.

I. Amendments

The ORSA Plan may be amended by the affirmative vote of all of the parties, provided that the provisions pertaining to the allocation of costs may be amended by the affirmative vote of not less than two-thirds of the parties, subject in each case to any required approval of the Commission.

III. Discussion

In Section 11A of the Act,[7] Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. In particular, Section 11A(a)(3)(B) of the Act[8] authorizes the Commission "by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof." Rule 608 under the Act establishes the procedures for filing, amending, and approving national market system plans.[9] Pursuant to paragraph (b)(2) of Rule 608, the Commission's approval of a national market system plan is conditioned upon a finding that the proposed plan "is necessary or appropriate in

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7 15 U.S.C. 78k-1.

8 15 U.S.C. 78k-1(a)(3)(B).

9 17 CFR 242.608.

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, or otherwise in furtherance of the purposes of the Act."[10] After carefully considering the ORSA Plan, the Commission finds that the ORSA Plan is 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 Act. In particular, the Commission finds that the ORSA Plan is consistent with Section 11A of the Act[11] and Rule 608 thereunder.[12]

The Commission believes that the ORSA Plan, which would permit the Exchanges to pool their resources for the regulation and surveillance of insider trading, should allow the Exchanges to more efficiently implement an enhanced surveillance program for the detection of insider trading, while eliminating redundant effort. In this regard, the Commission believes that the ORSA Plan should promote more effective regulation and surveillance of insider trading across all the options markets maintained by the Exchanges.

In approving the ORSA Plan, the Commission is authorizing the Exchanges to work together according to the procedures provided for under the ORSA Plan. The Commission is not approving or disapproving the terms of the RSA, nor is the Commission passing judgment on the surveillance performance of CBOE or the other Exchanges, acting individually or jointly under the ORSA Plan, or on the quality of their surveillance standards or any other parameters used for regulatory and surveillance functions. The ultimate responsibility and primary liability for self-regulatory failures remains with each Exchange, and the ORSA Plan does not relieve an

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10 17 CFR 242.608 (b)(2).

11 15 U.S.C. 78k-1.

12 17 CFR 242.608.

Exchange of its obligations as a self-regulatory organization under the Act. In this regard, the ORSA Plan specifically provides that each Exchange remains responsible to enforce compliance by persons subject to its regulatory jurisdiction with its own rules, the Act, and the rules and regulations thereunder.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 11A of the Act,[13] and Rule 608 thereunder,[14] that the ORSA Plan submitted by the Exchanges is approved.

By the Commission.

Nancy M. Morris
Secretary

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13 15 U.S.C. 78k-1.

14 17 CFR 242.608.