

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-58385; File No. 4-443)

August 19, 2008

Joint Industry Plan; Notice of Filing and Order Approving on a Temporary Basis 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 The amendment would provide a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of Long-term Equity

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).

Anticipation Securities (“LEAPS” or “LEAP”) options. This order summarily puts into effect Amendment No. 2 on a temporary basis not to exceed 120 days and solicits comment on Amendment No. 2 from interested persons.⁴

II. Description of the Proposed Amendment

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. Currently, Participant Exchanges may list a new LEAP expiration year at the appropriate time without any consideration as to the activity level of the class of options.

By agreeing to a minimum volume threshold per underlying class to qualify for an additional year of LEAP series, the Participant Exchanges 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.

In 2007, if this proposal had been in effect, the industry would have not 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 Exchanges agree that the benefit from reduced quoting levels greatly exceeds the small cost in missed business.

⁴ A proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanism of, a national market system or otherwise in furtherance of the purposes of the Act. See 17 CFR 242.608(b)(4).

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. 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.

The Commission directed the then-current options exchanges to act jointly to develop strategies to address overall capacity concerns in an Order dated September 8, 1999, as confirmed in a letter from the Director of the Division of Market Regulation dated September 13, 2000. This Amendment is an additional strategy to meet this goal.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the OLPP is consistent with the requirements of the Act and the rules and regulations thereunder.⁵ In particular, the Commission finds that the proposed amendment is consistent with the provisions of Section 11A of the Act⁶ and Rule 608 of Regulation NMS thereunder,⁷ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Specifically, the Commission believes that adopting a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAP options will reduce the number of option series available for trading, and thus may reduce increases in the options quote rate because market participants will not be submitting quotes in those series. In addition, the Commission finds that it is appropriate to put Amendment No. 2 into effect summarily upon publication of this notice on a temporary basis. The Commission believes

⁵ In approving this amendment, the Commission has considered its impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 242.608(b)(4).

that such action is appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets because it will allow the options exchanges to implement the initiative to reduce quote message traffic beginning immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether proposed Amendment No. 2 is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Numbers 4-443 in the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Numbers 4-443. These file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC

20549-1090 on business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-443 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,⁸ and Rule 608 thereunder⁹ that proposed Amendment No. 2 be, and it hereby is, approved on a temporary basis until December 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Acting Secretary

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608(b)(4).

¹⁰ 17 CFR 200.30-3(a)(29).