

annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account. Maintaining current information enables the portfolio manager to evaluate the client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure the client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that approximately 64 wrap fee and mutual fund wrap programs administered by 56 program sponsors use the procedures under rule 3a-4.⁵ Although it is impossible to determine the exact number of clients that participate in investment advisory programs, an estimate can be made by dividing total assets by the minimum account requirement (\$172.3 billion⁶ divided by \$40,714),⁷ for a total of 4,231,960 clients. Additionally, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 2000 through 2003, by the minimum account requirement (\$13.4 billion divided by \$40,714), for an average annual number of new accounts of 329,125.⁸

The Commission staff estimates that each program sponsor spends approximately one hour annually in preparing, conducting and/or reviewing interviews for each new client; 30 minutes annually preparing, conducting and/or reviewing annual interviews for each continuing client; and one hour preparing and mailing quarterly account activity statements, including the notice to update information to each client. Based on the foregoing, the Commission staff therefore estimates the total annual burden of the rule's paperwork requirements for all program sponsors to be 6,512,502.5 hours. This represents a decrease of 7,636,910 hours from the prior estimate of 14,149,412.5 hours. The decrease results from a change in

the method of computation of assets managed under investment advisory programs, and the resulting decrease in the estimated number of clients in those programs.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's safe harbor. Nevertheless, rule 3a-4 is a nonexclusive safe harbor, and a program that does not comply with the rule's collection of information requirements does not necessarily meet the Investment Company Act's definition of investment company. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or e-mail to: David.Rostker@omb.eop.gov; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 29, 2004.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49969; File No. 4-429]

Joint Industry Plan; Order Approving Joint Amendment No. 11 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Processing of Satisfaction Orders

July 2, 2004.

I. Introduction

On February 18, 2004, March 1, 2004, March 23, 2004, April 20, 2004, April 23, 2004, and April 28, 2004, the

International Securities Exchange, Inc. ("ISE"), the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange, Inc. ("PCX"), the Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), (collectively, the "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") an amendment ("Joint Amendment No. 11") to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").¹ The amendment proposes to change the manner in which the Participants and their members process Satisfaction Orders² they send following a Trade-Through³, and the executions ("fills") that arise from such orders.

The proposed amendment to the Linkage Plan was published in the **Federal Register** on May 19, 2004.⁴ No comments were received on the proposed amendment. This order approves the proposed amendment to the Linkage Plan.

II. Description of the Proposed Amendment

The Participants propose to change the manner in which they process Satisfaction Orders following a Trade-Through in Joint Amendment No. 11. Pursuant to the Linkage Plan, if a disseminated quote that is traded through represents a customer order, a member representing that order may send a Satisfaction Order.⁵ Upon receipt

¹ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined 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). On June 27, 2001, May 30, 2002, January 29, 2003, June 18, 2003, and January 29, 2004, the Commission approved joint amendments to the Linkage Plan. See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003); and 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

² A "Satisfaction Order" is defined as an order sent through the Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Section 2(16)(c) of the Linkage Plan.

³ A "Trade-Through" is defined as a transaction in an options series at a price that is inferior to the National Best Bid or Offer. See Section 2(29) of the Linkage Plan.

⁴ See Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954.

⁵ See Sections 7(a)(ii)(D) & 8(c)(ii)(B)(2) of the Linkage Plan.

⁵ These estimates are based on statistical information on wrap fee and mutual fund wrap programs provided by Cerulli Associates.

⁶ The estimate of the amount of assets in wrap fee and mutual fund wrap programs was provided by Cerulli Associates.

⁷ The estimate of the average minimum account requirement was provided by Cerulli Associates.

⁸ The requirement for initial client contact and evaluation is not a recurring obligation, but only occurs when the account is opened. The estimated annual hourly burden is based on the average number of new accounts opened each year.

of the Satisfaction Order, the member that initiated the Trade-Through can either fill the Satisfaction Order, or cause the price of the transaction that constituted the Trade-Through to be corrected to a price at which a Trade-Through would not have occurred.⁶ While the Participants believe this process generally works well, the experience with the Options Intermarket Linkage ("Linkage") to date has led the Participants to agree to three changes related to Satisfaction Order processing.

In Joint Amendment No. 11, the Participants explain that currently, the Linkage Plan permits a Participant to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through).⁷ The amendment proposes that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

In addition, the proposed amendment explains that the Linkage Plan currently permits a Participant that sends a Satisfaction Order through Linkage to reject the receiving Participant's fill within 30 seconds of being notified of the fill if the customer order that underlies the Satisfaction Order either has been executed on the sending exchange or has been canceled while the Satisfaction Order is being processed.⁸ However, if the order is filled or canceled, the Participants represent that there is currently no requirement in the Linkage Plan for the Participant that sent the Satisfaction Order to cancel it while it is still pending execution on another market. The Participants believe that this aspect of the Linkage Plan leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the amendment proposes a requirement that a Participant cancel a pending Satisfaction Order that it sent through Linkage as soon as practical if the underlying customer order is filled or canceled. The proposed amendment would clarify that the customer order must be canceled or executed prior to the receipt of the Satisfaction Order fill report.

Lastly, as noted above, a Participant can reject a Satisfaction Order fill if the

underlying customer order is executed or canceled while the Satisfaction Order is pending. However, the member that initiated the Satisfaction Order may, itself, trade against the customer order before the member receives a notice from the receiving Participant that the Satisfaction Order has been filled. In this case, the Participants believe that it would be inappropriate to reject the fill. Accordingly, the proposed amendment would provide that a Participant may not reject the fill of the Satisfaction Order when the underlying customer order has been executed against the member that initiated the Satisfaction Order.

III. Discussion

After careful consideration, the Commission finds that proposed Joint Amendment No. 11 to the Linkage Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act⁹ and Rule 11Aa3-2 thereunder,¹⁰ in that it should clarify the Participants' obligations with respect to the sending of Satisfaction Orders and the receipt of Satisfaction Order fills, which should facilitate the fair and efficient processing of Satisfaction Orders through the Linkage in furtherance of the goals of a national market system.

IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act¹¹ and Rule 11Aa3-2 thereunder,¹² that the proposed Joint Amendment No. 11 is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-15685 Filed 7-9-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 5, 2004:

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 240.11Aa3-2.

¹¹ See *supra* note 10.

¹² See *supra* note 11.

¹³ 17 CFR 200.30-3(a)(29).

A closed meeting will be held on Wednesday, July 7, 2004, at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Campos, as duty officer, voted to consider the item listed for the closed meeting in a closed session and determined that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Wednesday, July 7, 2004, will be:

Institution and settlement of an injunctive action;

Institution of an administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942-7070.

Dated: July 7, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04-15780 Filed 7-7-04; 4:46 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49963; File No. SR-Amex-2004-33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the American Stock Exchange LLC Relating to the Handling of Satisfaction Orders Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

July 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ See Section 8(c)(ii)(A) of the Linkage Plan.

⁷ See Section 8(c)(ii)(B)(2) of the Linkage Plan.

⁸ See Section 8(c)(ii)(C) of the Linkage Plan.