

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56806; File No. 4-429)

November 16, 2007

Joint Industry Plan; Order Approving Joint Amendment No. 24 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Regarding Elimination of the Class Gate

I. Introduction

On September 14, 2007, September 19, 2007, August 29, 2007, August 29, 2007, August 30, 2007, and September 26, 2007, American Stock Exchange LLC (“Amex”), Boston Stock Exchange, Inc. (“BSE”), Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), NYSE Arca, Inc. (“NYSE Arca”), and Philadelphia Stock Exchange, Inc. (“Phlx”) (collectively, the “Participants”), respectively, filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder² an amendment (“Joint Amendment No. 24”) to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”).³ In Joint Amendment No. 24, the Participants propose to eliminate the “Class Gate” restriction on Principal Order (“P Order”) access through the Linkage. The proposed Joint Amendment No. 24 was published in the Federal Register on October 12,

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (“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, Pacific Exchange, Inc. (n/k/a NYSE Arca), and BSE joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

2007.⁴ The Commission received no comments on Joint Amendment No. 24. This order approves Joint Amendment No. 24.

II. Description of the Proposed Amendment

In Joint Amendment No. 24, the Participants proposed to modify Section 7(a)(ii)(C) of the Linkage Plan so as to eliminate the Class Gate restriction on P Order access through the Linkage. Currently, Section 7(a)(ii)(C) of the Linkage Plan provides that, once a Participant automatically executes a P Order in a series of an Eligible Option Class, it may reject any other P Orders sent in the same Eligible Option Class by the same Participant for 15 seconds after the initial execution unless there is a price change in the receiving Participant's disseminated offer (bid) in the series in which there was the initial execution and such price continues to be the NBBO. After the 15 second period, and until the sooner of one minute after the initial execution or a change in its disseminated offer (bid), Section 7(a)(ii)(C) provides that the Participant that provided the initial execution is not obligated to execute any P Orders received from the same Participant in the same Eligible Option Class in its automatic execution system. In Joint Amendment No. 24, the Participants proposed to eliminate the Class Gate restriction because all Participants have removed restrictions on non-customer access to the automatic execution systems, rendering the Class Gate restriction unnecessary.

III. Discussion and Commission Findings

After careful consideration of Joint Amendment No. 24, the Commission finds that approving Joint Amendment No. 24 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that Joint Amendment No. 24 is

⁴ See Securities Exchange Act Release No. 56596 (October 2, 2007), 72 FR 58133.

consistent with Section 11A of the Act⁵ and Rule 608 thereunder⁶ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission recognizes that, at the time of the creation of the Linkage, certain Participants had restrictions on non-customer access to their automatic execution systems. The Class Gate provision served to protect those Participants that did not limit non-customer access against being obligated to automatically execute an unlimited number of P Orders. Since the implementation of the Linkage, all Participants have removed restrictions on non-customer access to their automatic execution systems. All of the exchanges, therefore, allow access to their trading platforms orders on behalf of non-member market makers. The Commission believes that the greater access to automatic execution systems has rendered the Class Gate provision unnecessary and that eliminating the Class Gate provision should facilitate the more efficient operation of the options markets.

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 242.608.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act⁷ and Rule 608 thereunder,⁸ that Joint Amendment No. 24 is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 242.608.

⁹ 17 CFR 200.30-3(a)(29).