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April 16, 2008

Ms. Nancy N. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549



**Re: Amendment No. 2 to the Options Price Protection and Locked/Crossed Market Plan; Implementation**

Dear Ms. Morris:

International Securities Exchange, LLC ("ISE") hereby submits this Amendment No. 2 ("Amendment No. 2" or "Amendment") to the proposed Options Price Protection and Locked/Crossed Market Plan (the "Plan"). We submitted the proposed Plan on September 12, 2007. We submitted Amendment No. 1 on December 10, 2007. This amendment supersedes Amendment No. 1 and replaces it in its entirety. Enclosed for use by the Commission staff are five additional, unexecuted copies of the Amendment. In the following paragraphs we respond to those requirements of Rule 608 under the Exchange Act that apply to this Amendment No. 2. All capitalized and undefined terms used in this letter have the same meanings assigned to them in the Plan.

1. Purpose of Amendment

The purpose of this Amendment is: (i) to provide more specificity on the implementation of the Plan; (ii) to redefine the term "Locked Market"; and (iii) to add two new Trade-Through exceptions. In addition, the Amendment add The NASDAQ Stock Market as a Participant and makes other minor word corrections.

Implementation

The ISE and NYSE Arca, Inc. ("NYSE Arca") currently have filed the Plan with the Commission, and most of the other options exchanges have stated that they plan to so file. At the same time, all the current options exchanges also are participants in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Old Plan"). It is our intention to withdraw from the Old Plan upon implementation of this Plan. However, we realize that not all of the other exchanges may join the Plan, and thus it may be necessary for both plans to operate simultaneously. Amendment No. 1 will ensure that the two plans can operate together seamlessly.

The Old Plan states that a participant in that plan may withdraw from that plan if the withdrawing exchange specifies how that exchange "plans to accomplish, by alternate means, the goals of the [Old Plan] regarding limiting Trade-Throughs of prices on other exchanges trading the same options classes."<sup>1</sup> We plan to accomplish this both by ensuring that exchanges not participating in the Plan can reach us to protect our orders, and that we can reach non-participating exchanges to protect their orders.

With respect to other exchanges reaching us, the terms of the Plan require that all exchanges retain connectivity to the "hub" operated by The Options Clearing Corporation under the Old Plan in order to receive orders.<sup>2</sup> Thus, we will be able to receive any orders such exchanges send to us prior to such exchanges trading through our quotations. In this regard, we will not propose to repeal the rules currently on our books specifying our obligation to execute incoming orders under the Old Plan until all exchanges have withdrawn from the Old Plan and become Participants in the Plan.<sup>3</sup>

With respect to us reaching other exchanges, the Plan is "rules-based," and not "system-based," and thus does not require any specific infrastructure to comply with the Plan's terms. As such, our members will be able to protect away-market quotations by sending orders to non-participating exchanges through existing, non-linkage, portals. However, we recognize that a key to the operation of the price protection provision of the Plan is the use of Intermarket Sweep Orders, or ISO's. Specifically, our members will be able to trade at a price inferior to another market's disseminated quotation as long as the member sends an ISO to such market for the full size of quotation. Unless that market recognizes the incoming order as an ISO, it is theoretically possible that an execution could cause a trade-through and the market would not fill the order.<sup>4</sup>

To address this theoretical possibility and to ensure that all orders are properly protected, Amendment No. 2 provides that we will not implement the Plan until all options exchanges either become Participants to the Plan or develop the ability to recognize incoming ISO's. Having all exchanges either participate in the Plan or read incoming orders as ISO's will ensure their ability to protect their disseminated quotations against inferior executions on other exchanges. The Amendment also provides the ability of Commission to waive this requirement, based on factors that may arise subsequent to the adoption of the Plan, as amended.

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<sup>1</sup> Section 5(c)(iii) of the Old Plan.

<sup>2</sup> Section 7(b) of the Plan.

<sup>3</sup> See ISE Rule 1901.

<sup>4</sup> We believe that this is problem would arise only in very limited situations. Most often the market with the better quote would be at the national best bid or offer ("NBBO") and would automatically trade at its disseminated price. However, it is possible that there could be two markets at different prices better than our quotation, and our member would need to send ISO's to both markets. While the market at the NBBO would execute the incoming order, the market with a quote superior to us but inferior to the NBBO might reject the order if the market could not read the ISO "tag."

### Locked Markets

The Amendment redefines the term "Locked Market."<sup>5</sup> Currently the Plan defines the term as a market in which a Protected Bid equals a Protected Offer, but only if one or both of those two quotes represents a Customer order. We originally proposed to limit the definition to Customer orders to allow non-Customer orders to lock. This would permit non-Customer orders to lock, thus providing market participants access to a "zero spread" quotation. At the same time, this would provide a Customer with an execution if its order was executable in the national market system.

We now believe that it will be difficult to administer the Locked Markets using the current definition. First, the options exchanges will need to develop mechanisms to identify when the locking quote is from a Customer. In addition, there may be situations where it would be appropriate to allow a Customer order to lock a market, such as when the fees charged to clear a locked quote would render such a trade uneconomical for the Customer. Thus, while we continue to believe that permitting certain Locked Markets is appropriate, we also recognize that we must address these issues in a comprehensive manner.

Attempting to resolve all Locked Market issues in the text of the Plan likely will delay the adoption of the Plan and the implementation of the new Linkage. In this regard, Section 6(c) of the Plan would allow the display of Locked Markets as permitted under exchange rules.<sup>6</sup> Thus, we plan to work with the other Participants to develop, and to submit to the Commission for approval, rules that permit Locked Markets in appropriate circumstances.

### Trade-Through Exceptions

We propose to add two new Trade-Through exceptions. The first would apply to "stopped orders." Specifically, if an order is stopped at price that did not constitute a Trade-Through at the time of the stop, an exchange could seek price improvement for that order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market. This exception would be particularly useful for executions effected pursuant to such mechanisms as the ISE's "Price Improvement Mechanism."<sup>7</sup>

The second new exception would cover "benchmark" trades. This would cover trades executed at a price not tied to the price of an option at the time of execution, and

<sup>5</sup> The Plan provides that the Participants must have rules requiring their members reasonably to avoid and reconcile Locked Markets, and prohibiting a pattern or practice of displaying Locked Markets.

<sup>6</sup> We propose amending Section 6 of the Plan to clarify that a Participant can adopt rules permitting Locked Markets to be excepted from all of Section 6's limitations.

<sup>7</sup> See ISE Rule 723.

for which the material terms were not reasonably determinable at the time of the commitment to make the trade. An example would be a value-weighted average price trade, or "VWAP." This corresponds to a Trade-Through exemption in Regulation NMS for equity trades.<sup>8</sup> No Participant currently permits these types of options trades, and any transaction-type relying on this exemption would require the Participant to adopt implementing rules, subject to Commission review and approval.

2. Governing or Constitutional Documents

Not applicable.

3. Implementation of Amendments

The Amendment will become effective when each current Participant submits the Amendment and the Commission approves the Plan, as amended.

4. Development and Implementation Phases

The Participant will implement the Plan, as amended, pursuant to the terms of this Amendment.

5. Analysis of Impact on Competition

The implementation of the Amendment will impose no burden on competition.

6. Written Understandings or Agreements relating to Interpretation of, or Participation in, Plan

Not applicable.

7. Approval by Sponsors in Accordance with Plan

Under Section 4(a) of the Plan, the requisite approval of the Amendment is achieved by execution of the Amendment on behalf of each current Participant.

8. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

9. Terms and Conditions of Access

Not applicable.

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<sup>8</sup> See Rule 611(b)(7) under the Exchange Act.

10. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

11. Method of Frequency of Processor Evaluation

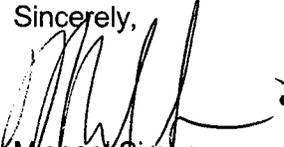
Not applicable.

12. Dispute Resolution

Not applicable.

If you have any questions on this proposed amendment, please contact me.

Sincerely,



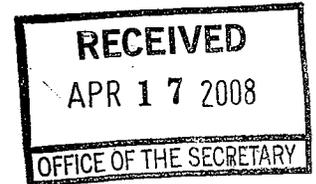
Michael Simon  
Secretary

Enclosure

cc: Elizabeth King  
David Liu  
Jennifer Colihan

April 16, 2008

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Secretary  
Securities and Exchange Commission  
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**Re: Amendment No. 2 to the Options Price Protection and Locked/Crossed Market Plan; Implementation**

Dear Ms. Morris:

NYSE Arca Inc. ("NYSE Arca" or "Exchange") hereby submits this Amendment No. 2 ("Amendment No. 2" or "Amendment") to the proposed Options Price Protection and Locked/Crossed Market Plan (the "Plan"). We submitted the proposed Plan on September 14, 2007. We submitted Amendment No. 1 on December 10, 2007. This amendment supersedes Amendment No. 1 and replaces it in its entirety. Enclosed for use by the Commission staff are five additional, unexecuted copies of the Amendment. In the following paragraphs we respond to those requirements of Rule 608 under the Exchange Act that apply to this Amendment No. 2. All capitalized and undefined terms used in this letter have the same meanings assigned to them in the Plan.

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With respect to other exchanges reaching us, the terms of the Plan require that all exchanges retain connectivity to the "hub" operated by The Options Clearing Corporation under the Old Plan in order to receive orders.<sup>2</sup> Thus, we will be able to receive any orders such exchanges send to us prior to such exchanges trading through our quotations. In this regard, we will not propose to repeal the rules currently on our books specifying our obligation to execute incoming orders under the Old Plan until all exchanges have withdrawn from the Old Plan and become Participants in the Plan.<sup>3</sup>

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<sup>1</sup> Section 5(c)(iii) of the Old Plan.

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<sup>3</sup> See NYSE Arca Rule 6.93

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Not applicable.

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8. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

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Not applicable.

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Not applicable.

11. Method of Frequency of Processor Evaluation

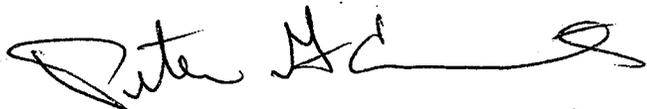
Not applicable.

12. Dispute Resolution

Not applicable.

If you have any questions on this proposed amendment, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Armstrong", with a stylized flourish at the end.

Peter G. Armstrong  
Managing Director, Options

Enclosure

cc: Elizabeth King  
David Liu  
Jennifer Colihan

**Amendment No. 2 to the Options Price Protection and Locked/Crossed Market Plan**

Underlining indicates additions; [brackets] indicate deletions.

\* \* \*

**Section 2 - Definitions**

\* \* \*

7) "Eligible Options Class" means all option series overlying a security (as that term is defined in Section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is available for trading [traded] on two or more Participants.

\* \* \*

10) "Intermarket Sweep Order" means an IOC Order for an options series that meets the following requirements:

(a) When routed to a [another] Participant, the IOC order is identified as an Intermarket Sweep Order;

(b) Simultaneously with the routing of the order, one or more additional IOC Orders, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the IOC Order, with such additional orders also marked as Intermarket Sweep Orders.

11) "Locked Market" means a quoted market in which a Protected Bid is equal to a Protected Offer in a series of an Eligible Options Class[, and in which either or both of the Protected Bid or Protected Offer represents, in whole or in part, a Customer order].

\* \* \*

22) "System" means the data processing hardware, software and communications network, operated by the OCC, linking the Participants.

\* \* \*

**Section 3 – Parties to the Plan**

(a) List of Parties

The parties to the Plan are as follows:

\* \* \*

International Securities Exchange, LLC ("ISE"), registered as a national securities exchange under the Exchange Act and having its principal place of business at 60 Broad Street, New York, New York 10004.

The NASDAQ Stock Market LLC, registered as a national securities exchange under the Exchange Act and having its principal place of business at One Liberty Plaza, 50<sup>th</sup> Floor, New York, New York 10006.

\* \* \*

**Section 5 – Order Protection**

\* \* \*

(b) Exceptions.

\* \* \*

(viii) The transaction that constituted the Trade-Through was effected as a portion of a "complex trade," as defined in the rules of a Participant; [or]

(ix) The transaction that constituted the Trade-Through was the execution by a Participant of an order for which, at the time of receipt of the order, a member of the Participant had guaranteed an execution at no worse than a specified price (a "stopped order"), where:

(A) the stopped order was for the account of a Customer;

(B) the Customer agreed to the specified price on an order-by-order basis;

and

(C) the price of the Trade-Through was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or, for a stopped sell order, higher than the national Best Offer in the options series at the time of execution;[.]

(x) The transaction that constituted the Trade-Through was reported to OPRA as

being out of sequence;[.]

(xi) The transaction that constituted the Trade-Through was the execution by a Participant of an order which was stopped at a price that did not Trade-Through another Participant at the time of the stop; or

(xii) The transaction that constituted the Trade-Through was the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the options series at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

(c) Intermarket Sweep Orders. Participants shall take reasonable steps to establish that Intermarket Sweep Orders meet the requirements of Section 2(10) of the Plan.

### **Section 6 – Locked and Crossed Markets**

The Participants agree that they shall establish, maintain and enforce written rules that:

- (a) Require their members reasonably to avoid displaying Locked and Crossed Markets;
  - (b) Are reasonably designed to assure the reconciliation of Locked and Crossed Markets;
- and
- (c) Prohibit its members from engaging in a pattern or practice of displaying Locked and Crossed Markets;[.]

in all cases subject to such exceptions as may be [other than displaying a Locked or Crossed Market as permitted by an exception] contained in the rules of a Participant approved by the Commission [established pursuant to paragraph (a) above].

\* \* \*

### **Section 7 – Compliance With the Plan**

(a) Use of the System or Private Routing to Comply With the Plan

A Participant may comply with the Plan either by establishing its own private routing arrangements or through use of the System. Participants who chose to use the System may do so solely to send Intermarket Sweep Orders or other IOC orders. Any incoming order, whether sent through the System or through private routing arrangements:

- (i) with respect to the sending Participant, must reflect the account capacity (such as customer, firm, market maker or other capacity that a Participant may use) of the order on whose behalf the order is being sent; and
- (ii) with respect to the receiving Participant, must be subject to the same fees that the Participant charges for orders the Participant's members enter for the same account capacity.

\* \* \*

**Section 8 – Implementation**

The Parties shall implement this Plan on a date upon which all Parties agree, but no later than January 31, 2009; provided that, unless the SEC otherwise authorizes, the Parties shall not implement this Plan unless all Eligible Exchanges either (1) have become parties to this Plan or (2) have developed the ability to recognize incoming Intermarket Sweep Orders.

\* \* \*

**Section 9 [8] – Counterparts and Signatures**

\* \* \*