

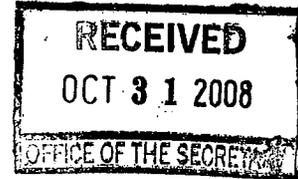


2008 NOV -3 PM 5:38

220 Montgomery Street | Suite 200
San Francisco, California 94104

October 30, 2008

SEC 711



Ms. Florence Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Amendment No. 3 to the Options Price Protection and Locked/Crossed Market Plan; Implementation

Dear Ms. Harmon:

NYSE Arca Inc. ("NYSE Arca" or "Exchange") hereby submits this Amendment No. 3 ("Amendment No. 3" or "Amendment") to the proposed Options Price Protection and Locked/Crossed Market Plan (the "Plan"). We submitted the proposed Plan on September 14, 2007. 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. 3. 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 amend the Plan's Trade-Through provisions to ensure that such provisions protect quotations of Eligible Exchanges that are not Participants; (ii) to delete one Trade-Through exception; (iii) to provide more specificity on the implementation of the Plan; (iv) to permit non-IOC Intermarket Sweep Orders; and (v) to update the names of the Participants. In addition, this cover letter provides more details on certain aspects of the Plan, including the operation of the Trade-Through exceptions and the governance of the System that Participants voluntarily can use to comply with the Plan.¹

A. Trade-Through Provisions

1. Trade-Throughs of Eligible Exchanges' Quotations

While we anticipate that all Eligible Exchanges will join the Plan, the Plan also could operate if one or more Eligible Exchanges elect to remain in the current linkage. That linkage operates pursuant to the Plan for the Purpose of Creating

¹ We also propose to update the names and alphabetical listings of the Participants both in the list of Participants and on the signature page.

and Operating an Intermarket Option Linkage ("Old Plan"). In that case, it is our intent to protect disseminated quotations of all options exchanges, not just those of Participants. The Amendment would ensure the protection of such quotations. Specifically, in a number of places the Plan refers to the protection of quotations of "Participants." The Amendment would change these references to cover quotations of "Eligible Exchanges." An "Eligible Exchange" currently is defined as an exchange that is registered with the Commission, is a Participant Exchange in OCC, and is a party to the OPRA Plan.² We propose to amend that definition to require that an exchange also be a participant in a Plan that provides Trade-Through protection comparable to this Plan.

2. Trade-Through Exceptions

a. Deletion of Out-of-Sequence Exception

The Amendment proposes to delete the Trade-Through exception for trades reported to OPRA out-of-sequence.³ That exception is not in the Old Plan, nor is it in Regulation NMS under the Exchange Act ("Regulation NMS") governing trade-throughs in equity securities. The exception could be misinterpreted to mean that a trade reported out-of-sequence is Trade-Through exempt even if it constituted a Trade-Through at the time of execution. That is not the case. Under the Plan, a Trade-Through is a compliance matter, and a transaction that constituted a Trade-Through raises compliance issues regardless of when it is reported to the OPRA. Reporting the trade out-of-sequence should not affect the Trade-Through status of the transaction.

b. Detailed Explanation of Trade-Through Exceptions

We would like to provide more explanation for the various Trade-Through exceptions that currently are proposed in the Plan:

- System Issues: Section 5(b)(i) of the Plan corresponds to the system-failure exception in Regulation NMS⁴ for equity securities and permits trading through an Eligible Exchange that is experiencing system problems. The Participants will adopt "self-help" rules to implement this exception.
- Trading Rotations: Section 5(b)(ii) of the Plan carries forward the current Trade-Through exception in the Old Plan⁵ and is the options equivalent to the single price opening exception in Regulation NMS for equity securities.⁶ Options exchanges use a trading rotation to open an option for trading, or to reopen an option after a trading halt. The rotation is effectively a single price

² Section 2(6) of the Plan.

³ Section 5(b)(10) of the Old Plan.

⁴ See Rule 611(b)(1) under the Exchange Act.

⁵ See Old Plan Section 8(c)(iii)(E).

⁶ See Rule 611(b)(3) under the Exchange Act.

auction to price the option and there are no practical means to include prices on other exchanges in that auction.

- **Crossed Markets:** Section 5(b)(iii) corresponds to the crossed quote exception in Regulation NMS for equity securities.⁷ If a Protected Bid is higher than a Protected Offer, it indicates that there is some form of market dislocation or inaccurate quoting. Permitting transactions to be executed without regard to Trade-Throughs in a Crossed Market will allow the market quickly return to equilibrium.
- **Intermarket Sweep Orders ("ISOs"):** These two exceptions correspond to the ISO exceptions in Regulation NMS for equity securities.⁸ Section 5(b)(iv) of the Plan permits a Participant to execute orders it receives from other Participants or members that are marked as ISO even when it is not at the NBBO. Section 5(b)(v) of the Plan allows a Participant to execute inbound orders when it is not at the NBBO, provided it simultaneously "sweeps" all better-priced interest displayed by Eligible Exchanges.
- **Quote Flickering:** Section 5(b)(vi) of the Plan corresponds to the flickering quote exception in Regulation NMS for equity securities.⁹ Options quotations change as rapidly, if not more rapidly, than equity quotations. Indeed, they track the price of the underlying security and thus change when the price of the underlying security changes. This exception provides a form of "safe harbor" to market participants to allow them to trade through prices that have changed within a second of the transaction causing a nominal Trade-Through.
- **Non-Firm Quotes:** Section 5(b)(vii) of the Plan carries forward the current non-firm quote Trade-Through exception in the Old Plan.¹⁰ By definition, an Eligible Exchange's quotations may not be firm for automatic execution during this trading state and thus should not be protected from Trade-Throughs. In effect, these quotations are akin to "manual quotations" under Regulation NMS.
- **Complex Trades:** Section 5(b)(viii) of the Plan carries forward the current complex trade exception in the Old Plan¹¹ and will be implemented through rules adopted by the Participants and approved by the Commission. Complex trades consist of multiple transactions ("legs") effected at a net price, and it is not practical to price each leg at a price that does not constitute a Trade-Through. Narrowly-crafted implementing rules will ensure that this exception does not undercut Trade-Through protections.

⁷ See Rule 611(b)(4) under the Exchange Act.

⁸ See Rule 611(b)(5) and (6) under the Exchange Act.

⁹ See Rule 611(b)(8) under the Exchange Act.

¹⁰ See Old Plan Section 8(c)(iii)(C).

¹¹ See Old Plan Section 8(c)(iii)(G).

- Customer Stopped Orders: Section 5(b)(ix) of the Plan corresponds to the customer stopped order exception in Regulation NMS for equity securities.¹² It permits broker dealers to execute large orders over time at a price agreed upon by a customer, even though the price of the option may change before the order is executed in its entirety.¹³
- Stopped Orders and Price Improvement: As explained in Amendment No. 2, Section 5(b)(xi) of the Plan would apply if an order is stopped at price that did not constitute a Trade-Through at the time of the stop. In this case, 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."¹⁴
- Benchmark Trades: Also as explained in Amendment No. 2, Section 5(b)(xii) of the Plan would cover trades executed at a price not tied to the price of an option at the time of execution, and for which the material terms were not reasonably determinable at the time of the commitment to make the trade. An example would be a volume-weighted average price trade, or "VWAP." This corresponds to a Trade-Through exemption in Regulation NMS for equity trades.¹⁵ 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.

B. Implementation

Amendment No. 3 amends certain aspects of the Plan's implementation provisions. Currently the Plan states that the Participants will implement the Plan when, among other things, the Commission approves the Plan. The Amendment makes clear that the Commission will need to approve both the Plan and the Participants' implementing rules before the Plan can become operational. The Amendment further amends the proposed target implementation date from January 31, 2009 to February 27, 2009 in order to accommodate one Participant's proposed software implementation schedule.

In addition, the Plan provides that it can become effective even if not all Eligible Exchanges become Participants. In that case, unless the Commission otherwise authorizes, the Plan currently provides that all Eligible Exchanges will need to develop the ability to "recognize" ISOs before the Participants can implement the Plan. The Amendment clarifies that Eligible Exchanges will need to

¹² See Rule 611(b)(9) under the Exchange Act.

¹³ For a further discussion on how this exemption operates, see the Regulation NMS Adopting Release, Exchange Act Release No. 51808, June 9, 2005 at notes 322-325.

¹⁴ See ISE Rule 723.

¹⁵ See Rule 611(b)(7) under the Exchange Act.

do more than merely “recognize” ISOs. Such non-participating exchanges will need to develop the ability to “accept and execute” ISOs.

C. Use of the System

Section 7 of the Plan provides for the voluntary use of the “System” by Participants to comply with the requirements of the Plan. The Options Clearing Corporation operates the System as the hub of the current intermarket linkage, governed by the Old Plan. The Participants planned to give their members the choice of sending ISOs to other Participants through their own private routing arrangements, through Participant-provided means, or the through the System. However, members expressed little or no interest in using the System, and the Participants now have decided that members will route ISOs either through private routing arrangements or Participant-provided means. Thus, the Amendment eliminates the section of the Plan discussing operation of, and payment for, the System.

D. Non-IOC Intermarket Sweep Orders

We propose to delete the requirement in Section 2(9) that an Intermarket Sweep Order also be an Immediate or Cancel (“IOC”) Order.¹⁶ Rather, an Intermarket Sweep Order could be any limit order that meets the other requirements of the Section 2(9) definition. This corresponds to the definitions in Regulation NMS for equity securities. A Participant could place on its book any remaining portion of a non-IOC Intermarket Sweep Order that it could not immediately execute. Alternatively, a Participant would retain the right to cancel such remaining portion of the order.

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.

¹⁶ The Plan defined an IOC Order in Section 2(9). We propose to delete that definition and renumber the following definitions. We also propose to adjust cross-references to the new numbering.

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.

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,

A handwritten signature in black ink, appearing to read "Peter G. Armstrong". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter G. Armstrong
Managing Director, Options

Enclosure

cc: Elizabeth King
David Liu
Jennifer Colihan

OPTIONS ORDER PROTECTION AND LOCKED/CROSSED MARKET PLAN

Amendment No. 3, October 28, 2008

Underlining indicates additions; [brackets] indicates deletions

Section 1 – Preamble

The Participants submit to the SEC this Plan providing a framework for order protection and addressing Locked and Crossed Markets in Eligible Options Classes. The purpose of the Plan is to enable the Participants to act jointly in establishing a framework for providing order protection and addressing Locked and Crossed Markets in Eligible Options Classes. In addition, the Plan provides for a non-exclusive method for achieving order protection and addressing Locked and Crossed Markets. The Participants will submit to the SEC for approval their respective rules that will implement the framework of the Plan. The Participants request that the SEC issue an order pursuant to Section 11A(a)(3)(B) of the Exchange Act and Rule 608 thereunder evidencing its approval of the Plan.

Section 2 - Definitions

- 1) "Best Bid" and "Best Offer" mean the highest priced Bid and the lowest priced Offer.
- 2) "Bid" or "Offer" means the bid price or the offer price communicated by a member of an Eligible Exchange [Participant] to any Broker/Dealer, or to any customer, at which it is willing to buy or sell , as either principal or agent, but shall not include indications of interest.
- 3) "Broker/Dealer" means an individual or organization registered with the SEC in accordance with Section 15(b)(1) of the Exchange Act or a foreign broker or dealer exempt from such registration pursuant to Rule 15a-6 under the Exchange Act.
- 4) "Crossed Market" means a quoted market in which a Protected Bid is higher than a Protected Offer in a series of an Eligible Class.
- 5) "Customer" means an individual or organization that is not a Broker/Dealer.
- 6) "Eligible Exchange" means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that [is]: (a) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); [and] (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.
- 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 on two or more Eligible Exchange [Participants].
- 8) "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- [9]"Immediate or Cancel (IOC) Order" means a limited price order that is to be executed in whole or in part as soon as such order is received, and the portion not executed, if any, is immediately canceled.]
- 9) [10]"Intermarket Sweep Order (ISO)" means a limit order [an IOC Order] for an options series that meets the following requirements:

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

(b) Simultaneously with the routing of the order, one or more additional [IOC Orders] ISOs, 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] ISO, with such additional orders also marked as [Intermarket Sweep Orders] ISOs.

10 [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.

11 [12]) "Non-Firm" means, with respect to Quotations in an Eligible Options Class, that members of a Participant are relieved of their obligations under that Participant's firm quote rule in that Eligible Options Class.

12 [13] "OCC" means The Options Clearing Corporation.

13 [14] "OPRA" means the Options Price Reporting Authority.

14 [15]) "OPRA Plan" means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Exchange Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended.

15 [16]) "Participant" means an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

16 [17]) "Plan" means the plan amended and restated in this instrument as from time to time amended in accordance with its provisions.

17 [18]) "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that:

- a. Is displayed by an Eligible Exchange [Participant];
- b. Is disseminated pursuant to the OPRA Plan; and
- c. Is the Best Bid or Best Offer, respectively, of an Eligible Exchange [Participant].

18 [19]) "Protected Quotation" means a Protected Bid or Protected Offer.

19) [20] "Quotation" means a Bid or Offer.

20) [21]"SEC" means the United States Securities and Exchange Commission.

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

21) [23] "Trade-Through" means a transaction in an options series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.

Section 3 – Parties to the Plan

(a) List of Parties

The parties to the Plan are as follows:

[American Stock Exchange LLC ["AMEX"], registered as a national securities exchange under the Exchange Act and having its principal place of business at 86 Trinity Place, New York, New York 10006.]

Boston Stock Exchange, Inc. ["BSE"], registered as a national securities exchange under the Exchange Act and having its principal place of business at 100 Franklin Street, Boston, Massachusetts 02110.

Chicago Board Options Exchange, Incorporated ["CBOE"], registered as a national securities exchange under the Exchange Act and having its principal place of business at 400 South LaSalle Street, Chicago, Illinois 60605.

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, 50th Floor, New York, New York 10006.]

[NYSE Arca, Inc. ("NYSE Arca"), registered as a national securities exchange under the Exchange Act and having its principal place of business at 100 South Wacker Drive, Suite 1800, Chicago, IL 60606.]

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, 50th Floor, New York, New York 10006.

NASDAQ OMX PHLX, Inc. [Philadelphia Stock Exchange, Inc. ("PHLX")], registered as a national securities exchange under the Exchange Act and having its principal place of business at 1900 Market Street, Philadelphia, Pennsylvania 19103.

NYSE Alternext US LLC, registered as a national securities exchange under the Exchange Act and having its principal place of business at 11 Wall Street, New York, NY 10005.

NYSE Arca, Inc., registered as a national securities exchange under the Exchange Act and having its principal place of business at 100 South Wacker Drive, Suite 1800, Chicago, IL 60606.

(b) Compliance Undertaking

By subscribing to and submitting the Plan for filing with the SEC, each Participant agrees to enforce compliance by its members with the provisions of the Plan.

(c) Entry of New Participants

The Participants agree that any other Eligible Exchange may become a Participant by: (i) executing a copy of the Plan, as then in effect; (ii) providing each then-current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan as specified in Section 4(b) of the Plan.

(d) Withdrawal from the Plan

Any Participant may withdraw from the Plan at any time by: (i) providing not less than 30 days' prior written notice to each of the other Participants [and to OCC] of such intent to withdraw; and (ii) effecting an amendment to the Plan as specified in Section 4(c) of the Plan. Upon the effectiveness of such withdrawal the withdrawing Participant shall have no further rights or obligations whatsoever under the Plan.

Section 4 – Amendments to the Plan

(a) General Amendment Authority

Except with respect to:

- (i) the addition of new Participants to the Plan; and
- (ii) the withdrawal of a Plan Participant,

any proposed change in, addition to, or deletion from the Plan may be effected only by means of a written amendment to the Plan that is unanimously approved by the Participants and that: (A) sets forth the change, addition or deletion; (B) is executed on behalf of each Participant; and (C) is approved by the SEC or otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 thereunder.

(b) New Participants

With respect to new Participants, an amendment to the Plan may be effected by a new Eligible Exchange executing a copy of the Plan, as then in effect (with the only change being the addition of the new Participant's name in Section 3(a) of the Plan), and submitting such executed Plan to the SEC. Such amendment will be effective when the amendment is approved by the SEC or otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 thereunder.

(c) Withdrawal from the Plan

A Participant seeking to withdraw from the Plan shall effect an amendment to the Plan as then in effect (with the only change being the deletion of the Participant's name in Section 3(a) of the Plan) by submitting such amended Plan to the SEC for approval. In submitting the amended Plan to the SEC, the Participant proposing to withdraw from the Plan shall state how the Participant plans to accomplish, by alternate means, the goal of the Plan regarding limiting Trade-Throughs of prices on other exchanges trading the same options classes. Such withdrawal from the Plan shall be effective when the amendment is approved by the SEC or otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 thereunder.

Section 5 – Order Protection

(a) Order Protection

(i) Prevention of Trade-Throughs. Each Participant agrees that it shall establish, maintain and enforce written policies and procedures as approved by the SEC that are reasonably designed to prevent Trade-Throughs in that Participant's market in Eligible Options Classes that do not fall within an exception set forth in paragraph (b) below, and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception.

(ii) Surveillance. Each Participant agrees to conduct surveillance of its market on a regular basis to ascertain the effectiveness of the policies and procedures required by paragraph (a)(1) of this section, and to take prompt action to remedy deficiencies in such policies and procedures.

(b) Exceptions.

(i) The transaction that constituted the Trade-Through was effected when the Eligible Exchange [Participant] displaying the Protected Quotation that was traded through was experiencing a failure, material delay, or malfunction in its systems or equipment;

(ii) The transaction traded through a Protected Quotation being disseminated by a Eligible Exchange [Participant] during a trading rotation;

(iii) The transaction that constituted the Trade-Through occurred when there was a Crossed Market;

(iv) The transaction that constituted the Trade-Through was the execution of an order identified as an Intermarket Sweep Order;

(v) The transaction that constituted the Trade-Through was effected by a Participant that simultaneously routed an Intermarket Sweep Order to execute against the full displayed size of any Protected Quotation that was traded through;

(vi) The Eligible Exchange [Participant] displaying the Protected Quotation that was traded through had displayed, within one second prior to execution of the Trade-Through, a Best bid or Best offer, as applicable, for the options series with a price that was equal or inferior to the price of the Trade-Through transaction;

(vii) The Protected Quotation traded through was being disseminated from a Eligible Exchange [Participant] whose Quotations were Non-Firm with respect to such options series;

(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;

(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;]

(x) [(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 Eligible Exchange [Participant] at the time of the stop; or

(xi) [(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(9) [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 contained in the rules of a Participant approved by the Commission.

[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.

(b) Use of the System for Receipt of Orders

Each Participant shall maintain connectivity to the System for the receipt of incoming orders. Any order received by a Participant through the System shall be handled in the same manner as an order received by a Participant other than through the System respecting (i) priority; (ii) trade allocation; and (iii) fees.

(c) Supervisory Committee

(i) Establishment of the Committee. Each Participant shall select from its staff one individual to represent such Participant as a member of a Supervisory Committee. Action taken pursuant to the vote of a majority of the members of the Supervisory Committee present at a meeting of the committee at which a majority of the full committee is present shall be deemed to be the action of the Supervisory Committee.

(ii) Authority. The Supervisory Committee shall not be a policy-making or rule-making body, but shall, either directly or by delegating its functions to individuals, subcommittees established by it from time to time or others: (A) oversee development of the System in accordance with the specifications agreed upon by the Participants using the System; (B) monitor the operation of the System; (C) advise the Participants using the System with respect

to any deficiencies, problems or recommendations as the Supervisory Committee may deem appropriate. In this connection, the Supervisory Committee shall have authority to develop procedures and make administrative decisions necessary to facilitate the operation of the System.

(iii) Participants' Rights. No action or inaction by the Supervisory Committee shall prejudice the right of any Participant using the System to present its views to the SEC or any other person with respect to any matter relating to the System or to seek to enforce its views in any other forum it deems appropriate.

(d) Costs Related to System Functionality

The Participants using the System to send orders shall share equally in the costs of developing and operating the System. However, each Participant using the System shall assume sole responsibility and costs for any modifications to its proprietary exchange systems necessary to achieve the efficient operation of the System.

(e) Participants Seeking to Use System Functionality

(i) Use of the System to Send Orders by Additional Participants. A Participant to this Plan that is not using the System to send orders to comply with the Plan's provisions may begin such use by providing reasonable notice to the Participants and by paying a System usage fee established by the Participants using the System to send orders. In determining the amount of the System usage fee, the Participants using the System to send orders shall consider, as applicable:

(A) the portion of costs previously paid by the Participants for the development, expansion and maintenance of System which, under generally accepted accounting principles, could have been treated as capital expenditures and, if so treated, would have been amortized over the five years preceding the admission of the Participant (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life);

(B) previous System usage fees paid by other Participants; and

(C) if the Participant previously used the System to send orders, any System costs

that Participant may previously have paid, with the intent that the Participant pay a fee representing only the development, expansion and maintenance of the System since the Participant ceased using the System to send orders.

(ii) Interim Access by Potential Participants. A national securities exchange or association registered with the SEC in accordance with Section 6(a) of the Exchange Act, as well as an entity seeking such registration (either being an "applicant"), may apply to the Supervisory Committee, in writing, for limited access to the System when the SEC has published for comment the applicant's proposed rules governing the trading of standardized options. Any such application must affirmatively state that the applicant is actively pursuing the establishment of a market for the trading of standardized options. If the applicant plans to use the System to send orders to comply with the provisions of this plan, then the application also must include a deposit, in an amount established by the Supervisory Committee, towards the then-current System usage fee applicable to new Participants. The deposit shall be applied to the System usage fee if the applicant ultimately begins to use the System to send orders, or otherwise shall be refunded. Upon making such application, and, if applicable, upon payment of such deposit, the applicant shall have access to System documentation, testing, and other services as the Supervisory Committee may consider reasonably necessary for the applicant to prepare to use the System. Such interim access shall be for a period of not greater than one year, unless the Supervisory Committee agrees to extend such access, which agreement shall not be unreasonably withheld.

(f) Ceasing Use of the System

A Participant may cease use of the System to send orders at any time by providing not less than 30 days' prior written notice to each of the other Participants and to OCC of such intent to withdraw. In this case, the Participant ceasing to use the System to send orders shall remain liable for, and shall pay upon demand, its portion of accrued costs. Upon ceasing to use the System to send orders, except as to liability for any payments for accrued costs, such Participant shall have no further rights or obligations with respect to the System other than to retain connectivity to receive orders. If such Participant seeks to use the System again to send orders, it must follow the procedures specified in paragraph 7(e) above.]

Section 7 [8] – Implementation

The Parties shall implement this Plan on a date upon which all Parties agree, but no later than February 27, 2009 [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 and the SEC has approved all necessary implementing rules or (2) have developed the ability to accept and execute [recognize] incoming Intermarket Sweep Orders.

Section 8 [9] – Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Plan has been executed as of the X day of X 2008 by each of the parties hereto.

[AMERICAN STOCK EXCHANGE LLC

By: _____

Date: _____]

BOSTON STOCK EXCHANGE, INC.

By: _____

Date: _____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

By: _____

Date: _____

INTERNATIONAL SECURITIES EXCHANGE, LLC

By: _____

Date: _____

The NASDAQ Stock Market LLC

By: _____

Date: _____

NASDAQ OMX PHLX, Inc. [PHILADELPHIA STOCK
EXCHANGE, INC.]

By: _____

Date: _____

NYSE ALTERNEXT US LLC

By: _____

Date: _____

NYSE ARCA, INC.

By: _____

Date: _____