

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60507; File No. 4-546)

August 14, 2009

Joint Industry Plan; Notice of Summary Effectiveness on a Temporary Basis of Joint Amendment No. 1 to the Options Order Protection and Locked/Crossed Market Plan, and Notice of Filing of Such Amendment

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 608 of Regulation NMS thereunder (“Rule 608”),<sup>2</sup> notice is hereby given that on August 7, 2009, August 7, 2009, August 7, 2009, August 11, 2009, August 11, 2009, and August 11, 2009, NYSE Arca, Inc. (“NYSE Arca”), NYSE Amex, LLC (“NYSE Amex”), International Securities Exchange, LLC (“ISE”), NASDAQ OMX BX, Inc. (“BOX”), Chicago Board Options Exchange, Incorporated (“CBOE”), NASDAQ OMX PHLX, Inc. (“Phlx”), and The NASDAQ Stock Market LLC (“Nasdaq”) (collectively, “Participants”),<sup>3</sup> respectively, filed with the Securities and Exchange Commission (“Commission”) an amendment to the Options Order

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<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> See letter from Peter G. Armstrong, NYSE Arca, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Michael Babel, NYSE Amex, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Michael J. Simon, ISE, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Maura A. Looney, Associate Vice President, BX, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Edward J. Joyce, CBOE, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009; letter from Richard S. Rudolph, Assistant General Counsel, Phlx, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009; and letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009. On August 12, 2009, Nasdaq and Phlx submitted letters correcting technical errors in their letters to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009.

Protection and Locked/Crossed Market Plan (“Plan”)<sup>4</sup> (“Joint Amendment No. 1”). In Joint Amendment No. 1, the Participants propose to modify Section 5(b) of the Plan to eliminate the requirement that policies and procedures be submitted to the Commission for approval. This order summarily puts into effect Joint Amendment No. 1 on a temporary basis not to exceed 120 days and solicits comment on Joint Amendment No. 1 from interested persons.<sup>5</sup>

## II. Description of the Proposed Amendment

The purpose of Joint Amendment No. 1 is to clarify that, while each Participant is required under the Plan to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs, there would not be a requirement that these policies and procedures be submitted to the Commission for approval. The Plan requires, and each Participant has represented, that its policies and procedures will be reasonably designed to prevent Trade-Throughs in the Exchange’s market in Eligible Options Classes, unless they fall within an exception set forth in Section 5(b) of the Plan. If relying on such exception, the policies and procedures will be reasonably designed to assure compliance with the terms of the exception.

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<sup>4</sup> On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

<sup>5</sup> 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 mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. See 17 CFR 242.608(b)(4).

The Participants request that the Commission provide summary effectiveness pursuant to Rule 608(b)(4) of the Act for the purpose of effecting Joint Amendment No. 1 on a temporary basis for 120 days.

### III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>6</sup> Specifically, the Commission finds that the proposed amendment to the Plan is consistent with Section 11A of the Act<sup>7</sup> and Rule 608 of Regulation NMS thereunder<sup>8</sup> in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission notes that, as a general matter, it does not approve specific policies and procedures that exchanges use to ensure compliance with their rules or NMS Plan provisions. Rather, the Commission uses its authority to review and examine exchanges to ensure that exchanges are meeting their regulatory obligations.

In addition, the Commission finds that it is appropriate to summarily put into effect Joint Amendment No. 1 upon publication of this notice on a temporary basis for 120 days. The Commission believes that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets because it would allow the amendment to become effective prior to the anticipated implementation date of the Plan.

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<sup>6</sup> In summarily putting into effect this Joint Amendment No. 1, the Commission has considered its impact on efficiency, competition, and capital formation.

<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> 17 CFR 242.608.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Joint Amendment No. 1 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](mailto:rule-comments@sec.gov). Please include File Number 4-546 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number 4-546. This file number 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 Joint Amendment that are filed with the Commission, and all written communications relating to the proposed Joint Amendment 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the proposed Joint Amendment also will be available for inspection and copying at the respective principal office of CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca.

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 4-546 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act<sup>9</sup> and Rule 608 of Regulation NMS,<sup>10</sup> that the proposed Joint Amendment No. 1 is summarily put into effect until [insert date 120 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> 17 CFR 242.608.

<sup>11</sup> 17 CFR 200.30-3(a)(29).