

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52001; File No. 4-208)

July 8, 2005

Intermarket Trading System; Order Granting Approval of the Twenty First Amendment to the ITS Plan Relating to the Recognition of the Automatic Generation of Outgoing ITS Commitments

On April 27, 2005, the Intermarket Trading System Operating Committee (“ITSOC”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 11Aa3-2 thereunder,² a proposed amendment (“Twenty First Amendment”) to the restated ITS Plan.³ The proposed amendment recognized the automatic generation of outgoing ITS commitments in circumstances where members in the Participants’ markets send such commitments contemporaneously with trading at inferior prices, disseminating a locking bid/offer in their own market, or a block trade. Notice of the proposed amendment appeared in the Federal Register on June 6, 2005.⁴ The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The Commission finds that the proposed amendment is consistent with the Act, in

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ The ITS Plan is a National Market System (“NMS”) plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (Amex”), the Boston Stock Exchange, Inc. (“BSE”); the Chicago Board Options Exchange, Inc. (“CBOE”); the Chicago Stock Exchange (“CHX”), Inc., the Cincinnati Stock Exchange, Inc. (“CSE”), the National Association of Securities Dealers, Inc. (“NASD”), the New York Stock Exchange, Inc. (“NYSE”), the Pacific Exchange, Inc. (“PCX”), and the Philadelphia Stock Exchange, Inc. (“Phlx”) (“Participants”).

⁴ See Securities Exchange Act Release No. 51755 (May 27, 2005), 70 FR 32853.

particular, with Sections 11A(a)(1)(C)(ii) and (D),⁵ which provide for fair competition among the Participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. Further, the Commission finds that the amendment is consistent with Rule 11A3-2(c)(2) under the Act,⁶ which requires among other things, that a plan amendment must be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and shall remove impediments to, and perfect the mechanisms of, a national market system. Specifically, the Commission believes that the proposed amendment, which permits the members in the Participants' markets to send computer generated commitments contemporaneously with trading at inferior prices, disseminating a locking bid/offer, or a block trade, should enable Participants to effect transactions that otherwise would appear to violate the trade-through rule while simultaneously fulfilling their obligations under the ITS Plan.

IT IS THEREFORE ORDERED, pursuant to Section 11A(a)(3)(B) of the Act⁷ that the proposed Twenty First Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor
Assistant Secretary

⁵ 15 U.S.C. 78k-1(a)(1)(C)(ii) and (D).

⁶ 17 CFR 240.11A3-2(c)(2).

⁷ 15 U.S.C. 78k-1(a)(3)(B).

⁸ 17 CFR 200.30-3(a)(29).