

Stock Exchange, Inc. ("Phlx"), and Boston Stock Exchange, Inc. ("BSE") (collectively the "Participants") respectively submitted to the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Linkage Plan").¹ The amendment proposes to modify the manner in which a member of a Participant may send Principal Acting as Agent Orders ("P/A Orders") that are larger than the Firm Customer Quote Size ("FCQS").

The proposed amendment to the Plan was published in the **Federal Register** on May 19, 2004.² No comments were received on the proposed amendment. This order approves the proposed amendment to the Plan.

II. Description of the Proposed Amendment

In Joint Amendment No. 10, the Participants explain that currently, the Linkage Plan provides a market maker with two ways to handle principal acting as agent ("P/A") Orders³ that are larger than the Firm Customer Quote Size ("FCQS").⁴ First, the market maker may send a P/A Order larger than the FCQS representing the entire customer order for manual processing at the receiving Participant. Second, the market maker may send an initial P/A Order for up to the FCQS. If the market maker then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

Proposed Joint Amendment No. 10 addresses the handling of P/A orders if the market maker chooses the second alternative, the sending of multiple P/A

Orders. As currently drafted, the Linkage Plan does not recognize the possibility that a Participant's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, the proposed Amendment specifies that a market maker sending a second P/A Order may limit such order to the lesser of: The remaining size of the customer order; 100 contracts; or the size of the receiving Participant's disseminated quotation.

In addition, the Participants believe that there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a market maker must send the entire order to one Participant or can send orders to multiple Participants, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. The Amendment clarifies the Linkage Plan to specify that a market maker may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size of the customer order or 100 contracts. However, a market maker may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

Finally, the proposed Amendment modifies the provisions of the Linkage Plan relating to the time period within which a receiving Participant must inform the sending Participant of the amount of the order executed and the amount, if any, that was canceled, and the time period for which a sending Participant must wait while the receiving Participant continues to disseminate the same price at the national best bid or offer before sending a second P/A Order. Currently, the applicable time period for each such circumstance is 15 seconds. The proposed Amendment would permit the Options Linkage Authority to determine different applicable time periods for both circumstances, subject to approval by the Commission.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Plan seeking to extend the current pilot is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Plan is consistent with Section 11A of the Act⁵ and Rule 11Aa3-2 thereunder,⁶ in that it should help to clarify the Participant's

obligations in handling P/A Orders, which should facilitate the efficient and active trading of P/A Orders through the Linkage in furtherance of the goals of a national market system.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act⁷ and Rule 11Aa3-2 thereunder,⁸ that the proposed Joint Amendment No. 10 is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 28, 2004:

A closed meeting will be held on Thursday, July 1, 2004, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter for the closed meeting scheduled for Thursday, July 1, 2004, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Litigation matter;
Report on investigation;
Consideration of amicus participation;
and an Opinion

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 240.11Aa3-2.

⁹ 17 CFR 200.30-3(a)(29).

¹ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, PCX and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

² See Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953.

³ A P/A Order is an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. See Section 2(16)(a) of the Linkage Plan.

⁴ The FCQS is the minimum size for which an exchange must provide an execution in its automatic execution system for a P/A Order, if the exchange's automatic execution system is available. See Section 2(11) of the Linkage Plan.

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 240.11Aa3-2.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: June 22, 2004.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49855; File No. SR-Amex-2004-30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Extend on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable To Trading in Nasdaq Securities

June 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 5, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 10, 2004, the Amex amended the proposed rule change.³ The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend paragraph (j) of Amex Rule 118 ("Trading in Nasdaq National Market Securities") and Commentary .05 of

Amex Rule 205 ("Manner of Executing Odd-Lot Orders") that were implemented on a pilot program basis and to extend the pilot program for an additional six-month period ending on December 27, 2004. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.

(j) *Odd-Lot Orders*—Odd lot orders in Nasdaq National Market securities shall be executed in the following manner:

(i) *Market and Executable Limit Orders*—A market or executable limit order shall be executed, unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File. An order entered through the Amex Order File shall receive automatic execution at such price.

All market odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round-lot or Part of Round Lot (PRL) transaction on the Exchange. Executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall be executed manually at the price of the first round-lot or PRL transaction on the Exchange.

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that

is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

(ii) *Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types*—Unless otherwise provided herein, non-executable limit, stop, and stop limit orders shall be executed in accordance with Rule 205, Parts A(2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C (1).

(iii) *Non-Regular Way Trades*—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C (2).

(iv) *Locked and Crossed Market Conditions*

(a) For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (i.e., the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.

(b) *Crossed Market Condition*—When a crossed market condition exists (i.e., bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by \$.05 or less, market orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest \$.01. When the national best displayed bid is higher than the offer by more than \$.05, an odd-lot market order will not receive automatic execution and is to be executed manually at the time a crossed market condition no longer exists, in accordance either with subparagraph (i) or (iv)(a) of this paragraph (j), as appropriate. An executable limit order will receive automatic execution at the crossed market national best displayed bid (in the case of an order to sell) or at the crossed market national best displayed offer (in the case of an order to buy).

(v) No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).

(vi) *Odd-lot orders in Nasdaq National Market securities* are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Eric Van Allen, Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 7, 2004, replacing Form 19b-4 in its entirety ("Amendment No. 1").

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).