

amount at least equal to any compensation received from a VIPER Fund by the Subadvisor or an affiliated person of the Subadvisor, other than any advisory fees paid to the Subadvisor or its affiliated person by the VIPER Fund, in connection with the investment by the Investing Non-Vanguard Management Company in the VIPER Fund made at the direction of the Subadvisor. In the event that the Subadvisor waives fees, the benefit of the waiver will be passed through to the Investing Non-Vanguard Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the National Association of Securities Dealers.

12. No VIPER Fund will acquire securities of any investment company, or of any company relying on Sections 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the VIPER Fund to purchase shares of an affiliated fund for short-term cash management purposes.

13. The board of any Investing Management Company and any VIPER Fund will satisfy the fund governance standards as defined in Rule 0-1(a)(7) under the Act by the date on which the Investing Non-Vanguard Management Company and the VIPER Fund execute an Investing Agreement.

Amendment to Prior Orders

Applicants agree to replace condition 2 of the Prior Orders with the following condition:

14. Each VIPER Shares Prospectus and Product Description will clearly disclose that, for purposes of the Act, VIPER Shares are issued by a VIPER Fund, which is a registered investment company, and that the acquisition of VIPER Shares by investment companies is subject to the restrictions of Section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a VIPER Fund beyond the limits of Section 12(d)(1), subject to certain terms and conditions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53763; File No. 4-208]

Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Third Amendment to the ITS Plan Relating to the Interaction of Chicago Stock Exchange, Inc. With ITS, the Change in Opening of Trading in a Halted Security, and the Change in Name from the New York Stock Exchange, Inc. to New York Stock Exchange LLC and From Pacific Exchange, Inc. to NYSE Arca, Inc.

May 5, 2006.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 608 thereunder,² notice is hereby given that on April 24, 2006, the ITS Participants, through the ITS Operating Committee, submitted to the Securities and Exchange Commission ("Commission") a proposed amendment ("Twenty Third Amendment") to the restated ITS Plan.³ The purpose of the Twenty Third Amendment is to recognize the manner in which Chicago Stock Exchange, Inc. ("CHX") will interact with ITS, to allow Participant markets to open trading in a halted security after a shorter period of time after a re-indication, and to reflect the name changes from the New York Stock Exchange, Inc. to New York Stock Exchange LLC and from Pacific Exchange, Inc. to NYSE Arca, Inc. Pursuant to Rule 608(b)(3)(ii) under the Act,⁴ the ITS Participants designated the amendment as concerned solely with the administration of the Plan. As a result, the Twenty Third Amendment has become effective upon filing with the Commission.⁵ At any time within 60 days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that such

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

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 currently 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 National Stock Exchange ("NSX"), the National Association of Securities Dealers, Inc. ("NASD"), NASDAQ Stock Market LLC ("NASDAQ"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") ("Participants").

⁴ 17 CFR 242.608(b)(3)(ii).

⁵ CHX intends to give ITS Participants 10 days notice prior to implementation of the amended manner of CHX's interaction with ITS.

amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission 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 the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

I. Description and Purpose of the Proposed Amendment

A. CHX's Interaction With ITS

The ITS Participants propose to amend the restated ITS Plan to eliminate all references to CHX in Section 6(a)(ii)(A) and to add new subparagraph (H) to section 6(a)(ii). Proposed new language is *italicized*:

(H) Description Applicable to CHX

With respect to an ITS transaction that involves a CHX member, the commitment to trade or response thereto destined for or originating with the CHX will leave and enter the System at the CHX. A trade involving the CHX would take place as follows. In the example in section 6(a)(ii)(A) above, assume that the order is for 300 shares. Assume also that when the NYSE member checks the continuously updated quotation display at the appropriate NYSE trading post, he sees that the best offer is one of 40.15 for 300 shares from the CHX. Having learned this information, the NYSE member may decide to attempt to buy the 300 shares for his customer from the 40.15 offer. By using an ITS station located on the NYSE trading floor, the broker would send, or cause to be sent, to the CHX a commitment to buy 300 shares of the stock at 40.15.

When the commitment to buy is entered into the System, the System will route the commitment to the CHX. If the 40.15 offer is still available when the commitment to buy reaches the CHX, or if a better offer is available and if the rules of the CHX permit an execution at that price, then the CHX would generate an acceptance of the commitment on behalf of the one or more CHX members responsible for the 40.15 offer (or the better offer) and route it to the System. The execution would occur at 40.15 (or at the better price) if the applicable time period had not expired. CHX would report the trade to the CTA Plan Processor for dissemination under the CTA Plan at 40.15 (or at the better price)

with the same identifier that is assigned to CHX.

If the example is reversed and a CHX member seeks to purchase 300 shares, the CHX member would send the NYSE a commitment to buy 300 shares of the stock at 40.15.

When the commitment to buy is entered into the CHX, the CHX will route the commitment to the System, which will in turn route the commitment to the NYSE. If the 40.15 offer is still available when the commitment to buy reaches the NYSE, or if a better offer is available, and if the rules of the NYSE permit an execution at that price, then the NYSE offer would accept the commitment during the applicable time period and an execution at 40.15 (or at the better price) would take place. The NYSE would then report the trade to the CTA Plan Processor for dissemination under the CTA Plan at 40.15 (or at the better price) with the identifier assigned to the NYSE.

This description shall take effect upon 10 days' written notice from the CHX to all Participants.

B. Opening of Trading in a Halted Security

The ITS Participants propose to amend the restated ITS Plan to have Section (b)(i)(B) of Exhibit A ("Tape Indications") read as follows. Proposed new language is *italicized*:

* * * * *

In any such situation, the specialist shall not open or reopen the security until not less than three minutes after his transmission of the opening or reopening indication of interest. However, where more than one indication is disseminated, a stock may re-open one minute after the last indication, provided that at least three minutes must have elapsed from the dissemination of the first indication. For the purposes of paragraphs (b)(ii)(A), (b)(ii)(B), (b)(iii) and (c), "pre-opening notification" includes an indication of interest furnished to the consolidated last sale reporting service.

C. Renumbering

The ITS Participants propose to renumber former section 6(a)(ii)(H) as section 6(a)(ii)(I).

D. Name Change

The ITS Participants propose to reflect the name changes from the New York Stock Exchange, Inc. to New York Stock Exchange LLC and from Pacific Exchange, Inc. to NYSE Arca, Inc. to reflect the legal name changes that occurred on March 7, 2006.

E. Additional Information

1. Governing or Constituent Documents
Not applicable.

2. Implementation of Amendment

The ITS Participants have manifested their approval of the proposed amendment by means of their execution of the Twenty Third Amendment. The Amendment has become effective upon filing.⁶

3. Development and Implementation Phases

Not applicable.

4. Analysis of Impact on Competition

The Participants believe that the proposed amendment does not impose any burden on competition.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

6. Approval by Sponsors in Accordance With Plan

Under section 4(c) of the restated ITS Plan, the requisite approval of the amendment is achieved by execution of the amendment on behalf of each ITS Participant. The amendment is so executed.

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

Not applicable.

8. Terms and Conditions of Access

Not applicable.

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

Not applicable.

10. Method of Frequency of Processor Evaluation

Not applicable.

11. Dispute Resolution

Not applicable.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment 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. Please include File No. 4-208 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 4-208. 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 Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan 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. Copies of the filing also will be available for inspection and copying at the principal office of the ITS. 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 No. 4-208 and should be submitted on or before June 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris,
Secretary.

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⁶ See *id.*

⁷ 17 CFR 200.30-3(a)(27).