

do not commingle their securities or use them to finance the broker-dealers' proprietary business. This rule does not involve the collection of confidential information. Persons should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [Alexander.T.Hunt@omb.eop.gov](mailto:Alexander.T.Hunt@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 30 days of this notice.

Dated: November 7, 2007.

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-22511 Filed 11-16-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56780; File No. 4-429]

### Joint Industry Plan; Order Approving Joint Amendment No. 23 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage To Permit the Use of Linkage Prior to the Opening of Trading

November 13, 2007.

#### I. Introduction

On September 14, 2007, September 19, 2007, August 29, 2007, August 30, 2007, August 29, 2007, and September 26, 2007, the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE"), the NYSE Arca, Inc. ("NYSE Arca"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder<sup>2</sup> an amendment ("Joint

Amendment No. 23") to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").<sup>3</sup> In Joint Amendment No. 23, the Participants propose to modify section 7(a)(i) of the Linkage Plan to permit trading on Linkage prior to the opening of trading. The proposed Joint Amendment No. 23 was published in the **Federal Register** on October 12, 2007.<sup>4</sup> The Commission received no comments on Joint Amendment No. 23. This order approves Joint Amendment No. 23.

#### II. Description of the Proposed Amendment

The Linkage Plan currently does not permit use of Linkage before an exchange opens for trading and disseminates a quotation in an option series. In Joint Amendment No. 23, the Participants proposed to amend section 7(a)(i) of the Linkage Plan to permit the use of Linkage prior to the opening of trading. Specifically, Joint Amendment No. 23 would allow Participants to send Linkage P/A Orders<sup>5</sup> to the Linkage prior to the exchange's opening.

#### III. Discussion and Commission Findings

After careful consideration of Joint Amendment No. 23, the Commission finds that approving Joint Amendment No. 23 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that Joint Amendment No. 23 is consistent with section 11A of the Act<sup>6</sup> and Rule 608 thereunder<sup>7</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 believes that allowing Participants to send Linkage P/A Orders to the Linkage prior to the exchange's opening should facilitate investors' intermarket access to superior prices disseminated by Participants other than the one to which the order was initially sent.

<sup>3</sup> 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, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> See Securities Exchange Act Release No. 56605 (October 3, 2007), 72 FR 58134.

<sup>5</sup> See Section 2(16)(a) of the Linkage Plan.

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 242.608.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act<sup>8</sup> and Rule 608 thereunder,<sup>9</sup> that Joint Amendment No. 23 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-22533 Filed 11-16-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56778; File No. SR-Amex-2007-100]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Options on Shares of the iShares MSCI Mexico Index Fund

November 9, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 27, 2007, the American Stock Exchange LLC (the "Amex" or the "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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to list and trade options on shares of the iShares MSCI Mexico Index Fund (the "Fund Options").

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

<sup>8</sup> 15 U.S.C. 78k-1.

<sup>9</sup> 17 CFR 242.608.

<sup>10</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of this proposal is to obtain approval to list for trading on the Exchange, options on the shares of the iShares MSCI Mexico Index Fund (the "Fund") (symbol: EWW). The shares of the Fund, an exchange-traded fund, are currently listed and traded on the Exchange. Commentary .06 to Amex Rule 915 and Commentary .07 to Amex Rule 916, respectively, establish the Exchange's initial listing and maintenance standards for equity options (the "Listing Standards"). The Listing Standards permit the Exchange to list options on the shares of open-end investment companies, such as the Fund, without having to file for approval with the Commission.<sup>3</sup> The Exchange submits that the shares of the Fund substantially meet all of the initial listing requirements. In particular, all of the requirements set forth in Commentary .06 to Rule 915 are met except for the requirement concerning the existence of a comprehensive surveillance sharing agreement ("CSSA"). However, the Exchange submits that sufficient mechanisms exist in order to provide adequate surveillance and regulatory information with respect to the portfolio securities of the Fund.

The Fund is registered pursuant to the Investment Company Act of 1940 as a management investment company designed to hold a portfolio of securities which track the MSCI Mexico Index ("Index").<sup>4</sup> The Index consists of stocks

traded primarily on the Bolsa Mexicana de Valores (the "Bolsa"). The Fund employs a "representative sampling" methodology to track the Index by investing in a representative sample of Index securities having a similar investment profile as the Index.<sup>5</sup> Barclays Global Fund Advisors ("BGFA" or the "Adviser") expects the Fund to closely track the Index so that, over time, a tracking error of 5%, or less, is exhibited. Securities selected by the Fund have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Index. The Fund will not concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except, to the extent practicable, to reflect the concentration in the Index. The Fund will invest at least eighty percent (80%) of its assets in the securities comprising the Index and/or related American Depositary Receipts ("ADRs"). In addition, at least ninety percent (90%) of the Fund's assets will be invested in the securities comprising the Index or in other related Mexican securities or ADRs. The Fund may also invest its other assets in futures contracts, options on futures contracts, listed options, over-the-counter ("OTC") options and swaps related to the Index, as well as cash and cash equivalents. The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund ("Fund Shares") are issued and redeemed, on a continuous basis, at net asset value ("NAV") in aggregation size of 100,000 shares, or multiples thereof (a "Creation Unit"). Following issuance, Fund Shares are traded on an exchange like other equity securities. The Fund Shares trade in the secondary markets in amounts less than a Creation Unit and the price per Fund Share may differ from its NAV which is calculated once daily as of the regularly scheduled close

of business of the New York Stock Exchange ("NYSE").<sup>6</sup>

State Street Bank and Trust Company, the administrator, custodian, and transfer agent for the Fund, calculates the Fund's NAV. Detailed information on the Fund can be found at <http://www.ishares.com>.

The Exchange has reviewed the Fund and determined that the Fund Shares satisfy the initial listing standards, except for the requirement set forth in Commentary .06(b)(i) to Amex Rule 915 which requires the Fund to meet the following condition: "any non-U.S. component stocks in the index or portfolio on which the Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio." The Exchange currently does not have in place a surveillance agreement with Bolsa.

The Exchange submits that the Commission, in the past, has been willing to allow a national securities exchange to rely on a memorandum of understanding entered into between regulators in the event that the exchanges themselves cannot enter into a CSSA.

The Exchange previously attempted to enter into a CSSA with Bolsa as part of seeking approval to list and trade options on the Mexico Index.<sup>7</sup> Additionally, the Chicago Board Options Exchange, Incorporated (the "CBOE") also previously attempted to enter into a CSSA with Bolsa at or about the time when the CBOE sought approval to list for trading options on the CBOE Mexico 30 Index in 1995, which was comprised of stocks trading on Bolsa.<sup>8</sup> Since Bolsa was unable to provide a surveillance agreement, the Commission allowed the CBOE to rely on the memorandum of understanding executed by the Commission and the CNBV,<sup>9</sup> dated as of October 18, 1990 ("MOU").<sup>10</sup> The Commission noted that in cases where it would be impossible to secure a CSSA, the Commission relied in the past on surveillance sharing agreements between the relevant regulators.<sup>11</sup> The Commission further noted that, pursuant to the terms of the

<sup>6</sup> The regularly scheduled close of trading in the NYSE is normally 4 p.m. Eastern Time ("ET").

<sup>7</sup> See Securities Exchange Act Release No. 34500 (August 8, 1994) 59 FR 41534 (August 12, 1994) (SR-Amex-94-20).

<sup>8</sup> See *infra* New Product Release at note 10.

<sup>9</sup> The National Commission for Banking and Securities, or "CNBV," is Mexico's regulatory body for financial markets and banking.

<sup>10</sup> See Securities Exchange Act Release No. 36415, at n. 23 (October 25, 1995), 60 FR 55620 (November 1, 1995) (SR-CBOE-95-45).

<sup>11</sup> *Id.*

<sup>3</sup> Commentary .06 to Amex Rule 915 sets forth the initial listing criteria for shares or other securities ("Exchange-Traded Fund Shares") that are principally traded on, or through the facilities of, a national securities exchange and reported as a national market security, and that represent an interest in an open-end registered investment company, a unit investment trust or other similar entity.

<sup>4</sup> Morgan Stanley Capital International Inc. ("MSCI") created and maintains the Index.

<sup>5</sup> As of July 31, 2007, the Fund was comprised of 27 securities. America Movil SA de CV-Series L had the greatest individual weight at 25.57%. The aggregate percentage weighting of the top 5 and 10 securities in the Fund were 58.51% and 78.39%, respectively.

MOU, it was the Commission's understanding that both the Commission and the CNBV could acquire information from, and provide information to, the other similar to that which would be required in a CSSA between exchanges and, therefore, should the Exchange or the CBOE need information on Mexican trading in the component securities of the Mexico Index or the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.<sup>12</sup>

The practice of relying on surveillance agreements or MOUs between regulators when a foreign exchange was unable, or unwilling, to provide an information sharing agreement was affirmed by the Commission in the Commission's New Product Release ("New Product Release").<sup>13</sup> The Commission noted in the New Product Release that if securing a CSSA is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. The Commission also noted that the Commission may determine instead that it is appropriate to rely on a memorandum of understanding between the Commission and the foreign regulator.

The Exchange requests that the Commission allow the listing and trading of the Fund Shares without a CSSA, upon reliance of the MOU entered into between the Commission and the CNBV, until the Exchange is able to secure a CSSA with Bolsa. The Exchange believes this request is reasonable and notes that the Commission has provided similar relief in the past. For example, the Commission approved, on a pilot basis, an Amex proposal to list and trade options on the iShares MSCI Emerging Markets Fund.<sup>14</sup>

The Exchange notes that the underlying Fund Shares may be listed and traded without a CSSA as long as last sale reporting of the component securities is available pursuant to Amex Rule 1000A-AEMI. Accordingly, the Exchange believes that options on such Fund Shares should be permissible.

The Commission's approval of this request to list and trade the Fund Options would otherwise render the Fund compliant with all of the applicable Listing Standards.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of section 6(b)(5)<sup>16</sup> of the Act, in particular, in that it will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and, in general, protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 SR-Amex-2007-100 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-Amex-2007-100. 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 rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Amex. 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 SR-Amex-2007-100 and should be submitted on or before December 10, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>18</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The listing of the Fund Options does not satisfy Commentary .06(b)(i) to Amex Rule 915 which requires the Fund to meet the following condition: "any non-U.S. component stocks in the index or portfolio on which the Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio."

<sup>17</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> *Id.*

<sup>13</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), at note 101.

<sup>14</sup> See Securities Exchange Act Release Nos. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (SR-Amex-2006-43); 54081 (June 30, 2006), 71 FR 38911 (July 10, 2006) (SR-Amex-2006-60); 54553 (September 29, 2006), 71 FR 59561 (October 10, 2006) (SR-Amex-2006-91); 55040 (January 3, 2007), 72 FR 1348 (January 11, 2007) (SR-Amex-2007-01); and 55955 (June 25, 2007), 72 FR 36079 (July 2, 2007) (SR-Amex-2007-57).

<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

The Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators where the listing SRO finds it impossible to enter into an information sharing agreement.<sup>19</sup> In this case, Amex has attempted unsuccessfully to reach such an agreement with Bolsa.

Consequently, the Commission has determined to approve Amex's listing and trading of the Fund Options and to allow Amex to rely on the MOU<sup>20</sup> with respect to the underlying Fund components trading on Bolsa. The Commission believes that, regardless of the Commission's willingness to permit reliance on the MOU, Amex should continue to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (1) Express language addressing market trading activity, clearing activity, and customer identity; (2) the Bolsa's reasonable ability to obtain access to and produce requested information; and (3) based on the CSSA and other information provided by the Bolsa, the absence of existing rules, law or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>21</sup> for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register** because it will enable the Exchange to immediately consider listing and trading the Fund Options, similar to products already traded on the Exchange,<sup>22</sup> and because it does not raise any new regulatory issues.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Amex-2007-100) be, and it hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-22482 Filed 11-16-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56781; File No. SR-ISE-2007-93]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Send P/A Orders Through Linkage Prior to the Opening of Trading

November 13, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2007, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been substantially prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The ISE proposes to amend ISE Rule 701 to permit the sending of Principal Acting as Agent Orders ("P/A Orders")<sup>3</sup> through the Intermarket Options Linkage ("Linkage") prior to the opening of trading. This proposal would conform ISE Rule 701 to Joint Amendment No. 23<sup>4</sup> of the Linkage Plan.<sup>5</sup> The text of the proposed rule

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Section 2(16)(a) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").

<sup>4</sup> See Securities Exchange Act Release No. 56780 (November 13, 2007) (File No. 4-429).

<sup>5</sup> 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, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850

change is available at the ISE, at the Commission's Public Reference Room, and at <http://www.ise.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, its proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is proposing to amend ISE Rule 701 to conform it to a proposed amendment to section 7(a)(i) of the Linkage Plan. The proposed rule change will permit the use of Linkage prior to the opening of trading. Prior to the Commission's approval of Joint Amendment No. 23 to the Linkage Plan, the Linkage Plan did not permit use of Linkage before an exchange opens for trading and disseminates a quotation in an options series. In addition, there was no trade-through protection for opening trades. As a result, if there was a better market away at the time a Participant opens its market, the ISE Primary Market Maker ("PMM"), responsible both for the opening and for protecting customer orders, could not access that market for a customer. The customer thus could receive a price inferior to the national best bid and offer. This amendment to ISE Rule 701 will allow the sending of Linkage P/A Orders prior to the opening, allowing the PMM to access better markets on behalf of customers prior to the ISE's opening.

In implementing this proposed rule change, the Exchange will ensure that customers always receive the best price for their orders. Under the Linkage Plan, a receiving market has five seconds to respond to a P/A Order,<sup>6</sup> and the receiving market can reject a response it receives more than five seconds after sending the order.<sup>7</sup> In the unlikely event that the ISE opens its market during this five-second period, it is possible that the

(November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>6</sup> See Linkage Plan Section 7(a)(ii)(B)(1)(a).

<sup>7</sup> See Linkage Plan Section 7(a)(iii).

<sup>19</sup> See *supra* note 10; See also New Product Release, *supra* note 13.

<sup>20</sup> See *supra* note 10.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> See *supra* note 14.

<sup>23</sup> 15 U.S.C. 78s(b)(2).