

Participants use the underlying market to hedge their options positions.

The Commission finds that the proposal to reduce the amount of time a member must wait after sending a linkage order to a market before that member can trade through that market from thirty seconds to twenty seconds is appropriate because the Linkage Plan will retain the requirement that a Participant respond to a Linkage order within 15 seconds of receipt of that order.<sup>12</sup>

The Commission also finds that the proposal to establish a general prohibition against Linkage fees for executing Satisfaction Orders is appropriate. An exchange will receive a Satisfaction Order only when it has traded through customer orders on another exchange. The Commission agrees with the Participants that an exchange that traded through another market should not be allowed to impose a fee on the aggrieved party that exercises its rights under the Linkage Plan to complain about a trade-through.

## V. Conclusion

*It is therefore ordered*, pursuant to section 11A of the Act,<sup>13</sup> and Rule 11Aa3-2(c)(4) thereunder,<sup>14</sup> that Joint Amendment No. 4, as modified by the Pilot Amendment, is approved until May 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-3101 Filed 2-6-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 68 FR 5058, January 31, 2003.

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Tuesday, February 4, 2003.

**CHANGE IN THE MEETING:** Rescheduled Item.

<sup>12</sup> The Participants have represented that they believe reducing the response time even further to five seconds would provide an opportunity for the transmittal of responses to orders, while also allowing their members to execute orders on their own exchanges in a timely manner.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 240.11Aa3-2(c)(4).

<sup>15</sup> 17 CFR 200.30-3(a)(29).

The following item has been rescheduled to be considered at the Open Meeting of Thursday, February 6, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room: Regulation AC (Analyst Certification).

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

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: February 4, 2003.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 03-3241 Filed 2-5-03; 12:41 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47297; File No. SR-Amex-2002-84]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by American Stock Exchange LLC, Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto

January 31, 2003.

#### I. Introduction

On October 15, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the "Linkage"). On December 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.<sup>4</sup> The Commission received no comments on the proposed rule change. On January 30, 2003, the Exchange filed Amendment No. 2 to the

proposed rule change.<sup>5</sup> On January 31, 2003, the Exchange filed Amendment No. 3 to the proposed rule change, which replaces Amendment No. 2 in its entirety.<sup>6</sup> This order approves the proposed rule change, provides notice of filing of Amendment No. 3 and grants accelerated approval to Amendment No. 3.

#### II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.<sup>7</sup> The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Plan"),<sup>8</sup> which

<sup>5</sup> See letter from Jeffrey Burns, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 28, 2003 ("Amendment No. 2"). Amendment No. 2 was replaced with a subsequent amendment. Telephone call between Jeffrey Burns, Assistant General Counsel, Amex, and Jennifer Lewis, Attorney, Division, Commission, on January 31, 2003.

<sup>6</sup> See letter from Jeffrey Burns, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 28, 2003 ("Amendment No. 3"). Amendment No. 3 replaces Amendment Nos. 1 and 2 in their entireties. In Amendment No. 3, the Exchange proposes to: (1) Delete its interim linkage rules; (2) reorder the proposed linkage rules as Amex Rules 940 through 944; (3) amend the definition of "Linkage Order" contained in proposed Amex Rule 940 to state that such orders are immediate or cancel orders; (4) amend the definition of "Eligible Market Maker" contained in proposed Amex Rule 940 to state that such market maker is participating in the Exchange's automatic execution system, if available; (5) amend proposed Amex Rule 941 to clarify the specialist's obligation to address a linkage order when such order is not eligible to be executed automatically pursuant to commentary .01(d) to Amex Rule 933; (6) amend proposed Amex Rule 942 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (7) amend proposed Amex Rule 942 to clarify that members may not engage in a pattern or practice of trading through; (8) clarify that its existing fees for specialists and market makers will apply to certain Linkage orders; and (9) to make other non-substantive grammatical revisions to the proposed rules.

<sup>7</sup> Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

<sup>8</sup> Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. See Securities Exchange Act Release Nos.

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

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

<sup>3</sup> See letter to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, from Jeffrey Burns, Assistant General Counsel, Amex, dated December 18, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex clarified that it was not deleting its interim linkage rules at that time.

<sup>4</sup> See Securities Exchange Act Release No. 47066 (December 20, 2002), 67 FR 79180.

provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The proposed rule change also establishes a fee, which will apply to Linkage transactions except for Satisfaction Orders (which result after a trade-through). These fees are the same fees applicable to Amex specialists and market makers.

### III. Discussion

The Commission has reviewed the Amex's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>9</sup> and with the requirements of section 6(b).<sup>10</sup> In particular the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.<sup>11</sup> The Commission also finds that the proposed fee change is consistent with section 6(b)(4) of the Act<sup>12</sup> in that it represents an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission believes that the rules proposed by the Amex will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of

notice of filing thereof in the **Federal Register**. Amendment No. 3 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 3 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 3.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Amendment No. 3 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-84 and should be submitted by February 28, 2003.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-2002-84), be, and hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-3100 Filed 2-6-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47294; File No. SR-CBOE-2002-61]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

#### I. Introduction

On October 9, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the "Linkage"). The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.<sup>3</sup> The Commission received no comments on the proposed rule change. On January 30, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

#### II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange

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

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

<sup>3</sup> See Securities Exchange Act Release No. 47052 (December 19, 2002), 67 FR 79189.

<sup>4</sup> See letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated January 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to: (1) Amend the definition of "Linkage Order" contained in proposed CBOE Rule 6.80 to state that such orders are immediate or cancel orders; (2) amend the definition of "Reference Price" contained in proposed CBOE Rule 6.80 to conform to the definition of such term in the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Plan"); (3) amend proposed CBOE Rule 6.81 to clarify the specialist's obligation to address a linkage order when such order is not eligible to be executed automatically; (4) amend proposed CBOE Rule 6.83 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (5) amend proposed CBOE Rule 942 to clarify that members may not engage in a pattern or practice of trading through; and (6) establish fees for certain Linkage orders.

44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

<sup>9</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).