

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51755; File No. 4-208)

May 27, 2005

Intermarket Trading System; Notice of Filing of the Twenty First Amendment to the ITS Plan
Relating to the Recognition of the Automatic Generation of Outgoing ITS Commitments

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 11Aa3-2 thereunder,² notice is hereby given that on April 27, 2005, the Intermarket Trading System Operating Committee (“ITSOC”) submitted to the Securities and Exchange Commission (“Commission”) a proposed amendment (“Twenty First Amendment”) to the restated ITS Plan.³ The purpose of the proposed amendment is to recognize 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.

I. Description of the Proposed Amendment

The ITSOC proposes to amend the restated ITS Plan to recognize the automatic generation of outgoing ITS commitments in circumstances where members in the Participants’ markets send such commitments contemporaneously with trading at inferior prices,

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”).

disseminating a locking bid/offer in their own market, or a block trade.

The ITSOC proposes to amend the restated ITS Plan to add a new paragraph (G) to section 6(a)(ii). Proposed new language is italicized.

(G) Description Applicable to Contemporaneous Automatic Formatting and Sending Commitments

Notwithstanding the descriptions set forth in section 6(a)(ii)(A), (B), (D) and (F) above, a Participant (and, in the case of the NASD, ITS/CAES Market Makers) may automatically format and automatically send a commitment to trade to one or more other Participants, under the following circumstances: each such commitment is sent contemporaneously with: (i) one or more transactions on the market of the sending Participant that, absent the commitment(s), would be considered an Exchange trade-through(s) or a third market participating market center trade-through(s) (both as defined in Exhibit B); (ii) the dissemination by the sending Participant of a locking bid (offer) (as defined in Exhibit B); or (iii) a block trade (as defined in Exhibit C). The term “one or more transactions on the market of the sending Participant” used in clause (i) in the preceding sentence means, in addition to the transaction that would be priced lower than superior priced bid(s) or higher than superior priced offer(s) of another Participant(s), those one or more transactions priced at such superior priced bid(s) or offer(s).

The ITSOC provided the following example that demonstrates the functioning of clause (i) in subsection G, utilizing the CHX as the sending Participant:

- a. CHX Receives Order: Buy 2000 at-the-market. Member handling execution of order determines to complete order at **45.56**, necessitating satisfaction of superior priced offers on other Participant markets.

NBBO: N 45.50 45.53 B 5x2

Mkt	Bid	Offer	Size
B	45.30	45.53	1x2
T	45.30	45.54	3x3
N	45.50	45.55	5x5
X	45.25	45.59	2x5
P	45.20	45.60	1x1
M	45.40	45.65	1x1

b. CHX Executions: Customer buying/member selling as principal 2000 shares

200 at 45.53

300 at 45.54

500 at 45.55

1000 at 45.56

c. CHX Computer Generated Commitments: Member buying to partially off-set sales on CHX

M to B -- Buy -- 200 at 45.53

M to T -- Buy -- 300 at 45.54

M to N -- Buy -- 500 at 45.55

A. Governing or Constituent Documents

Not applicable.

B. Implementation of Amendment

The Participants have manifested their approval of the proposed amendment to the Plan by means of their execution of the proposed amendments. The proposed amendment would become effective upon the Commission's approval of the amendment.

C. Development and Implementation Phases

Not applicable.

D. Analysis of Impact on Competition

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

E. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

Not applicable.

F. 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 and by Commission approval. The amendment is so executed.

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

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 Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

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 such 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 [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland
Deputy Secretary

⁴ 17 CFR 200.30-3(a)(27).