

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60841; File No. 4-546)

October 20, 2009

Joint Industry Plan; Order Approving Joint Amendment No. 1 to the Options Order Protection and Locked/Crossed Market Plan

I. Introduction

On August 7, 2009, August 7, 2009, August 7, 2009, August 7, 2009, August 11, 2009, August 11, 2009, and August 11, 2009, NYSE Arca, Inc. (“NYSE Arca”), NYSE Amex, LLC (“NYSE Amex”), International Securities Exchange, LLC (“ISE”), NASDAQ OMX BX, Inc. (“BOX”), Chicago Board Options Exchange, Incorporated (“CBOE”), NASDAQ OMX PHLX, Inc. (“Phlx”), and The NASDAQ Stock Market LLC (“Nasdaq”) (collectively, “Participants”), respectively, filed with Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder² an amendment (“Joint Amendment No. 1”) to the Options Order Protection and Locked/Crossed Market Plan (“Plan”).³ In Joint Amendment No. 1, the Participants proposed to modify Section 5(b) of the Plan to eliminate the requirement that policies and procedures be submitted to the Commission for approval. On August 14, 2009, the Commission summarily put into effect Joint Amendment No. 1 on a temporary basis not to exceed 120 days and solicited comment on Joint

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

Amendment No. 1 from interested persons.⁴ The Commission received no comments on Joint Amendment No. 1. This order approves Joint Amendment No. 1.

II. Description of Proposed Amendment

In Joint Amendment No. 1, the Participants proposed to clarify that, while each Participant is required under the Plan to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs, there would not be a requirement that these policies and procedures be submitted to the Commission for approval. The Plan requires, and each Participant has represented, that its policies and procedures will be reasonably designed to prevent Trade-Throughs in the Exchange's market in Eligible Options Classes, unless they fall within an exception set forth in Section 5(b) of the Plan. If relying on such exception, the policies and procedures will be reasonably designed to assure compliance with the terms of the exception.

III. Discussion and Commission Findings

The Commission previously determined, pursuant to Rule 608 under the Act,⁵ to put into effect summarily on a temporary basis not to exceed 120 days, the change to the Plan detailed above in Joint Amendment No. 1.⁶ After careful consideration of Joint Amendment No. 1, the Commission finds that approving Joint Amendment No. 1 is consistent with the requirements of the Act and the rules and regulations thereunder.⁷ Specifically, the Commission finds that Joint

⁴ See Securities Exchange Act Release No. 60507 (August 14, 2009), 74 FR 42709 (August 24, 2009) (File No. 4-546).

⁵ 17 CFR 242.608.

⁶ See supra note 4.

⁷ In approving this Joint Amendment No. 1, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Amendment No. 1 is consistent with Section 11A of the Act⁸ and Rule 608 of Regulation NMS thereunder⁹ in that it is in the public interest, for the protection of investors, and the maintenance of fair and orderly markets.

In so finding, the Commission notes that the Commission generally does not approve, pursuant to Section 19(b), surveillance policies and procedures of national securities exchanges, though they may be reviewed by Commission staff, for example, pursuant to inspections and examinations.

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act¹⁰ and Rule 608 thereunder,¹¹ that Joint Amendment No. 1 is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78k-1.

¹¹ 17 CFR 242.608.

¹² 17 CFR 200.30-3(a)(29).