



DIVISION OF  
MARKET REGULATION

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

November 16, 2007

Jeffrey P. Burns  
Vice President and Associate General Counsel  
American Stock Exchange LLC  
86 Trinity Place  
New York, NY 10006

Re: Exemption Under Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 from Certain Provisions of the "Plan for the Purpose of Creating and Operating an Intermarket Option Linkage" Relating to the Representation of Principal Acting as Agent Orders on the American Stock Exchange

Dear Mr. Burns:

Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act") provides that the Securities and Exchange Commission ("Commission") may exempt from the provisions of Rule 608 of Regulation NMS, either unconditionally or on specified terms and conditions, any self-regulatory organization, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system.<sup>1</sup> As discussed below, the Commission is exempting the American Stock Exchange ("Amex") from Rule 608(c) of Regulation NMS, which requires Amex to comply with, and enforce compliance by its members with, certain provisions of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").<sup>2</sup>

**Exemption from Certain Provisions of the Linkage Plan**

In your letter, dated November 14, 2007, you state that the Amex seeks an exemption from Rule 608(c) of Regulation NMS, which requires Amex to enforce the terms of the Linkage Plan regarding Principal Acting as Agent Orders ("P/A Orders")<sup>3</sup> directed to the Intermarket

<sup>1</sup> 17 CFR 242.608(e).

<sup>2</sup> The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, and Rule 608 of Regulation NMS. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). The exchanges that currently participate in the Linkage Plan are the Amex, the Boston Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, NYSE Arca, and the Philadelphia Stock Exchange (collectively, the "Participants").

<sup>3</sup> See Section 2(16)(a) of the Linkage Plan.

Option Linkage (“Linkage”)<sup>4</sup> by its specialists. Specifically, Amex requests that the Commission, pursuant to Rule 608(e) of Regulation NMS, exempt Amex from the requirement of Rule 608(c) of Regulation NMS that Amex enforce compliance by its members with Sections 7(a)(ii)(A) and (B) of the Linkage Plan, which requires that P/A Orders sent through Linkage satisfy the definition of “P/A Order” as set forth in Section 2(16)(a) of the Linkage Plan. In addition, Amex requests an exemption from Rule 608(c) of Regulation NMS, which requires Amex to comply with Section 4(b) of the Linkage Plan, which requires the Amex to enforce compliance with Sections 7(a)(ii)(A) and (B) of the Linkage Plan.

1. Exemption from the Requirement to Enforce Compliance with Sections 7(a)(ii)(A) and (B)

Section 7(a)(ii) of the Linkage Plan provides that a member of a Participant who wishes to buy or sell contracts of a series of an Eligible Option Class, as defined in the Linkage Plan, by sending an order through Linkage may do so by using one of three defined order types. The P/A Order is one order type that may be sent through Linkage. Section 2(16)(a) of the Linkage Plan defines a P/A Order as an order for the “principal account of a Market Maker that is *authorized to represent* Customer orders, reflecting the terms of a related unexecuted Customer order *for which the Market Maker is acting as agent.*” (Emphasis added.)

Sections 7(a)(ii)(A) and (B) of the Linkage Plan contemplate market makers sending P/A Orders, as defined in Section 2(16)(a) of the Linkage Plan, through the Linkage. Amex has requested an exemption from Rule 608(c) of Regulation NMS, which requires it to enforce compliance by its members with these provisions. Specifically, Amex wishes to allow its specialists to send P/A Orders through the Linkage pursuant to Sections 7(a)(ii)(A) and (B) of the Linkage Plan that do not satisfy all of the elements of the “P/A Order” definition set forth in Section 2(16)(a) of the Linkage Plan.

Under Amex’s rules,<sup>5</sup> the P/A Order would be placed through the specialist’s principal account, and the P/A Order would reflect the “terms of a related unexecuted Customer order.” However, an Exchange employee known as an Amex Book Clerk (“ABC”), not a market maker, would have custody of, and be responsible for executing, the related, unexecuted Customer order.<sup>6</sup> Accordingly, the related, unexecuted Customer order would *not* be one for which the specialist would be “acting as agent.” In fact, upon the implementation of the proposed rule change establishing ABCs, specialists will no longer be authorized to act as agent. Therefore, you request an exemption from the requirement in Rule 608(c) of Regulation NMS that Amex

<sup>4</sup> The term “Linkage” means the systems and data communications network that link electronically the Participants to one another for the purposes of sending and receiving Linkage Orders, related confirmations, order statuses and Administrative Messages. See Section 2(14) of the Linkage Plan.

<sup>5</sup> Concurrent with the grant of this exemption, the Commission is approving a proposed rule change submitted by the Amex to eliminate options specialists’ responsibility to act as agent for customer orders. The proposed rule change establishes Amex Book Clerks, employees or independent contractors of the Exchange who will represent customer orders routed to the ANTE Display Book and handle outbound P/A Orders. See Securities Exchange Act Release No. 56804 (November 16, 2007) (order approving SR-Amex-2006-107, the “ABC proposal”).

<sup>6</sup> See *id.*

enforce compliance by its members with the requirement in Sections 7(a)(ii)(A) and (B) of the Linkage Plan that P/A Orders be for the account of a market maker that is authorized to represent Customer orders and that is acting as agent for a related unexecuted Customer order, as defined in Section 2(16)(a) of the Linkage Plan.

2. Request for Exemption from the Requirement to Comply with the Terms of Section 4(b) of the Linkage Plan (Compliance Undertaking)

Section 4(b) of the Linkage Plan requires each Participant to enforce compliance by its members in their use of Linkage through its facilities with the provisions of the Linkage Plan. You have requested that the Commission, pursuant to Rule 608(e) of Regulation NMS, exempt Amex from the requirement Rule 608(c) of Regulation NMS that Amex comply with Section 4(b) by enforcing members' compliance with Sections 7(a)(ii)(A) and (B) of the Linkage Plan.

**Response to Requests for Exemption**

On the basis of the representations and facts presented in your letter, the Commission grants an exemption to Amex from the requirement under Exchange Act Rule 608(c) of Regulation NMS that Amex enforce compliance by its members with the requirement in Sections 7(a)(ii)(A) and (B) of the Linkage Plan that P/A Orders be for the account of a market maker that is authorized to represent Customer orders and that is acting as agent for the related unexecuted Customer order, as defined in Section 2(16)(a) of the Linkage Plan. This exemption permits specialists to send a P/A Order through Linkage for their own account, reflecting the terms of a related unexecuted Customer order held by an ABC, even though the specialist is not acting as agent for such Customer order and is not authorized to represent Customer orders.

In addition, the Commission grants an exemption to Amex from the requirement in Rule 608(c) of Regulation NMS that Amex comply with Section 4(b) of the Linkage Plan by enforcing its members' compliance with the requirements of Sections 7(a)(ii)(A) and (B) of the Linkage Plan that P/A Orders be for the account of a market maker that is authorized to represent Customer orders and that is acting as agent for the related unexecuted Customer order, as defined in Section 2(16)(a) of the Linkage Plan.

This exemption is expressly conditioned on Amex meeting the following conditions:

- (1) The P/A Orders that are routed through Linkage are for the specialist's principal account;
- (2) The P/A Order reflects the terms of a related, unexecuted Customer order, as that term is defined under Section 2(5) of the Linkage Plan;
- (3) The Customer order is routed to the ANTE Display Book, where the order is in the custody of the ABC; and
- (4) The resulting execution is transferred from the specialist to the Customer by means of an appropriate offsetting transaction.

The Commission has determined that this exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and the perfection of the mechanisms of a national market system because it will enable customer orders routed to Amex to be executed through Linkage at another exchange disseminating the NBBO following the approval of the ABC proposal.

This exemption is conditioned solely on the facts and representations presented in your letter. In the event that any material change occurs with respect to any of the facts or representations presented, the exemption will expire and Amex must immediately resume operating in accordance with all the provisions in the Linkage Plan.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,<sup>7</sup>



Elizabeth K. King  
Associate Director

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17 CFR 200.30-3(a)(42).



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November 14, 2007

**Via Federal Express**

Elizabeth K. King, Associate Director  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Request for an Exemption Under Rule 608(e) of Regulation NMS Under the Securities Exchange Act of 1934 from Certain Provisions of the Options Intermarket Linkage Plan Relating to the Representation of Principal Acting as Agent Orders

Dear Ms. King:

The American Stock Exchange LLC (the "Amex" or the "Exchange") respectfully request that the Securities and Exchange Commission (the "Commission" or the "SEC") grant the Amex a partial exemption from Rule 608(c) of Regulation NMS under the Securities Exchange Act of 1934 (the "1934 Act"), which requires the Exchange to comply with, and enforce compliance by its members with, the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Linkage Plan" or the "Plan"). As set forth below, the Amex seeks an exemption that would allow Exchange employees or independent contractors, when acting in the capacity of Amex Book Clerks ("ABCs"), under Amex rules, to utilize the principal account of an Amex specialist in order to send a Principal Acting as Agent Order ("P/A Order") through the Intermarket Options Linkage (the "Linkage") even though the specialist is not acting as the agent for the order.

**Commission's Exemptive Authority**

Rule 608(e) of Regulation NMS under the 1934 Act authorizes the Commission to issue exemptions from the provisions of Rule 608. In particular, Rule 608(e) provides:

The Commission may exempt from the provisions of this rule, either unconditionally or on specific terms and conditions, any self-regulatory organization... if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.<sup>1</sup>

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<sup>1</sup> See 17 C.F.R. § 242.608(e).

The Linkage Plan is an effective National Market System plan pursuant to Rule 608, and the Amex is a Participant in the Linkage Plan. Rule 608(e) authorizes the Commission to issue an exemption to the Amex from Rule 608(c), which requires Amex to comply with and to enforce compliance by Amex members with the terms of the Linkage Plan.<sup>2</sup>

### **Background**

The Exchange seeks this exemption in order to facilitate a rule change that eliminates the possibility of priority rule violations by specialists.<sup>3</sup> The Amex has determined that the most effective way to accomplish this goal is to eliminate a specialist's duty and authority to represent unexecuted customer orders as an agent. Under the ABC Proposal, the duty to execute customer orders resting in the ANTE Display Book (i.e. the specialist customer limit order book) would be assumed by Exchange employees or independent contractors that would be known as "ABCs".

In executing customer orders in the ANTE Display Book, ABCs will need a mechanism to obtain an execution for customer orders when the best available price exists on another national securities exchange. Under current Amex Rules, a specialist acts as agent for unexecuted customer orders in the ANTE Display Book and can route a P/A Order through the Linkage to the national securities exchange that is disseminating the national best bid or offer (the "NBBO"). When the specialist receives an execution of a P/A Order, it then executes a corresponding transaction in favor of the customer at the price obtained for the P/A Order, thereby effectively transferring the trade to the customer.

After ABCs assume responsibility for unexecuted customer orders received in ANTE and resting in the ANTE Display Book, ABCs need a comparable means to ensure that customer orders receive an execution on another national securities exchange when the bid or offer on that exchange is superior to the Amex market. Only P/A Orders are guaranteed an execution under the Linkage Plan for a size applicable to customer orders.<sup>4</sup> Under Section 2(16)(a) of the Linkage Plan, however, a P/A Order may be routed to another national securities exchange only through the principal account of a market maker that is authorized to represent customer orders. The ABC Proposal would require a specialist to allow the specialist's principal account to be used by ABCs to place P/A Orders related to unexecuted customer orders resting in the ANTE Display Book when another national securities exchange is disseminating a superior price. This mechanism would enable ABCs to obtain for customers the same quality of execution that specialists now are able to obtain for customer orders resting in the ANTE Display Book.

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<sup>2</sup> Rule 608(c) requires each self-regulatory organization to "comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall absent reasonable justification or excuse, enforce compliance with any such plan by its members." 17 CFR 242.608(c).

<sup>3</sup> See Securities Exchange Act Release No. 55583 (April 5, 2007), 72 FR 18695 (April 13, 2007) (Amex File No. SR-Amex 2007-107) ("ABC Proposal").

<sup>4</sup> Compare Section 7(a)(ii)(A) and (B) of the Plan with Section 7(a)(ii)(C) of the Plan.

### **Provisions of the Linkage Plan Requiring Exemption**

Section 7(a)(ii) of the Linkage Plan provides that a member of a Participant<sup>5</sup> who wishes to buy or sell contracts of a series of an eligible Options Class by sending an order through Linkage may do so by using one of three defined orders types. Section 2(16)(a) of the Linkage Plan defines a P/A Order as an order for the "principal account of a Market Maker that is *authorized to represent* Customer orders, reflecting the terms of a related unexecuted Customer order *for which the Market Makers is acting as agent.*"<sup>6</sup> (Emphasis added.) Under the Amex Proposal, the P/A Order would be placed through the specialist's principal account, and the P/A Order would reflect the "terms of a related unexecuted Customer order." However, the ABC, not the specialist would have custody of, and be responsible for executing, the related customer order. Accordingly, although the specialist qualifies as a "Market Maker," the Customer order would *not* be one for which the specialist would be "acting as agent" or one that the specialist would be "authorized to represent" in the sense that an agent represents a Customer's order. Accordingly, Amex requests an exemption from the requirement in Rule 608(c) that Amex enforce compliance by its members with the requirement in Section 7(a)(ii)(A) and (B) of the Linkage Plan that P/A Orders be for the account of a market maker that is authorized to represent Customer orders and that is acting as agent for a related unexecuted Customer order. Absent an exemption, Rule 608(c) would require Amex to enforce compliance by its members with these aspects of the definition of an allowable P/A Order and thereby would prevent specialists from sending through the Linkage a P/A Order that reflects the terms of a related unexecuted Customer order held by the ABC.

In addition, Section 4(b) of the Linkage Plan requires Amex to enforce compliance with the provisions of the Linkage Plan by Amex members when they use the Linkage through Amex facilities. Because Amex is seeking an exemption from the requirement that it enforce compliance with certain provisions of the Linkage Plan, it will also need an exemption from Section 4(b) of the Plan as well.

### **Exemption Request**

In connection with the Commission's approval of the ABC Proposal, Amex respectfully requests an exemption, pursuant to Rule 608(e), from the requirement of Rule 608(c) that Amex enforce compliance by its members with the requirements in Section 7(a)(ii)(A) and (B) of the Plan that P/A Orders be for the account of a market maker that is authorized to represent Customer orders and that is acting as agent for a related unexecuted Customer order, provided that:

- 1) The P/A Order is routed through the Linkage and is for the principal account of the specialist;

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<sup>5</sup> A "Participant" is defined in Section 2(24) of the Linkage Plan to mean an eligible exchange whose participation has become effective pursuant to Section 4(c) of the Linkage Plan.

<sup>6</sup> Section 2(5) of the Linkage Plan defines a "Customer" order as "an order which, if executed, would result in the purchase or sale for an account in which no Broker/Dealer has an interest." (Emphasis omitted.)

- 2) The order reflects the terms of a related order of a Customer, as that term is defined under Section 2(5) of the Plan;
- 3) The order is routed to the ANTE Display Book where the order is in the custody of an ABC; and
- 4) The resulting execution is transferred to the Customer by means of an appropriate offsetting transaction.

Lastly, to the same extent and subject to the same limitations, Amex requests exemptive relief from the requirement in Rule 608(c) of Regulation NMS that Amex comply with Section 4(b) of the Linkage Plan by enforcing compliance by its members with the provisions of Section 7(a)(ii)(A) and (B) of the Linkage Plan, as discussed above.

The Exchange believes the exemption request satisfies the requirements of Rule 608(e) of Regulation NMS, in that the exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. In particular, the exemption will enable Amex to implement the ABC Proposal, which is intended to eliminate trading ahead violations by specialists, a result that is in the public interest and will protect investors, while enabling ABCs to protect and represent Customer Orders by obtaining executions at a superior option price when one is available on another national securities exchange. Moreover, the elimination of the possibility of trading ahead by specialists will better promote market fairness and ensure that specialists are not in a position to put their own interest above those of Customers. Furthermore, the Exchange submits that the proposal will benefit the marketplace by eliminating any public perception that specialists may engage in such conduct. These changes thereby will promote investor confidence in the integrity of the Amex market, which itself will strengthen the overall national market system.

These important goals will be accomplished without sacrificing any of the policy goals that underlie the definition of P/A Orders under Section 2(16)(a) of the Linkage Plan. The key purpose behind that definition is to ensure that Customer Orders have access to the NBBO through the Linkage. The Linkage Plan implements that goal by defining a P/A Order as an order that reflects the terms of an underlying "Customer Order," which in turn is defined as an order "which, if executed, would result in the purchase of sale for an account in which no Broker/Dealer has an interest."<sup>7</sup> In contrast, a Principal Order is defined as an order for the specialist's principal account as to which there is no related customer order.<sup>8</sup>

In other words, the point of the definition of a P/A Order is not that the specialist must be acting as an agent for a Customer with respect to the order in question, but that the specialist must *not* be acting on its *own* behalf as principal with respect to that order. Although Section 2(16)(a) of the Linkage Plan nominally defines a P/A Order in terms of

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<sup>7</sup> See *supra* at note 6.

<sup>8</sup> Section 2(16)(b) of the Linkage Plan defines a "Principal Order" as an "order for the principal account of an Eligible Market Maker and is not a P/A Order." (Emphasis omitted.)

whether the specialist is "acting as agent" with respect to the underlying unexecuted "Customer Order," that language is based on the assumption that the only alternatives are that a specialist must be acting as either an agent or a principal. Based on that assumption, the definition limits P/A Orders to instances when the specialist is acting as an agent – in order to exclude from the definition any instance in which the specialist is acting in its *principal* capacity. However, the present situation involves a third option that the Linkage Plan did not contemplate – that the specialist could be acting *neither* as an agent *nor* as a principal, but rather as merely a pass-through intermediary. In particular, the Customer Order would be in the custody of, and would be handled exclusively by, the ABC, who would simply use the specialist account as a vehicle by which to transmit the order through the Linkage system. Because the underlying order would be an order for a non-broker/dealer customer, not for the specialist's principal account, the requested exemption would be consistent with all of the policy goals that underlie the definition of a P/A Order.

For the foregoing reasons, Amex respectfully requests that the Commission grant an exemption from Rule 608(c), which requires Amex to comply with, and enforce compliance with, Sections 7(a)(ii)(A) and (B) of the Linkage Plan and Section 4(b) of the Linkage Plan, under the terms and conditions specified above.

If you have any questions or comments, please do not hesitate to contact me at 212-306-1822.

Sincerely,



cc: Richard Holley, SEC  
Nathan Saunders, SEC  
Nancy M. Morris, Secretary, SEC  
Michael T. Bickford, Amex