

Services. The indemnity applies regardless of negligence, willful misconduct, or breach of warranty by the company that provided the Services or any of its officers, directors, employees or agents.

Any amendment to a Service Agreement must be in writing executed by all of the parties. In addition, the CG&E and PSI Service Agreements (but not the form of Service Agreement for CG&E's utility subsidiaries) provide that any amendment to either of those Service Agreements, before being submitted to the Commission for its review, must first be submitted to the Ohio Commission and the Indiana Commission staff for their review (and submitted to certain other interested parties for informational purposes). As a result, the Ohio Commission and Indiana Commission staffs have effective veto power over any proposed amendment. Cinergy is precluded from seeking Commission approval of the contract or amendment, or must withdraw it, and may not put it into effect with respect to CG&E or PSI, if the Ohio Commission or Indiana Commission staff Disapprove it or find it unreasonable.

Additional Nonutility Companies may become parties to the Service Agreement after the original execution by executing appropriate signature pages. In the absence of any changes to the terms of the Service Agreement, merely adding new Nonutility Companies as signatories would not be considered an amendment, including for purposes of any prior state review.

The provision of Services would in all cases, be subject to any limitations or restrictions contained in any applicable current or future orders or authorizations, statutory provisions, rules or regulations, tariffs, or agreements of regulatory or governmental agencies having jurisdiction over the parties to the Service Agreement, including the Commission, the applicable state commission and the Federal Energy Regulatory Commission. To the extent, if any, that at any time any provision of the Service Agreement conflicts with any limitation or restriction of any regulatory agency, the limitation of restriction would control.

Northeast Utilities, et al. (70-9463)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, and its service company subsidiary, Northeast Utilities Service Company ("NUSCO"), have filed an application-declaration under

sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 54 under the Act.

NU proposes to adopt a stockholder rights plan ("Plan") and to enter into a related Rights Agreement ("Agreement") with NUSCO, acting as transfer agent, to implement the Plan. Under the Plan, NU's Board of Trustees ("Board") proposes to declare a dividend of one right ("Right") for each outstanding share of NU common stock, \$5.00 par value ("Common Stock"). The dividend will be payable to stockholders of record on the fifth business day after the Commission has issued an order requested in this filing ("Record Date"). Each Right would entitle the holder to purchase one share of Common Stock at a price of \$65.00 per share, subject to adjustment ("Purchase Price").

Initially, the Rights may only be traded together with the Common Stock certificates that are outstanding on the Record Date. The Rights may not be exercised until the Distribution Date, which is defined in the Agreement as the earlier of two dates. The first is ten days after the first public announcement that any person or group has acquired beneficial ownership of fifteen percent or more of Common Stock ("Acquiring Person"), without Board approval ("Acquisition Event"). The second is ten business days (unless extended by the Board) after any person or group has commenced, or announced an intent to make, a tender or exchange offer which would, upon its consummation, result in the person or group becoming an Acquiring Person (this event, together with an Acquisition Event, "Triggering Events"). On the occurrence of either Triggering Event, each Right will be evidenced by a Right Certificate, which may then be traded independently of the Common Stock.

In the event that a person becomes an Acquiring Person, Right holders will have the right to receive Common Stock (or, in certain circumstances, cash, property, other NU securities or a reduction in the Purchase Price) having a value equal to two times the effective Purchase Price ("Discount Purchase Price"). If, after the Distribution Date, NU is acquired by another person, the Common Stock is changed into shares of another person, or fifty percent of NU's consolidated assets or earning power are sold or transferred to another person (in each case, a "Surviving Person"), each Right holder may exercise a Right and receive for each Right the common stock of the Surviving Person at the Discount Purchase Price. If a Triggering Event occurs, all Rights that are, were or subsequently become beneficially owned by an Acquiring Person, and

certain other related persons, become null and void.

NU may redeem the Rights, as a whole, at an adjustable price of \$0.001 per Right, at any time prior to the close of business on the tenth day after the date that any person has become an Acquiring Person. At any time after any person or group becomes an Acquiring Person and before any person or group, other than NU and certain related entities, becomes the beneficial owner of fifty percent or more of the outstanding shares of Common Stock, the Board may direct the exchange of shares of Common Stock for all or any part of the Rights. The exchange would be at a rate of one Right per share of Common Stock or the equivalent in other NU securities or assets.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41246; File No. 4-208]

Intermarket Trading System; Notice of Filing and Temporary Summary Effectiveness of Proposed Fourteenth Amendment to the ITS Plan To Link the PCX Application of the OptiMark System to the Intermarket Trading System ("ITS")

April 2, 1999.

I. Introduction

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Exchange Act" or "Act"), notice is hereby given that on March 29, 1999, the Intermarket Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission") an amendment ("Fourteenth Amendment") to the restated ITS Plan.¹ The purpose of the amendment is to link the Pacific Exchange, Inc.'s ("PCX") Application of the OptiMark System ("PCX Application") to ITS. The Commission is publishing this notice to solicit comment on the amendment from interested persons. While comment is being solicited on the proposed amendment, the Commission

¹ The ITS is a National Market System plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2. See Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

has determined to make the proposed amendment summarily effective upon publication of notice on a temporary basis.²

ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter market operated by the National Association of Securities Dealers, Inc. ("NASD"). ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

Participants in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc., the PCX, and the Philadelphia Stock Exchange, Inc.

II. Background to the Amendment

On January 27, 1999, the Commission granted temporary exemptive relief to the ITS participants to exempt them from the ITS Plan provision requiring a Plan amendment to reflect the PCX Application interface with ITS.³ The Commission granted this exemption to the participants, in part, because the PCX Application was scheduled to begin operating on January 29, and there was insufficient time to obtain authorization from each of the authorizing bodies of the participants before this date.⁴ The PCX Application

began operating pursuant to the exemption on January 29, 1999. The exemption expires on April 2, 1999.⁵

III. Description

The purpose of the Fourteenth Amendment is to link the PCX Application to ITS.⁶ The PCX Application is a facility of the PCX that receives orders generated by the OptiMark System, an electronic matching system that, on a periodic "call" basis, processes certain qualifying expressions of trading interest (called "profiles"). Profiles may be created from the published quotations disseminated by the other participants at the commencement of the OptiMark System call reflecting the best bid and offer prices and associated sizes "CQS profiles".⁷ The orders received by the PCX Application will be processed by the PCX to permit: (a) in the case of those orders reflecting a match between non-CQS profiles, appropriate execution on the PCX and reporting thereafter in accordance with the applicable PCX rules; and (b) in the case of those orders reflecting a match between a non-CQS profile and a CQS profile: (i) processing pursuant to Section 6(a)(ii)(A) or (ii) transmission to ITS pursuant to Section 6(a)(ii)(B), whichever is applicable.

The proposed amendment adds subsections (33A) and (33B) to Section 1 of the ITS Plan to define and include the terms "PCX Application" and "PCX Application Module." The proposed amendment also amends existing definitions set forth in subsections (11), (23), (34A), and (34B) to recognize the use of the PCX Application and the PCX Application Module.

The proposed amendment adds to Section 6(a)(ii) a description of the operation of the PCX Application and how PCX will access other participants' markets through ITS. The amendment

also authorizes PCX to computer-generates ITS commitments.

In addition, the proposed amendment adds Section 8(h), which sets forth the parameters for the PCX Application's automated linkage to ITS. This section establishes the "PCX Application Formula" ("Formula") for calculating the "Percentage of PCX Application ITS Volume" ("PCX Application Percentage") and a "PCX Application Ceiling" ("Ceiling"). The Formula establishes a ceiling on the volume of trade-at commitments generated by the PCX Application, relative to the total volume of transactions resulting from the PCX Application. Specifically, the Formula has as its numerator the number of shares computer-generated by the PCX Application Module as ITS "trade-at" commitments that are executed in other ITS participant markets,⁸ and as its denominator the same shares as in the numerator plus all shares executed on the PCX received from the PCX Application and reported to the Consolidated Tape Association by the PCX. The Formula results in the PCX Application Percentage. Section (h) provides that PCX may computer-generates "trade-at" commitments if the PCX Application Percentage does not exceed the agreed upon Ceiling as calculated over Rolling Calendar Quarters.⁹ The Ceiling starts at 15% and will be reduced to 10% when the NYSE and PCX jointly request that the percentage be reduced. Section (h) provides that if the PCX Application Percentage exceeds the Ceiling then PCX must cease computer-generating "trade-at" commitments for a three-month period. However, during the first 24 calendar months following implementation of the PCX Application, the PCX retains the right to notify the ITSOC in writing, as specified in new Section (h)(iv), that it will undertake, or cause to be undertaken, system adjustments to the operation of the PCX Application in an effort to ensure future compliance with the PCX Application Ceiling. In the event of such notification, the PCX shall have, at a minimum, nine calendar months from the date of such notice (or such longer period as may be approved by all members of the ITSOC upon a showing of reasonable cause), to implement its

² Exchange Act Rule 11Aa3-2(c)(4) empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "If the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act."

³ The Commission has authority under Exchange Act Rule 11Aa3-2(f) to exempt participants in a national market system plan from the requirements of that plan. Exchange Act Rule 11Aa3-2(f) provides: "The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, 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."

The Division of Market Regulation has delegated authority to grant an exemption in this instance pursuant to 17 CFR 200.30-3(a)(29). See Letter from Richard R. Lindsey, Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Committee Chairman, ITSOC, dated January 27, 1999.

⁴ In general, to amend the ITS Plan, the ITS participants vote on a particular amendment and, assuming unanimous approval, each participant

goes back to its respective authorizing body, such as its Board of Directors or Executive Committee. Following ratification by each of the participants' authorizing bodies, the ITSOC submits a proposed amendment to the Commission, which publishes it for comment. An amendment to the ITS Plan is generally not effective until approved by the Commission. On January 21, 1999, the ITSOC unanimously voted to recommend to the participants' authorizing bodies an amendment to the Plan that would allow the PCX Application to link with ITS.

⁵ The Commission extended the exemption until publication of this notice. See Letter from Belinda Blaine, Associate Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Chairman, ITSOC, dated April 1, 1999.

⁶ The Fourteenth Amendment is identical to the amendment approved by the ITSOC on January 21, 1999.

⁷ For further discussion of the PCX Application, see Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (order approving the PCX Application).

⁸ "Trade-at" commitments are those commitments sent from the PCX Application when there is no match of non-CQS profiles, or a partial execution of a non-CQS profile, with the balance filled by another participant.

⁹ "Rolling Calendar Quarter" means any three consecutive calendar months, with the first Rolling Calendar Quarter ending on the last business day of the first three full calendar months following the month in which the PCX Application commences operation, i.e., April 30, 1999.

proposed system adjustments. During this 9-month period, the restrictions shall not apply. Notwithstanding other provisions, if, for any Rolling Calendar Quarter, the PCX Application Percentage exceeds 30%, the PCX must cease computer-generating "trade-at" commitments for three calendar months beginning the first business day of the second month following the end of such Rolling Calendar Quarter.

Finally, Section 8(h)(vi) provides that, each month, the PCX shall furnish the ITSOC with a report showing the number of shares for each component of the PCX Application Formula, as well as the number of executed shares resulting from "trade-through" commitments.¹⁰

IV. Discussion

The Commission has made a preliminary determination that the proposed amendment 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. While comment is being solicited on the proposed amendment, the Commission therefore will make the amendment summarily effective on a temporary basis upon publication of notice of the amendment.¹¹

The Commission believes that the linkage of the PCX Application to ITS will further the purposes of Section 11A of the exchange Act¹² and the development of the national market system by promoting economically efficient securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer. The Commission notes that the PCX Application has been linked to ITS since January 29, 1999, under the same terms now being proposed. These terms were agreed upon by the ITS participants after extensive discussions.¹³ The Commission believes

that linking the PCX Application to ITS has provided, and potentially will continue to provide, a new and more efficient way to match and execute trading interest.¹⁴ The Commission therefore believes it is appropriate to make the proposed amendment summarily effective on a temporary basis upon publication of notice of such amendment in order to allow the PCX Application to continue to be linked to ITS without interruption following termination of the ITS participants' exemptive relief.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed amendment, including whether the proposed Plan amendment 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 Plan amendment change that are filed with the Commission, and all written communications relating to the proposed Plan amendment 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 at the Commission's Public Reference Room. Copies of such Plan amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4-208 and should be submitted by May 3, 1999.

VI. Conclusion

The Plan amendment is hereby made summarily effective on a temporary basis not to exceed August 10, 1999 pursuant to Exchange Act Rule 11Aa3-2(c)(4).¹⁵

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41252; File No. SR-CBOE-99-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To List Index Options for an Additional Expiration Month

April 5, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 15, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to amend CBOE Rule 24.9, *Terms of Index Option Contracts*, to allow the Exchange to list up to seven expiration months, instead of the currently permitted six, for certain index options up until the expiration of those options in January 2000. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

¹⁰ A trade-through occurs when a transaction is effected at a price below the best prevailing bid, or above the best prevailing offer. The ITS Plan requires price continuity among the various markets by ensuring that the best national bids and offers are provided opportunities to trade with other markets effecting trades outside the best national quote.

¹¹ See Exchange Act Rule 11Aa3-2(c)(4).

¹² Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k-1(a)(1)(D).

¹³ The participants agreed upon these amendments after the Commission published a proposal to amend the ITS Plan. See Exchange Act Release No. 40204 (July 15, 1998), 63 FR 39306 (July 22, 1998) ("Proposing Release"). The Commission received 30 comment letters on the Proposing Release, generally favoring linking the PCX Application to ITS.

¹⁴ See *Id.*

¹⁵ 17 CFR 240.11Aa3-2(c)(4).

¹⁶ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Although the Exchange spoke with staff in the Division of Market Regulation ("Division") at the Commission to give notice of its intent to file the proposed rule change, the Exchange did not provide the Commission with written notice and the text of the proposed rule change at least five business days prior to the date of filing the proposed rule change. Rule 19b-4(f)(6)(iii). However, the Commission has decided to waive the pre-filing requirement. On March 18, 1999, CBOE made technical amendments to the proposal. Telephone conversations between Timothy H. Thompson, Director, Regulatory Affairs, CBOE, and Kenneth Rosen and Joseph Morra, Attorneys, Division, Commission.