

trading through other markets under Section 8(c)(i)(C) of the Linkage Plan.

The Commission approved the proposed amendment for a one-year pilot<sup>7</sup> to give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for Trade-Throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for Trade-Throughs near the end of the trading day leads to an increase in the number of Trade-Throughs.

In the order approving Joint Amendment No. 4, the Commission stated that in the event the Participants chose to seek permanent approval of this limitation, the Participants must provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the "Report").<sup>8</sup> The Commission specified that the Report should include information about the number and size of Trade-Throughs that occur during the last seven minutes of the options trading day and during the remainder of the trading day, the number and size of Satisfaction Orders that Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the Participants use the underlying market to hedge their options positions.<sup>9</sup> In a subsequent amendment to the Linkage Plan for the purpose of extending the pilot, Joint Amendment No. 8, the Participants represented that if they were to seek to make the limitation on Trade-Through liability permanent, they would submit the Report to the Commission no later than March 31, 2004.<sup>10</sup>

Following the most recent extension of the pilot program, certain Participants provided the Commission with portions of the data required in the Report, but were unable to provide sufficient information to enable the Commission to evaluate whether permanent approval

would be appropriate. Extending the pilot through January 31, 2005 would allow the limitation to continue in effect, with the increase in liability to 25 contracts, while the Participants continue to compile the data necessary to permit the Commission to evaluate the propriety of permanent approval of the Trade-Through liability limitation.

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan seeking to extend the pilot provision limiting Trade-Through liability for the last seven minutes of the trading day in the options markets for an additional seven months, and to increase the limitation on liability from 10 contracts to 25 contracts per Satisfaction Order is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act<sup>11</sup> and Rule 11Aa3-2 thereunder,<sup>12</sup> in that extending the pilot while the Participants gather and the Commission evaluates data relating to the effect of the operation of the pilot, is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission further finds that raising the limitation on liability to 25 contracts per Satisfaction Order, which should increase the average size of Satisfaction Order fills during the last seven minutes of the options trading day, is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission is extending the effectiveness of Section 8(c)(ii)(B)(2)(c) of the Linkage Plan, with the increase in the limitation in liability to 25 contracts per Satisfaction Order, for an additional seven months, until January 31, 2005.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act<sup>13</sup> and Rule 11Aa3-2 thereunder,<sup>14</sup> that the proposed Joint Amendment No. 12 is approved on a pilot basis from July 1, 2004 until January 31, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49871; File No. SR-OPRA-2004-03]

### Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Revise Guideline 1 of the Capacity Guidelines To Confirm That It Is Within the Authority of the Independent System Capacity Advisor To Make Determinations Concerning the Establishment, Modification or Removal of Output Throttles From the OPRA System

June 16, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on May 7, 2004, the Options Price Reporting Authority ("OPRA"),<sup>3</sup> submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed amendment would revise Guideline 1 of the Capacity Guidelines to confirm that it is within the authority of the Independent System Capacity Advisor ("ISCA") under the OPRA Plan to make determinations concerning the establishment, modification or removal of any throttle on the output of the OPRA System. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

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

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

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

<sup>7</sup> See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (approval of the pilot program on a 120-day basis); see also Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4).

The Commission subsequently extended the pilot program for five months until June 30, 2004. See Securities Exchange Act Release No. 49010 (December 30, 2003), 69 FR 706 (January 6, 2004) (Order approving Joint Amendment No. 8).

<sup>8</sup> See Order approving Joint Amendment No. 4, *supra* note 7.

<sup>9</sup> *Id.*

<sup>10</sup> See Order approving Joint Amendment No. 8, *supra* note 7.

<sup>11</sup> 15 U.S.C. 78k-1.

<sup>12</sup> 17 CFR 240.11Aa3-2.

<sup>13</sup> See *supra* note 11.

<sup>14</sup> See *supra* note 12.

## I. Description and Purpose of the Amendment

Guideline 1 of the Capacity Guidelines provided for in the OPRA Plan sets forth the "Function and Authority of the ISCA." The purpose of the proposed amendment to Guideline 1 is to include in the Capacity Guidelines an express statement that the authority of the ISCA would include the authority to establish a throttle limiting the output of the System to less than the total capacity available in the System, and to modify or remove any such throttles that may be established from time to time.<sup>4</sup> OPRA believes that throttling System output to less than total System capacity could sometimes be an appropriate way to limit the maximum message-handling capacity that vendors and subscribers could be required to have in order to handle OPRA's maximum output. Previously, the authority to establish, modify or remove throttles on the output of the OPRA System has been exercised by OPRA's Policy Committee. The proposed amendment would acknowledge that, in light of the recent establishment of an independent entity (the ISCA) with responsibilities of planning and implementing System modifications, it would be appropriate to clarify the ISCA's authority to make decisions with respect to System output throttles. OPRA believes that providing this authority to the ISCA would assure that these decisions would not be influenced by competitive considerations among the parties to the OPRA Plan, and would not present any appearance of being so influenced.

The text of the proposed revised Capacity Guideline 1 is set forth below. Proposed new language is in *italics*.

\* \* \* \* \*

1. *Function and Authority of the ISCA.* As a general matter, it is the responsibility of the ISCA to determine when and how to modify the OPRA System so that each party to the OPRA Plan may be provided with the System capacity it has requested. *Without limiting the general authority of the ISCA in this regard, the ISCA is specifically authorized to establish a throttle on the output of the OPRA*

*System to less than the total capacity available in the System and to modify or remove any such throttles that have been established.* The ISCA will also determine, consistent with these Guidelines, how the costs of modifying, maintaining and operating the OPRA System to meet the needs of the parties should be allocated among the parties, and, within the limits of its authority under Guideline 6, how System capacity should be allocated among the parties in certain circumstances when available System capacity is not sufficient to provide each party with the capacity it has requested.

\* \* \* \* \*

## II. Implementation of Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3-2 of the Act.<sup>5</sup>

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA 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](mailto:rule-comments@sec.gov). Please include File Number SR-OPRA-2004-03 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 Number SR-OPRA-2004-03. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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 Number SR-OPRA-2004-03 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49884; File No. PCAOB 2004-03]

### Public Company Accounting Oversight Board; Order Approving Proposed Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements ("Auditing Standard No. 2")

June 17, 2004.

## I. Introduction

On March 17, 2004, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements* ("Auditing Standard No. 2"), pursuant to section 107 of the Sarbanes-Oxley Act of 2002 (the "Act") and section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"). Auditing Standard No. 2 would provide the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting under section 404 of the Act. Notice of the proposed standard was published in

<sup>4</sup> The output throttle that is the subject of the proposed amendment would serve to limit the total output of the OPRA System. It would be different from the OPRA System's "dynamic throttle," which allows any unused System capacity to be temporarily and dynamically allocated to a participant exchange that needs additional capacity on a short-term, interruptible basis. Telephone conversation between Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on June 14, 2004.

<sup>5</sup> 17 CFR 240.11Aa3-2.

<sup>6</sup> 17 CFR 200.30-3(a)(29).