

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49871; File No. SR-OPRA-2004-03)

June 16, 2004

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

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 May 7, 2004, the Options Price Reporting Authority (“OPRA”),³ 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.

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ 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.

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.⁴ 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*.

⁴ 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.

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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.

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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.⁵

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:

⁵ 17 CFR 240.11Aa3-2.

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 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 [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(29).