

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50785; File No. SR-OPRA-2004-06)

December 2, 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 Amend Guideline 2 of the Capacity Guidelines Adopted in Accordance with the Plan

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 October 19, 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 ("Plan"). The proposed amendment would amend Guideline 2 of the Capacity Guidelines ("Guideline 2") adopted in accordance with the Plan. The Commission is publishing this notice to solicit comments from interested persons on the proposed Plan amendment.

I. Description and Purpose of the Amendment

OPRA states that there are two purposes to the proposed amendment to Guideline 2. Guideline 2 describes the process to be followed by the Independent System Capacity Advisor ("ISCA") under the Plan in soliciting and considering capacity

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<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.

projections and requests from the parties to the Plan. Among other things, Guideline 2 requires the ISCA to repeat this process on a quarterly cycle. The first purpose of the proposed amendment to Guideline 2 is to reduce the frequency of the capacity review cycle to no less frequently than semi-annually. OPRA states that, based on the experience of the ISCA and the parties to the Plan with this process, it is now apparent that, by requiring the solicitation and review of capacity projections on a quarterly cycle, Guideline 2 fails to take into account that it takes more than 3 months for the complete cycle of solicitation, discussion, revision, and review of these projections to be completed.<sup>4</sup> For this reason, the ISCA suggested, and the parties to the Plan agreed, that a six-month cycle for the capacity projection and review process would be more realistic. In the view of the ISCA and the parties to the Plan, a six-month cycle for this process would provide the ISCA with sufficiently current capacity projections to assure that the OPRA System would be able to meet the capacity needs of the parties as they may change from time to time.

The second purpose of the proposed amendment concerns the provision of Guideline 2 that requires the ISCA, once it has received capacity projections and requests

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<sup>4</sup> The ISCA's initial solicitation and review of capacity projections commenced in January 2004. Under the quarterly cycle required by Guideline 2, the second solicitation and review would have had to commence in April 2004. OPRA states that, when OPRA's Policy Committee met on March 1, 2004, it was plain that the January review would not be completed by April. Accordingly, OPRA waived the April 2004 solicitation and review and agreed that the next solicitation would call for projections to be furnished to the ISCA no later than July 1, 2004, which was done. According to OPRA, the Commission's representative at the March 1, 2004 meeting agreed that a one-time waiver of the ISCA's quarterly capacity review would not require a formal amendment of the Capacity Guidelines. OPRA believes that this suggests that waivers of quarterly reviews on a regular basis would require such an amendment, as this filing proposes.

from all of the parties and has estimated the cost of any modifications to the OPRA System necessary to accommodate these projections and requests, to furnish its cost estimates to each party requesting additional capacity. After receiving the estimate, the party is able to reduce the amount of additional capacity it requested in light of the estimated cost, or to withdraw its request altogether. Guideline 2, however, does not contemplate that a party would be able to increase the amount of additional capacity it is requesting at this stage of the process. The ISCA has recommended to OPRA, and OPRA has concurred, that Guideline 2 should be amended to permit a party either to reduce or increase the amount of additional capacity it is requesting once it has received the ISCA's initial cost estimates. OPRA believes that providing the parties to the Plan with this additional flexibility is justified not only because, by the time these estimates are received, there may be changes to a party's projection of the capacity it would need, but also because the ISCA's cost estimates may themselves be based on implementing changes to the system that would result in greater additional capacity being available than the aggregate amount of added capacity initially requested by the parties. In such an event, OPRA believes that the parties to the Plan should have an opportunity to adjust their requests upward if they so desire in order to receive an allocation of any additional capacity that may be available.<sup>5</sup>

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<sup>5</sup> OPRA states that, although Capacity Guideline 5(a) makes it clear that the ISCA is not authorized to implement system changes that would provide more capacity than has been requested by the parties unless the changes are approved by 75% of the parties, the ISCA may find it prudent for reasons of economy and efficiency to recommend modifying the system to provide more capacity than has been requested on the reasonable assumption that at least 75% of the parties would approve such a recommendation. Telephone conversation between Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, and Karl Varner, Special Counsel,

The text of the proposed revised Capacity Guideline 2 is set forth below.

Proposed new language is in *italics*; proposed deletions are in [brackets].

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2. Procedures and Timetable to be Followed by the ISCA; Reports to OPRA.

The OPRA Plan requires each of the parties, independently and from time to time, to project the amount of system capacity it will need, and to communicate to the ISCA, privately and in writing, requests for system capacity based on its projections in accordance with procedures developed by the ISCA. An applicant to become a party will likewise have to inform the ISCA, at least six months prior to the time it proposes to commence trading, concerning the initial amount of system capacity it will need. The costs of providing initial system capacity to an applicant in accordance with its request, as determined by the ISCA, will be included in the applicant's Participation Fee payable under Section 1(b) of the OPRA Plan. The ISCA will describe to the parties (and to applicants to become parties) the specific information that it wishes to receive from them for this purpose, the format in which the information is to be presented, and when the information is to be provided, provided that the ISCA shall solicit and consider capacity projections and requests from the parties no less frequently than semi-annually [quarterly]. The ISCA may also request additional information pertaining to System capacity from the parties at any time, subject to the confidentiality requirements described above.

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Division of Market Regulation ("Division"), Commission, and David Liu, Attorney, Division, Commission, on November 30, 2004.

As promptly as practicable after each due date for the receipt of capacity projections and requests from the parties, the ISCA will complete its review of the material furnished by the parties and any other information it deems relevant, and will present a written report to OPRA's Policy Committee concerning the extent and timing of any modifications to the OPRA System that it determines are necessary to meet the capacity needs of the parties in accordance with their requests. Whenever the ISCA believes it will not be able to meet this timetable for furnishing its report to OPRA, it will promptly notify the Executive Director of OPRA in writing, explaining why the timetable can not be met and providing a date when it believes the report will be available.

Before presenting any report to OPRA that includes proposed modifications to the OPRA System, the ISCA shall discuss the proposed modifications with the OPRA Processor and with representatives of the parties (which may include OPRA's Policy Committee and its Technical Committee) individually or collectively, and it may also discuss the proposed modifications with other persons (such as OPRA's administrative officers, vendors and subscribers) whose views the ISCA believes may be of assistance. Among other things, the ISCA will furnish to each party that has submitted a request for additional capacity an estimate of the cost to that party of obtaining the capacity it has requested, following receipt of which, the party will be afforded an opportunity to increase or reduce the amount of additional capacity it is requesting or to withdraw its request in its entirety. Applicants to become parties shall also have an opportunity to discuss their initial capacity requests with the ISCA, to receive cost estimates, and to modify their initial requests. Persons with whom the ISCA discusses OPRA System capacity matters shall be required to agree in writing not to disclose to any of the other

parties any information pertaining to a party's individual capacity projections or capacity requests, except in the form of aggregate capacity projections or requests that do not identify the individual capacity projections or requests of any of the parties.

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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.<sup>6</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-2004-06 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-2004-06. 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

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<sup>6</sup> 17 CFR 240.11Aa3-2.

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-2004-06 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.<sup>7</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(29).