

PLAN FOR REPORTING OF CONSOLIDATED OPTIONS  
LAST SALE REPORTS AND QUOTATION INFORMATION

[Proposed new language is double underlined; proposed deletions are [in brackets]]

The registered national securities exchanges named below, in response to directives of the Securities and Exchange Commission ("Commission") that provision be made for the consolidated reporting of transactions in eligible option contracts listed and traded on national securities exchanges and in response to the finding set forth in Section 11A (a) (1) (c) (iii) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, have jointly developed and hereby agree upon the following plan for these purposes. The term ["Plan"] as used herein shall mean said plan as from time to time amended in accordance with the provisions hereof. The Options Price Reporting Authority ("OPRA") shall mean the parties to the Plan acting jointly pursuant to the terms of the Plan. Pursuant to Section 11A(a)(3)(B) of the Exchange Act, the Commission's approval of the Plan and any amendments thereto shall authorize and require the parties to the Plan to act jointly with respect to matters as to which they share authority thereunder in planning, developing, operating or regulating the OPRA system, provided that such joint action shall be limited to circumstances in which it is necessary in order to fulfill the functions and objectives of OPRA as stated in the Plan, and provided further that each of the parties shall take reasonable steps to insure that nonpublic business information specific to that party remains segregated and confidential from the other parties, except for information that may be shared in connection with joint activities permitted hereunder.

The functions and objectives of OPRA shall include: the collection, consolidation and dissemination of Last Sale Reports (as defined below), Quotation Information (as defined below), and other information concerning Eligible Securities (as defined below) as the parties shall agree as provided herein; contracting for the distribution or sale of such information; contracting for and maintaining facilities to support any activities permitted in the Plan and guidelines adopted thereunder, including, without limitation, the operation of the System (as defined herein), and those matters set forth in this Plan and in all guidelines adopted hereunder.

I. Parties

(a) The parties to the Plan are the following national securities exchanges:

- (i) American Stock Exchange[, ] [Inc.] LLC  
86 Trinity Place

New York, New York 10006

(ii) Chicago Board Options Exchange, Inc.  
400 South LaSalle Street  
Chicago, Illinois 60605

(iii) International Securities Exchange [ LLC ], Inc.  
60 Broad Street  
New York, New York 10004

[(iv) New York Stock Exchange, Inc.]  
[ 11 Wall Street]  
[ New York, New York 10005]

[(v) iv] Pacific Exchange, Inc.  
301 Pine Street  
San Francisco, California 94104

[(vi) y] Philadelphia Stock Exchange, Inc.  
1900 Market Street  
Philadelphia, Pennsylvania 19103

(b) Any other national securities exchange or national securities association [whose rules governing] that maintains a market for the trading of standardized options [have been] in accordance with rules approved by the Securities and Exchange Commission may become a party. Subject to Section IX concerning the continuing liability of former parties for certain obligations under the Plan, [provided] a party shall cease to be a party at such time as it ceases to maintain a market for the trading of securities option contracts. As a condition of becoming and continuing as a party, said organization [agrees] shall agree to conform to the terms and conditions of the Plan, as the same may be amended from time to time [ . As a condition of becoming a party (or after becoming a party in the case of an organization that became a party after January 1, 2000 but before the time the Plan was amended to incorporate specific factors to be considered by OPRA in determining the amount of the Participation Fee)], [said organization] and shall pay a Participation Fee to OPRA in an amount that has been determined by a vote of a majority of the parties to the Plan as fairly and reasonably compensating OPRA for costs it has incurred in developing and maintaining the OPRA system [or] and for costs it will incur in providing for the new party's participation. A party to which the Fee applies shall not vote on the determination of the amount of the Fee to be paid by that party. In determining the amount of the Participation Fee to be paid by any new party, OPRA shall consider the following factors:

- [The] the portion of costs previously paid by OPRA for the development, expansion and maintenance of OPRA's facilities which, under generally accepted accounting principles, would have

been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new party;

- an assessment of costs incurred and to be incurred by OPRA for modifying the OPRA System or any part thereof to accommodate the new party, which are not otherwise required to be paid or reimbursed by the new party; and
- previous Participation Fees paid by other new parties.

In the event OPRA and a new party do not agree on the amount of the Participation Fee, the amount of the Fee will be subject to review by the Commission pursuant to Section 11A(b)(5) of the Exchange Act.

(c) (i) An applicant may apply to become a party to the Plan by submitting to OPRA a completed Participation Application on the form provided by OPRA.

(ii) An applicant may apply for limited access to OPRA for planning and testing purposes pending its becoming a party by submitting to OPRA a completed Application for Limited Access to the OPRA System, accompanied by payment of a deposit in the amount established by OPRA, which shall be applied or refunded as described in the Application.

## II. [Administration of the Plan.] Definitions

(a) [Options Price Reporting Authority. This plan and the Options Last Sale and Quotations Reporting System described herein said system, including] "OPRA System" or "System" means all data processing equipment, communications facilities and other facilities utilized by the parties or any data processing service organizations acting on their behalf in connection with the processing, consolidating and distribution of options [last sale reports]Last Sale Reports and [quotation]Quotation [information]Information and related information [is referred]pursuant to [herein as ]the ["]Plan.

(b) "Eligible Securities" means each series of options contracts traded on or in the securities market maintained by a party to the Plan.

(c) "FCO Securities" means those Eligible Securities consisting of foreign currency option contracts.

(d) "Index Option Securities" means those Eligible Securities consisting of options on a group or index of equity securities.

(e) "FCO Party" means a party to the Plan that provides a market in FCO Securities.

(f) "Index Option Party" means a party to the Plan that provides a market in Index Option Securities.

(g) "Last Sale Reports" means price, volume, or related information reflecting completed transactions in Eligible Securities.

(h) "Quotation Information" means bids, offers, or related information pertaining to quotations in Eligible Securities, including information consisting of the BBO for Eligible Securities.

(i) "Options Information" means Last Sale Reports and Quotation Information and any other information transmitted over the information reporting system administered by OPRA.

(j) "Current" means Last Sale Reports or Quotation Information that has been transmitted by the Processor, by a Participant or by OPRA within the immediately preceding 15 minutes.

(k) "Vendor" means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor in connection with such person's business of distributing, publishing, or otherwise furnishing such information to other persons.

(l) "Subscriber" means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor for its own use, other than in connection with its activities as a Vendor.

(m) "Independent System Capacity Advisor" or "ISCA" means the person, group of persons or organization selected by OPRA, pursuant to the affirmative vote of at least 75% of the parties, to perform the functions designated to be performed by such person, persons or organization in connection with OPRA's capacity planning process in accordance with Section III(g) below. The identity of the person, persons or organization selected to act as ISCA in accordance with the foregoing shall be filed with the Commission as an amendment to OPRA's national market system plan pursuant to Rule 11Aa3-2 under the Exchange Act, eligible to be put into effect upon filing in accordance with paragraph (c)(3) of that Rule. Persons selected to act as the ISCA shall not be employed by any of the parties; shall maintain the confidentiality of information entrusted to them in accordance with the requirements of Section III(g); and may be discharged by a vote of at least 75% of the parties.

(n) "Capacity Guidelines" means the guidelines to be followed by the ISCA in performing its capacity planning and allocation functions under Section III(g) below, as amended from time to time. The adoption of the initial Capacity Guidelines shall require the approval of all of the parties; thereafter (except as provided therein) the Capacity Guidelines may be amended from time to time by the affirmative vote of at least 75% of the parties, subject in all cases to being filed with and approved by the Commission.

(o) "BBO" ("Best Bid and Offer") means at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the parties, as determined and disseminated by OPRA in accordance with "BBO Guidelines" adopted by the parties. The BBO Guidelines may be amended from time to time by the affirmative vote of at least 75% of the parties, subject in all cases to being filed with and approved by the Commission.

(p) "Processor" means one or more data processing service organizations selected by OPRA in accordance with Section IV below, to perform specified functions on behalf of OPRA pertaining to the development, operation and maintenance of the OPRA System.

(q) "Executive Director" means the person designated by OPRA in accordance with Section III(b) below to perform administrative functions on behalf of the OPRA as specified in the Plan and such other functions as may be delegated to the Executive Director by the Policy Committee from time to time.

### III. Administration of the Plan

(a) OPRA Policy Committee. The Plan and the OPRA System[" or the "System")] shall be administered by the [parties]OPRA Policy Committee, which shall be constituted as[ hereinafter] provided [through a committee designated as the Options Price Reporting Authority ("OPRA")]in Section III(c), [and all]below. All action taken by the parties or their agents for purposes of implementing and administering the Plan shall be on behalf of all the parties in the name of OPRA. [All references herein to OPRA shall mean the parties acting through the administrative committee pursuant to the Plan.]

(b) [Action taken by OPRA. OPRA]Authority of Policy Committee. Except as otherwise expressly provided in the Plan, the OPRA Policy Committee shall make all policy decisions on behalf of OPRA in furtherance of the functions and objectives of OPRA under the Exchange Act and under the Plan, including but not limited to the following:

(1) determining the extent to which options Last Sale Reports, Quotation Information and other market information will be collected, consolidated and disseminated by OPRA to satisfy the requirements of the Exchange Act and the needs of investors and other participants in the options markets, and setting standards governing the method and format for reporting consolidated options [last sale reports and quotation]market information by the parties, the Processor and [vendors]Vendors;

(2) making policy determinations pertaining to contracts with Vendors, Subscribers, purveyors of data processing services, and others, and prescribing the forms of contracts to be entered into with

[vendors, subscribers, purveyors of data processing services, and others] such persons;

(3) setting standards to be applied in determining the qualifications of persons to receive options [last sale reports or quotation information]consolidated Last Sale Reports or consolidated Quotation Information in any capacity;

(4) determining the level of fees to be paid to the parties by [vendors, subscribers]Vendors, Subscribers, or others for services related to consolidated options [last sale reports]Last Sale Reports or [quotation information]consolidated Quotation Information;

(5) determining policy questions relating to budgetary or financial matters[.];

(6)planning for the projected capacity needs of the OPRA System and authorizing modifications to the System in accordance with determinations made by OPRA's Independent System Capacity Advisor as provided in paragraph (g) of this Section III; and

(7)planning, discussing, and developing options quote message traffic mitigation approaches and strategies, and implementing approaches and strategies filed with and approved by the Commission.

The OPRA Policy Committee may delegate all or part of [the]its administrative functions under the Plan, but not [the]its policy making authority (except to the extent determinations in respect of capacity planning and allocation are delegated to the Independent System Capacity Advisor under Section III(g)), to one or more of the parties or to other persons, and any person to which administrative functions are so delegated shall perform the same as agent for the parties, in the name of OPRA. Each person who performs administrative functions on behalf of OPRA (including OPRA's Executive Director and its other officials and the Processor) shall be required to agree that any nonpublic business information pertaining to any party that becomes known to such person shall be held in confidence and not shared with the other parties, except for information that may be shared in connection with joint activities permitted under the Plan.

(c) Composition and Selection of Policy Committee. The Policy Committee shall consist of one voting member representing each party and one alternate voting member representing each party who shall have a right to vote only in the absence of that party's voting member. Each of the voting and alternate voting members of the Policy Committee shall be appointed by the party that he or she represents, and shall serve at the will of the party appointing such member.

[ (c) Voting Authority](d) Action of Policy Committee.  
[Subject to the provisions of Section II(d) below, and except as]Except as otherwise provided [in Section VII(d) as to fees and charges imposed hereunder and in Section X as to amendments to the

Plan]herein, each of the parties shall have one vote on all matters [under]voted upon by the [Plan,]Policy Committee and action of OPRA under the Plan shall be authorized by the affirmative vote of a majority of [all of ]the parties[. Each of the parties shall appoint one voting representative and one alternate voting representative],subject to [exercise voting authority on behalf of that party for purposes of the Plan]the approval of the Securities and Exchange Commission whenever such approval is required under applicable provisions of the Exchange Act, and the rules of the Commission adopted thereunder. Action authorized in accordance with the Plan shall be binding upon all of the parties, without prejudice to the rights of any party to present contrary views to any regulatory body or in any other appropriate forum.

([d]e) Tie-breaking Voting Authority. In the event that a matter subject to authorization by a majority vote of the parties under Section [II]III([c]d) above results in a tie vote, upon the motion of any party the matter may be resubmitted to a vote of the parties in accordance with the provisions of this Section [II]III([d]e). Action of OPRA taken under this Section [II]III([d]e) shall be authorized by the affirmative vote of parties representing not less than 66 2/3% of the total voting authority determined in accordance with this Section [II]III([d]e). The tie-breaking voting authority of each party shall be initially determined on the date of execution of this Plan or on the subsequent date when new parties become admitted, and it shall be redetermined as of March 1 of each year. In the event there are only two parties to the Plan on any such March 1, tie-breaking voting authority shall be equally divided between the parties. In the event there are more than two parties to the Plan on any such date, the tie-breaking voting authority of each party shall be a percentage of the total voting authority determined by dividing (i) the number of compared trades reported by The Options Clearing Corporation ("OCC") as having been submitted by that party during the preceding twelve-calendar month period by (ii) the total number of all options transactions so reported as having been submitted by all parties during that same period. (Numbers of transactions shall be annualized for parties that have been such for less than the full twelve-month period.) Notwithstanding any other provision of this Section [II]III([d]e), no party shall have tie-breaking voting authority greater than 50%, and any tie-breaking voting authority in excess of 50% that a party might otherwise have shall be distributed pro rata to the other party or parties in proportion to their tie-breaking voting authority prior to such distribution. Parties admitted to OPRA during the period between the annual determination of tie-breaking voting authority as provided above shall be entitled to tie-breaking voting authority of 10% taken proportionally from the tie-breaking voting authority of the other organizations which have been parties since the immediately preceding March 1. If an organization should cease to be a party, its tie-breaking voting authority shall be allocated among the remaining parties in proportion to the then tie-breaking voting authority of

each such party until the next succeeding date for redetermination of tie-breaking voting authority.

([e]f) Meetings of the [Parties]Policy Committee. Regular meetings of the [parties, which shall]Policy Committee may be attended by each party's voting representative or alternate[,]voting representative and[ may be attended] by one or more nonvoting representatives of the parties, by the Executive Director and other representatives of OPRA and the Processor, by representatives of the Commission, and by such other persons that the Committee may invite to attend; provided that the Committee may, where appropriate, determine to meet in Executive Session at which only voting members of the Policy Committee and other representatives of the parties or of OPRA that the Policy Committee may invite shall be present. Meetings of the Policy Committee shall be held at such times as shall from time to time be determined by [OPRA]the Policy Committee, on not less than 10 days notice. Special meetings of the Policy Committee may be called upon the request of two or more parties on not less than two days' notice. At each meeting of the Policy Committee, [OPRA]the Committee shall designate one of the representatives of the parties to preside as Chairman of the meeting and shall designate the Executive Director of OPRA [administrator ]or [one of the representatives of the parties]other person in attendance to act as Secretary to record the minutes thereof. The location of the regular and special meetings of the Policy Committee shall be fixed by [OPRA]the Committee, provided that in general the location of meetings shall be rotated among the locations of the principal offices of the parties. [Parties]Members of the Policy Committee may [attend]be present at a meeting by conference telephone or other electronic means that enables each of them to hear and be heard by all others present at the meeting, and action may be taken without a meeting if [the voting representatives]all of [all parties]the members entitled to vote consent thereto in writing.

### [III. Definitions]

[ (a) "Eligible securities" means each series of options contracts traded on or in the securities market maintained by a party to the Plan.]

[ (b) "FCO securities" means those eligible securities] consisting of foreign currency option contracts.]

[ (c) "Index option securities" means those eligible securities consisting of options on a group or index of equity securities.]

[ (d) "FCO party" means a party to the Plan that provides a market in FCO securities.]

[ (e) "Index option party" means a party to the Plan that provides a market in index option securities.]



[ (f) "Last sale reports" means price, volume, or related information reflecting completed transactions in eligible securities.]

[ (g) "Quotation information" means bids, offers, or related information pertaining to quotations in eligible securities, including information consisting of the BBO for eligible securities.]

[ (h) "Options Information means Last Sale Reports and Quotation information and any other information transmitted over the information reporting system administered by OPRA.]

[ (i) "Current" means, in the case of Last Sale Reports, such information that has been transmitted by the Processor, by a Participant or by OPRA within the immediately preceding 15 minutes, and in the case of Quotation Information, the bid or offer in respect of a given security that was most recently transmitted by the Processor, by a Participant or by OPRA.]

[ (j) "Vendor" means a person that receives Options Information provided by OPRA or provided by a vendor in connection with such person's business of distributing, publishing, or otherwise furnishing such information to other persons.]

[ (k) "Subscriber" means a person that receives Options Information provided by OPRA or provided by a vendor for its own use, other than in connection with its activities as a vendor.]

[ (l) "Relevant calendar quarter" means:]

[ (i) For the capacity allocation commencing on May 1 of each year, the months of January, February, and March.]

[ (ii) For the capacity allocation commencing on August 1 of each year, the months of April, May, and June.]

[ (iii) For the capacity allocation commencing on November 1 of each year, the months of July, August, and September. ]

[ (iv) For the capacity allocation commencing on February 1 of each year, the months of October, November, and December.]

[ (m) "Customer contracts" means options contracts executed on a national securities exchange and cleared in a customer account at a registered clearing agency.]

[ (n) "Options class" means all options (put options and call options) covering the same underlying security, including the same group or index of securities.]

[ (o) "Included class" means any options class (other than a class of FCO securities) listed by a party:]

[ (i) For which such party executes during the relevant calendar quarter an average of at least 15 customer contracts per day if the options class is multiply-traded; or]

[ (ii) For which such party executes during the relevant calendar quarter an average of at least 25 customer contracts per day if the options class is not multiply-traded.]

[ (p) "Capacity credit" means, for each party that is operating an options market, for each options class that is an included class for that party, an amount equal to:]

[ (i) If the options class is a multiply-traded options class, the average number of quote messages for that options class received by OPRA between 3:00 p.m. and 4:00 p.m. eastern time during the relevant calendar quarter from all parties for which such class is an included class, divided by the number of such parties; and ]

(g) Capacity Planning; Allocation of System Capacity.

[(ii) If the options class is not a multiply-traded options class, the average number of quote messages for that options class received by OPRA between 3:00 p.m. and 4:00 p.m. eastern]i) For purposes of determining how and when to modify the capacity of the OPRA System, each of the parties will from time [during]to time independently project the [relevant calendar quarter from]amount of system capacity it needs and will submit requests for system capacity privately and in writing to the [party trading such class]ISCA based on its projected needs, in accordance with procedures developed by the ISCA. The ISCA will maintain such information in confidence except as it may need to be shared with OPRA's Processor and other persons for operational or administrative purposes; provided that in no event will such information be shared with any of the other parties except in the form of aggregate capacity requests that do not identify the individual capacity requests of any of the parties, and provided further that such information will not be used by the ISCA in any of its other business activities in a manner that may result in its being made available to any of the other parties or that is otherwise inconsistent with the confidentiality of such information.

[(q) "Allocation percentage" for a party means the total of all such party's capacity credits divided by]ii) Based on such information and subject to the [total of all]Capacity Guidelines, the ISCA will consider how and when to modify the System in order to provide the system capacity [credits for all]requested by the parties, and how the costs of such expansion should fairly be allocated among the parties to the extent such costs come within the authority of the ISCA under Section VIII(a) of the Plan to allocate the total costs of OPRA in excess of a specified ceiling. The ISCA shall communicate its

conclusions in writing to OPRA, which, to the extent and subject to the conditions set forth in the Capacity Guidelines, shall be obligated to authorize and fund the modification of the System in accordance with the ISCA's determinations. Once the capacity of the System has been modified so as to be able to provide to a party the capacity it has requested, that party's allocated share of System capacity shall not exceed its requested capacity unless the party is able to acquire another party's unused capacity in accordance with paragraph (h) of this Section III.

([r) "New Exchange Share" means 40 percent of OPRA systems capacity (exclusive of the amount of systems capacity made available exclusively for FCO securities in accordance with Section V(d)(i)) divided by the number of parties that are operating a market in options that is not limited to FCO securities]iii) To the extent and subject to the conditions and limitations set forth in the Capacity Guidelines, under circumstances when the capacity of the System is unable to meet the aggregate requests for capacity that have been submitted to and approved by the ISCA, the ISCA shall be authorized to allocate available System capacity among the parties. In addition, the Capacity Guidelines shall provide for the utilization of a "dynamic throttle" that is capable of automatically and instantaneously making available to a party with an immediate need for additional capacity, on a short-term interruptible basis, any unused capacity, subject to the conditions that the party receiving such unused capacity must pay for it at a rate that is determined by the ISCA to be greater than the fully allocated cost of such additional capacity to the extent provided in the Capacity Guidelines, and must relinquish such capacity to the party or parties to which it had originally been allocated whenever such party or parties need it. Amounts paid by a party for the use of excess capacity made available to it by operation of the dynamic throttle shall be added to OPRA's general revenues.

[(s) "BBO" ("Best Bid and Offer") means at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the parties, as determined and disseminated by OPRA in accordance with "BBO Guidelines" adopted by the parties. The [adoption of the initial BBO] Guidelines shall require the approval of all of the parties; thereafter [the BBO Guidelines may be amended from time to time by the affirmative vote of at least 75% of the parties, subject in all cases to being filed with and approved by the Commission.] (h) Transfer of System Capacity Between Parties. The following shall be the exclusive procedure to be used by the parties in seeking to acquire additional System capacity from, or in making excess System capacity available to, another party. Any party may at any time notify OPRA's Executive Director (or other person designated by OPRA for this purpose) of any need it may have for additional System capacity beyond the capacity allocated to it based on its prior requests, or of any portion of its previously allocated System capacity that it is not

using and may be willing to make available to other parties on specified terms. OPRA's Executive Director (or other designated person) shall act as an intermediary in matching any such requests for additional capacity with any unused capacity that may be available and in negotiating the terms for such transfer of System capacity, but in doing so it shall not communicate to any party the identities of the parties who are either requesting or offering capacity.

#### IV. Data Processing Functions

OPRA may itself perform some or all of the data processing functions associated with the operation of the OPRA System, or it may enter into a contract (or contracts) with one or more data processing service organizations [(referred to herein as the "Processor")] approved by the affirmative vote of at least 75% of the parties providing for such organization or organizations to [perform] act as OPRA's Processor in performing, in accordance with procedures and guidelines established by OPRA, functions related to the receiving, processing, consolidating, preparing for distribution and distributing to [vendors] Vendors and others information furnished by the parties concerning [last sale reports] Last Sale Reports and [quotation] Quotation [information] Information for all purposes under the Plan, and [to perform] such other functions as OPRA shall determine. Such contracts shall be in such form and shall include such provisions as may be agreed to by OPRA and the other party or parties thereto.

#### V. Collection and Dissemination of Options Last Sale Reports and Quotation Information

(a) Collection of Last Sale Reports. Each of the parties shall collect and promptly transmit to the OPRA System by means of its own facilities all [last sale reports] Last Sale Reports relating to its respective market. For this purpose, each of the parties shall use its best efforts to transmit such reports to the OPRA System, properly sequenced, within two minutes of the time of execution. Such reports shall be sequenced and transmitted in the appropriate format conforming to the specifications prescribed by OPRA (which may be reflected in contractual agreements between OPRA and persons providing data processing services to OPRA).

Except as otherwise provided by OPRA, such reports shall identify:

- (i) The options series;
- (ii) The number of contracts in each transaction;
- (iii) The price at which the contracts were sold;
- (iv) The market of execution; and

(v) Through appropriate codes and messages, late or out of sequence trades, cancels, spread transactions, opening ranges, trading halts and suspensions, and similar matters.

If any party becomes aware that one or more of its [last sale reports]Last Sale Reports are delayed for a period of time significantly greater than the two minute interval referred to above, such report or reports will be identified as ["late"] by an accompanying code or administrative message. In the event the delay affects more than one report (for example, if the entire reporting system is running late), it will be sufficient to transmit a single administrative message describing the delay.

(b) Collection of Quotation Information. Each of the parties, during the time that it is open for trading, shall collect and promptly transmit to the OPRA System by means of its own facilities bids and offers at stated prices or limits with respect to individual [eligible securities]Eligible Securities in which it provides a market, sufficient in number and timeliness to reflect the current state of the market in such security. Except as may be determined by OPRA, spread, straddle or combination quotations shall not be reported to the OPRA System; should OPRA subsequently determine to permit or require the reporting of such quotations, they shall be specifically identified. Bids and offers shall be so transmitted in the appropriate formats conforming to the specifications provided by OPRA (which may be reflected in contractual agreements between OPRA and persons providing data processing services to OPRA). Except as otherwise provided by OPRA, [quotation]Quotation [information]Information shall identify:

(i) The premium bid or offered;

(ii) The number of contracts in each bid or offer;

(iii) The options series;

(iv) The market in which the quotation was entered;

(v) Through appropriate codes and messages, cancels, corrections, trading halts and suspensions, market conditions, combination or other nonstandard quotations to the extent such quotations may be permitted or required to be reported, and similar matters.

Whenever a party determines that the level of trading activity or other unusual market conditions prevent it from collecting and transmitting [quotation information]Quotation Information as required above, or whenever there is a trading halt or suspension in an [eligible]Eligible [security]Security traded in its market, the party shall promptly notify the [OPRA]Executive [Administrator]Director of

such condition or event, and shall resume collecting and transmitting quotations as soon as it becomes practicable to do so.

(c) Dissemination of Last Sale Reports, Quotation Information and Other Information.

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of consolidated [options information]Options Information, on fair and reasonable terms over a network or networks to [vendors]Vendors, [subscribers]Subscribers and other approved persons. Such information shall include consolidated [last sale reports]Last Sale Reports and consolidated [quotation]Quotation [information]Information for all series of options for which the parties are required to provide current market information to OPRA in accordance with paragraphs (a) [-] (b) of this Section V. Not later than March 31, 2003, or upon the earlier completion of modifications to the OPRA [System]system necessary to enable the System to carry the BBO, such information shall also include the BBO for all such series of options. Once the BBO is available through the OPRA System, OPRA may offer a complete options market data service consisting of the BBO combined with consolidated [last sale reports]Last Sale Reports and [quotation]Quotation [information]Information, or OPRA may offer a limited service consisting of the BBO combined with consolidated [last sale reports]Last Sale Reports only while separately continuing to offer [last sale reports]Last Sale Reports and complete [quotation]Quotation [information]Information. Only such consolidated market information and related information, together with other information that satisfies the conditions of paragraph (iv) of this Section V(c) or is approved by OPRA, shall be disseminated through the System.

(ii) A party may disseminate information pertaining to quotations and transactions in its market ([ ]"Proprietary Information"") through a network separate from the OPRA System only if such dissemination meets the requirements of paragraph (iii) of this Section V(c).

(iii) A party may disseminate its Proprietary Information pursuant to paragraph (ii) of this Section V(c) provided that:

(A) such dissemination is limited to [(1) such party's members only for display on terminals or workstations used by persons associated with the member who are authorized to enter or transmit orders or quotations in or to the options market maintained by such party, and (2) ]other parties [to the Plan; (B) each member to which a party disseminates its Proprietary Information also has]and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of

options that are included in the Proprietary Information. For purposes of this subparagraph ([B]A), "consolidated Options Information" means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed "equivalent" if both kinds of information are equally accessible on the same terminal or work station; and

([C]B) a party may not disseminate its Proprietary Information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of Options Information.

(iv) Any one or more parties may utilize the OPRA System for the purpose of disseminating information in addition to [last sale reports]Last Sale Reports and [quotation]Quotation [information]Information, but only if the following conditions are met:

(A) The party so utilizing the OPRA System shall give each of the other parties and the [OPRA administrator]Executive Director not less than five business days written notice describing the additional information and the manner in which it will be disseminated, and certifying that said party has the legal right to disseminate such information;

(B) Such additional information must relate to the party's market in one or more [eligible securities]Eligible Securities;

(C) The party so utilizing the OPRA System shall agree to pay directly to the [OPRA processor]Processor, and to reimburse OPRA, for all costs allocable to or occasioned by the dissemination of such additional information;

(D) The dissemination of such additional information shall be permitted only if and to the extent that it does not in any manner impair or interfere with the primary function of the OPRA System to disseminate [last sale reports]Last Sale Reports and [quotation]Quotation [information]Information.

[ (d) Quarterly Calculation of Capacity Allocation.]

[ (i) All references in this paragraph (d) to "OPRA systems capacity" shall mean the total capacity of the OPRA system less the share of systems capacity that is made available by OPRA exclusively for FCO market data, which share shall be

capable of processing and disseminating not less than 350 messages per second.]

[ (ii) On the first of February, May, August, and November of each year, and continuing in effect until the first day of the third succeeding month, each party that operates an options market will receive an allocation of OPRA systems capacity in an amount equal to:]

[ (A) Such party's New Exchange Share, if so elected pursuant to paragraph (d)(iii) of this Section or if paragraph (d)(iv) of this Section applies; or]

[ (B) The aggregate of:]

[ (1) One-third of OPRA systems capacity divided by the number of parties that are operating an options market; plus]

[ (2) The product of multiplying total OPRA systems capacity reduced by the allocation of any New Exchange Shares and further reduced by the total allocation of capacity pursuant to paragraph (d)(ii)(B)(1), times such party's allocation percentage.]

[ (iii) Subject to subparagraph (d)(iv) of this Section, not later than the fifth business day following the end of the relevant calendar quarter, each party that on the last day of the relevant calendar quarter has been operating an options market for fewer than 270 calendar days may, by written notice to OPRA, elect to accept a capacity allocation commencing with the next succeeding relevant calendar quarter, equal to the New Exchange Share in lieu of the capacity allocation that it would otherwise receive under paragraph (d)(ii)(B).]

[ (iv) Notwithstanding subparagraphs (ii) and (iii) of this paragraph (d), when a party first commences the trading of options, it will be allocated capacity equal to the New Exchange Share, which allocation will remain in effect until the next quarterly determination of capacity allocation in accordance with this paragraph (d). If a party commences trading of options other than on the first day of February, May, August, or November, each other party's capacity allocation that was determined pursuant to paragraph (d)(ii)(A) or (B) of this Section shall be recalculated reflecting the change in the number of parties that are operating an options market and the capacity allocated to the new party in accordance with the preceding sentence. Any recalculation of a party's capacity allocation pursuant to the preceding sentence shall be made under the same subparagraph (A) or (B) that applied to the original determination of that party's capacity allocation for that



quarter, and shall use the allocation percentage figures from the most recently completed relevant calendar quarter.]

[ (v) OPRA will calculate the capacity allocation specified in paragraph (d)(ii) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the parties. Alternatively, OPRA can contract with the Processor or with another third party to perform this calculation. OPRA will notify the parties and the Commission of the capacity allocation promptly after such calculation is made. The capacity allocation provided for in this paragraph (d) shall be implemented by the Processor whenever it determines that total capacity demand of all parties exceeds the total available OPRA system capacity, and shall continue in effect until such total demand is less than 80% of total available OPRA system capacity. The Processor shall be required to notify promptly each party and the Commission whenever total capacity demand reaches 90% of total available system capacity, as well as whenever capacity allocation procedures under this paragraph (d) go into effect or are discontinued.]

[(e)](d) Indemnification.

(i) Each party agrees, severally and not jointly, to indemnify and hold harmless each other party and each of its directors, officers, employees and agents (including OPRA and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any [last sale price, quotation information]Last Sale Report, Quotation Information or other information reported to OPRA by such party and disseminated by OPRA as so reported. This indemnity agreement shall be in addition to any liability which the indemnifying party may otherwise have.

(ii) Promptly after receipt by an indemnified party under paragraph (i) of this Section V(d) of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under such subparagraph, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under such subparagraph. In case any such action is brought against any indemnified party and it promptly notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume and control the defense thereof, with counsel chosen by it, and after notice from the indemnifying party of its election so to assume the defense thereof, the indemnifying party will not

be liable to such indemnified party under such paragraph for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, but the indemnified party may, at its own expense, participate in such defense by counsel chosen by it, without, however, impairing the indemnifying party's control of the defense. The indemnifying party may negotiate a compromise or settlement of any such action provided that such compromise or settlement does not require a contribution by the indemnified party.

([f]e) For the duration of the pilot period described in subparagraph (d)(vi) of Section VII of the Plan, each of the parties to the Plan is entitled to access Options Information without obligation to pay information fees or facilities charges to OPRA, provided that such access is provided only on the party's trading floor or at its other business locations, and provided further that the Options Information is used by the party only in connection with the operation, surveillance or regulation of its market in [eligible]Eligible [securities]Securities. This entitlement extends to any other self-regulatory organization that performs regulatory or surveillance functions for a party.

#### VI. Hours of Operation of OPRA System

The regular hours of operation of the OPRA System shall be from 7:30 A.M. to 6:00 P.M. Eastern Time on any regular trading day of trading of two or more parties. At the request of any party or parties, the OPRA System shall also operate at other times, in which event the incremental costs of operating the System during such times shall be allocated in accordance with Section VIII(e).

#### VII. Vendors, Subscribers and Other Approved Persons

(a) Approval Required. Consolidated Options [information]Information shall be disseminated through the OPRA System only to [vendors]Vendors, [subscribers]Subscribers and other categories of persons that have been approved by OPRA and have entered into agreements with or for the benefit of OPRA and are in full compliance therewith. OPRA may, in its discretion, require that [vendors]Vendors, [subscribers]Subscribers or other approved persons be separately approved to receive [last sale reports]consolidated Last Sale Reports and/or [quotation information]consolidated Quotation Information relating to each of FCO [securities]Securities, [index option securities]Index Option Securities or other categories of [eligible]Eligible [securities]Securities. Any [vendor]Vendor, [subscriber]Subscriber, or other approved person may be disapproved or its previous approval may be terminated upon a determination by OPRA that such action is necessary or appropriate in the public interest or for the protection of investors, or in the event such person violates any provision of any contract or agreement pursuant to which such person receives [last sale reports]consolidated Last Sale Reports,

consolidated Quotation Information or [quotation information]other Options Information. Any person adversely affected by final action of OPRA in disapproving or revoking prior approval of the privilege of receiving [last sale reports]consolidated Last Sale Reports or [quotation information]consolidated Quotation Information shall be entitled to have such action reviewed in accordance with the applicable rules and regulations of the Securities and Exchange Commission.

(b) Agreements. Agreements for the furnishing of [options information]Options Information shall be designed to insure that such information is disseminated in an orderly, reliable and timely fashion, and that it is available only to approved [vendors]Vendors, [subscribers]Subscribers and other approved persons. Such agreements may impose reasonable and nondiscriminatory charges for the privilege of receiving such information. OPRA may, in its discretion, contract separately for the dissemination of [last sale reports]consolidated Last Sale Reports and [quotation information]consolidated Quotation Information, or it may offer [last sale reports]consolidated Last Sale Reports and [quotation information]consolidated Quotation Information together in a single contract. As provided in Section V(c), upon the availability of a BBO through the OPRA System, OPRA may contract separately for [last sale reports]Last Sale Reports combined with the BBO, or it may offer [last sale reports]Last Sale Reports, [quotation]Quotation [information]Information and the BBO together in a single contract. OPRA may also contract separately for access to information and facilities pertaining to FCO [securities]Securities or [index option securities]Index Option Securities.

Agreements with [vendors]Vendors shall provide that [last sale reports]consolidated Last Sale Reports and [quotation information]consolidated Quotation Information may be received by [vendors]Vendors only for the purpose of (A) developing a data base that enables the [vendor]Vendor to respond to inquiries from interrogation devices or other devices located in the office of approved [subscribers]Subscribers that are capable of displaying [last sale reports]Last Sale Reports of transactions in, and/or quotations for, [eligible]Eligible [securities]Securities as they occur; (B) reporting changes in [last sale reports]Last Sale Reports and [quotation]Quotation [information]Information through display devices located in the office of approved [subscribers]Subscribers; and (C) providing [last sale reports]consolidated Last Sale Reports and/or [quotation information]consolidated Quotation Information to approved [subscribers]Subscribers and to such other persons and in such other forms as OPRA may approve. In furtherance of the foregoing purposes, [vendor]Vendor agreements shall include provisions relating to the following:

(i) There shall be uniform specifications governing the manner in which [last sale reports and quotation information]consolidated Last Sale Reports and consolidated Quotation Information are transmitted by or on behalf of OPRA to

[vendors]Vendors. Such specifications may be different for different categories of [eligible]Eligible [securities]Securities;

(ii) There shall be standards governing the services provided by [vendors]Vendors to [subscribers]Subscribers which shall require that such services facilitate dissemination of [last sale reports]consolidated Last Sale Reports and [quotation information]consolidated Quotation Information in a manner that is consistent with applicable rules and regulations of the Securities and Exchange Commission and that is not discriminatory or contrary to the orderly operation and regulation of options markets;

(iii) Vendors shall be permitted to provide unconsolidated Proprietary Information furnished by one or more parties in accordance with subparagraph (c)(iii) of Section V above, but only if the conditions set forth in said subparagraph (c)(iii) are satisfied. In providing consolidated Options Information, Vendors shall not exclude reports or otherwise discriminate on the basis of the market in which a transaction or quotation took place, and the equipment used in connection with the display or retrieval of [last sale reports]Last Sale Reports or [quotation]Quotation [information]Information shall be capable of displaying all such reports or information regardless of the market where a transaction or quotation took place, and, unless exempted, shall identify such market; provided, however, that agreements with [vendors]Vendors may provide that the requirements of this paragraph (b)(iii) will be deemed to be satisfied if a [vendor]Vendor's market data service includes [last sale reports]Last Sale Reports together with the BBO, or [last sale reports]Last Sale Reports together with all bids and offers furnished by OPRA, for each eligible security included in the service, notwithstanding that the service may also include additional unconsolidated information in respect of such security.

All agreements entered into between the parties and persons receiving [last sale reports and/or quotation information]consolidated Last Sale Reports and/or consolidated Quotation Information shall provide that the respective reports and information covered thereunder remain the property of the respective party on or in whose market the reported transaction or quotation took place, and all contracts shall be executed, and the fees collectable thereunder shall be billed and collected, on behalf of all parties, except that OPRA may provide for certain contracts pertaining exclusively to FCO [securities]Securities or [index option securities]Index Option Securities to be executed, and certain fees pertaining to such [eligible]Eligible [securities]Securities to be billed and collected, on behalf of those parties that provide a market in such [eligible]Eligible [securities]Securities.

(c) Direct Access to the OPRA System. No person shall be entitled to receive [last sale reports or quotation information]consolidated Last Sale Reports or consolidated Quotation Information directly from the OPRA System unless at the time of receipt thereof such person has entered into an appropriate agreement with OPRA, in the form approved by OPRA, providing for such direct access, and is in full compliance therewith. Such agreements may impose reasonable charges for access to facilities and services provided by OPRA, which charges may be in addition to applicable information fees.

(d) Fees and Charges.

(i) General. OPRA may impose information fees and/or facilities charges upon [vendors, subscribers]Vendors, Subscribers or other approved persons in accordance with the agreements between OPRA and such persons. A schedule of OPRA's effective fees and charges is attached as Exhibit A hereto. Except as provided in paragraphs (ii) and (iii) below, changes in these fees and charges may be made by the affirmative vote of not less than two-thirds of all of the parties. Upon approval in accordance with this Section VII(d) and, in the case of fees and charges subject to approval only by parties who provide a market in FCO [securities]Securities or [index option securities]Index Option Securities, upon not less than 30 days prior written notice to the other parties, changes in fees and charges may be put into effect upon OPRA's filing notice thereof with the Securities and Exchange Commission, subject to any required notice period in the agreements between OPRA and the persons subject to the fees or charges in question. Any change in a fee or charge that has taken effect as stated above may be summarily abrogated by the Securities and Exchange Commission within 60 days of the date of filing the same with the Commission if the Commission determines that it is appropriate in furtherance of the purposes of the [Securities ]Exchange Act[ of 1934] that such change not be put into effect until it has been reviewed and approved by the Commission. The abrogation of a change in a fee or charge by the Commission shall not affect the validity of the revised fee or charge during the period it was in effect, except that if the Commission should ultimately disapprove the change, OPRA shall refund the excess of any fees or charges paid to it over the fees or charges as finally approved by the Commission.

(ii) FCO Securities. OPRA may impose a separate [subscriber]Subscriber fee and other separate fees and charges for access to or for the use of information and facilities pertaining solely to FCO [securities]Securities. Subject to paragraph (v) below, the decision to impose separate fees and charges pertaining solely to FCO [securities]Securities, as well as the amount of and changes to such fees and charges, may be made by the affirmative vote of a weighted majority (as defined

below) of those parties who provide a market in FCO [securities]Securities.

(iii) Index Option Securities. OPRA may impose separate fees and charges for access to or for the use of information and facilities pertaining solely to [index option securities]Index Option Securities. Subject to paragraph (v) below, the decision to impose separate fees and charges pertaining solely to [index option securities]Index Option Securities, as well as the amount of and changes to such fees and charges, may be made by the affirmative vote of a weighted majority (as defined below) of those parties who provide a market in [index option securities]Index Option Securities; provided that at no time may fees or charges pertaining solely to [index option securities]Index Option Securities be established at a level that would exceed two-thirds of the then effective comparable fee applicable to [eligible]Eligible [securities]Securities other than FCO [securities]Securities or [index option securities]Index Option Securities, unless such fees or charges are approved by an unweighted majority vote of all of the parties.

(iv) Weighted Majority. For purposes of paragraphs (ii) and (iii) above, a "weighted majority" vote of a specified number of parties shall mean a majority vote of those parties, with the vote of each party being a percentage of the total voting authority of all parties eligible to vote on the matter determined by dividing (x) the number of compared trades in the category of [eligible]Eligible [securities]Securities to which the vote relates reported by OCC as having been submitted by that party during the preceding twelve calendar months by (y) the total number of all compared trades in that category of [eligible]Eligible [securities]Securities so reported as having been submitted by all parties during that same period.

(v) Notwithstanding the foregoing, in the event OPRA is party to a contract with one or more third parties that sets a limit on the amount of a particular category of fees or charges that may be imposed by OPRA, or on changes in a particular category of such fees or charges, fees or charges of that category may be imposed or changed only by the affirmative vote of not less than two-thirds of all of the parties.

(vi) Temporary Exemption from Subscriber Fees and Charges for Certain Members of Parties. During a pilot period that will end on May 31, 2002, or on such later date as OPRA may determine, except as OPRA's schedule of effective fees and charges may expressly provide to the contrary, a member of a party who acts in the capacity of a broker or dealer on a party's trading floor, or a member of a party who acts as a specialist or registered market maker on an electronic exchange or other electronic facility maintained by the party, shall not be subject to OPRA's

information fees or facilities charges in respect of those terminals or other devices that are used by the member for the sole purpose of obtaining access to OPRA Information in connection with its performing the above activities. Such members who have access to OPRA Information at off-floor locations will be required to enter into [subscriber]Subscriber agreements with OPRA, except that the provisions of those agreements pertaining to payment of fees to OPRA will not apply.

#### VIII. Financial Matters

##### (a) General

(i) OPRA's expenses and revenues shall be allocated among OPRA's accounting centers as provided in paragraphs (iii) and (iv) of this Section VIII(a), and shall be further allocated among the parties providing markets in the securities included within such accounting centers as provided in Section VIII(b), (c) and (d) below. For purposes of this Section VIII, OPRA shall consist of an FCO accounting center, an index option accounting center encompassing OPRA's revenues and expenses pertaining to [index option securities]Index Option Securities, and a basic accounting center encompassing revenues and expenses pertaining to OPRA's other activities.

(ii) Each party shall be responsible for paying the full cost incurred by it in collecting and reporting to the Processor [last sale reports and quotation]Last Sale Reports and Quotation [information]Information related to [eligible]Eligible [securities]Securities for dissemination through the OPRA System.

(iii) Except for (1) costs and expenses attributable to after-hours operation, which are allocated in accordance with Section VIII(e) below, and (2) total costs of OPRA (including the amortization of purchased hardware and software) accrued in a single calendar year above a specified ceiling, which are allocated in accordance with the Capacity Guidelines, all costs and expenses pertaining to the implementation, start-up, development, administration and operation of the Plan and the OPRA System, including costs incurred by any party authorized to act on behalf of other parties, shall be allocated as follows:

(1) Except as otherwise provided below, costs and expenses directly attributable solely to the development, operation or administration of a single accounting center, including the costs of developing facilities necessary for receiving, processing and disseminating [last sale reports and quotation]Last Sale Reports and Quotation [information]Information pertaining to securities included

within that accounting center, shall be allocated entirely to that accounting center.

(2) Costs and expenses of the Processor incurred in connection with the receipt, processing and distribution of [last sale reports and quotation]Last Sale Reports and Quotation [information]Information that are attributable to more than one accounting center shall be allocated among such accounting centers as determined by OPRA at the beginning of each fiscal year on the basis of the percentage of total message traffic (last sale, quotations, open interest, end of day summaries and other product-specific messages) pertaining to [eligible]Eligible [securities]Securities included within each respective accounting center that are reflected in the records of OPRA's Processor as having been processed by the Processor during the last three calendar months of the preceding fiscal year; provided, however, that until such time as OPRA charges separately for access to information and facilities pertaining to [index option securities]Index Option Securities, such costs and expenses, other than those allocated to the FCO accounting center, shall be allocated between the basic accounting center and the index accounting center in the same proportion as revenues are allocated between those two centers pursuant to paragraph (iv) of this Section VIII(a).

(3) All administrative and general overhead costs and expenses, other than those governed by subparagraphs (1) or (2) above, including costs and expenses directly related to billing and collection of OPRA fees (exclusive of bad debt expense) shall be allocated among OPRA's accounting centers in a fair and reasonable manner as determined by OPRA.

(4) Bad debt expense shall be charged against an appropriate bad debt reserve established in respect of each accounting center.

(5) All costs and expenses associated with facilities development shall be allocated as determined by OPRA for the particular facility in question, or if no specific allocation is determined for a particular facility, such costs and expenses shall be allocated equally among the accounting centers that are expected to make use of that facility. OPRA shall determine the allocation of such costs and expenses prior to the commencement of each facilities development project.

(6) If an OPRA facility is used by one or more [eligible securities]Eligible Securities included within an accounting center that was not allocated any of the



development costs of that facility, such accounting center shall be allocated such share of the total development cost of the facility as shall be determined by OPRA, but only if such use commences within 24 months of the time the facility first became operational.

(iv) Until such time as OPRA charges separately for access to information and facilities pertaining to [index option securities]Index Option Securities, revenues derived from fees and charges imposed by OPRA, exclusive of fees and charges pertaining solely to FCO [securities]Securities, shall be allocated between the basic accounting center and the index accounting center on the basis of the relative number of compared trades in [eligible]Eligible [securities]Securities included within each respective accounting center as reported by OCC for the preceding three calendar months. At any time when OPRA charges separately for access to information and facilities pertaining to [index option securities]Index Option Securities, revenues derived from index option fees and charges shall be allocated entirely to the index option accounting center, and revenues derived from fees and charges exclusive of index option and FCO fees and charges shall be allocated entirely to the basic accounting center. Revenues derived from FCO fees and charges shall be allocated entirely to the FCO accounting center.

(v) An independent audit shall be made yearly of all costs chargeable to the System, all revenues collected in connection therewith, and the allocation of costs and revenues among the separate accounting centers and among the parties.

(b) Basic Accounting Center Costs and Revenues

The provisions of this Section VIII(b) shall apply to costs and revenues not allocated to the FCO or index option accounting centers, all of which shall be allocated to the basic accounting center.

(i) Subject to the provisions of Section VIII(e), each party shall bear a proportional share of all start-up, development, administrative and operating costs and expenses of the System allocated to the basic accounting center, such costs to be apportioned at the end of each calendar quarter on the basis of the relative number of compared trades in [eligible securities]Eligible Securities other than FCO [securities]Securities and [index option securities]Index Option Securities submitted by each party for clearing to OCC during the preceding three calendar months.

(ii) Revenues allocated to the basic accounting center in excess of the aggregate costs and expenses allocated to the basic accounting center shall be credited to each of the parties at the end of each calendar quarter on the same basis as provided in paragraph (b) (i) above for the allocation of costs.

(c) FCO Accounting Center Costs and Revenues

(i) Subject to the provisions of Section VIII(e), each FCO [party]Party shall bear a proportional share of all start-up, development, administrative and operating costs and expenses of the System allocated to the FCO accounting center, such costs to be apportioned at the end of each calendar quarter on the basis of the relative number of compared trades in FCO [securities]Securities reported by OCC as having been submitted by each FCO [party]Party during the preceding three calendar months.

(ii) Revenues derived from fees and charges allocated to the FCO accounting center in excess of the aggregate costs and expenses allocated to the FCO accounting center shall be credited to each of the FCO parties at the end of each calendar quarter on the same basis as provided in paragraph (c)(i) above for the allocation of costs.

(d) Index Option Service

(i) Subject to the provisions of Section VIII(e), each [index option party]Index Option Party shall bear a proportional share of all start-up, development, administrative and operating costs and expenses of the System allocated to the index option accounting center, such costs to be apportioned at the end of each calendar quarter on the basis of the relative number of compared trades in [index option securities]Index Option Securities reported by OCC as having been submitted by each [index option party]Index Option Party during the preceding three calendar months.

(ii) Revenues derived from fees and charges allocated to the index option accounting center in excess of the aggregate costs and expenses allocated to the index option accounting center shall be credited to each of the index option parties at the end of each calendar quarter on the same basis as provided in paragraph (d)(i) above for the allocation of costs.

(e) After-Hours Operation

In the event the OPRA System operates outside of its regular hours of operation at the request of one or more parties, costs attributable to such operation shall be allocated as follows:

(i) such costs shall first be allocated among the FCO accounting center, the index option accounting center and the basic accounting center in proportion to the share of OPRA's line output capacity (measured in KBPS) available to FCO [securities, index option securities]Securities, Index Option Securities and

all other [eligible]Eligible [securities]Securities, respectively, during after-hours periods of operation.

(ii) costs allocated to a single accounting center in accordance with paragraph (e)(i) above shall be further apportioned among the parties providing a market in securities included in that accounting center during that period of time in the same proportion as other costs allocated to that accounting center are apportioned among such parties pursuant to paragraphs (b)(i), (c)(i) or (d)(i) above, as applicable.

EXAMPLES:

1. If the OPRA System operates from 6:00 P.M. to 8:00 P.M. at the request of Exchange A only, all incremental costs attributable to operating the System during those two hours shall be allocated to Exchange A, regardless of which facilities are available during that time period.
2. If the OPRA System operates from 10:00 P.M. to 2:00 A.M. at the request of Exchanges B and C, and if information pertaining to [index option securities]Index Option Securities only is available during those four hours, all incremental costs attributable to such operation shall be allocated to the index option accounting center, and shall be further allocated between Exchanges B and C in proportion to the relative number of total compared index option trades submitted by those two exchanges for clearing to OCC during the preceding quarter.
3. If the OPRA System operates from 6:00 P.M. to midnight at the request of Exchanges B, D and E, and if Exchanges B and D utilize the System to disseminate information pertaining to FCO [securities]Securities from 6:00 P.M. to 10:00 P.M., and Exchanges B and E utilize the System to disseminate information pertaining to [index option securities]Index Option Securities from 6:00 P.M. to midnight, all incremental costs attributable to operating the System from 6:00 P.M. to 10:00 P.M. shall be allocated between the FCO accounting center and the index option accounting center on the basis of total line output capacity available to FCO [securities]Securities and [index option securities]Index Option Securities, respectively, during such period. Next, all costs attributable to operating the System from 10:00 P.M. to midnight shall be allocated to the index option

accounting center. Next, all costs allocable to the FCO accounting center shall be allocated between Exchanges B and D in proportion to the relative number of total compared FCO trades submitted by those two exchanges for clearing to OCC during the preceding quarter. Finally, all costs allocable to the index option accounting center shall be allocated between Exchanges B and E in proportion to the relative number of total compared index option trades submitted by those two exchanges for clearing to OCC during the preceding quarter.

IX. Withdrawal; Non-transferability of Rights Under the Plan

Any party may withdraw from the Plan at any time on not less than six months prior written notice to each of the other parties and to any data processing service organizations designated by OPRA. Any party withdrawing from the Plan shall remain liable for its proportionate share of costs and expenses allocated to it pursuant to [Section] Sections III(g) and VIII above for the period during which it was a party, and for its indemnification obligations pursuant to Section V(d) in respect of matters pertaining to the period during which it was a party, but it shall have no further obligations under the Plan or to any of the other parties with respect to the period following the effectiveness of its withdrawal. The right of a party to have [last sale reports] consolidated Last Sale Reports and [quotation information] consolidated Quotation Information disseminated through the Systems shall not be transferable.

X. Amendments to the Plan

The Plan may be amended from time to time when authorized by the affirmative vote of all of the parties, subject to the approval of the Securities and Exchange Commission.

XI. Applicability of Exchange Act

The rights and obligations of the parties to the Plan and of [vendors] Vendors, [subscribers] Subscribers and other persons contracting with the parties in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the [Securities ]Exchange Act[ of 1934, as amended,] and any rules and regulations promulgated thereunder.

OPTIONS PRICE REPORTING AUTHORITY  
CAPACITY GUIDELINES

Section III(g) of the OPRA Plan provides that certain functions pertaining to planning the capacity of the OPRA System, determining how the costs of modifying the System should be allocated among the parties and allocating available System capacity among the parties under specified circumstances where allocation is required are delegated to an Independent System Capacity Advisor ("ISCA") selected by OPRA in accordance with the Plan. The Plan gives the ISCA considerable flexibility and authority in performing the functions delegated to it under the Plan, provided that in exercising its authority the ISCA must adhere to "Capacity Guidelines" adopted by OPRA in accordance with the Plan. The Capacity Guidelines adopted by OPRA for this purpose are as follows:

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. 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.

Although the ISCA ordinarily is expected to provide the parties with the System capacity they have requested, it may provide less than all of the capacity that has been requested if it determines (a) that the capacity requests of one or more of the parties are unreasonable, or (b) that it is not reasonable to develop or maintain a System that has capacity sufficient to satisfy the requests of the parties. The ISCA may find a party's request to be unreasonable, in accordance with (a) above, only if it concludes that a party does not have a reasonable need for all of the capacity it has requested within the timeframe to which the request applies. The ISCA may determine, in accordance with (b) above, that it is not reasonable to develop or maintain a System with all of the capacity that has been requested if it concludes that it is not technically feasible to do so, or that a significant number of OPRA vendors cannot or will not carry the amount of message traffic disseminated by such a System.

In accordance with Guideline 2, the ISCA will periodically solicit and receive requests for system capacity from each party to the Plan based on each party's projected capacity needs. Subject to the conditions and limitations set forth in these Guidelines, the ISCA will develop and implement a plan for modifying the OPRA System to the extent it determines modifications are necessary to provide reasonable

assurance that the parties will be provided with the System capacity requested. The ISCA will endeavor to satisfy the capacity requests of the parties within six months of the due date for furnishing capacity requests to the ISCA. In performing its function, the ISCA is expected to consult with representatives of the parties, individually and collectively, as well as with OPRA's administrative officers, OPRA's Processor and such other persons that the ISCA believes may be of assistance to it. The ISCA will maintain in confidence all of the information it receives from the parties pertaining to their individual capacity requests, except as it may need to share this information with OPRA's Processor and other persons for planning purposes. In no event will capacity projections or requests received from one party be shared with any of the other parties except in the form of aggregate capacity projections and requests that do not identify the individual capacity projections and requests of any of the parties.

The ISCA will maintain internal safeguards and procedures adequate to ensure compliance with Section III(g) of the Plan. These safeguards and procedures must be sufficient to assure that confidential information provided to the ISCA by the parties is not shared with any of the other parties except in the form of aggregate capacity requests or other aggregate information that does not identify the individual capacity requests of any of the parties, and to further assure that such information will not be used by the ISCA in any of its other business activities in a manner that may result in its being made available to any of the other parties or that is otherwise inconsistent with the confidentiality of such information. Prior to the time it first exercises its authority under the Plan, the ISCA shall have furnished a written description of these internal safeguards and procedures to the Commission.

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 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.

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 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.

3. Information to be Included in ISCA Reports to OPRA. Every report furnished by the ISCA pursuant to Guideline 2 shall contain the following information together with such other information as the ISCA may determine to include:

a. The current capacity of the OPRA System measured in messages per second; the peak aggregate demand for System capacity experienced within the past 24 months; the aggregate demand for System Capacity projected for the period covered by the report, whether or not the ISCA believes it is necessary to increase the total amount of System capacity in order to accommodate the aggregate capacity requests submitted by the parties.

b. If the ISCA has determined that modifications to the System are necessary to satisfy the capacity requests of the parties, the report shall include a detailed description of any new hardware or software and any other modifications to the System that the ISCA has determined is needed, together with a detailed itemization of the total costs of such modifications. If the ISCA believes there are alternative ways to provide the capacity that has been requested, the above information shall be provided for each of these alternatives, together with a statement of the ISCA's reasons for choosing one of these alternatives. If for any reason the ISCA believes the OPRA System should be modified so as to provide more or less capacity than has been requested by the parties, this should also be explained in the report.

c. A statement to the effect that the ISCA has discussed its recommendations with the Processor and that the Processor agrees with the determinations made by the ISCA, or if it does not agree, what different approaches the Processor would recommend and why.

d. A projected timetable for implementing the modifications the ISCA has determined should be made to the OPRA System, together with a statement that the Processor and any other providers of goods or services needed to implement the modifications agree that the timetable is reasonable.

e. How the costs of the modifications to the System are to be allocated among the parties in accordance with Guideline 7 below, and when payment by the parties of their allocated share of costs is to be made. This should be accompanied by a statement of the basis for the cost allocation, to the extent this can be presented in a manner that does not disclose the individual capacity projections and requests of the parties.

#### 4. Implementation of the ISCA's Report.

If the ISCA's report reflects a determination to modify the OPRA System in order to meet the capacity requests of the parties, the OPRA Policy Committee shall be afforded an opportunity to meet with the ISCA to discuss the report and the manner of its implementation.

Subject to the limitations on its authority set forth in Guideline 5 below, the ISCA may take whatever action it deems to be necessary or appropriate to implement the System modifications it has determined to make (including contracting for goods and services from the Processor and other vendors), provided that it may not commence taking such action any sooner than 10 days following the date its report is furnished to the parties unless OPRA agrees to waive this waiting period. Any commitments made or entered into by the ISCA within the scope of its authority under the Plan and these Guidelines shall be in the name of and on behalf of OPRA, and the parties shall be obligated to pay their respective share of the costs of any



modifications to the System so authorized in the manner reflected in the report.

The ISCA shall promptly notify OPRA's Executive Director whenever it has entered into contracts or made other commitments with the Processor or other vendors pertaining to modifications to the OPRA System, and shall provide the Executive Director with copies of all such contracts, work orders or other commitments, and with reasonable progress reports as the work is underway.

5. Limitations on the Authority of the ISCA. The ISCA's authority to modify the OPRA System and to obligate the parties to pay the costs of such modifications is subject to the following:

a. The ISCA may not authorize a modification to the OPRA System to increase its capacity in any respect beyond the capacity that reflects the aggregate capacity requests of the parties unless at least 75% of the parties consent to such greater increase.

b. The ISCA may not authorize a modification to the OPRA System that, together with other capacity increases previously authorized by the ISCA, represents an increase in the total capacity of the System in excess of 15,000 mps over the immediately preceding twelve months unless at least 75% of the parties consent to such increase.

c. The ISCA may not authorize a modification to the OPRA System if the Processor disagrees with any material aspect of the manner or scope of the modification unless at least 75% of the parties consent to such modification.

d. The ISCA may not authorize a modification to the OPRA System that makes major changes to the System, such as changing the types of servers used in the System or changing the communication protocols used in the network unless at least 75% of the parties consent to such modification.

6. Capacity Allocation. (a) In the event the capacity of the OPRA System is not sufficient to satisfy the capacity requests of one or more of the parties, the ISCA is authorized to allocate available System capacity among the parties, but only to the extent specified in this Guideline. This situation could arise, for example, (i) during the transition period prior to full implementation of the new procedures under the revised Plan; (ii) during the period between the time a new party commences to trade options and the time when it has received the capacity it has requested in its initial capacity request under Guideline 2; (iii) during the period between the time that the ISCA has determined to modify the capacity of the System to satisfy the requests of the parties and the time that the modified System becomes operational; or (iv) at any time when the ISCA has determined to modify the System to provide less capacity than has been requested because of the application of limits to the authority of the ISCA

under these guidelines, or because the ISCA for some other reason has determined not to modify the System as requested.

(b) If a party is not provided with the capacity it has requested during the initial transition period for implementing the revised capacity planning provisions under the revised Plan (i.e., prior to the time the parties have been furnished with the capacity asked for in the initial round of requests to the ISCA), any allocation of capacity that may be authorized by the ISCA shall be in accordance with the allocation formula set forth in Attachment A to these Guidelines.

(c) If, at the time a new party proposes to commence trading options as set forth in its initial request for capacity submitted under Guideline 2, the new party has not received the capacity it requested, and if at that same time there is excess capacity available in the OPRA System that has not been provided to any of the parties, the ISCA may allocate to the new party all or a portion of any such excess System capacity in order to provide the new party with capacity determined by the ISCA to be sufficient to satisfy the reasonable needs of the new party until it has been provided with the capacity it initially requested. In no event, however, may the ISCA allocate capacity to a new party that is greater than the capacity initially requested by the new party, nor may the ISCA allocate to a new party capacity that has previously been provided to any of the other parties.

(d) In the event of a major systems failure or other catastrophic event that prevents the OPRA System from providing each of the parties with the capacity to which it would otherwise be entitled, for the duration of the emergency the capacity previously provided to each party will be proportionately reduced to reflect the overall reduction in available capacity. Additionally, for the duration of any such emergency the ISCA may implement a disproportionate temporary allocation of available capacity among the parties, but only if such disproportionate allocation is approved by at least 75% of the parties, and is approved by any party or parties that would be required to give up a disproportionate share of capacity in any such allocation.

(e) In any other circumstance where the OPRA system is not capable of providing sufficient capacity to meet the aggregate requests of the parties, the ISCA is authorized to allocate System capacity among the parties in a fair and equitable manner, subject to paragraphs (f) and (g), taking into account those factors that the ISCA believes are appropriate. Without limiting the discretion of the ISCA in this regard, the following are some of the factors that the ISCA may consider as bearing upon the allocation of capacity:

i. The relative demonstrated need of each of the parties for capacity as determined by the ISCA.

ii. The extent to which a party's past requests for additional capacity may not have been satisfied. (A capacity request submitted by a party to the ISCA is not considered for allocation purposes until six months after the date of its submission.)

iii. The extent to which a party has effectively mitigated its message traffic.

(f) Notwithstanding the foregoing, in no event may the ISCA allocate capacity to a party under paragraph (e) above beyond the total capacity that has been requested by that party (exclusive of capacity requests made within six months preceding the date of any such allocation) unless the allocation is approved by at least 75% of the parties.

(g) Except as provided in paragraphs (b) and (d) above, the ISCA has no authority to make an allocation of capacity that would require any party to give up any capacity previously provided to that party in response to its request. Thus, for example, in the circumstance where an allocation of capacity by the ISCA is authorized under paragraph (e) of this guideline, the capacity available for allocation is limited to any excess capacity that may be available in the System that has not previously been provided to any other party.

(h) The authority of the ISCA to allocate excess capacity in accordance with paragraphs (a) - (g) of this Guideline 6 is in addition to the automatic, short-term, interruptible allocation of unused capacity that may be made by the "dynamic throttle" that is incorporated within the OPRA System. Section III(g) of the OPRA Plan provides that any party receiving an allocation of unused capacity pursuant to the operation of the dynamic throttle must pay for it at a rate determined by the ISCA, which is to exceed the fully allocated cost of such additional capacity to the extent provided in these guidelines. Accordingly, the ISCA is directed to apply a multiple of 150% to the fully allocated cost of capacity for purposes of arriving at the rate at which a party shall be charged for capacity made available to it pursuant to the operation of the dynamic throttle.

## 7. Allocation of Costs.

(a) Section VIII(a)(iii)(1) - (6) of the OPRA Plan shall govern the allocation of OPRA's costs (including the amortization of purchased hardware and software) accrued in a single calendar year up to a ceiling of \$5,000,000, such ceiling being subject to adjustment on an annual basis pursuant to the affirmative vote of at least 75% of the parties.

(b) ISCA is responsible for allocating among the parties OPRA's costs above the ceiling specified in paragraph 7(a) above (other than costs allocated to an applicant to be a party and included in the applicant's Participation Fee in accordance with Guideline 2) in a

fair and equitable manner, giving such weight as it believes is appropriate to the following factors, among others:

1. Each party's relative share of the capacity provided by the modification the costs of which are being allocated;

2. Whether specific costs are attributable solely to a party's request for additional capacity, in which event they may properly be allocated entirely to that party, or instead whether they are attributable to the cumulative impact of prior system modifications, in which event they may properly be allocated in whole or in part to all of the parties who shared in the capacity resulting from those prior modifications;

3. The extent to which the costs subject to allocation are directly attributable to the modification of the System (e.g., costs of hardware, software, development, testing, etc.) or are associated with general aspects of the operation of OPRA (e.g., general overhead and administrative costs).

Allocation Formula for Guideline 6(b)

The following Allocation Formula cannot be amended except with the unanimous approval of the parties.

Part A. Definitions.

(a) "Relevant calendar quarter" means:

(i) For the capacity allocation commencing on May 1 of each year, the months of January, February, and March.

(ii) For the capacity allocation commencing on August 1 of each year, the months of April, May, and June.

(iii) For the capacity allocation commencing on November 1 of each year, the months of July, August, and September.

(iv) For the capacity allocation commencing on February 1 of each year, the months of October, November, and December.

(b) "Customer contracts" means options contracts executed on a national securities exchange and cleared in a customer account at a registered clearing agency.

(c) "Options class" means all options (put options and call options) covering the same underlying security, including the same group or index of securities.

(d) "Included class" means any options class listed by a party:

(i) For which such party executes during the relevant calendar quarter an average of at least 15 customer contracts per day if the options class is multiply-traded; or

(ii) For which such party executes during the relevant calendar quarter an average of at least 25 customer contracts per day if the options class is not multiply-traded.

(e) "Capacity credit" means, for each party that is operating an options market, for each options class that is an included class for that party, an amount equal to:

(i) If the options class is a multiply-traded options class, the average number of quote messages for that options class received by OPRA between 3:00 p.m. and 4:00 p.m. eastern time during the relevant calendar quarter from all parties for which such class is an included class, divided by the number of such parties; and

(ii) If the options class is not a multiply-traded options class, the average number of quote messages for that options class received by OPRA between 3:00 p.m. and 4:00 p.m. eastern time during the relevant calendar quarter from the party trading such class.

(f) "Allocation percentage" for a party means the total of all such party's capacity credits divided by the total of all capacity credits for all parties.

(g) "New Exchange Share" means 40 percent of OPRA System capacity divided by the number of parties that are operating an options market.

Part B. Calculation of Capacity Allocation for Purposes of Guideline 6(b).

(a) In accordance with Capacity Allocation Guideline 6(b), during the initial transition period for implementing the revised capacity planning provisions, commencing on the first of February, May, August, and November of each year during such period and continuing in effect until the first day of the third succeeding month, each party that operates an options market will receive an allocation of OPRA System capacity in an amount equal to:

(1) Such party's New Exchange Share, if so elected pursuant to paragraph (b) of this Part B; or

(2) The aggregate of:

(A) One-third of OPRA System capacity divided by the number of parties that are operating an options market; plus

(B) The product of multiplying total OPRA System capacity reduced by the allocation of any New Exchange Shares and further reduced by the total allocation of capacity pursuant to subparagraph (a)(2)(A), times such party's allocation percentage.

(b) Not later than the fifth business day following the end of the relevant calendar quarter, each party that on the last day of the relevant calendar quarter has been operating an options market for fewer than 270 calendar days may, by written notice to OPRA, elect to accept a capacity allocation commencing with the next succeeding relevant calendar quarter, equal to the New Exchange Share in lieu of the capacity allocation that it would otherwise receive under subparagraph (a)(2).

(c) OPRA will calculate the capacity allocation specified in paragraph (a) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the parties. Alternatively, OPRA can contract with the Processor or with another third party to perform this calculation. OPRA will notify the parties and the Commission of the capacity allocation promptly after such calculation is made. The capacity allocation provided for in this Part B shall be implemented by the Processor during the initial transition period described in paragraph (a) whenever it determines that total capacity demand of all parties exceeds the total available OPRA System capacity, and shall continue in effect until the earlier of the time such total demand is less than 80% of total available OPRA system capacity, or the end of the initial transition period. The Processor shall be required to notify promptly each party, the ISCA and the Commission whenever total capacity demand reaches 90% of total available system capacity, as well as whenever capacity allocation procedures under Part B go into effect or are discontinued.