

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50973; File No. SR-OPRA-2004-06]

### Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend Guideline 2 of the Capacity Guidelines Adopted in Accordance With the Plan

January 6, 2005.

On October 19, 2004, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").<sup>3</sup> The proposed amendment would amend Guideline 2 of the Capacity Guidelines ("Guideline 2") adopted in accordance with the Plan. Notice of the proposal was published in the **Federal Register** on December 9, 2004.<sup>4</sup> The Commission received no comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

The first purpose of the proposed OPRA Plan amendment is to amend Guideline 2 to reduce the frequency of the capacity review cycle from a quarterly cycle to a cycle no less frequently than semi-annually. According to OPRA, based on the experience of the Independent System Capacity Advisor ("ISCA") and the parties to the Plan, the quarterly cycle currently required by Guideline 2 fails to take into account the amount of time needed for the complete cycle of solicitation, discussion, revision, and review of these projections to be completed. Because of this, the ISCA suggested, and the parties to the Plan agreed, that a six-month cycle for the capacity projection and review process

would be more realistic, while providing the ISCA with sufficiently current capacity projections to assure that the OPRA System would be able to meet the capacity needs of the parties as they may change from time to time.

The second purpose of the proposed amendment is to permit a party to the Plan to either increase or decrease the amount of additional capacity it is requesting once it has received the ISCA's initial cost estimates for OPRA System modifications to accommodate the capacity projections and requests of all of the parties. Currently, Guideline 2 does not contemplate that a party would be able to increase the amount of additional capacity it is requesting at this stage of the process.

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>5</sup> The Commission believes that the proposed OPRA Plan amendment is consistent with Section 11A of the Act<sup>6</sup> and Rule 11Aa3-2 thereunder<sup>7</sup> in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

Specifically, given the experience of the ISCA and the parties to the Plan, the Commission finds that it is appropriate to extend the capacity review cycle to no less frequently than semi-annually so as to provide the ISCA and the parties sufficient time to complete their cycle of solicitation, discussion, revision and review regarding capacity projections. Moreover, the Commission believes that permitting the parties to increase their requested capacity after receiving initial costs estimates from the ISCA should help to ensure that the various parties to the Plan have the flexibility they need in projecting and planning for their capacity needs.

*It is therefore ordered*, pursuant to Section 11A of the Act,<sup>8</sup> and Rule 11Aa3-2 thereunder,<sup>9</sup> that the proposed OPRA Plan amendment (SR-OPRA-2004-06) be, and it hereby is, approved.

<sup>5</sup> In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 240.11Aa3-2.

<sup>8</sup> 15 U.S.C. 78k-1.

<sup>9</sup> 17 CFR 240.11Aa3-2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50988; File No. SR-Amex-2004-97]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Reduce Options Transaction Fees for Exchange Specialists and Registered Options Traders

January 6, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 2, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On January 6, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to reduce the aggregate options transaction fee for Exchange specialists and registered options traders from \$0.25 per contract side to \$0.20 per contract side. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

<sup>10</sup> 17 CFR 200.30-3(29).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Form 19b-4 dated January 6, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified the effective date of the proposed fee change.

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

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

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

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

<sup>4</sup> See Securities Exchange Act Release No. 50785 (December 2, 2004), 69 FR 71440.