

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50067; File No. SR-OPRA-2004-03)

July 22, 2004

Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Revise Guideline 1 of the Capacity Guidelines to Confirm that it is within the Authority of the Independent System Capacity Advisor to Make Determinations Concerning the Establishment, Modification or Removal of Output Throttles from the OPRA System

On May 7, 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”)¹ and Rule 11Aa3-2 thereunder,² an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan” or “Plan”).³ The proposed amendment would revise Guideline 1 of the Capacity Guidelines to confirm that it is within the authority of the Independent System Capacity Advisor (“ISCA”) under the OPRA Plan to make determinations concerning the establishment, modification or removal of any throttle on the output of the OPRA System. Notice of the proposal was published in the Federal Register on June 23, 2004.⁴ The Commission received no comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

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

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

⁴ See Securities Exchange Act Release No. 49871 (June 16, 2004), 69 FR 35082.

Guideline 1 of the Capacity Guidelines in the OPRA Plan sets forth the “Function and Authority of the ISCA.” The purpose of the proposed amendment to Guideline 1 is to include in the Capacity Guidelines an express statement that the authority of the ISCA would include the authority to establish a throttle limiting the output of the System to less than the total capacity available in the System, and to modify or remove any such throttles that may be established from time to time.⁵ OPRA believes that throttling System output to less than total System capacity could sometimes be an appropriate way to limit the maximum message-handling capacity that vendors and subscribers would be required to have.

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.⁶ The Commission believes that the proposed OPRA Plan amendment is consistent with Section 11A of the Act⁷ and Rule 11Aa3-2 thereunder⁸ 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.

⁵ The output throttle that is the subject of the proposed amendment would serve to limit the total output of the OPRA System. It would be different from the OPRA System’s “dynamic throttle,” which allows any unused System capacity to be temporarily and dynamically allocated to a participant exchange that needs additional capacity on a short-term, interruptible basis. Telephone conversation between Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on June 14, 2004.

⁶ 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).

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 240.11Aa3-2.

Specifically, given the recent establishment of the ISCA and its responsibilities in planning and implementing System modifications, the Commission finds that it is appropriate for OPRA to clarify in the Plan the ISCA's authority to make decisions with respect to System output throttles. The Commission believes that providing the ISCA with this authority should ensure that these decisions are not influenced by competitive considerations among the parties to the OPRA Plan.

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,⁹ and Rule 11Aa3-2 thereunder,¹⁰ that the proposed OPRA Plan amendment (SR-OPRA-2004-03) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 240.11Aa3-2.

¹¹ 17 CFR 200.30-3(29).