

Exchange Act. In addition, the Commission will consider adopting Rule 19b-5 and amendments to Rule 19b-4, under the Securities Exchange Act, that address the rule filing requirements for self-regulatory organizations. For further information contact: Marianne H. Duffy, Special Counsel at (202) 942-4163 or Kevin Ehrlich, Staff Attorney at (202) 942-0778, Office of Market Supervision, Division of Market Regulation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: November 24, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98-31905 Filed 11-25-98; 11:50 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held the following meeting during the week of November 23, 1998.

A closed meeting was held on Wednesday, November 25, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who have a interest in the matters were also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting held on Wednesday, November 25, 1998, at 11:00 a.m., was:

Settlement of injunctive actions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

November 25, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98-32019 Filed 11-25-98; 3:49 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40701; File No. SR-OPRA-98-1]

Options Price Reporting Authority; Order Granting Approval of Amendment to OPRA Plan Adopting a New Rider to OPRA's Vendor Agreement Permit Vendors to Utilize Electronic Contracts

November 23, 1998.

I. Introduction

On September 18, 1998, the Options Price Reporting Authority ("OPRA")¹ submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Exchange Act"), an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The proposed amendment adds a new Electronic Contract Rider ("Rider") to OPRA's Vendor Agreement that would permit OPRA's vendors to utilize electronic contracts with certain categories of Internet or other on-line customers in satisfaction of the requirement of the Vendor Agreement for written agreements between vendors and their customers.

The proposed amendment was published for comment in the **Federal Register** on October 20, 1998.² No comments were received on the proposal. This order approves the proposal.

II. Description and Purpose of the Amendment

The purpose of the proposed amendment is to allow OPRA vendors who wish to offer Internet or other on-line access to options market

¹ OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2 thereunder. See Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

² See Exchange Act Release No. 40547 (October 13, 1998) 63 FR 56051.

information to Nonprofessional Subscribers or PC Dial-Up customers to make use of electronic contracts in satisfaction of the requirement of the Vendor Agreement that there be written agreements between OPRA's Vendors and these categories of customers. This amendment is proposed in response to requests from an increasing number of OPRA vendors (including some whose activities as vendors are in support of their primary function as electronic brokers) to be able to conduct all of their business with customers electronically, including contract administration.

The Rider imposes several conditions on the use of these electronic contracts by vendors. As a threshold matter, a vendor is permitted to use these electronic contracts only if the vendor's other agreements with its customers may be entered into electronically. In addition, the vendor is required to submit for OPRA's approval an "Attachment A" that describes the procedures and systems the vendor intends to utilize in administering its electronic contracts. The Rider requires vendors to use the forms of electronic contracts (one for Nonprofessional Subscribers and one for Dial-Up Customers), except that vendors are permitted to use their own forms of electronic contracts for Dial-Up Customers, subject to the approval of OPRA. In this respect the Rider is comparable to the existing Vendor Agreement, which requires the use of a specified form of written Nonprofessional Subscriber Agreement and requires OPRA's approval of each form of Dial-Up Agreement.

The Rider imposes certain requirements on vendors concerning the manner in which they present electronic contracts to their customers and how customers may indicate their assent to these contracts. These requirements are intended to assure that customers are given an opportunity to read the full text of each contract before they are asked to assent to it, and that procedures are in place to verify the identity of the customers who enter into agreements electronically and to confirm the terms of the electronic contracts to which they have agreed. Vendors are required to maintain detailed records of all electronic contracts entered into, and to make such records available for OPRA's inspection. Finally, each time a customer accesses the Options Information Service, the vendor must give the customer notice concerning the electronic contract and must make the text of that contract available for the customer's review.

Vendors are also required to indemnify OPRA against loss in the

event electronic contracts are held to be invalid or unenforceable by reason of their having been entered into or administered electronically. Because the law on electronic contracts is still developing, OPRA believes it is reasonable to ask those vendors who wish to use electronic contracts to assume any risk that such contracts may be found to be unenforceable or invalid.

The Rider also provides OPRA with the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice concerning electronic contracts or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason. In light of the continuing evolution of the law of electronic contracts, OPRA believes it should be able to amend or withdraw permission to use electronic contracts if such contracts are likely to be held invalid or unenforceable or are otherwise found to be deficient.

III. Discussion

After careful review, the Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder.³ Specifically, the Commission believes that the proposed amendment, which accommodates the use of electronic contracts by vendors, is consistent with Rule 11Aa3-2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system.

The Commission notes that the proposed amendment will require a number of conditions intended to ensure that OPRA's interests are protected, regardless of the type of contract used by its vendors. First, OPRA limits the use of electronic contracts to those vendors that allow their customers to enter into other agreements electronically. Second, vendors must submit for OPRA's approval an "Attachment A," describing the vendors' procedures and systems.⁴ Third, OPRA requires vendors to use

OPRA's forms for electronic contracts, except that vendors may use their own forms for Dial-Up Customers, subject to OPRA's approval. Fourth, vendors must keep detailed records of all electronic contracts, and make such records available for review by OPRA. Fifth, the vendor must give the customer notice and make the text of the electronic contract available for the customer's review every time the customer accesses the Options Information Service. Sixth, vendors must indemnify OPRA against loss due to a determination that any electronic contract is invalid or unenforceable. Finally, the amendment also grants OPRA the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason.

The Commission believes that, in the absence of substantial historical experience with electronic contracts and given the current unsettled state of the law in this area, it is reasonable for OPRA to take precautions, such as those proposed, to protect its interests. The Commission believes that the above-mentioned conditions imposed by OPRA on vendors desiring to use electronic contracts are reasonable and consistent with the Act. Accordingly, the Commission believes that the proposed amendment will provide additional flexibility to OPRA vendors by allowing them to use electronic contracts under certain circumstances while providing OPRA with the contractual protections that it requires.

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3-2 of the Act, that the proposed Plan amendment (SR-OPRA-98-1) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-31814 Filed 11-27-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40696; File No. SR-DTC-98-18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Validation Testing

November 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 1, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

Under the proposed rule change, DTC will require that its participants successfully complete a Year 2000 validation test.

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

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements.²

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

On January 1, 2000, certain computer programs may misinterpret the Year 2000 as the Year 1900. Because DTC depends on computer technology to allow its participants to input and retrieve settlement transaction reports and to complete the daily settlement of securities transactions, such a misinterpretation could have serious

³In approving this rule, the Commission has considered the proposed Plan Amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴In its review of vendors' Attachment A, OPRA will consider "the reasonableness of the procedures that the vendor plans to use to identify its customers, to ensure that those customers are who they say they are, and to keep track of the exact form of agreement that is assented to by each customer" in light of the then-current industry practices. OPRA will also review the security procedures that vendors will use. See Letter from Lisa Winger, Schiff, Hardin & Waite, to Deborah Flynn, Division of Market Regulation, Commission, dated October 21, 1998.

⁵ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.