

Policies provide each Policy owner with the right to exercise his own judgment and transfer Policy values into any other available variable and/or fixed investment options. Additionally, the Applicants state that the proposed substitutions will not, in any material manner, reduce the number, nature, or quality of the available investment options. The Applicants assert that the Policy owners will be offered the opportunity to transfer amounts among the available subaccounts without any cost or other penalty that may otherwise have been imposed until thirty days after the Substitution Date. For these reasons, the Applicants maintain that the proposed substitutions will not result in the type of costly forced redemptions and sales loads that Section 26(b) was designed to prevent.

5. The Applicants further submit that the proposed substitutions also are unlike the type of substitution that Section 26(b) was designed to prevent in that by purchasing a Policy, Policy owners select much more than a particular underlying fund in which to invest their Policy values. The Policy owners also select the specific type of insurance coverage offered by the Applicants under the applicable Policy, as well as numerous other rights and privileges set forth in the Policy. The Applicants state that it is likely that, in choosing to purchase a Policy from Transamerica Occidental, the Policy owner also may have considered the company's size, financial condition, and reputation for service in selecting the Policy, and that none of these considerations and factors will change as a result of the proposed substitutions.

6. Applicants state that the investment performance of the two proposed TVIF Funds is better than, or at least comparable to, that of the relevant HRT Portfolios. The average annual returns of the TVIF Growth Portfolio for one, five, and ten-year periods are substantially higher than the returns of the HRT Growth Portfolio. With respect to the TVIF Money Market Portfolio, Applicants state that its 7-day yield of 4.60% and effective yield of 4.71% as of July 31, 1999, are substantially better than the yield figures of the HRT Money Market Portfolio for the same period (4.33% and 4.42%, respectively). The average annual total returns for the one-year period ended December 31, 1998, for the HRT Money Market and TVIF Money Market portfolios was 5.34% and 4.93%, respectively.

7. The annual operating expenses of the two TVIF Funds have historically been higher than the expenses of the comparable HRT Portfolios. Applicants

argue that the superior performance of the TVIF Growth Portfolio overwhelms the minor differences in operating expenses and that, as of July 31, 1999, the TVIF Money Market Portfolio's yield substantially exceeds the yield of the HRT Money Market Portfolio.

8. Applicants submit that past operating expense levels may or may not be the same in future years, especially for new portfolios like TVIF Money Market, which commenced operations on January 2, 1998. Applicants state that as its assets increase (increased from \$6.1 million on January 31, 1999, to \$10.7 million on July 1, 1999) operating expenses are likely to decrease.

9. Applicants also submit that Section 26(b) was intended for situations where the depositor of the unit investment trust initiated the substitution (and where investors would directly or indirectly, be forced to bear additional sales charges). Here, Applicants state that Transamerica Occidental did not initiate or instigate the proposed substitutions; rather Equitable instigated it. In response to that, Applicants argue that Transamerica Occidental is taking prudent, appropriate steps to protect its Policy owners, and to continue to fulfill the Policy owner's objectives in purchasing their variable life insurance policies from Transamerica Occidental and making their original investment selections.

10. Applicants submit that, for all the reasons summarized above, the proposed substitutions of two portfolios of TVIF and two portfolios of EQAT are good choices, and consistent with the protection of investors and the purposes fairly intended by the policy and purposes of the 1940 Act in general, and Section 26(b) in particular.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41843]

Securities Exchange Act of 1934; Application Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934; Order

September 8, 1999.

Notice is hereby given that the American Stock Exchange LLC ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") have sought an order pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act")¹ expressly authorizing them and the New York Stock Exchange ("NYSE"), by and through their members, affiliated member associations, the Securities Industry Automation Corp. ("SIAC"),² the Options Price Reporting Authority ("OPRA"),³ and the International Securities Exchange ("ISE") ("Participants"),⁴ to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic to (1) recommend and propose, individually or jointly, self-regulatory organization or Commission rules or plan amendments in connection therewith, or (2) undertake other options quote message traffic mitigation strategies.

¹ Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive, to facilitate the establishment of a national market system, by rule or order, "to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof."

² SIAC is a registered exclusive securities information processor and is owned by the AMEX and the NYSE. Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372.

³ OPRA is an association governed by a committee consisting of representatives of the four national securities exchanges authorized by the Commission to list options for trading (the AMEX, the CBOE, the PCX, and the PHLX) and the NYSE (which no longer lists options for trading and whose role in these matters accordingly may be limited). In 1976, the Commission granted its registration as a securities information processor. Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372. OPRA was formed and operates pursuant to a plan approved by the Commission on March 18, 1981, as amended. Securities Exchange Act Release No. 17638, as amended. See, e.g., Securities Exchange Act Release No. 40767 (Dec. 16, 1998), 63 FR 69354.

⁴ The ISE, which has filed an application with the Commission to register as a national securities exchange, also will be participating in the SRI study. Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (Jun. 1, 1999).

I. Background

SIAC, which manages the gathering, processing, and dissemination of option exchanges' bid and quote information for OPRA, and Stanford Research, Inc. Consulting ("SRI") are conducting a study to address issues raised by an anticipated increase in options message traffic. OPRA has experienced substantial and accelerating growth in peak message rates. SIAC and SRI attribute this growth to the listing of new options (including the listing of new options series), the development of new products, and the growth in on-line trading.

There also are a number of anticipated market events that OPRA believes and SIAC and SRI estimate could result in a seven-fold increase in peak message traffic above normal baseline forecasts. These market events include decimalization and the increase in multiple listings, as well as the anticipated entry into the options markets of the ISE and the related increase in multiple listings.

This anticipated increase in options quote message traffic has implications for the options industry and the continued maintenance of fair and orderly markets for investors. For example, it creates issues for OPRA concerning its data management and processing capacity. It also creates issues for OPRA's data recipients and vendors concerning whether they have the infrastructure to receive and disseminate OPRA data. Finally, it creates issues concerning the quality of the market data OPRA likely will be able to generate.

The SIAC and SRI project study is intended to: (1) Identify potential options quote message traffic mitigation strategies and quote triage approaches; (2) gauge the feasibility of those strategies through options industry interviews; and (3) analyze and evaluate various approaches.

The project structure includes a Project Steering Committee with representatives of self-regulatory organizations, as well as other participants in the securities markets or industry, and the Commission staff. It is expected that SIAC and SRI will gather information from the membership of the Project Steering Committee and that self-regulatory organizations will work together to assist SRI in conducting the study.

By letter dated August 26, 1999, the AMEX, CBOE, PCX, and PHLX have asked the Commission to authorize expressly by order such joint discussions and joint action by the

Participants, consistent with Section 11A of the Act.⁵

II. Discussion

Section 11A(a)(2) of the Act directs the Commission, having due regard for the public interest, the protection of investors and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a national market system for securities. In exercising its authority to facilitate the establishment of a national market system, the Commission must protect the public interest in maintaining fair and orderly markets in the face of new technology and other significant market developments.⁶ As part of its authority to facilitate the establishment of a national market system, Congress gave the Commission the authority to authorize or require by order the self-regulatory organizations "to act jointly * * * in planning, * * * operating, or regulating a national market system."⁷ This authority is intended, among other things, to enable the Commission to require joint activity that otherwise might be asserted to have an impact on competition, where the activity serves the public interest and the interests of investors. Pursuant to its Section 11A(a)(2) and Section 11A(a)(3)(B) authority, on March 18, 1981, the Commission approved the OPRA Plan.

The Commission is concerned about the increase of options quote message traffic that may result from various anticipated events in the options markets. The proposed SICA/SRI study will provide important information about how to address this increase in options quote message traffic. To achieve the goals of the study, it will be essential for the Participants to work jointly with each other and with SIAC and SRI to provide relevant information and to discuss the feasibility of strategies to avoid quote traffic congestion, including quote mitigation strategies and increasing capacity, and individual or joint action with respect to such strategies for ultimate approval and implementation. The Commission believes that such joint discussions and joint action are unlikely to have adverse effects on competition and that any incidental effects on competition will be outweighed by their benefits to the public interest and the interests of investors. In this respect, the

Commission notes that the parties seeking this Order have represented that the joint discussions contemplated by this Order will be limited to strategies to avoid quote traffic congestion, including quote mitigation strategies and strategies to increase capacity, in response to the increase in options quote message traffic. In addition, this Order covers only discussions in the presence of Commission staff or actions that are approved by the Commission. For that reason, the Commission staff will attend all joint discussions and will participate in developing approaches in response to anticipated increases in options quote message traffic.

The Commission finds that the public interest in maintaining fair and orderly markets is furthered by requiring the Participants to work jointly to evaluate issues resulting from increased message traffic and to develop and recommend strategies to address problems resulting from that increase. The Commission notes that there are various contexts in which market participants are required by law to cooperate to achieve certain national market system objectives. The Commission expects that this cooperation will continue and does not require additional authorization by the Commission. The Commission is issuing this Order only because of recent and expected changes in the options markets, the need for prompt development of appropriate response to those changes, and the concerns expressed by some Participants about their ability to meet collectively to address this situation.

Accordingly, the Commission has determined to issue an order directing the Participants to cooperate with each other and to conduct joint discussions and to take such joint action as is necessary or advisable to plan and develop recommended strategies and approaches with respect to anticipated increases in options quote message traffic.⁸

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act, that the AMEX, CBOE, NYSE, PCX, and PHLX, on their own behalf and acting through their members, affiliated member associations, SIAC, and OPRA, are directed to act jointly in planning, developing, and discussing approaches and strategies with respect to options quote message traffic (including, in particular, by participating in the SRI study) to (1) recommend and propose,

⁵ Letter from Colleen Mahoney to Jonathan Katz, dated August 26, 1999, attached as Exhibit A.

⁶ See generally, Section 11A(a)(1)(B) of the Act, 15 U.S.C. 78k-1(a)(1)(B) and Section 11A(a)(1)(C) of the Act, 15 U.S.C. 78k-1(a)(1)(C).

⁷ Section 11A(a)(3)(B) of the Act, 15 U.S.C. 78k-1(a)(3)(B).

⁸ The Commission reaches this conclusion without in any way considering or deciding whether the conduct expressly authorized by this Order is within the scope of the Commission's March 1981 Order approving the OPRA plan, as amended.

individually or jointly, self-regulatory organization or Commission rules or plan amendments in connection therewith, or (2) undertake other strategies to avoid quote traffic congestion, including options quote traffic mitigation strategies and strategies to increase capacity. To the extent this Order may be construed as reflecting a Commission finding that a particular discussion or action has no adverse effect on competition, or that any such adverse effect is outweighed by the benefits to the public interest and the interests of investors, that finding is limited to discussions in the presence of the Commission staff or actions formally approved by the Commission.⁹

It is hereby further ordered that this Order will be effective until such time as the Commission adopts such rules or plan amendments or September 1, 2000, whichever is earlier.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

August 26, 1999.

Jonathan Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549

Dear Mr. Katz: The Securities Industry Automation Corp. ("SIAC") and Stanford Research, Inc. Consulting ("SRI") have been asked to conduct a study at the request of the Options Price Reporting Authority ("OPRA") to address issues raised by an anticipated increase in options message traffic.

On behalf of the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc., all of which are participants in OPRA, we hereby request that the Securities and Exchange Commission exercise its authority under Section 11A of the Securities Exchange Act of 1934 (the "Act") to issue an order expressly authorizing the self-regulatory organizations, including without limitation the OPRA participants, on their own behalf and through their members and member associations, to act jointly with each other and with SIAC in planning, developing and discussing applications and strategies with respect to options quote message traffic, in order to individually or jointly recommend and propose individual or joint self-

regulatory organization or Commission rules or plan amendments in connection therewith or to undertake other options traffic mitigation strategies.

On March 18, 1981 the Commission approved the OPRA Plan. See Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan, as amended, was developed:

in response to directives of the Securities and Exchange Commission that provision be made for the consolidated reporting of transactions in eligible options contracts * * * and in response to the finding set forth in [the 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.

The OPRA Plan was designed to enable the OPRA participants, through OPRA, to "make all policy decisions under the Plan, including, but not limited to * * * setting standards governing the method and format for reporting options last sale reports and quotation information by [the national exchanges, among others]." See Securities Exchange Act Release No. 34-40767 (Dec. 16, 1998), 63 Fed. Reg. 69354. The SIAC/SRI conducted study is intended to address strategies for dealing with the anticipated increase in options quote message traffic, and, accordingly, will require consideration of policies and standards for managing quotation message traffic.

The OPRA participants believe that their joint action in connection with the SIAC/SRI study is encompassed by the approved OPRA Plan. Nonetheless, we request that the Commission authorize expressly, by separate order, such joint discussions and joint action by the self-regulatory organizations, including without limitation the OPRA participants, on their own behalf and through their members and member associations, consistent with Section 11A of the Act, in order to eliminate any possible question that might arise as to the authority of the OPRA participants on their own behalf and through their members to cooperate with each other and with SIAC and SRI to conduct joint discussions and to take such joint action as is necessary or advisable to plan and develop recommended strategies and approaches with respect to anticipated increases in options quote message traffic or undertake other options traffic mitigation strategies.

We have enclosed a draft order that has been the subject of discussions with Commission staff.

Sincerely,
Colleen P. Mahoney

Enclosure

[FR Doc. 99-23991 Filed 9-14-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41840; File No. SR-Amex-99-31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Publication of Certain Membership, Corporate Governance, and Disciplinary Information in the Amex Weekly Bulletin

September 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 13, 1999, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The text of the proposed rule change is available at the Office of the Secretary, the 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 self-regulatory organization 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. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to eliminate references in its Constitution and Rules to the requirement that certain

⁹ In issuing this Order, the Commission intends to address only the circumstances the Order expressly discusses. The Commission believes that it would be inappropriate to draw any inference from this Order concerning the Commission's views as to any conduct or circumstance not addressed by the Order. In particular, other than as described in this Order, the Commission expresses no conclusion on any issue concerning joint conduct, whether occurring before or after the date of this Order, or concerning the circumstances under which the Commission would view such joint conduct as in the public interest and the interests of investors.

¹ 15 U.S.C. 78s(b)(1).