12. On September 27, 1999, Nationwide supplemented the separate account prospectuses informing all existing and prospective Contract Owners that it is the process of applying for approval from the Commission to effect a substitution of VP Balanced for VP Advantage. In addition, the prospectus supplements state that Nationwide will not exercise any right reserved by it under the Contracts to impose an restriction or fee on transfers until at least 30 days after the proposed substitutions.

13. All Contract Owners have received a copy of the prospectus for VP Balanced because the portfolio is currently offered as an investment option under all contracts issued through the Separate Accounts.

14. Following the establishment of the Exchange Date, Contract Owners with interests remaining VP Advantage will be advised that the fund will be replaced on the Exchanged Date and that they are free to make any allocation change changes among the available investment options in advance of the Exchange Date.

15. Within five days of the Exchange Date, all Contract Owners affected by the substitution will receive a written confirmation of the substitution. The confirmation will state that Contract Owners may transfer all cash value in the affected sub-account to any other available sub-account(s). The confirmation will reiterate that Nationwide will not exercise any right reserved by it under the Contracts to impose any restriction or fee on transfers until at least 30 days after the proposed substitution.

16. The proposed substitution will take place at relative net asset value with no increase or decrease in the amount of any Contract Owner's policy value. The substitution will not result in any additional fees for Contract Owners nor will current charges increased. Contract Owners will not bear any added cost or expense, including any additional brokerage costs or expenses, associated with the proposed substitution. None of the contractual obligations currently assumed by Nationwide will in any way be abridged or modified as a result of the substitution. The proposed substitution will in no way alter a Contract Owner's right to surrender the contract at any time prior to or after the substitution in accordance with the terms of the contract. Finally, the substitution should in no way affect whatever tax benefits Contract Owners currently enjoy and will not engender any adverse tax consequences.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substitution of the securities held by the trust. The section further provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants assert that the proposed substitution meets the standards that the Commission has applied to past substitutions.

3. Applicants assert that the investment objectives and policies of VP Advantage and VP Balanced are sufficiently comparable that the investment strategies currently employed by Contract Owners may be maintained after the substitution. Both funds seek to provide investors with the benefits of a balanced portfolio of fixed income and equity securities that serves as a more conservative alternative to traditional growth funds and as a more aggressive alternative to traditional bond funds.

4. Applicants further assert that Contract Owners will benefit from the proposed substitution because VP Balanced has greater assets than VP Advantage. Accordingly, VP Balanced should continue to have lower expenses as a percentage of net asset than does VP Advantage, creating the opportunity for better performance.

Conclusion

Applicants assert, for the reasons stated above, that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and the requested order approving the substitution should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14247 Filed 6–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42849; File No. SR–OPRA–00–05]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

May 26, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 18, 2000, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would modify the current temporary capacity allocation plan for peak usage periods, which minimize the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.*, Securities Industry Automation Corporation (''SIAC'')) aggregate message handling capacity. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment and to grant accelerated approval to the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

OPRA proposes to modify the most recent amendment allocating the message handling capacity of its processor among the participant exchanges.[3] This modification will

[1] 17 CFR 240.11Aa3–2.

[2] 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 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the International Securities Exchange (''ISE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[3] The current temporary allocation program is embodied in an amendment to the OPRA Plan proposed by OPRA and approved by the Commission. Securities Exchange Act Release No. 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000) (order approving File No. SR–OPRA–00–04). As proposed by OPRA, that program was to expire by its terms on May 25, 2000. However, in its approval order the Commission modified the OPRA Plan

commence on May 26, 2000, which is the day when ISE is scheduled to commence trading, and will continue until the earlier of the date when OPRA implements a system upgrade that will increase its maximum message handling capacity from the current 3,540 messages per second (''mps'') to 8,000 mps [4] or August 24, 2000. During the modification provided for in this amendment, the current allocation will continue in effect: from May 26, 2000, through June 22, 2000, ISE will be allocated 55 mps; from June 23, 2000, through July 27, 2000, ISE will be allocated 110 mps; and from July 28, 2000, through August 24, 2000, ISE will be allocated 165 mps. Each of the foregoing allocations to ISE is subject to being reduced if, on or before the third day preceding the first day preceding the first day of an allocation period, ISE notifies OPRA that it does not need its full share of capacity for the ensuing allocation period and agrees to accept a specified reduced capacity share. Any reduction in capacity share that may be agreed to by ISE will be reallocated proportionately to the other exchanges, and will not affect the capacity share to which ISE is entitled during the next allocation period.

OPRA has filed this proposed modification of its temporary capacity allocation program as an amendment to its national market system plan, and accordingly, is filing the proposed amendment for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2 under the Act.[5] ISE has represented to OPRA that it finds the capacity share proposed to be allocated to it in the proposed amendment to be acceptable.

II. Implementation of the Plan Amendment

OPRA believes the proposed modification of the temporary capacity allocation program is necessary and appropriate to avoid delays and queues in the dissemination of options market information, which in tern helps to achieve the objectives of Section 11A(a)(1)(C)(iii),[6] including assuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission permit the modification of the proposed allocation program be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3–2 [7] of the Act, based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–05 and should be submitted by June 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Prosed Plan Amendment

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.[8] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3–2 under the Act [9] 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 aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of, and at times surpasses, OPRA's systems capacity. OPRA estimates that its current plans to expand OPRA systems capacity will not be completed until July 17, 2000. Consequently, the Commission is concerned that, absent a program to allocate systems capacity among the options markets, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation plan is a reasonable means for addressing potential strains on capacity.

The Commission notes that the anticipated enhancements to the OPRA system should increase systems capacity from 3,540 mps to 8,000 mps. The Commission does not, however, believe that the enhancement will end the need for a capacity allocation [10] as the imminent move to decimalization and the dissemination of quotations with size will continue to strain OPRA systems capacity. For the above reasons, among others, the Commission modified the temporary allocation proposed by OPRA to extend its capacity allocation. [11]

amendment as filed by OPRA by extending the duration of the temporary allocation program for an additional 120 days from the date of the order, and further modified the program by providing an allocation of OPRA's capacity to ISE during this extended period. In its order, the Commission stated that any OPRA Plan amendment subsequently proposed by OPRA and found to be consistent with the Act would supersede the Commission's order. OPRA questions the authority of the Commission to impose such modifications to the OPRA Plan by order, as opposed to acting by rule, which is the procedure established in Rule 11Aa3–2(c)(2) for national market system plan amendments initiated by the Commission. Because the OPRA Plan amendment proposed in this filing would extend the temporary allocation program until the earlier of August 24, 2000, or the expansion of OPRA's capacity to the point where the allocation program is no longer needed, and because it would also provide an appropriate allocation of capacity to ISE during this period, OPRA believes that the approval of this amendment will obviate the need to resolve the issue of the Commission's authority to impose modifications to the OPRA Plan in its May 12 order.

[4] OPRA expects this upgrade to go into production on July 17, 2000.

[5] 17 CFR 240.11Aa3–2.

[6] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[7] 17 CFR 240.11Aa3–2.

[8] 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).

[9] 17 CFR 240.11Aa3–2.

[10] Consequently, the Commission recently solicited comment on a proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434). The comment period on this proposal expires on June 9, 2000.

[11] *See* Securities Exchange Act Release No. 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000) (''May 12 order''). The Commission has authority to modify by order an amendment to a national market system plan submitted by plan participants as it did in the May 12 order. Rule 11a3–2(c)(2).

The Commission believes that the proposed amendment to the OPRA Plan is consistent with the Act and has determined to substitute the provisions of this proposal for the modifications made by the Commission to OPRA's previous capacity allocation amendment. [12] Therefore, OPRA capacity should be allocated according to the terms of the capacity allocation set forth in this amendment.

The Commission finds good cause to accelerate the proposed OPRA Plan amendment prior to the date of publication in the **Federal Register**. The Commission notes that the proposed OPRA Plan amendment is intended to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the amendment will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate, and possibly implement, other quote mitigation strategies. In addition, the limited time frame of this capacity allocation program provides the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed OPRA Plan amendment is appropriate and consistent with Section 11A of the Act.[13]

V. Conclusion

It Is Therefore Ordered, pursuant to Rule 11Aa3–2 of the Act,[14] that the proposed OPRA Plan amendment (SR-OPRA-00-05) is approved on an accelerated basis until the earlier of the date when OPRA implements a system upgrade that will increase its maximum message handling capacity to 8,000 mps or August 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [15]

Margaret H. McFarland,

Deputy Secretary.

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[12] *See* note 11 *supra.*

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2.

[15] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42853; File No. SR–AMEX–00–19]

Self-Regulatory organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Establishment of an Interim Seat Allocation Program

May 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2000, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Amex is filing with the Commission a proposed rule change to establish an Interim Seat Allocation Program that would allow a member or member organization designate one or more iterim members. Thereafter, the member or member organization would be permitted to allocate temporarily its membership, with certain restrictions, to the interim member whenever the member or member organization's active member or nominee is absent from the trading floor. The text of the proposed rule change is available for inspection at the places specified in item IV below.

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

In its filing with the Commission, Amex 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 IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

1. Purpose

Active Exchange seats are assigned to a person not a firm. Consequently, when a person to whom a seat is assigned is absent from the trading floor, the seat cannot be used to participate in trading activities on the floor. In effect, at any given time, some measurable percentage of one of the Exchange's most valuable assets lies dormant and unavailable for use. Therefore, the Exchange is proposing an Interim Seat Allocation Program which would allow an active member (*i.e.* the person to whom the seat has been assigned and who actively participates in securities transactions on the floor of the Exchange) temporarily to allocate the membership to an interim member when the active member is absent from the trading floor. The active member would pay an interim member status annual fee of $1,500 and a flat fee of $250 for each allocation. A temporary allocation may be for a minimum of one day to a maximum of one year.

The interim member would have to be approved for membership in accordance with the Constitution and Rules of the Exchange. Once approved, and upon payment of the flat allocation fee and submission of the appropriate from to the Exchange's Membership Services Department, an interim member could be allocated the membership held by the active member. Contracts made on the trading floor of the Exchange by an interim member would be considered contracts made by the active member. The active member would also be responsible for all obligations to the Exchange and all obligations to other members resulting from Exchange transactions or transactions in other securities conducted by the interim member. The Exchange would require prior approval of the interim members by lessor.

The owner of the membership, rather than the interim member, would be deemed to be the member of the Exchange for purposes of participating in any distribution of the assets and funds of the Exchange in the event of any voluntary or involuntary final liquidation, dissolution, or winding up of the Exchange's affairs. The owner of the membership or active member, as the case may be, rather than the interim member, would be the Participant in the Exchange's Gratuity Fund and entitled to the benefits described in Article IX of the Exchange Constitution. In addition, an interim member will not be permitted to vote the active member's