

## 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.

[FR Doc. E5-115 Filed 1-12-05; 8:45 am]

BILLING CODE 8010-01-P

## 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.

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. The Exchange 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 currently imposes transactions charges for transactions in equity options executed on the Exchange by Exchange specialists and Exchange registered options traders ("ROTs"). The current charges for Exchange specialist and ROTs in equity options are \$0.25 per contract side, consisting of an options transaction fee of \$0.15, an options comparison fee of \$0.05 and an options floor brokerage fee of \$0.05. The Exchange proposes to reduce the aggregate equity options transaction fee for Exchange specialists and ROTs from the current level of \$0.25 per contract side to \$0.20 per contract side effective December 2, 2004. Non-member market makers, *i.e.*, market makers registered in the same option class on another option exchange, will continue to be charged the current aggregate transaction fee of \$0.30 per contract side. The new aggregate equity options transaction fee for Exchange specialists and ROTs will consist of an options transaction fee of \$0.10 per contract side, an options comparison fee of \$0.05 per contract side and options floor brokerage fee of \$0.05 per contract side.

The Exchange believes that the proposed reduction in the equity options transaction fee will benefit the Exchange by providing greater incentive to Exchange specialists and ROTs to competitively quote their markets in comparison to the markets made by other options exchanges. The Exchange also believes that the reduction in the equity options transaction fee will help to maintain the existing floor operations of member firms at the Amex.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, regarding the equitable allocation of reasonable dues, fees and other charges among exchange

members and other persons using exchange facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</sup> because the proposed rule change establishes or changes a due, fee or other charge applicable only to a member of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.<sup>8</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-97 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-97 and should be submitted on or before February 3, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-116 Filed 1-12-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50999; File No. SR-Amex-2003-90]

**Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to the Amendment of Exchange Rule 153**

January 7, 2005.

**I. Introduction**

On October 9, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 6, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

<sup>9</sup> 17 CFR 200.30-3(a)(12).