will hold a 45% general partner interest in Wireless and Bell Atlantic will hold the remaining 55% general partner interest. The Transaction is expected to be consummated in early March 2000. AirTouch states that, following the Transaction, on an unconsolidated basis, approximately 62% of its total assets will consist of securities of operating companies that AirTouch controls (within the meaning of section 2(a)(9) of the Act), including Wireless, approximately 17% will consist of securities of wholly- and majority-owned subsidiaries, approximately 19% will consist of other securities, and approximately 2% will consist of assets other than securities.[1]

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7) of the Act.

2. AirTouch states that as a result of the Transaction, it may meet the definition of an investment company under section 3(a)(1)(C) of the Act because Wireless will not be a wholly- or majority-owned subsidiary and, therefore, AirTouch's ''investment securities,'' as defined in section 3(a)(2) of the Act, may represent approximately 81% of its total assets on an unconsolidated basis.

3. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. AirTouch requests an order under section 3(b)(2) declaring that it is primarily engaged through its wholly- and majority-owned subsidiaries and controlled companies in a business other than that of investing, reinvesting, owning, holding, or trading in securities.[2]

4. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the SEC considers: (a) The applicant's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

(a) *Historical Development.* AirTouch states that it has been an operating company since 1984, developing mobile telecommunications networks and providing telecommunications services in the U.S. and, beginning in 1989, overseas.

(b) *Public Representations of Policy.* AirTouch states that it has never held, and does not now hold, itself out as an investment company. AirTouch asserts that, in its annual reports, shareholder communications, prospectuses, SEC filings, and on its Internet web site, it consistently has held itself out to the public as an operator of mobile telecommunications networks and provider of telecommunications services.

(c) *Activities of Officers and Directors.* AirTouch states that its officers and directors are actively engaged in the management of its wholly- and majority-owned subsidiaries and controlled companies through which AirTouch conducts its telecommunications business. AirTouch states that it has approximately 14,000 full-time employees, only two of whom spend any time on investment activities.

(d) *Nature of Assets.* AirTouch states that, as of September 30, 1999, its assets other than securities, together with securities of wholly- and majority-owned subsidiaries, represented approximately 65%, securities and controlled companies represented approximately 16%, and other securities represented approximately 19% of its total assets on an unconsolidated basis. AirTouch further states that, following the consummation of the Transaction, on a pro forma basis, its assets other than securities, together with securities of wholly- and majority-owned subsidiaries, will represent approximately 19%, securities of controlled companies, including Wireless, will represent approximately 62%, and other securities will represent approximately 19% of its total assets on a unconsolidated basis.

(e) *Sources of Income.* AirTouch states that for the twelve months ended March 31, 1999, it had net income of $844 million, of which 40.1% was attributable to its wholly- and majority-owned subsidiaries, 45.3% was attributable to controlled companies,and 14.6% was attributable to investments. AirTouch states that post-Transaction, on a pro forma basis, for the twelve months ended March 31, 1999, its net income was $925 million, of which 86.7% was attributable to controlled companies, including Wireless, and 13.3% was attributable to investments.

5. AirTouch thus states that it meets the factors that the SEC considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[1] Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

[2] If the requested order is granted, Vodafone AirTouch's counsel have advised Vodafone AirTouch that it is not an investment company under section 3(a) of the Act.

[3] *See Tonopah Mining Company of Nevada,* 26 S.E.C. 426, 427 (1947).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42362; File No. SR–OPRA–00–02]

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

January 28, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 28, 2000, the Options Price Reporting Authority (''OPRA'') [2] submitted to the Securities and

[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 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 that 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'').

Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment proposes to allocate the message handling capacity of OPRA's processor among the participant exchanges for a temporary period ending March 4, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's (*i.e.,* Securities Industry Automation Corporation) aggregate message handling capacity.[3] The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Plan amendment, and to grant accelerated approval to the proposed Plan amendment through March 4, 2000.

I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to allocate the message handling capacity of its processor among the participant exchanges for a temporary period ending March 4, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's aggregate message handling capacity. During this period, the processor's aggregate message-handling capacity, which is estimated by the processor to be 3,110 messages per second, will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 910 messages per second
Chicago Board Options Exchange: 1,210 messages per second
Pacific Exchange: 545 messages per second
Philadelphia Stock Exchange: 445 messages per second

OPRA proposes to allocate the message handling capacity of its processor in response to significant increases in the number of options quotations that have recently been experienced by all of the participant exchanges as a result of the greater number of options series being traded on the exchanges and the heightened volatility in the underlying securities. Although the aggregate amount of options market information messages is generally still within the capacity of the OPRA processor, the aggregate options message traffic is now so close to reaching the processor's maximum message-handling capacity that some short-term solution to the problem is necessary to avoid risking unacceptable delays and queuing in the dissemination of real-time options market information. Although some long-term solutions have been proposed in the course of the Options Capacity Planning and Quote Mitigation Program that has been taking place over the past several months, these may not be in place soon enough to deal with the current expansion of message traffic.[4] For this reason, during the month of January 2000, OPRA's participant exchanges agreed upon a capacity allocation based upon an assumed maximum processor capacity of 3,000 messages per second.[5] OPRA's processor now estimates that the capacity allocation may prudently be adjusted upwards to reflect an assumed maximum processor capacity of 3,110 messages per second. Accordingly, OPRA's participant exchanges, in the presence of Commission staff pursuant to the September 1999 Order, have agreed to the allocation that is proposed in this filing to be effective during February 2000. Because this allocation is based upon an assumed maximum processor capacity of 3,110 messages per second, which the processor advises is a realistic number, it should serve the intended purpose of avoiding delays and queues in OPRA's real-time stream of market information.

To retain sufficient flexibility to deal with changed circumstances within and among the options markets, including the planned commencement of options trading by the International Securities Exchange, the proposed allocations will remain in effect only until March 4, 2000, unless OPRA decides that the proposed allocation or some revised allocation should be continued beyond that date.[6]

II. Implementation of the Plan Amendment

OPRA believes the temporary implementation of the proposed capacity allocation program is essential to avoid delays and queues in the dissemination of options market information, which in turn is necessary to achieve the objective of Section 11A(a)(1)(C)(iii),[7] including to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the proposed allocation program to be put into effect summarily upon publication of notice of this filing, on a temporary basis, pursuant to paragraph (c)(4) of Rule 11Aa3–2,[8] 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 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, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed 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 number SR–OPRA–00–2 and should be submitted by February 28, 2000.

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

After careful review, the Commission finds that the proposed Plan amendment is consistent with the requirements of the Act and the rules

[3] OPRA has determined to treat this proposed capacity allocation as an amendment to its national market system plan and, accordingly, to file the proposed capacity allocation for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2. Any determination made by OPRA to continue the effectiveness of the proposed capacity allocations or any revised capacity allocations beyond March 4, 2000 will be the subject of a separate filing under the same Rule.

[4] *See* Exchange Act Release No. 41843 (September 8, 1999) in which the Commission issued an order authorizing the options exchanges, OPRA, OPRA's processor and other parties to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic and related matters (''September 1999 Order'').

[5] *See* Exchange Act Release No. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (File No. SR–OPRA–00–01).

[6] Any such continued allocation of OPRA capacity that might be approved by OPRA would be the subject of a separate filing under Rule 11Aa3–2. 17 CFR 240.11Aa3–2. *See* note 3, *supra.*

[7] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[8] 17 CFR 240.11Aa3–2(c)(4).

and regulations thereunder.[9] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets, 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 aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent an agreed-to program to allocate systems capacity among the options markets that is put in place immediately, 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 proposal is a reasonable means for addressing potential strains on capacity that may occur between now and March 4, 2000.

The Commission finds good cause to accelerate the proposed Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the proposed Plan amendment is intended to allocate OPRA system capacity for a short period of time 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 proposed capacity allocation 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 the applicability of the capacity allocation program should provide 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 Plan amendment is appropriate and consistent with Section 11A of the Act.[10]

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[11] that the proposed Plan amendment (SR–OPRA–00–02) is approved on an accelerated basis through March 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[9] In approving this proposed Plan amendment, the Commission has considered the proposal's impact on efficiency, competition,and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 240.11Aa3–02.

[12] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42371; File No. SR–CBOE–99–63]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exercise Price Intervals for FLEX Equity Options

January 31, 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 December 10, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'') 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 Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

CBOE proposes to delete Interpretation .01 of CBOE Rule 24A.4(c)(2) [3] which limits exercise price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 CBOE 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 CBOE 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 purpose of the proposed rule change is to delete Interpretation .01 under CBOE Rule 24A.4(c)(2). This interpretation limits the exercise price intervals and exercise prices available for FLEX Equity call options to those intervals and prices that are available for Non-FLEX Equity call options pursuant to Interpretation and Policy .01 under CBOE Rule 5.5. This policy was intended to eliminate uncertainty concerning what constitutes a ''qualified'' covered call for certain purposes under the Internal Revenue Code pending clarification of this tax issue.

Currently, under Section 1092(c)(4)(B) of the Internal Revenue Code, certain covered short positions in call options qualify for advantageous tax treatment if the options are not in the money by more than a specified amount at the time they are written. One measure used to determine whether a call option is qualified is whether its exercise or ''strike'' price is no lower than the ''lowest qualified benchmark price,'' which is generally the highest strike price available for trading that is less than the current price of the underlying stock. Since the exercise prices of FLEX Equity Options are not subject to the same intervals that apply to Non-FLEX Equity Options, this has raised the question whether the existence of a series of FLEX Equity Options with a strike price of, for example, 58 when the price of the underlying stock is 59 would disqualify a Non-FLEX call option with a strike price of 55, which would otherwise be the highest strike price available that is less than the price of the stock.

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

[2] 17 CFR 240.19b–4.

[3] The Commission approved this Interpretation in 1996. *See* Release No. 34–37726 (September 25, 1996), 61 FR 51474 (October 2, 1996).