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

Dated: May 16, 2000.

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42779; File No. SR-OPRA-00-04]

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

May 12, 2000.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 9, 2000, the Options Price Reporting Authority ("OPRA")<sup>2</sup> 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 extend the current temporary capacity allocation plan for peak usage periods through the close of trading on May 25, 2000, to 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. In addition, to accommodate the anticipated entry into OPRA of the International Securities Exchange ("ISE"), the amendment has been modified to reallocate OPRA systems capacity during peak usage periods among the options exchanges to include ISE. If, as expected, the ISE becomes a participant in OPRA, the amendment, as

modified, would proportionally reduce the existing allocations to the Amex, CBOE, PCX, and Phlx, based on each OPRA participant's relative share of total OPRA systems capacity, to allocate systems capacity to the ISE. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment, as modified, and to grant accelerated approval to the proposed OPRA Plan amendment, as modified, on a temporary basis, for 120 days.

### I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to extend the temporary period during which the message handling capacity of its processor is allocated among the participant exchanges, currently scheduled to end on May 13, 2000,<sup>3</sup> for an additional twelve days, through the close of trading on May 25, 2000. Through May 25, 2000, the processor's aggregate message-handling capacity, estimated by the processor to be 3,540 messages per second,<sup>4</sup> 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: 1,024 messages per second  
Chicago Board Options Exchange: 1,366 messages per second  
Pacific Exchange: 635 messages per second  
Philadelphia Stock Exchange: 515 messages per second

ISE is scheduled to begin trading on May 26, 2000<sup>5</sup> and is expected prior to that date to become a participant in OPRA. To date, the OPRA participants have been unable to agree to a method

by which to allocate existing capacity to ISE. Because there has been no increase in overall OPRA systems capacity that would accommodate ISE's capacity needs, the 60 messages per second that ISE has requested for its first month of operation will have to be allocated to ISE by reducing the other OPRA participants current allocation levels. To facilitate the allocation of existing capacity to ISE, the Commission is modifying the proposed OPRA Plan amendment to provide for a promotional distribution of capacity to ISE based on each OPRA participant's relative share of total OPRA system capacity if, as expected, ISE becomes a participant in OPRA.

Specifically, the proposed allocation plan, which will be in effect on a temporary basis for 120 days, would operate as follows during peak usage periods:

- The existing allocation scheme would remain in place through May 25, 2000.
- Assuming, as anticipated, that ISE is a participant in OPRA, from May 26 until June 25, 2000, ISE would be allocated 55 messages per second,<sup>6</sup> with the other exchanges' existing allocation reduced proportionally. To provide ISE with a capacity allocation of 55 messages per second during its first month of operation, the following allocation among the exchanges would result: 1,008 messages per second to the Amex (a reduction of 16 messages per second); 1,345 messages per second to the CBOE (a reduction of 21 messages per second); 625 messages per second to the PCX (a reduction of 10 messages per second); 507 messages per second to the Phlx (a reduction of 8 messages per second); and 55 messages per second to ISE.

- Assuming, as anticipated, that ISE is a participant in OPRA, beginning June 26, 2000, ISE's allocation would be increased by 55 messages per second every 30 days for as long as this Order is in effect (*i.e.*, 110, 165, and 220 messages per second for ISE's second, third, and fourth months of operation, respectively). The same proportional reduction in the current level of capacity allocated to the existing markets would provide the additional allocation for ISE.

In the event that additional capacity becomes available to the OPRA system

<sup>6</sup> Although ISE initially requested from OPRA a capacity allocation during peak periods of 60 messages per second, the Commission is allocating 55 messages per second to it during its first month of operation. The Commission believes that the ISE, like the other options exchanges, will need to undertake efforts to encourage its market makers to quote as efficiently as possible to stay within the 55 messages per second cap.

<sup>1</sup> 17 CFR 240.11Aa3-2.

<sup>2</sup> 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 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").

<sup>3</sup> The Commission approved three consecutive temporary capacity allocation plans that were proposed by OPRA Participants. See Securities Exchange Act Release Nos. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (order approving File No. SR-OPRA-00-01); 42362 (January 28, 2000), 65 FR 5919 (February 7, 2000) (order approving File No. SR-OPRA-00-02); and 42493 (March 3, 2000), 65 FR 12597 (March 9, 2000) (order approving File No. SR-OPRA-00-03). In addition, the Commission has sought public comment on two alternative formulas for allocating OPRA systems capacity during peak usage periods. See Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4-434).

<sup>4</sup> The proposed OPRA Plan amendment incorrectly referred to 3,518 messages per second. It had been modified here pursuant to OPRA's verbal request. Telephone conversation between Joseph Corrigan, Executive Director, OPRA, and Deborah Flynn, Senior Special Counsel, Division of Market Regulation, Commission, on May 9, 2000.

<sup>5</sup> ISE was registered as a national securities exchange for options trading on February 24, 2000. See Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

during the 120 days that this order is in effect, and the OPRA participants fail to agree to a new allocation plan to reflect the higher capacity available, the additional capacity would be distributed in the same proportions as allocated under this Order. If, at any time, the OPRA participants submit to the Commission a proposed OPRA Plan amendment that is consistent with the Act, the Commission will act to replace and supersede this temporary order with that proposal.

## II. Implementation of the Plan Amendment

OPRA believes the proposed extension of the temporary capacity allocation program through May 25, 2000, is needed to avoid delays and queues in the dissemination of options market information. The availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, is necessary to achieve the objective of Section 11(A)(a)(1)(C)(iii) of the Act.<sup>7</sup> Accordingly, OPRA requests that the Commission permit the extension of the proposed allocation program to be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3-2 under the Act.<sup>8</sup> Based on a finding by the Commission that such action, as modified for the reasons described in Section IV below, 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. Persons making written submission 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 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-00-04 and should be submitted by June 9, 2000.

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

After careful review, the Commission finds that the proposed OPRA Plan amendment, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>9</sup> Specifically, the Commission believes that the proposed amendment, as modified, which allocated the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3-2 under the Act<sup>10</sup> 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, and at times surpasses, 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 a 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 option markets. The Commission believes that the agreed-upon extension of the current allocation plan is a reasonable means for addressing potential strains on capacity that may occur between now and May 25, 2000.

The Commission believes that the reallocation of OPRA systems capacity to provide an allocation to ISE is appropriate if, as expected, the ISE becomes a participant in OPRA, particularly in light of the temporary nature of the allocation plan, which will be in effect for no more than 120 days. In fact, several factors make it likely that this temporary plan will be superseded prior to its expiration date. First, if at any time the OPRA participant exchanges files with the Commission a capacity allocation plan for peak usage

periods that is consistent with the Act, the Commission will act to substitute that proposal for this plan. Second, the Commission recently requested comment on its proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula.<sup>11</sup> The Commission notes that the comment period on that proposal expires on June 9, 2000. Approving this interim measure on a temporary basis will permit the comment letters received by the Commission to be carefully considered before deciding whether to take final action on the proposal. Finally, the enhancements to the OPRA system are expected to increase systems capacity from 3,540 messages per second to 8,000 messages per second. That increase will create incentives for the OPRA participants to reevaluate this capacity allocation plan and submit to the Commission a modified capacity allocation plan consistent with the Act.

The Commission further believes that the proposed amendment to the OPRA Plan to reallocate OPRA system capacity among the options exchanges, including ISE, on a temporary basis is necessary to accommodate ISE's entry into the market. The Commission rarely invokes its authority to modify proposed amendments to national market system plans, but believes that exigent circumstances including, the inability of the OPRA participants to agree to an allocation that includes ISE, the potential harm to investors should queuing occur, and the desirability of permitting ISE to begin trading, mandate the Commission's action. Specifically, the Commission finds that it is necessary and appropriate to approve the proposed allocation plan, as modified,<sup>12</sup> to be in effect for no more than 120 days, to ensure that all potential barriers to entry are removed prior to ISE's commencement of trading.

The Commission finds good cause to accelerate the proposed OPRA Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the proposed OPRA Plan amendment is intended to allocate OPRA system capacity for a short period of time, 120 days, 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

<sup>11</sup> See Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4-434).

<sup>12</sup> The Commission has authority to approve any proposed National Market System Plan amendment "with such changes or subject to such conditions as the Commission may deem necessary or appropriate," and to do so by order.

<sup>7</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>8</sup> 17 CFR 240.11 Aa3-2(c)(4).

<sup>9</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>10</sup> 17 CFR 240.11Aa3-2.

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 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, as modified, is appropriate and consistent with Section 11A of the Act.<sup>13</sup>

#### V. Conclusion

*It is therefore ordered*, pursuant to Rule 11Aa3-2 of the Act,<sup>14</sup> that the proposed OPRA Plan amendment, as modified, (SR-OPRA-00-04) is approved on an accelerated basis until September 9, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42782; File No. SR-DTC-00-03]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to Establishing a Depository Link With SIS SegalInterSettle AG

May 15, 2000.

On February 22, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-00-03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on March 9, 2000.<sup>2</sup> No

comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### I. Description

Under the rule change, DTC will establish a free-of-payment omnibus account at SIS SegalInterSettle AG ("SIS") in order to create a one-way DTC-SIS link. The link will permit, but will not require, DTC to hold in its account at SIS positions in issues that are eligible at both DTC and SIS. The interface will enable DTC participants to more efficiently move and position their inventory through book-entry movements from one depository's books to the other's.<sup>3</sup>

Establishment of the link will enable a DTC participant to settle a cross-border transaction with an SIS counterparty by making a free-of-payment book-entry delivery from DTC's omnibus account at SIS to the SIS participant's account at SIS. Conversely, an SIS participant will be able to settle a cross-border transaction with a DTC participant by making a free-of-payment book-entry delivery from the SIS participant's account at SIS to the DTC omnibus account at SIS (while identifying the DTC participant to which the delivered securities should be credited). The receiving DTC participant then will be able to redeliver the securities on either a free-of-payment or versus-payment basis to any other DTC participant within DTC.

SIS will make SIS's custody and depository services (such as income collection, maturity presentments, and reorganization processing) available to DTC for securities held in DTC's account at SIS in accordance with SIS procedures. Whether DTC holds its underlying inventory in Switzerland or in the U.S., DTC services to DTC participants will be the same as are currently provided.

#### II. Discussion

Section 17A(b)(3)(F)<sup>4</sup> of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. For the reasons set forth below, the Commission believes that DTC's

proposed rule change is consistent with DTC's obligations under the Act.

The Commission believes that the link between DTC and SIS should promote the prompt and accurate clearance and settlement of securities transactions. The central purpose of the link is to facilitate the efficient processing of cross-border securities transactions between DTC participants and SIS participants. By opening an omnibus account at SIS, DTC will enable its participants to substitute efficient book-entry movements for inefficient physical movements of securities certificates from SIS to DTC. The link should reduce much of the time, expense, costs, and risks associated with physically moving certificates from SIS and redepositing them at DTC.

The Commission also believes that DTC has established the link with SIS in a manner that is consistent with its safeguarding obligations under the Act. In order to assure itself that the linking with SIS is safe and prudent, DTC completed an extensive review of such things as: (1) SIS's operational controls, financial strength, technology capabilities, and audit arrangements; (2) Swiss regulation of SIS; and (3) application and effect of Swiss and U.S. laws as they pertain to the link.

Accordingly, the Commission finds that the link satisfies DTC's obligations to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-00-03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 240.11Aa3-2.

<sup>15</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 42482, (March 1, 2000), 65 FR 12602.

<sup>3</sup> With respect to global share issues of issuers such as UBS, DTC expects to hold the bulk of its positions at DTC so that DTC's position will be reflected on the books of U.S. transfer agents.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).