

may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. The Fund is a Maryland corporation and is registered under the Act as an open-end management investment company. The Fund intends to invest all or substantially all of its assets in the shares of various other registered investment companies ("Underlying Funds") in reliance on section 12(d)(1)(F) of the Act. The Adviser is registered under the Investment Advisers Act of 1940 and acts as investment adviser to the Fund. The Distributor is the principal underwriter to the Fund. Applicants request relief to permit the Fund to charge a sales load in excess of the limit in section 12(d)(1)(F)(ii) of the Act.

### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquiring company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(F) of the Act provides that Section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. Section 12(d)(1)(J) of the Act provides that the Commission may

exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

4. Applicants request an order under section 12(d)(1)(J) exempting them from the sales load limitation in section 12(d)(1)(F)(ii). Applicants agree, as a condition to the requested order that any sales charges, distribution related fees, and service fees relating to the shares of the Fund, when aggregated with any sales charges, distribution related fees and service fees paid by the Fund relating to its acquisition, holding or disposition of shares of the Underlying Funds will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers Inc. ("NASD") Conduct Rules.

### Applicants' Conditions

1. The Fund will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution related fees, and service fees relating to the shares of the Fund, when aggregated with any sales charges, distribution related fees and service fees paid by the Fund relating to its acquisition, holding or disposition of shares of the Underlying Funds will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

3. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

4. Before approving any advisory contract under section 15 of the Act, the Board of the Fund, including a majority of the Board who are not "interested persons" (as defined in section 2(a)(19) of the Act), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Fund advisory contract. This finding,

and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting Notice

#### Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 22, 2000.

An open meeting will be held on Tuesday, May 23, 2000 at 9:00 a.m. in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, May 23, 2000 at 9 a.m. will be:

The Commission's Division of Investment Management will conduct a roundtable discussing several issues relating to investment advisers. The roundtable will bring together investment advisers, legal counsel to advisers, representatives from state regulatory bodies, representatives from the NASD, and others to discuss these issues and offer their recommendations. For further information, please contact Cynthia M. Fornelli at (202) 942-0720, or J. David Fielder at (202) 942-0530.

A closed meeting will be held on Wednesday, May 24, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Wednesday, May 24, 2000 will be:

Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further

information and to ascertain that, if any, matters have been added, deleted or postponed, please contact:

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>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).

<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").