of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the National City Group holds of record more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain of the Funds. Because of this ownership, applicants state that the Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b). Applicants note that the Boards, including a majority of the Disinterested Trustees, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the Reorganization will be based on the Funds' relative net asset values.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13615 Filed 5–31–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42817; File No. SR–OPRA–99–01]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Participation Fee Payable by Each New Party to the Plan

May 24, 2000.

On August 16, 1999, pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] the Options Price Reporting Authority (''OPRA'') [2] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed amendment would add provisions applicable to a participation fee payable by each new party to the OPRA Plan and codifies procedures applicable to the admission of new parties to the OPRA Plan. Notice of the proposed OPRA Plan amendment was published in the **Federal Register** on October 20, 1999.[3] The Commission received three comment letters on the proposed OPRA Plan amendment.[4] On January 3, 2000, April 28, 2000, and May 18, 2000, OPRA submitted Amendments Nos. 1, 2, and 3, respectively.[5] The Commission is publishing this notice and order to grant accelerated approval to the proposed OPRA Plan amendment, as revised by Amendment No. 3, and to solicit comments from interested persons on Amendment No. 3.

I. Background

Currently, the OPRA Plan provides that any national securities exchange or registered securities association whose rules governing the trading of standardized options have been approved by the Commission may become a party to the OPRA Plan, provided it agrees to conform to the terms and conditions of the OPRA Plan. However, the OPRA Plan does not provide procedures for the application process or for a participation fee to be paid by an exchange at the time it becomes a party to the OPRA Plan.

In response to the application recently received from the International Securities Exchange (''ISE'') to become a party to the OPRA Plan and in anticipation of the receipt of additional applications from other new options exchanges, OPRA's initial filing proposed to incorporate into the OPRA Plan certain application forms and procedures to be used to apply to become a party to the OPRA Plan and to obtain interim access to the OPRA system and to the OPRA Processor for planning and testing purposes. The initial filing also proposed to add to the OPRA Plan provisions for a one-time participation fee payable by each new party to the OPRA Plan.

The Commission received three comment letters on the proposed OPRA Plan amendment.[6] None of the commenters oppose the proposed establishment of an OPRA participation fee. However, the commenters raise concerns regarding the factors OPRA proposed to consider in determining the amount of the participation fee, asserting that the proposed OPRA Plan amendment could create a barrier to entry into the options industry that could harm competition. In response to

[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 five exchanges which 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'').

[3] *See* Securities Exchange Act Release No. 42002 (October 13, 1999), 64 FR 56543.

[4] *See* letters from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., to Jonathan G. Katz, Secretary, Commission, dated November 10, 1999 (''Archipelago Letter''); the United States Department of Justice, to the Commission, dated November 10, 1999 (''Justice Letter''); and Michael J. Simon, Senior Vice President, General Counsel, and Secretary, International Securities Exchange, to Jonathan G. Katz, Secretary, Commission, dated November 17, 1999 (''ISE Letter'').

[5] *See* letters to Deborah L. Flynn, Division of Market Regulation, Commission, from Joseph Corrigan, Executive Director, OPRA, dated December 31, 1999 (''Amendment No. 1'') and April 26, 2000 (''Amendment No. 2''). *See also* letter to John Roeser, Division of Market Regulation, Commission, from Joseph Corrigan, Executive Director, OPRA, dated May 17, 2000 (''Amendment No. 3''). In Amendment No. 1, OPRA responded to the issues raised by commenters, but proposed no changes to its original filing. In Amendment No. 2, OPRA proposed to revise the list of factors to be considered in the determination of a participation fee and to implement the proposed fee structure on a temporary basis to expire at the end of calendar year 2000. In Amendment No. 3, as described below, OPRA proposes to modify its initial filing to incorporate into the OPRA Plan the concept of a participation fee, with the specific standards applicable to the determination of the amount of a participation fee to be added by a future OPRA Plan amendment, subject to Commission approval. OPRA also proposes to make conforming changes to its Application Agreement.

[6] *See* Archipelago Letter, Justice Letter, and ISE Letter, *supra* note 4.

the commenters, OPRA proposes to modify the proposal.[7]

II. Description and Purpose of Amendment No. 3 to the Plan Amendment

The purpose of Amendment No. 3 to the proposed OPRA Plan amendment, as described above, is to further modify that part of the proposed OPRA Plan amendment concerning the participation fee, and to make conforming changes to the Application Agreement filed as part of the original filing. Because the OPRA Plan participants and the Commission have not yet reached agreement on the precise standards to be applied in determining the amount of the participation fee, OPRA proposes, in Amendment No. 3 to the OPRA Plan amendment, to eliminate the proposed factors to be considered in determining the participation fee and the requirement that the fee be paid as a condition to becoming a party to the OPRA Plan.[8] Instead, Amendment No. 3 would incorporate into the OPRA Plan only the concept of a participation fee, with the specific standards applicable to the determination of the amount of the fee to be added by a future OPRA Plan amendment that would be subject to a separate filing and Commission approval. Although any new party to the OPRA Plan would be subject to the new participation fee, the fee would not be payable until after the applicable standards have been approved by the Commission and a specific fee based on those standards has been agreed upon by OPRA and the new participant.

A new exchange would not have a vote on the adoption of the specific standards applicable to the determination of the fee to be paid by that party or on the determination of the amount of the fee based on those standards, although it may participate with the other parties in the discussion of the specific standards to be adopted. As was provided in the proposed OPRA Plan amendment as originally filed, in the event OPRA and the new participant do not agree on the amount of the participation fee, the amount of the fee will be subject to review by the Commission pursuant to Section 11A(b)(5) of the Act.[9]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3 to the proposed OPRA Plan amendment, including whether it 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 Amendment No. 3 to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the Amendment No. 3 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 number SR–OPRA–99–01 and should be submitted by June 22, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed OPRA Plan Amendment

After careful review, the Commission finds that the proposed OPRA Plan amendment as revised by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission believes that Amendment No. 3 to the proposed OPRA Plan amendment is consistent with Rule 11Aa3–2 [11] 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 any new party to the OPRA Plan would be subject to a participation fee. The fee, however, would not be payable until after specific standards for determining the fee have been approved by the Commission and a specific fee based on those standards has been agreed upon by OPRA and the new participant.

The Commission believes that is reasonable for the OPRA Plan to provide for an initial participation fee to be paid by new parties to the OPRA Plan. Until specific standards can be agreed upon by the OPRA participants and approved by the Commission, however, the Commission believes it is appropriate for new exchanges to be admitted as parties to the OPRA Plan without requiring such new parties to pay a participation fee immediately.

In addition, Amendment No. 3 to the OPRA Plan amendment would allow new parties to the OPRA Plan to participate in discussions regarding the specific standards on which the participation fee is to be based, but would prohibit new parties from voting on the adoption of such standards. The Commission believes that because specific standards would be the subject of a separate filing and published by the Commission for notice and comment, new parties would have a voice, if not a vote, regarding the propriety of such standards. Further, the Commission notes that such standards will ultimately be subject to Commission approval, which will ensure further review of this issue.

The Commission finds good cause to accelerate the approval of Amendment No. 3 to the proposed OPRA Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that Amendment No. 3 to the proposed OPRA Plan amendment is responsive to concerns expressed by commenters and Commission staff regarding the propriety of the proposed factors to be considered in the determination of a participation fee. In addition, approving Amendment No. 3 to the proposed OPRA Plan amendment on an accelerated basis will permit the OPRA Plan to provide for a fee as ISE becomes a party to the OPRA Plan. The Commission believes that approving the amended proposal on an accelerated basis will provide the OPRA Plan participants additional time to develop appropriate standards upon which a participation fee should be based, without unnecessarily delaying ISE's bid to become a party to the OPRA Plan. The Commission finds, therefore, that granting accelerated approval of Amendment No. 3 to the proposed OPRA Plan amendment is consistent with Section 11A of the Act.[12]

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[13] that the proposed OPRA Plan amendment, as amended by Amendment No. 3, (SR–OPRA–99–01) is approved on an accelerated basis.

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[7] *See* Amendment No. 3, *supra* note 5.

[8] *See* Amendment No. 3, *supra* note 5.

[9] 15 U.S.C. 78k–1(b)(5).

[10] 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)

[11] 17 CFR 240.11A3–2.

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 240.11Aa3–2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13616 Filed 5–31–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42821; File No. SR–CBOE–00–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Interpret Rules Relating to Customer Communications

May 24, 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 20, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' 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

The CBOE proposes to issue a Regulatory Circular to its membership setting forth a clarifying interpretation to Exchange Rule 9.21, *Communications to Customers,* which governs communications from member firms to customers or members of the public. The text of the proposed rule change is available at the 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 IV 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

Exchange Rule 9.21, *Communications to Customers,* governs communications between Exchange members and their customers and other members of the public. The Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* (''Guidelines'')[3] to explain the customer communications rules of the options exchanges and the interpretations of these rules. The Exchange proposes to issue a Regulatory Circular to formally install a clarifying interpretation that has long been applied by the Exchange. This interpretation deals with the requirement to discuss tax considerations when engaging in certain option strategies. Although the Exchange believes this interpretation to be consistent with and fairly implied by Rule 9.21 and the Guidelines, the Exchange believes that clarification in a Regulatory Circular would be beneficial to its members.

Although Rule 9.21 is silent regarding tax considerations in customer communications, the Guidelines and the Exchange's internal checklist (''Checklist''), which CBOE's Department of Financial and Sales Practice Compliance uses in reviewing communication materials, do require that tax considerations be discussed in communications in certain circumstances. The Guidelines state, ''depending upon the technical or specific nature of such communication, any one or more of the following points should be addressed.'' The Guidelines go on to list various considerations, including the following statement about taxes, ''[s]ince options transactions may involve complex tax considerations, it would misleading to omit the mention of such strategies from any communication that discusses or recommends options strategies.'' In response to comments and recommendations made by the Commission's Office of Compliance Inspections and Examinations, the Exchange in February 1994 added language to its Checklist reflecting the Exchange's long-standing practice in reviewing communications for tax considerations. That practice was, and is, to require a discussion of tax considerations if the communication is educational material or sales literature that is strategy specific and complex.

The Exchange believes that more clarification could be provided to its members regarding this topic and has, therefore, decided to issue an interpretation in a Regulatory Circular clarifying which communications require a mention about tax considerations. The language in the interpretation mimics the language contained in the Exchange's Checklist. The proposed interpretation states that an advisory concerning taxes is required for educational material and sales literature involving specific, detailed and complex option strategies. In addition, the proposed interpretation states an advisory regarding taxes is not necessary where the communication is of a general, noncomplex nature or involves common basic options strategies (*e.g.,* purchasing, covered writing or cash secured put writing). An example of an appropriate advisory concerning taxes, where one is needed, would be, ''[b]ecause of the importance of tax considerations to all option transactions, the investor considering options should consult with his/her tax advisor as to how taxes affect the outcome of contemplated options transactions.''

Again, although the proposed interpretation merely restates the Exchange's long-standing policy in reviewing customer communications for the inclusion of discussions of tax considerations, the Exchange believes that this policy also makes sense from a practical standpoint. The Exchange believes that in common, basic option strategies the tax consequences are straightforward. Therefore, the Exchange believes that the inclusion of a tax advisory in all communications might serve to lessen the impact of the advisory in those cases where the advisory serves a useful purpose.

The Exchange believes that formal clarification of this interpretation of Rule 9.21 is warranted; however, the Exchange also believes that its long-standing interpretation is appropriate and supported by the language of the Guidelines.

2. Statutory Basis

The CBOE believes the proposed Regulatory Circular interpretation of Exchange Rule 9.21 is consistent with and further the objectives of Section 6(b)(5)[4] of the Act in that it is designed to remove impediments to a free and

[14] 17 CFR 200.30–3(a)(29).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File Nos. SR–Amex–90–38; SR–CBOE–90–27; SR–NASD–91–02; SR–NYSE–90–51; and SR–PSE–90–41).

[4] 15 U.S.C. 78f(b)(5).