

VII. Conclusion

It is Therefore Ordered, pursuant to sections 12(f)²³ and 11A²⁴ of the Act and paragraph (c)(2) of Rule 11Aa3-2²⁵ thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through July 19, 2001, and certain exemptive relief through July 19, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44347; File No. SR-OPRA-2001-02]

Options Price Reporting Authority; Notice of Filing of Amendment to OPRA Plan to Permit Exchanges to Disseminate Unconsolidated Market Information to Certain of Their Members

May 24, 2001.

Pursuant to section 11A of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 11Aa3-2 thereunder,² notice is hereby given that on April 12, 2001, the Options Price Reporting Authority ("OPRA"),³ 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").

²³ 15 U.S.C. 781(f).

²⁴ 15 U.S.C. 78k-1.

²⁵ 17 CFR 240.11Aa3-2(c)(2).

²⁶ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 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 five categories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange ("CBOE"), the International Securities Exchange ("ISE"), the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

The amendment would permit options exchanges to disseminate unconsolidated market information to certain of their members under certain circumstances.

I. Description and Purpose of the Amendment

The purpose of the proposed amendment is to change the provision of the OPRA Plan that requires the parties to use the OPRA System as the exclusion means for the dissemination of options last sale reports and quotation information (the "exclusivity clause"). The proposed amendment, in part, would modify the exclusivity clause to incorporate two conditional, temporary exemptions from the exclusivity clause that the Commission previously granted to the ISE and the CBOE.⁴ These exemptions, which expire on May 26, 2001, and which the Commission is extending today until September 1, 2001,⁵ permit these two exchanges to disseminate to all of their members, but not to other persons, unconsolidated market information pertaining to options traded in their respective markets by means of communication networks other than the OPRA System, subject to conditions.

The proposed amendment would modify the exclusivity clause so that each OPRA participant could disseminate its own market information by means of communication networks separate from the OPRA System under the following conditions. First, an OPRA participant could disseminate its own market information through means separate from the OPRA System only to other OPRA participants and to its members to display on terminals or workstations used by persons associated with such members who are authorized to enter or transmit orders or quotations in the options market maintained by the OPRA participant.⁶ This condition means that an exchange's market information could not be furnished to a customer of a member, whether over a terminal sponsored by a member or otherwise. Second, each member to which an OPRA participant disseminates its market information would be required to have equivalent

access to consolidated options market information disseminated by OPRA for the same classes or series of options that are included in the market information.⁷ Access would be deemed to be "equivalent" if the information were equally accessible on the same terminal or workstation. Both of these conditions are consistent with conditions set forth by the Commission in the exemption letters to the ISE and CBOE.

Finally, the proposed amendment would prohibit OPRA participants from disseminating their market information through means other than the OPRA System on a more timely basis than the same information is furnished to the OPRA System for inclusion in the consolidated information disseminated by OPRA.⁸ While this condition is similar to one set forth in the exemption letters, the proposed amendment differs materially from that in the exemption letters because it would not consider market information to be disseminated more timely than information is furnished to the OPRA System simply because the market information includes additional or more frequently updated information, so long as it does not include additional or more frequently updated price information in respect of the best bid or best offer for any series of options as compared with price information furnished to OPRA. Accordingly, the proposed amendment would permit an OPRA participant to provide market information through a network separate from the OPRA System that is in addition to or different from the information furnished to the OPRA System, including information concerning orders and quotations in the OPRA participants' market that do not represent the best bid and offer and size information that is not furnished to OPRA.

The Quote Rule⁹ requires that if an exchange collects from responsible brokers or dealers quotation sizes and aggregate quotation sizes in listed options, such exchange must make available the aggregate quotation sizes associated with the best bid and offer to quotation vendors. The Commission believes, and OPRA acknowledges, that, absent an exemption from the Quote Rule, an exchange may not make available aggregate quote size through a network separate from the OPRA System (*i.e.*, make available to a quotation vendor) without also making such information available to other

⁴ See Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated May 25, 2000 and Edward J. Joyce, President, CBOE, dated November 6, 2000.

⁵ See Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, and Edward J. Joyce, President, CBOE, dated May 24, 2001.

⁶ See proposed OPRA Plan amendment, Section V.(c)(iii)(A).

⁷ See proposed OPRA Plan amendment, Section V.(c)(iii)(B).

⁸ See proposed OPRA Plan amendment, Section V.(c)(iii)(C).

⁹ Exchange Act Rule 11Ac1-1, 17 CFR 240.11Ac1-1.

quotation vendors through the OPRA System.

By modifying the OPRA Plan to incorporate the previously granted exemptions from the OPRA Plan's exclusivity clause, OPRA believes that the proposed amendment would place all of the parties to the OPRA Plan on equal footing with respect to the right to disseminate their market data to their members. OPRA believes that this would allow any of the parties to the OPRA Plan to make market information available to those of its members who enter or transmit orders or quotes in or to its market, while at the same time assuring that all persons who have access to market information also have equal access to consolidated market information disseminated by OPRA. OPRA represents that because parties that operate an electronic market or an electronic trading facility must be allowed to disseminate market information to their members who enter orders or quotes in their markets, the proposed amendment would provide parties who do not maintain such electronic facilities with the same right to disseminate market information to their members, thereby fostering fair and equal competition among all of the parties.

II. Implementation of Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3-2 of the Act.¹⁰

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA 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, NW., Washington, DC 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-2001-02 and should be submitted by June 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44342; File No. SR-Amex-2001-28]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Select Ten Notes

May 23, 2001.

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 May 7, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Amex proposes to list and trade notes, the return on which is based upon an equal-dollar weighted portfolio of securities representing the ten highest dividend yielding stocks in the Dow Jones Industrial Average ("DJIA") from year to year (the "Select Ten Index" or "Index").³

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 Amex 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 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

Under section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.⁴ The Amex proposes to list for trading under section 107A of the Company Guide notes based on the Select Ten Index (the "Select Ten Notes" or "Notes"). The Select Ten Index will be determined, calculated and maintained solely by the Amex.⁵

The Select Ten Notes will conform to the initial listing guidelines under Section 107⁶ and continued listing guidelines under sections 1001-1003⁷

Proctor & Gamble Co.; and Minnesota Mining & Manufacturing Co. The portfolio of securities will include the ten highest dividend yielding stocks in the DJIA for that year and the Amex will not have any discretion in the selection process.

⁴ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

⁵ Subject to the criteria in the prospectus regarding the construction of the Index, the Exchange has sole discretion regarding changes to the Index due to annual reconstitutions and adjustments to the Index and the multipliers of the individual components.

⁶ The initial listing standards for Select Ten Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholder's equity of at least \$20 million.

⁷ The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10

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¹⁰ 17 CFR 24.0.11Aa3-2. OPRA requested that the Commission approve the amendment prior to May 26, 2001, to avoid disrupting the markets of the two exchanges that are now operating under the previously granted temporary exemptions, which are scheduled to expire on that date. However, in order to allow for a full comment period on this proposal, the Commission has extended the previously granted temporary exemptions for another 90 days. See note 5, *supra*.

¹¹ 17 CFR 200.30-3(a)(29).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The initial portfolio of securities comprising the Select Ten Index for the first year will be the highest dividend yielding stocks as of May 1, 2001, and are as follows: Philip Morris Co., Inc.; Eastman Kodak Co.; General Motors Corp.; DuPont El De Nemours; J.P. Morgan Chase & Co.; Caterpillar Inc.; International Paper Co.; SBC Communications, Inc.;