

application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by March 19, 2004.

*Appropriateness of establishing other expedited procedures.* The Commission grants the Service's Request for Expedition to the extent of authorizing settlement procedures; allowing a shorter-than-usual period for intervention; and requiring participants, in their notices of intervention, to state whether they intend to seek a hearing and to identify with particularity any genuine issues of material fact that would warrant a hearing. Decisions on other expedited procedures, such as limiting discovery time limits, will be made at a later time.

*Settlement.* The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold settlement conferences on March 18, 19, 22, or 23, 2004, in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's experimental status or on the need for a hearing.

*Representation of the general public.* In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*Intervention; need for hearing.* Those wishing to be heard in this matter are directed to file a written notice of intervention with Steven W. Williams, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001, on or before March 17, 2004. Notices should indicate whether participation will be on a full or limited basis. See 39 CFR 3001–20 and 3001–20a. No decision has been made at this point on whether a hearing will be held in this case. To assist the Commission in making this decision, participants are directed to indicate, in their notices of intervention, whether they seek a hearing and, if so, to identify with

particularity any genuine issues of material facts believed to warrant such a hearing.

*Prehearing conference.* A prehearing conference will be held March 25, 2004, at 10 a.m. in the Commission's hearing room. Participants shall be prepared to address matters referred to in this ruling.

#### Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. MC2004–1, Experimental Periodicals Co-Palletization Dropship Discounts For High Editorial Publications to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit *en banc* in this proceeding.

3. The deadline for filing notices of intervention is March 17, 2004.

4. Notices of intervention shall indicate whether the participant seeks a hearing and identify with particularity any genuine issues of material fact that warrant a hearing.

5. The deadline for answers to the Motion of United States Postal Service for Waiver is March 19, 2004.

6. The deadline for comments on the Postal Service's request for treatment under Commission rules 67–67d is March 19, 2004.

7. The Commission will make its hearing room available for settlement conferences on March 18, 19, 22, or 23, 2004, at such times as deemed necessary by the settlement coordinator.

8. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.

9. The Postal Service's Request for Expedition is granted to the extent of allowing a shorter-than-usual intervention period, allowing settlement discussions, and requiring participants' interest in a hearing to be identified in the notice of intervention.

10. A prehearing conference will be held Thursday, March 25, 2004, at 10 a.m. in the Commission's hearing room.

11. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

12. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Issued: February 27, 2004.

**Steven W. Williams,**  
Secretary.

[FR Doc. 04–4769 Filed 3–2–04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form S–3, OMB Control No. 3235–0073, SEC File No. 270–61

Form S–8, OMB Control No. 3235–0066, SEC File No. 270–66

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (“Commission”) is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form S–3 (OMB Control No. 3235–0073; File No. SEC 270–61) is used by issuers to register securities pursuant to the Securities Act of 1933. Form S–3 gives investors the necessary information to make investment decisions regarding securities offered to the public. Approximately 2,010 issuers file Form S–3 at an estimated 398 hours per response for a total annual burden of 799,980 hours. It is estimated that 50% of the total burden hours (399,990 reporting burden hours) is prepared by the issuer.

Form S–8 (OMB Control No. 3235–0066; SEC File No. 270–66) is the primary registration statement used by qualified registrants to register securities issued in connection with employee benefit plans. It is estimated that 4,050 issuers file Form S–8 annually at an estimated 24 hours per response for a total annual burden of 97,200 hours. It is estimated that 50% of the total burden hours (48,600 reporting burden hours) is prepared by the issuer.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 24, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-4713 Filed 3-2-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49322; File No. SR-OPRA-2003-01]

### Options Price Reporting Authority; Order Granting Permanent Approval to an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information and Amendments No. 1 and 2 Thereto To Revise the Manner in Which the Options Price Reporting Authority Engages in Capacity Planning and Allocates Its Available System Capacity Among the Parties to the Plan

February 26, 2004.

On April 15, 2003, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").<sup>3</sup> The proposed amendment would revise the manner in which OPRA engages in capacity planning and allocates capacity among the exchanges that are parties to the Plan. On July 16, 2003 and October 12, 2003, respectively, OPRA submitted Amendments No. 1 and 2 to the

proposal.<sup>4</sup> On November 21, 2003, the Commission issued notice of and approved the proposal, as amended, on a temporary basis not to exceed 120 days, and solicited comment on the proposal.<sup>5</sup> The Commission received no comments on the proposal, as amended. This order approves the OPRA Plan amendment, as amended, on a permanent basis.

The proposed Plan amendment would revise the manner in which OPRA engages in capacity planning and allocates its available system capacity among the exchanges that are parties to the Plan. In addition, proposed amendments to the OPRA Plan would make it clear that participation in OPRA is limited to those self-regulatory organizations ("SROs") that are engaged in the business of providing a market for the trading of securities options and other eligible securities under the OPRA Plan.<sup>6</sup> Furthermore, the functions and objectives of OPRA would be specifically set forth in the OPRA Plan, most particularly in the preamble to the Plan and in Section III(b) thereof. The proposed amendment would make explicit in the preamble to the Plan that joint action by the parties to the Plan is limited to those matters as to which they share authority under the Plan, and then only to circumstances where such joint action is necessary in order to fulfill the functions and objectives of OPRA as stated in the Plan.

Under the proposed amendment to the OPRA Plan, OPRA would require each party to the Plan from time to time to independently project the capacity it would need and to privately submit requests for capacity based on its projections to an Independent System Capacity Advisor ("ISCA"), which

would maintain these individual capacity projections and requests in confidence. The Plan would require the ISCA to maintain the confidentiality of this information, consistent with the provisions of section III(g) of the Plan.<sup>7</sup> Furthermore, confidential capacity-related information obtained by the ISCA would not be used by the ISCA in any of its other business activities in a manner that may result in the information being made available to any of the parties to the Plan, or to use it in any manner that is otherwise inconsistent with the ISCA's obligation to hold the information in confidence.<sup>8</sup> The ISCA would then determine how and when to modify the OPRA System in order to provide to each party the capacity it has requested and how the cost of such modifications is to be allocated among the parties, all in accordance with, and subject to, the proposed Capacity Guidelines that are incorporated in the Plan as part of the proposed amendment.

Moreover, future Plan amendments, including amendments to the proposed provisions of the Plan pertaining to capacity planning and allocation, would continue to require the unanimous approval of the parties. However, decisions relating to the selection or termination of the ISCA, certain changes to the authority of the ISCA, and changes to the Capacity Guidelines may be authorized by a vote of 75% of the parties. In addition, the selection of the ISCA would be required to be filed with the Commission as an amendment to OPRA's national market system plan. In accordance with this requirement, OPRA selected the Options Clearing Corporation ("OCC") to act as the ISCA.

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendments No. 1 and 2, is consistent

<sup>4</sup> See letters from Michael L. Meyer, Counsel to OPRA, Schiff, Hardin & Waite, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 15, 2003 ("Amendment No. 1") and October 15, 2003 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 48822 (November 21, 2003), 68 FR 66892 (November 28, 2003).

<sup>6</sup> The proposed amendment would revise the OPRA Plan in response to the Commission's Order instituting public administrative proceedings against four of OPRA's participant exchanges (Amex, CBOE, PCX and Phlx, referred to collectively as the "respondent exchanges") pursuant to Section 19(h)(1) of the Act, and specifically in response to Section IV.B.c. of the Order (the "Undertaking"). The Undertaking requires each of the four respondent exchanges, acting jointly with all other options exchanges, to modify the structure and operation of OPRA in various ways that would eliminate undesirable joint and collective action in the capacity planning and allocation process. See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268, dated September 11, 2000 and Administrative Proceeding File 3-10282 ("Order").

<sup>7</sup> See Amendment No. 2, *supra* note 4.

<sup>8</sup> Guideline No. 1 of the Capacity Guidelines would require the ISCA to maintain internal safeguards and procedures adequate to assure that the requirements of the Plan pertaining to the confidentiality of information provided to the ISCA would be satisfied. In addition to the confidentiality requirements imposed on the ISCA, the proposal would amend Section III(b) of the Plan to make explicit the requirement that each person who performs administrative functions for OPRA, including its Executive Director and other officials and its processor, shall agree that any nonpublic business information pertaining to any party shall be held in confidence and not be shared with the other parties, except for information that may be shared in connection with permitted joint activities. The proposal would also make explicit in the preamble to the Plan that the parties themselves are each obligated to take reasonable steps to insure that their nonpublic business information remains segregated and confidential from the other parties, except for information that may be shared in connection with permitted joint activities.

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

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

<sup>3</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 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 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 six participants to the OPRA Plan are the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc., the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx").