

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52710; File No. SR-OPRA-2005-03]

### Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Provide That Classes of Foreign Currency Options Newly Introduced for Trading on the Philadelphia Stock Exchange Be Treated as Equity/Index Options During a Temporary Period Ending on December 31, 2007

November 1, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on October 21, 2005, the Options Price Reporting Authority ("OPRA") 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").<sup>3</sup> The proposed OPRA Plan amendment would provide that classes of Foreign Currency Options ("FCO Securities" or "FCO"), newly introduced for trading on the PHLX during a temporary period ending no later than December 31, 2007, will be treated by OPRA as Equity/Index Options ("EIO Securities" or "EIO") to the extent described in the proposed amendment. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

#### I. Description and Purpose of the Amendment

FCO Securities under the OPRA Plan are currently traded only on the PHLX, which processes these options on a separate computer platform from its EIO Securities. The FCO platform is a legacy system, which is in the process of being converted to a newer technology. The

PHLX has advised OPRA that it expects to have this effort completed no later than December 31, 2007, and that, in the meanwhile, the PHLX does not intend to devote resources to expanding the soon to be replaced legacy platform. Because the legacy FCO platform does not have the capacity to handle additional classes of FCO Securities that may be introduced for trading by the PHLX while the new platform is being developed, the PHLX has proposed to temporarily process any such new classes of FCO Securities on its EIO platform, which does have the capacity to handle them, until the new FCO platform is available. According to OPRA, this would mean that, while these new FCO Securities are on the EIO platform, their quotes and trade reports would be disseminated to OPRA over EIO data lines and not over the FCO data line. In turn, this would require OPRA to treat these quotes and trade reports as if they were EIO Securities. Thus, quotes and trade reports covering these new FCO Securities would be included in OPRA's basic service and not in its FCO service, and revenues and expenses pertaining to market data regarding these new FCO Securities would be allocated to OPRA's basic accounting center and further allocated among the parties to the OPRA Plan as if these products were EIO Securities and not FCO Securities.

OPRA represents that all currently traded FCO products would continue to be disseminated on the current FCO data line, and would continue to be treated by OPRA as FCO Securities. Only newly traded FCO Securities would be treated as EIO Securities and only for a temporary period while the PHLX's upgraded FCO platform is being developed.

At the PHLX's request, OPRA proposes to amend the OPRA Plan in order to codify in the language of the OPRA Plan the above-described temporary treatment of the PHLX's newly traded FCO Securities.

The text of the proposed amendment to the OPRA Plan is set forth below. Text additions are in *italics*.

\* \* \* \* \*

#### VIII. Financial Matters

\* \* \* \* \*

##### (c) FCO Accounting Center Costs and Revenues

(i) and (ii) [No Change]  
 (iii) *Special Temporary Provision for Newly Traded FCO Securities. This paragraph (c)(iii) applies only to FCO Securities that are introduced for trading on the Philadelphia Stock Exchange ("PHLX") during the period while this paragraph is in effect. FCO*

*Securities introduced for trading by PHLX during this period are referred to as "New FCO Securities."*

*Notwithstanding anything in the Plan to the contrary, effective during a temporary period ending on December 31, 2007, or on such earlier date as may be established by the party or parties trading New FCO Securities, written notice of which shall be given to the other parties ("period of effectiveness"), access to information and facilities pertaining to New FCO Securities shall not be subject to the separate fees and charges that would otherwise apply to such access pertaining to FCO Securities, but instead shall be subject to those fees and charges that apply to Eligible Securities other than FCO Options and Index Options. During the period of effectiveness, revenues derived from New FCO Securities shall be allocated to OPRA's basic accounting center and shall be further allocated among the parties as described in section VIII(a)(iv), and trades in New FCO Index Options and not as trades in FCO Securities. At the close of business on the last day of the period of effectiveness, this section VIII(c)(iii) shall automatically terminate and cease to be of any further effect.*

\* \* \* \* \*

#### II. Implementation of the OPRA Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Section 11A of the Act<sup>4</sup> and Rule 608 thereunder.<sup>5</sup> OPRA states that the proposed amendment would apply to any new classes of FCO Securities introduced for trading on the PHLX during the period beginning at the time the proposed amendment is approved by the Commission and ending when the proposed amendment expires in accordance with its terms.

#### 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. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>4</sup> 15 U.S.C. 78k-1.

<sup>5</sup> 17 CFR 242.608.

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

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>.

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, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc ("PHLX").

No. SR-OPRA-2005-03 on the subject line.

#### Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-OPRA-2005-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OPRA-2005-03 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52701; File No. SR-Amex-2005-101]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, Relating to Equity Transaction Charges

October 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2005, the American Stock Exchange LLC ("Amex" 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 Amex. On October 18, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 27, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to revise a variety of equity transaction fees that Exchange members are charged for executions on the Exchange. These fee changes will only apply to equity issues, and, accordingly will leave unchanged the current transaction charges for Portfolio Depository Receipts, Index

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On October 27, 2005, the Amex withdrew Amendment No. 1.

<sup>4</sup> In Amendment No. 2, the Exchange: (1) Clarified its current practice of assessing equity fees on transactions rather than orders; (2) provided further explanation of how the proposed rule change will attract additional order flow to the Exchange; (3) changed the name of the current "Regulatory Fee" to a "Specialist Transaction Fee" and provided clarification as to the purpose of that change; (4) amended the rule text to specifically indicate that System Orders are subject to a transaction charge; and (5) generally provided clarification regarding the purpose of the proposed rule change.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

Fund Shares and Trust Issued Receipts ("Exchange-Traded Funds" or "ETFs").

The text of the proposed rule change, as amended, is available on the Amex's Web site at <http://www.amex.com>, at the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

#### 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, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Amex is proposing to amend its Equity Fee Schedule to revise a variety of transaction fees applicable to Exchange members. These fee changes will be assessed on Exchange members commencing October 3, 2005.

The Exchange proposes the following changes to the Amex Equity Fee Schedule: (i) Adoption of a monthly transaction charge of \$.0030 per share for up to 50 million shares and \$.0025 per share for amounts over 50 million shares; (ii) elimination of transaction charges based upon the total gross dollar amount; (iii) clarification that transaction charges are calculated based on each transaction rather than each order; (iv) revision to the transaction charges so that only the first 5,000 shares of each executed transaction are assessed the charge; (v) elimination of transaction charges for transactions resulting from electronic orders of up to 500 shares;<sup>7</sup> (vi) elimination of the fee exemption for transactions by Amex option specialists and registered options traders ("ROTs") in paired securities; (vii) elimination of the 50% fee exemption for proprietary trades in Canadian securities; and (viii) changing the name of the "Regulatory Fee" to the

<sup>7</sup> The Commission notes that a clarifying change was made to item (v). Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on October 28, 2005.

<sup>6</sup> 17 CFR 200.30-3(a)(29).