SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42755; File No. 4–434]

RIN 3235–AH92

Options Price Reporting Authority

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to national market system plan.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing amendments to the Options Price Reporting Authority (''OPRA'') Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed amendments set forth two alternatives to establish a formula to allocate the message capacity of the OPRA system among the participant exchanges. The allocation formula is intended as a short-term solution to OPRA capacity shortages.

DATES: Comments should be submitted by June 9, 2000.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. 4–434; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*).

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SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to the OPRA Plan [1] to allocate among the options exchanges OPRA's peak period message handling capacity. An allocation formula is needed because of OPRA's inability to increase its systems capacity within the short-term. Without sufficient capacity, options market data are delayed and, therefore, stale, which reduces market transparency and hampers efficient price discovery. When this occurs, the only market participants with up-to-date quote and trade information are those physically on the floor of a particular exchange. Those participants then have an informational advantage that is inconsistent with the goal of a fair and open market for all investors.

Consolidated options data offer enormous benefits to investors and the markets. The Commission is working with the OPRA participants to increase the capacity of the consolidated data systems and to empower the markets to individually ensure adequate data capacity in the future. In the meantime, an objective capacity allocation formula is essential to ensure that scarce OPRA systems capacity is allocated among the options exchanges on a fair and reasonable basis and that delays in the dissemination of options market data to the public are minimized.

An equitable allocation of capacity should ensure that all broker-dealers and investors have available to them accurate and timely information with respect to quotations for and transactions in options and would help to avoid delays and queues in the dissemination of options market information. The OPRA Plan participants have been unable to formulate an objective capacity allocation model. The Commission, therefore, is proposing these amendments to the OPRA Plan on its own initiative, pursuant to Section 11A under the Securities Exchange Act of 1934 (''Act'') [2] and Rule 11Aa3–2 thereunder,[3] and is seeking comment from interested persons.

I. Background

In 1981, the Commission approved the OPRA Plan as a national market system plan, pursuant to Sections 11A(a)(2) and 11A(a)(3)(B) of the Act.[4] The OPRA Plan governs the process by which options market data are collected from participant exchanges, consolidated, and disseminated.[5] Consolidated data help ensure that broker-dealers, markets, and investors have the best prices available for an option, from all markets trading that option class. It assists customers in setting the terms of their orders and in monitoring how well their brokers execute their orders. Consolidated data also assist brokers and markets in providing the best execution possible for an order.

Current OPRA participants include: Amex, CBOE, PCX, Phlx, and NYSE.[6] A policy committee composed of representatives from each participant exchange implements and, subject to Commission approval, amends the policies and procedures set forth in the OPRA Plan. This committee selected the Securities Industry Automation Corporation (''SIAC'') as the facility for gathering the last sale and quote information from each of the participant exchanges and consolidating and disseminating it to approved vendors. All of the transactions executed on, and price quotations for options generated by, each options exchange are communicated to the public by OPRA through the facilities of its exclusive processor, SIAC. The messages are sent to OPRA and distributed to market data vendors on a consolidated basis for use by options market participants, including retail investors, broker-dealers, and the exchanges themselves.

A. Systems Capacity

Each trade that is executed on an options exchange, as well as each price change quoted on an options exchange, is reported to OPRA as a ''message.'' The options markets generate messages for a substantial number of products. Currently, there are approximately 3,300 equity securities and indexes underlying listed options products, and

[1] 1 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).

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 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'').

[2] 15 U.S.C. 78k–1.

[3] Rule 11Aa3–2 establishes procedures for initiating or approving amendments to national market system plans such as the OPRA Plan. Paragraph (b)(2) of Rule 11Aa3–2 permits the Commission to propose amendments to an effective national market system plan. Further, Paragraph (c)(2) of Rule 11Aa3–2 requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule. *See* 17 CFR 240.11Aa3–2(c)(2).

[4] 15 U.S.C. 78k–1(a)(2) and (3)(B); *see also* Securities Exchange Act Release No. 17638 (March 18, 1981), as amended; *see, e.g.,* Securities Exchange Act Release No. 40767 (December 9, 1998), 63 FR 69354 (December 16, 1998).

[5] OPRA was granted registration as a securities information processor by the Commission in 1976. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4372.

[6] The NYSE sold its options business to the CBOE in 1997. Nevertheless, the NYSE remains a participant of OPRA. The International Securities Exchange is seeking to become an OPRA participant.

more than 140,000 individual options series.[7] Trade and quote data are generated continuously during the hours that markets are open for each options product listed on each options exchange.

Quote message traffic represents the vast majority of the options message traffic generated.[8] Generally, quotes are generated automatically for individual options series based on changes in the underlying stock price or index value. In other words, every time a price changes for a particular equity security, the quotes for all of the options on that security or an index in which that security is represented are automatically updated on each exchange that trades those options. This enormous amount of quote message traffic is burdening the OPRA system, which threatens to compromise the reliability of options market data disseminated to market participants, including retail investors.

The number of messages generated by the exchanges on a daily basis has been growing exponentially. In January 1999, OPRA reported an average of only about 17 million messages per day. By January 2000, OPRA reported an average of 40 million messages per day. And, on April 4, 2000, OPRA reported 74.3 million messages.[9]

A more significant gauge of the level of options market data is messages per second. Messages per second, or ''MPS,'' is just that—the number of messages (*i.e.,* options trade and quote data) reported to OPRA by the options exchanges during any given second of a trading day. The increases in this gauge have been nothing less than staggering. Between January 1998 and January 1999, OPRA reported an increase in one and five minute peaks from approximately 600 messages per second to approximately 1,400 messages per second. By January 2000, OPRA's reported one and five minute peaks reached approximately 2,900 messages per second. Currently, the exchanges are hitting OPRA's current systems capacity of 3,540 messages per second on an almost daily basis.

In the past, OPRA had generally been able to handle the peak messages per second generated by the exchanges. In January 1998, OPRA had systems capacity to handle 600 messages per second, with plans to upgrade its systems to handle more messages per second. In January 1999, OPRA had capacity to handle 1,900 messages per second and thus, was not in immediate danger of a system overload based on the peak messages per second reported. In January 2000, however, OPRA systems only had capacity to handle approximately 3,000 messages per second, which was dangerously close to being met.[10]

The significant increase in message traffic may be attributed to increased volume on the exchanges, increased volatility in the underlying equity securities, and increased multiple trading of previously exclusively-traded options products across the options exchanges. Dramatic growth in options quote message traffic is expected to continue in the near future as a new exchange enters the market,[11] products begin to trade in decimals rather than fractions, and quotes are disseminated with size.[12] The combination of these factors could result in a peak MPS rate as high as 38,000 MPS by the end of 2001, a ten-fold increase over existing capacity.

B. OPRA's Capacity Initiatives

As options message traffic has increased exponentially over the last few years, OPRA has directed SIAC to implement technological updates to accommodate the additional message traffic. Over the last year, however, it has become increasingly apparent that the message traffic expected to be generated by the options exchanges cannot be accommodated by the planned enhancements to the OPRA system.

In response to the systems capacity problems, OPRA, SIAC, as well as the options exchanges and their members, have worked to develop strategies to mitigate quote message traffic. In 1999, SIAC, at the request of the Commission, retained Stanford Research Institute (''SRI'') to conduct a study and to recommend possible strategies aimed at mitigating the amount of options quote message traffic.[13] As part of this study, the options exchanges (including ISE), SIAC, OPRA, and the Securities Industry Association (''SIA'') met over a period of six months to attempt to develop quote reduction and mitigation strategies.

A number of alternatives to reduce options message traffic were considered and SRI's findings were presented to Commission staff on December 14, 1999. To date, the options exchanges have, individually, implemented a number of internal mitigation strategies. The Commission expects the options exchanges to continue to consider other mitigation strategies that could be implemented as both long-term and short-term solutions. Nonetheless, quote traffic has continued to strain OPRA capacity.

II. Discussion

A. Purpose of the Proposed OPRA Plan Amendment

As discussed above, the Commission is greatly concerned about the lack of available OPRA systems capacity to accommodate the current and anticipated levels of options message traffic generated by the options exchanges. The Commission is concerned about the ability of OPRA to disseminate options market data on a real-time basis during times of high message traffic or high volatility in the equity markets. During these times, when systems capacity is stretched to the limit, OPRA data feeds may begin to queue, leading to the dissemination of stale market data to market participants. The Commission is concerned that without access to current market information, investors and other market participants will be unable to make informed options trading decisions.

To address mounting capacity problems, novel ways of obtaining adequate capacity to support the industry's continued growth will need to be identified, evaluated, and implemented. The Commission recognizes that wholesale changes to the manner in which capacity is obtained will not occur overnight. Therefore, the options markets must continue to work within the existing capacity infrastructure for the short-term.

The options exchanges have responded to this capacity crisis by agreeing to allocate existing OPRA systems capacity among themselves

[7] A series is a class of options, either all puts or all calls, on the same underlying security that have the same exercise price and maturity date.

[8] For example, in February 2000, the average number of quotes per day was 37.5 million and the average number of trades per day was 183,000.

[9] As discussed below, this tremendous increase in message traffic may be attributed, in part, to the increase in multiple listing of previously exclusively-traded option classes that began in August 1999.

[10] For example, on January 5, 2000, SIAC reported a one-minute peak of 2,970 MPS and on January 25, 2000, SIAC reported a five-minute peak of 2,868 MPS.

[11] The International Securities Exchange (''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).

[12] Currently, unlike quotes for equity securities, options price quotes currently are disseminated without size. Options quotes are expected to be disseminated with size in January 2001.

[13] On September 8, 1999, the Commission ordered the options exchanges to participate in the SRI quote mitigation study and to act jointly to develop quote mitigation strategies. Commission staff attended all meetings of this group. *See* Securities Exchange Act Release No. 41843 (September 8, 1999), 64 FR 50126 (September 15, 1999).

during peak periods,[14] while continuing to work on other short-term mitigation strategies, including delisting classes with little or no open interest and developing a cabinet for inactive options classes.[15] To date, the options markets have reluctantly agreed, on three occasions, to allocate the existing OPRA capacity among themselves during peak periods through temporary amendments to the OPRA Plan.[16] The capacity allocation used by the exchanges has been based loosely on the historical peaks experienced by each options market, and determined through negotiations among the markets. Despite repeated urgings by Commission staff, the options exchanges have been unable to formulate an equitable, more objective capacity allocation model, which would include incentives for the exchanges to reduce the excessive quoting of existing listings or to add new listings only with a sound business rationale. The Commission notes that each exchange has represented that the total messages per second allocated to it are insufficient to address its capacity needs. The Commission is concerned that the exchanges may be unable or unwilling to continue to allocate scarce OPRA capacity among themselves in the near future. The Commission believes the queuing that would undoubtedly result is unacceptable because all market participants would be subjected to unreliable market data, including stale quotes.

B. Two Alternative Proposed Capacity Allocation Models

The Commission is proposing to amend the OPRA Plan to establish a capacity allocation formula to be used in the short-term to allocate OPRA systems capacity among the options exchanges during peak periods. The Commission is proposing the following two alternative allocation models.

1. Alternative A

The first proposed capacity allocation model would allocate capacity during peak periods based on the average quotation volume of options classes listed on each exchange that have sufficient trading volume to meet a minimum threshold.[17] The proposed formula rewards quoting efficiency and restricts the allocation of capacity to an exchange in a particular options class in which the exchange's trading volume does not exceed certain thresholds. The Commission proposes that, on a quarterly basis,[18] OPRA would perform the required allocation calculation itself or contract with its processor or another third party to do so. The information necessary to calculate allocations pursuant to the proposed formula is based on quote and transaction data reported routinely to OPRA by the options exchanges pursuant to the OPRA Plan. OPRA would notify the options exchanges and the Commission of the specific allocations for peak periods that would be in place beginning one month after the calculation is made.

a. Included Classes

A critical element of the first Commission proposal is the concept that an exchange only receives a portion of the available capacity for those option classes in which the exchange's trading reaches some minimal threshold (''Included Classes'').[19] The Commission is proposing that an options class be considered an Included Class for an exchange if during the three-month period, that exchange trades an average of: (i) 15 trades per day, if the class is multiply-listed, or (ii) 30 trades per day, if the class is exclusively-listed. Thus, an options exchange would receive capacity credit only for those options classes in which it exceeds these minimum levels of trading activity.

The Commission understands, however, that there are a number of ways to define the term Included Class. For this reason, the Commission is also seeking comment on several variations of the proposed definition. Specifically, the Commission seeks comment on whether the proposed 15/30 threshold levels are appropriate, or whether these thresholds should be lower or higher. For example, should an exchange only have to have an average one trade per day in a multiply-listed class for that class to be an Included Class? The Commission also seeks comment on the threshold for considering an exclusively traded options class as an Included Class. Specifically, should the minimum be on average 15 trades per day, or 45 trades per day, or another amount, rather than 30 trades per day as proposed? In addition, the Commission would like commenters' views on whether the exchanges should have the same average daily trading requirements for multiply-listed classes and exclusively-listed classes to be considered Included Classes. If commenters believe that multiply-listed and exclusively-listed options should be subject to the same minimum trading volume standard, the Commission seeks comment on what that standard should be. Finally, the Commission seeks comment on whether another measure, such as an exchange's average quarterly ratio of quotes-to-contract volume in an options class would be more appropriate to use for determining which classes are Included Classes for an exchange.

To permit new entrants a fair opportunity to compete with existing exchanges, the Commission is also proposing that all options classes listed by a new options market be considered Included Classes for 9 months. Only after the new exchange has been operating for nine months would the minimum threshold levels be applied in determining which options classes are Included Classes for purposes of the allocation of capacity.

The Commission recognizes the highly competitive environment in which the options exchanges operate. As such, the Commission is carefully considering whether the proposed

[14] During peak periods when capacity caps are imposed on the exchanges, the Commission believes that it is unacceptable for any options exchange to generate message traffic in excess of the level allocated to it pursuant to an approved OPRA Plan amendment. An exchange that transmits message traffic through inbound OPRA lines in excess of its allocation will cause queuing in the OPRA system, and consequently, will result in the dissemination of unreliable market data to all market participants, including retail investors. The options markets should take whatever steps are necessary to prevent delays in their quotes stream processed by OPRA. If an options exchange inadvertently generates and transmits to OPRA message traffic in excess of its allocation, the Commission expects that the exchange will notify the public that it has exceeded its established allocation and as a result, its disseminated quotes are likely to be unreliable.

[15] A cabinet would effectively inactivate those options classes placed in the ''cabinet,'' so that the options exchanges would provide quotes to market participants only upon specific request, rather than disseminating continuous, two-sided quotations.

[16] 16 *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).

[17] The Commission proposes to include in the allocation formula a requirement that the trading volume of an option class meet certain minimum thresholds on an exchange before that options class will be counted for purposes of that exchange's allocation. As discussed below, this minimum threshold requirement is intended to limit any potential incentive for an exchange to add new products solely to obtain an additional allocation of capacity, without seriously committing to compete for order flow in those classes.

[18] The Commission proposes that the calculation be made on a quarterly basis to take into consideration the potential effect of the expiration cycle on the average quoting frequency and trading volume in individual option classes. The calculations would be based on quoting and trading activity during a calendar quarter (*e.g.*, January, February, and March) and the allocations would be effective beginning the second month following the end of the calendar quarter (*e.g.*, May 1).

[19] Proposed OPRA Plan Section III (m).

capacity allocation model should include any special protections for new listings.[20] As the Commission strongly encourages competition both within and among the various options exchanges, a short-term ''safe harbor'' was contemplated for new listings (*e.g.,* three to six months), during which time the listing exchange would get credit towards its allocation for the new listing, even if it obtained little or no order flow in the particular class. The Commission's desire to provide a safe harbor for new listings was balanced against its concern about the potential that exchanges could abuse it by adding new listings merely to obtain a larger share of capacity and then, at the end of the established safe-harbor period, immediately delist those classes and add new listings. To limit this potential, the Commission proposes to include in the formula for capacity allocation only those options classes that meet the minimum trading levels. The Commission emphasizes that its proposal does not in any way limit the ability of the options exchanges to list new option classes. Instead, the proposed limits on what options classes are considered Included Classes, relate only to the extent to which a particular exchange would receive an allocation credit of capacity for a new listing.

b. Capacity Credit for Multiply and Exclusively Listed Options Classes

For each options class that is listed on more than one exchange, an exchange for which such class is an Included Class would be allocated capacity based on the average quoting frequency during the first half-hour of the trading day after the opening rotation across all exchanges for which such class is an Included Class. By allocating capacity based on the average level of quoting across the exchanges trading a particular option class, the Commission intends to encourage quoting efficiency in multiply-traded classes. For options classes listed on only one exchange, an exchange would be allocated capacity based on the average quote traffic generated within the first half-hour of trading after the opening rotation, if the exchange's trading volume was sufficient for that class to be an Included Class.[21] The Commission seeks comment as to the propriety of determining the average quoting frequency of multiply-traded and exclusively-traded options classes based on the quoting activity occurring during the first half-hour after the opening rotation.

[20] The Commission defines an options class as a ''new'' listing if the listing exchange does not currently list that class, regardless of whether another options exchange has previously listed the same option class.

[21] Proposed OPRA Plan Section III (m).

2. Alternative B

As an alternative to allocating capacity based on the average quoting frequency of those options classes in which an exchange has sufficient volume to meet certain minimum thresholds, the Commission is proposing to allocate capacity using a modified equal share method. Specifically, under the proposed equal share method, capacity would be allocated equally among all the options exchanges with adjustments based on the market's ratio of quotes to contract volume. The more efficient the market (*i.e.,* the fewer quotes to contracts), the greater the allocation that market receives. Any options classes listed by an exchange during the preceding calendar quarter would be excluded from the ratio calculation. Excluding new listings from the ratio calculation would allow exchanges to list new options classes without being penalized in the allocation of capacity.

The equal allocation would be adjusted by an exchange's deviation from the average ratio of quotes-to-contracts traded multiplied by a dampening factor. The Commission is proposing that the dampening factor be 10% for the first Quote-to-Contract Volume Deviation calculation. The dampening factor will be reduced by one percent and a recalculation of the Quote-to-Contract Volume Deviation will be made if after the first calculation any exchange's capacity allocation falls below a pre-determined minimum, which the Commission is proposing to be 15% of all OPRA capacity. Recalculations of the Quote-to-Contract Volume Deviation will continue, reducing the dampening factor by one percent for each successive recalculation until all exchanges have at least the 15% minimum capacity allocation.

The Commission seeks comment on Alternative B as proposed, and on whether another relative performance criteria, such as quotes-to-number of trades, would be more appropriate. The Commission also seeks comment on what minimum portion of capacity an exchange should be guaranteed. For example, rather than 15%, is 10% a more appropriate minimum? The Commission also seeks comment about the propriety of the proposed dampening factor. Should the dampening factor for the first calculation be a factor other than 10%? In addition, should the dampening factor used in the recalculations be reduced from the factor used in the first calculation by a percentage other than one percent?

III. Request for Public Comments

The Commission seeks comments on adopting a capacity allocation formula, as described in this release. In addition to the requests for comments throughout the release, the Commission seeks comment on whether a capacity allocation formula to allocate OPRA systems capacity during peak periods is necessary and should be adopted. If an objective capacity allocation formula is desirable, commenters should address which of the Commission's proposals would most fairly allocate systems capacity among the options exchanges during peak periods. Commenters should also address whether there are any legal or policy reasons why the Commission should consider a different approach and a description of what that approach should be. The Commission seeks comment on the specific proposals set forth, as well as on the proposed calculation of the average quoting frequency for multiply-traded and exclusively-traded products and the proposed treatment of new listings and new entrants into the market. Commenters should also address the propriety of a quarterly allocation calculation and whether OPRA participants should be permitted to perform the calculation, and under what circumstances. In addition, the Commission seeks comment on whether, under either of the proposed allocation alternatives, options exchanges should receive capacity in units that could be traded among the options exchanges, with the resulting transactions reported to the Commission.

IV. Costs and Benefits of the Proposed Plan Amendments

The Commission is considering the costs and benefits of the proposed amendment to the OPRA Plan.

A. Benefits

The Commission believes that some form of capacity allocation should provide significant short-term benefits by avoiding delayed quotes. Currently, OPRA has the capacity to handle approximately 3,540 messages per second and the exchanges are approaching this level on an almost daily basis. On March 15, 2000, OPRA received 3,486 messages per second over a five-minute period and 3,544 messages per second over a one-minute period. The Commission believes that without a capacity allocation formula for peak message periods, peak message traffic may regularly exceed OPRA's capacity, especially with the entry of the ISE, the planned conversion to decimal pricing, and the dissemination of options quotes with size. If peak quoting rates exceed OPRA's systems capacity, an unacceptable level of queuing may occur and stale or selective market data may be transmitted to market participants and investors, thereby reducing market transparency and hampering efficient price discovery. As a result, investors may be making investment decisions based on stale or delayed quote information.

The Commission believes that, until sufficient capacity is available to the options markets, the adoption of an objective capacity allocation formula, such as one of those proposed by the Commission, should help to ensure that scarce OPRA systems capacity is allocated in an equitable manner. The Commission further believes that the adoption of objective criteria should bring additional transparency and consistency to the allocation process. By using an objective capacity allocation formula to determine each exchange's message traffic limitations during high volume or high volatility times, the Commission's proposal should enable the options markets to disseminate options market data on a real-time basis, which should foster competition. Further, the proposal should maintain efficient and orderly markets for options by ensuring that current market data is continuously available and reliable. Finally, the proposal should encourage each individual exchange to establish and utilize efficient quote reduction methods based on the amount of message capacity it has been allocated, thereby promoting efficiency.

B. Costs

Although the proposed capacity allocation formulas have been tailored to minimize the costs on any one exchange, the Commission expects that the options exchanges will experience some burdens because capacity will be limited during peak periods and the exchanges will have to reduce message traffic during peak times. This may result in the exchanges taking steps to delist or inactivate options that are not being actively traded or reduce the number of times that quotes can be refreshed for certain options classes. The Commission notes, however, that the options exchanges have previously agreed to allocate existing OPRA capacity during peak periods on three occasions, while continuing to work on other short-term and long-term mitigation strategies.

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed alternatives, commenters are requested to provide analysis and data relating to the anticipated costs and benefits associated with the proposed allocation alternatives, as well as any possible anti-competitive impact of the proposed alternatives. Specifically, the Commission requests commenters to address whether any of the proposed alternatives would generate the anticipated benefits or impose any costs on U.S. investors or others.

V. Effects on Competition, Efficiency, and Capital Formation

Commenters should consider the proposed rule's effect on competition, efficiency and capital formation.

Section 23(a) of the Act [22] requires that the Commission, when promulgating rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furtherance of the purposes of the Act. Section 3(f) of the Act [23] requires the Commission, when engaging in rulemaking, to consider or determine whether the action is necessary or appropriate in the public interest, and whether the action would promote efficiency, competition, and capital formation.

The Commission solicits comments on the impact of the proposed rules on competition. Specifically, the Commission requests commenters to address how the proposed rule would affect competition between and among the options exchanges, market participants and investors. Further, the Commission requests comment on the proposal's effect on efficiency and capital formation.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[24] the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. If possible, commenters should provide empirical data to support their views.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with Section 3 of the Regulatory Flexibility Act (''RFA'').[25] It relates to proposed amendments to the OPRA Plan to establish a capacity allocation model to allocate OPRA systems capacity among the options exchanges during peak periods.

A. Reasons for and Objectives of the Proposal

Although the participant exchanges have agreed to previous short-term capacity allocations and continue to work on short-term mitigation strategies, they have been unable to formulate a fair and objective capacity allocation model, which would include disincentives to quote existing listings or to add new listings excessively without a sound business rationale. The Commission is proposing to amend the OPRA Plan on its own initiative, until a long-term solution to the options industry's capacity problems has been implemented.

The objective of the proposed capacity allocation model is to achieve the statutory goals regarding the maintenance of fair and orderly markets to assure efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. The adoption of an objective capacity allocation model to allocate fairly OPRA systems capacity among the options exchanges during peak periods until a long-term solution to the capacity problem is achieved is intended to prevent queuing and delays in the dissemination of options market information that would result in market participants receiving unreliable market data.

B. Legal Basis

Section 11A(a)(3)(B) of the Act [26] authorizes the Commission, by rule or order, to authorize or require self-regulatory organizations (''SROs'') to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. Rule 11Aa3–2 [27] establishes procedures for the proposal of amendments to national market system plans, such as the OPRA Plan. Paragraph (b)(2) of Rule 11Aa3–2 [28] states that the Commission may propose amendments to an effective national market system plan by publishing the text of the amendment together with a statement of purpose of the amendments.

[22] 15 U.S.C. 78w(a).

[23] 15 U.S.C. 78c(f).

[24] Pub. L. No. 104–121, tit. II, 110 stat. 857.

[25] 5 U.S.C. 603(a).

[26] 15 U.S.C. 78k–1(a)(3)(B).

[27] 17 CFR 240.11Aa3–2.

[28] 17 CFR 240.11Aa3–2(b)(2).

C. Small Entities Affected by the Proposed Amendments

The proposal would directly affect Amex, CBOE, ISE, PCX, and Phlx, none of which are small entities. Paragraph (e) of the Rule 0–10 [29] states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 11Aa3–1.[30] Thus, there would be no impact for purposes of the RFA on small businesses.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposals would not impose any new reporting, recordkeeping, or other compliance requirements.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap or conflict with the proposed rules.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposal, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, or any part thereof, for small entities. The Commission believes that none of the above alternatives is applicable. The OPRA Plan participants are the only parties that are subject to the requirements of the OPRA Plan. The OPRA Plan participants are all national SROs and, as such, are not ''small entities.'' Therefore, the Commission does not believe the alternatives are applicable to the proposal.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission seeks comment on: (i) the number of small entities, if any, that would be affected by the proposed amendment; and (ii) the impact that the proposed amendment would have, if any, on such entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendment is adopted, and will be in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. 4–434; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed amendments do not impose recordkeeping or information collection requirements, or other collections of information which require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

VIII. Description of Alternative Proposed Amendments to the OPRA Plan

The Commission hereby proposes to amend the OPRA Plan to provide for a specific formula to allocate capacity among the options exchanges during peak usage periods pursuant to Rule 11Aa3–2(b)(2) and (c)(1) [31] and the Commission's authority under Section 11A(a)(3)(B) of the Act.[32]

Alternative A

* * * * *

III. Definitions

(a)–(k) No change.

(l) *Relevant Calendar Quarter.*

(i) For the capacity allocation commencing on May 1 of each year, the Relevant Calendar Quarter shall mean the months of January, February, and March.

(ii) For the capacity allocation commencing on August 1 of each year, the Relevant Calendar Quarter shall mean the months of April, May, and June.

(iii) For the capacity allocation commencing on November 1 of each year, the Relevant Calendar Quarter shall mean the months of July, August and September.

(iv) For the capacity allocation commencing on February 1 of each year, the Relevant Calendar Quarter shall mean the months of October, November and December.

(m) ''Included Class'' means any options class listed by an OPRA participant:

(i) For which such participant executes during the Relevant Calendar Quarter an average of at least 15 trades per day if the options class is multiply-listed;

(ii) For which such participant executes during the Relevant Calendar Quarter an average of at least 30 trades per day if the options class is exclusively listed; or

(iii) That during the Relevant Calendar Quarter has been trading options for fewer than 270 calendar days.

(n) An OPRA participant that is operating an options market receives a ''Capacity Credit'' for each options class that is an Included Class for that participant equal to:

(i) For a multiply-traded options class, the average quote messages generated during the Relevant Calendar Quarter by all OPRA participants, for which such class is an Included Class, during the first half-hour of trading after the opening rotation is completed divided by the number of such OPRA participants; or

(ii) For an exclusively-listed options class, the average quote messages generated during the Relevant Calendar Quarter by the OPRA participant during the first half-hour of trading after the opening rotation is completed.

(o) ''Allocation Percentage'' for an OPRA participant means the total of all such participant's Capacity Credits divided by the total of all Capacity Credits for all OPRA participants.

IV. No Change

V. (a)–(c) No Change

(d) *Quarterly Calculation of Capacity Allocation.*

(i) *On the first of February, May, August and November of each year, each OPRA participant that operates an options exchange will receive an allocation of OPRA's peak period systems capacity in an amount equal to its Allocation Percentage multiplied by the total OPRA systems capacity.*

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[29] 17 CFR 240.0–10(e).

[30] 17 CFR 240.11Aa3–1.

[31] 17 CFR 240.11Aa3–2(b)(2) and (c)(1).

[32] 15 U.S.C. 78k–1(a)(3)(B). Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the development of a national market system, by rule or order, to authorize or require SROs to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a national market system (or subsystem thereof) or one or more facilities thereof.

(ii) *OPRA will calculate the capacity allocation specified in paragraph (d)(i) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the OPRA participants. Alternatively, OPRA can contract with its processor or with another third party to perform this calculation. OPRA will notify the OPRA participants and the Commission of the capacity allocation for peak periods promptly after such calculation is made.*

(*e*) [d] Indemnification.

(i)–(ii) No change.

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Alternative B

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III. Definitions

(a)–(k) No change.

(l) Relevant Calendar Quarter.

(i) For the capacity allocation commencing on May 1 of each year, the Relevant Calendar Quarter shall mean the months of January, February, and March.

(ii) For the capacity allocation commencing on August 1 of each year, the Relevant Calendar Quarter shall mean the months of April, May, and June.

(iii) For the capacity allocation commencing on November 1 of each year, the Relevant Calendar Quarter shall mean the months of July, August and September.

(iv) For the capacity allocation commencing on February 1 of each year, the Relevant Calendar Quarter shall mean the months of October, November and December.

(m) ''Quotes-to-Contract Volume'' for an OPRA participant means the average daily quotes in options classes listed for more than 3 calendar months generated during the Relevant Calendar Quarter by a participant divided by the average daily contract volume traded in options classes listed for more than 3 calendar months by that participant during the same calendar quarter.

(n) ''Average Quotes-to-Contract Volume'' means the average Quote-to-Contract Volume of all OPRA participants during the Relevant Calendar Quarter computed by adding together the Quotes-to-Contract Volume for each participant and dividing by the number of participants.

(o) ''Quotes-to-Contract Volume Deviation'' for an OPRA participant is calculated using the following formula:

*(1—(Quotes-to-Contract Volume for that OPRA participant/ Average Quotes-to-Contract Volume)) * Dampening Factor.*

(d) ''Equal Share'' means one divided by the number of OPRA participants that are operating an options market.

(d) No Change

(d) (a)–(c) No change.

(d) Quarterly Calculation of Capacity Allocation

(i) On the first of February, May, August, and November of each year, each OPRA participant that operates an options exchange will receive an allocation of OPRA's systems capacity in an amount equal to the sum of the Equal Share and such participant's Quotes-to-Contract Volume Deviation. For purposes of calculating the Quote-to-Contract Volume Deviation, the Dampening Factor shall equal 10%.

(ii) Notwithstanding paragraph (d)(i), in no event shall an OPRA participant that operates an options exchange receive a capacity allocation that is less than 15% of OPRA's systems capacity. If the initial calculation of the Quote-to-Contract Volume Deviation results in an options exchange receiving an allocation of less than 15% of the total OPRA system's capacity, the Quote-to-Contract Volume Deviation will be recalculated as follows:

a. The first recalculation shall consist of a downward adjustment of the Dampening Factor by 1% (i.e., to 9%) applied to all OPRA participants.

b. If after the first recalculation, any OPRA participant that operates an options exchange still receives less than 15% of OPRA's systems capacity, the recalculations shall continue by adjusting the Dampening Factor downward by 1% until all OPRA participants have at least 15% of OPRA's systems capacity.

(iii) OPRA will calculate the capacity allocation specified in paragraph (d)(i) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the OPRA participants. Alternatively, OPRA can contract with its processor or with another third party to perform this calculation. OPRA will notify the OPRA participants and the Commission of the capacity allocation for peak periods promptly after such calculation is made.

(e) [d] Indemnification.

(i)–(ii) No change.

* * * * *

By the Commission.

Dated: May 4, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–11680 Filed 5–9–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Asthma Disease Management, Inc.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Asthma Disease Management, Inc., a Nevada corporation, with its principal place of business in Berlin, New Jersey. Questions have been raised about the adequacy and accuracy of publicly disseminated information, concerning, among other things, purported contracts between Asthma Disease Management, Inc. and three health maintenance organizations: Cape Health Plan (f/k/a Cape Medical) of Detroit, Michigan; Horizon Mercy of Trenton, New Jersey; and HMA of Philadelphia, Pennsylvania.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, May 8, 2000, through 11:59 p.m. EDT, on May 19, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–11798 Filed 5–8–00; 12:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42752; File No. SR–Amex–00–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Options Transaction Fees for Non-Member Broker-Dealers

May 3, 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 give that on April 7, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

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

[2] 17 CFR 240.19–4.