

I. Description and Purpose of the Amendment

Guideline 1 of the Capacity Guidelines provided for in the OPRA Plan sets forth the "Function and Authority of the ISCA." The purpose of the proposed amendment to Guideline 1 is to include in the Capacity Guidelines an express statement that the authority of the ISCA would include the authority to establish a throttle limiting the output of the System to less than the total capacity available in the System, and to modify or remove any such throttles that may be established from time to time.⁴ OPRA believes that throttling System output to less than total System capacity could sometimes be an appropriate way to limit the maximum message-handling capacity that vendors and subscribers could be required to have in order to handle OPRA's maximum output. Previously, the authority to establish, modify or remove throttles on the output of the OPRA System has been exercised by OPRA's Policy Committee. The proposed amendment would acknowledge that, in light of the recent establishment of an independent entity (the ISCA) with responsibilities of planning and implementing System modifications, it would be appropriate to clarify the ISCA's authority to make decisions with respect to System output throttles. OPRA believes that providing this authority to the ISCA would assure that these decisions would not be influenced by competitive considerations among the parties to the OPRA Plan, and would not present any appearance of being so influenced.

The text of the proposed revised Capacity Guideline 1 is set forth below. Proposed new language is in *italics*.

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1. *Function and Authority of the ISCA.* As a general matter, it is the responsibility of the ISCA to determine when and how to modify the OPRA System so that each party to the OPRA Plan may be provided with the System capacity it has requested. *Without limiting the general authority of the ISCA in this regard, the ISCA is specifically authorized to establish a throttle on the output of the OPRA*

System to less than the total capacity available in the System and to modify or remove any such throttles that have been established. The ISCA will also determine, consistent with these Guidelines, how the costs of modifying, maintaining and operating the OPRA System to meet the needs of the parties should be allocated among the parties, and, within the limits of its authority under Guideline 6, how System capacity should be allocated among the parties in certain circumstances when available System capacity is not sufficient to provide each party with the capacity it has requested.

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II. Implementation of Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3-2 of the Act.⁵

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. Please include File Number SR-OPRA-2004-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-OPRA-2004-03. 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 Section, 450 Fifth Street, NW., 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-2004-03 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49884; File No. PCAOB 2004-03]

Public Company Accounting Oversight Board; Order Approving Proposed Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements ("Auditing Standard No. 2")

June 17, 2004.

I. Introduction

On March 17, 2004, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements* ("Auditing Standard No. 2"), pursuant to section 107 of the Sarbanes-Oxley Act of 2002 (the "Act") and section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"). Auditing Standard No. 2 would provide the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting under section 404 of the Act. Notice of the proposed standard was published in

⁴ The output throttle that is the subject of the proposed amendment would serve to limit the total output of the OPRA System. It would be different from the OPRA System's "dynamic throttle," which allows any unused System capacity to be temporarily and dynamically allocated to a participant exchange that needs additional capacity on a short-term, interruptible basis. Telephone conversation between Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on June 14, 2004.

⁵ 17 CFR 240.11Aa3-2.

⁶ 17 CFR 200.30-3(a)(29).

the **Federal Register** on April 16, 2004,¹ and the Commission received 31 comment letters. For the reasons discussed below, the Commission is granting approval of the proposed standard.

II. Description

The Act establishes the PCAOB to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in preparation of informative, accurate and independent audit reports.² Section 103(a) of the Act directs the PCAOB to establish auditing and related attestation standards, quality control standards, and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Commission. The Board has defined the term "auditing and related professional practice standards" to mean the standards established or adopted by the Board under section 103(a) of the Act.

Section 404 of the Act requires that registered public accounting firms attest to and report on an assessment of internal control made by management, and that such attestation "shall be made in accordance with standards for attestation engagements issued or adopted by the Board." The Board's proposed Auditing Standard No. 2 provides the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting under section 404 of the Act. A significant aspect of this proposed standard is the requirement of the independent auditor to attest on two items. The auditor has to evaluate management's assessment process to be satisfied that management has an appropriate basis for its conclusion. Additionally, the auditor must test and evaluate both the design and the operating effectiveness of internal control to be satisfied that management's conclusion is correct and, therefore, fairly stated. The auditor's report on internal control over financial reporting will express two opinions—an opinion on whether management's assessment of the effectiveness of internal control over financial reporting as of the end of the most recent fiscal year is fairly stated, and an opinion on whether the company has maintained effective internal control over financial reporting as of that date.

¹ Release No. 34-49544 (April 8, 2004); 69 FR 20672 (April 16, 2004).

² Section 101(a) of the Act.

III. Discussion

The Commission received 31 comment letters in response to its request for comments on Auditing Standard No. 2. The comment letters came from issuers, registered public accounting firms, professional associations and others. In general, issuers expressed opposition to the proposed standard, and accounting firms, professional associations, and others expressed support for the proposed standard. Most commenters, irrespective of affiliation or position on the proposed standard, recommended that the Commission and the PCAOB provide additional guidance with respect to a number of different issues. Several commenters recommended that the Commission limit the scope of management's assessment of the effectiveness of internal control over financial reporting by excluding entities that are consolidated but over which the issuer lacks control.

Issuers and many of the professional associations also expressed concern with the cost of compliance in terms of management time, consultant fees and audit fees. One commenter requested that the PCAOB closely monitor the impact of the proposed standard on small and medium-sized companies. Other requests included clarifying that an adverse internal control report would not of itself result in regulatory action; delaying the effective date of the proposed standard; providing a one-year deferral to issuers that meet the definition of an accelerated filer for the first time in 2004; and deferring the accelerated filing date for Forms 10-K filed for year-end 2004. The PCAOB gave careful consideration to the issues raised by these commenters in the course of revising the proposed standard prior to its adoption by the Board. The resulting standard is a reasonable exercise of the Board's standards-setting authority under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that proposed Auditing Standard No. 2 is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that proposed Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements* (File No. PCAOB-2004-03) be and hereby is approved.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49877; File No. SR-CBOE-2004-05]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Relocation of an Entire Trading Station's Securities to Another Trading Station

June 16, 2004.

I. Introduction

On January 28, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rules 8.84 and 8.95 to transfer the authority to approve the relocation of an entire trading station's securities to another trading station that is operated by the same DPM organization to the MTS Committee from the Allocation Committee. CBOE filed Amendment No. 1 and 2 on March 15, 2004,³ and May 6, 2004,⁴ respectively. The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on May 19, 2004.⁵ CBOE filed Amendment No. 3 on May 19, 2004.⁶ No

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division of Market Regulation ("Division"), Commission, dated March 12, 2004 ("Amendment No. 1").

⁴ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 5, 2004 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 49687 (May 12, 2004), 69 FR 28959.

⁶ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 18, 2004 ("Amendment No. 3"). In Amendment No. 3, CBOE amended CBOE Rule 8.84 to clarify that the MTS Committee may determine whether to relocate an entire trading station's securities to another trading station that is operated by the same DPM, pursuant to a request from a DPM organization or on the Committee's own initiative. CBOE also requested