

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45133; File No. SR-OPRA-2001-04]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan to Make Technical Corrections to Section V(c)

December 5, 2001.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 24, 2001, the Options Price Reporting Authority ("OPRA"),² 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"). The proposed amendment would make technical corrections to section V(c) of the OPRA Plan. OPRA has stated that the proposed OPRA Plan amendment involves solely technical or ministerial matters and is, therefore, effective upon filing, pursuant to Rule 11Aa3-2(c)(3)(iii) under the Act.³ The Commission is publishing this notice to solicit comments on the proposed OPRA Plan amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed OPRA plan amendment would make technical corrections to Section V(c) of the OPRA Plan, as that

section was recently amended.⁴ These proposed corrections consist of the deletion of an inappropriate reference in paragraph (ii) of section V(c) and the redesignation of subparagraphs (i)-(iv) of paragraph (iv) of section V(c) as subparagraphs (A)-(D) in order to conform their designation to the style of the OPRA Plan. OPRA represents that the proposed OPRA Plan amendment would make no substantive change to the provisions of the OPRA Plan.

II. Implementation of the Plan Amendment

OPRA represents that the proposed OPRA Plan amendment involves solely technical or ministerial matters and is, therefore, effective upon filing, pursuant to Rule 11Aa3-2(c)(3)(iii) under the Act.⁵ At any time within 60 days of the filing of the OPRA Plan amendment, the Commission may summarily abrogate the amendment and require that such amendment be filed in accordance with Rule 11Aa3-2(b)(1) under the Act⁶ and reviewed in accordance with Rule 11Aa3-2(c)(2) under the Act⁷ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of

OPRA. All submissions should refer to File No. SR-OPRA-2001-04 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45130; File No. SR-Amex-2001-17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Increasing Regular Memberships and Creating Two-Year Permits

December 5, 2001.

I. Introduction

On March 19, 2001, the American Stock Exchange LLC ("Exchange" or "Amex") submitted to the Securities and Exchange Commission ("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 increasing the number of regular memberships on the Exchange and creating two-year permits. The Exchange submitted Amendment Nos. 1, 2, and 3 to the proposed rule change on May 3, 2001,³ May 16, 2001,⁴ and May 18, 2001,⁵ respectively. The

¹ 17 CFR 200.30-3(a)(29).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission dated April 30, 2001 ("Amendment No. 1"). Amendment No. 1 states that on April 30, 2001, a majority of the regular and options principal members, voting as a single class, voted in favor of the proposed rule change.

⁵ Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 14, 2001 ("Amendment No. 2"). Amendment No. 2 requests the Commission to consider the Plan on a pilot basis for a minimum of two years and a maximum of four years, in the event the Seat Fund Committee exercises its discretion to extend the Plan. Amendment No. 2 also states that there are approximately 300 members trading equities on the Exchange floor.

⁶ Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 17, 2001 ("Amendment No. 3"). Amendment No. 3 clarifies that the administrative fee that the Amex would receive for administering the Plan would be \$750.00 per sale/lease and that the administrative fee will be collected out of the sale proceeds, prior to their distribution to the members. Amendment No. 3 also states that Amex members and the Board of Governors have approved this fee.

¹ 17 CFR 240.11Aa3-2.

² OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 1981), 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 five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

³ 17 CFR 240.11Aa3-2(c)(3)(iii).

⁴ See Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR 39218 (July 27, 2001) (order approving File No. SR-OPRA-2001-02).

⁵ 17 CFR 240.11Aa3-2(c)(3)(iii).

⁶ 17 CFR 240.11Aa3-2(b)(1).

⁷ 17 CFR 240.11Aa3-2(c)(2).

proposed rule change was published for comment in the **Federal Register** on June 1, 2001.⁶ The Commission received no comments on the proposal. This order approves the proposal. The portion of the proposed rule change establishing the trading permits is approved on a pilot basis for a minimum of two years and a maximum of four years, in the event that the Exchange's Seat Fund Committee exercises its authority to renew the permits for an additional two years.

II. Description of the Proposal

The Amex proposes to increase by 25 the number of regular memberships and create 25 two-year permits as a result of a Regular Seat and Two-Year Permit Offering Plan (the "Plan"). The seats and the permits would be allocated as determined by the Exchange's Seat Fund Committee ("Committee"). The Committee would determine the sale price for regular seats would be at least \$600,000. The price for two-year permits would be at least \$14,000, per month.

The Committee would be able to renew the two-year permits once for an additional two years, but the permits would be non-transferable. A two-year permit would terminate if the holder went out of business. Any regular seats offered but not sold would be permitted to be converted into two-year permits as determined by the Committee.⁷ The two-year permits would have no distribution or voting rights.

All prospective seat and/or permit holders would be required to be approved by the Exchange prior to the sale of a seat or the transfer of a permit by the Exchange. The Exchange would receive a \$750 administrative fee for each seat/permit for administering the sale/transfer for prospective seat/permit owners.

Prior to any seat sale or permit transfer by the Exchange, a non-member or a person/organization that was not currently the owner of a regular membership would be required to meet all requirements currently applicable to regular or two-year permit holders. If the purchaser of a seat intended to lease the seat pursuant to a special transfer agreement or transfer the seat to a nominee, the lessee or nominee would also be required to meet all Exchange requirements. All applicable fees due by persons/organizations that are not owners of regular memberships or

members of the Exchange would be required to be paid before the sale of any seat or transfer of any permit.

Sale proceeds will be distributed to all seat owners at a date to be determined by the Committee. The Ex-date for determining distribution of sale proceeds to owners would be the date of approval of the Plan by the Commission.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.⁸ Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁹ in that it is designed to remove impediments to and perfect the mechanism of a free and open market.¹⁰

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by enhancing the depth and liquidity of the Amex floor by bringing additional capital and market participants to the Amex, which should attract more order flow. In addition, the Commission believes that the proposed rule change will enable the Exchange to better handle increased volume on the Exchange. The Commission believes that increasing the number of seats and providing a limited number of trading permits should enable Exchange members to afford customers an optimal level of service. The Commission notes that there are currently 864 Amex seat holders that have the ability to trade securities pursuant to the Exchange's equity trading rules and approximately 300 equity seat holders.¹¹ These traders are fully represented on the Exchange's Board and key committees. The Commission specifically notes that the proposed trading permits are limited in duration to a maximum of four years and constitute a *de minimis* number in relation to regular members that trade equities.¹² The Commission also notes

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ Options seat holders are permitted to trade exchange traded funds, which trade pursuant to the Exchange's equity rules.

¹² The Act requires an Exchange to "assure a fair representation of its members in the selection of its directors and administration of its affairs. . . ." See section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). This requirement serves to ensure that an exchange is administered in a way that is equitable to all those who trade on the exchange. If the trading permits

that a majority of the Exchange's regular and options principal members voted in favor of the proposed rule change.

IV. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Amex-2001-17) is approved. The portion of the proposed rule change establishing trading permits is approved on a pilot basis for a minimum of two years and a maximum of four years.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland.

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45128; File No. SR-ISE-2001-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the International Securities Exchange LLC and Amendment No. 1 Thereto Relating to Payment for Order Flow Fees

December 4, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 2001, the International Security Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. On November 28, 2001, the ISE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The ISE is proposing to establish a ceiling of \$750,000 in each of the ten payment-for-order-flow funds that the ISE maintains. The text of the proposed

had an unlimited term or more than a *de minimis* number of trading permits were being issued, the permit holders would be entitled to fair representation.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ Securities Exchange Act Release No. 44341 (May 23, 2001), 66 FR 29848.

⁷ Consequently, if the Exchange did not sell any of the authorized seats, a maximum of 25 additional trading permits could be authorized, for a total of 50.