a purchase and sale for consideration other than cash (Lexington would purchase Units of TEI with its Portfolio Company Interests rather than with cash; and TEI would sell its Units for Portfolio Company Interests rather than for cash) and the Transaction would be effected at the NAV of the Portfolio Company's Interests rather than at an independent current market price.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

5. Applicants submit that the Transaction meets the requirements of section 17(b) of the Act. Applicants state that the Transaction will be effected at the Funds' and the Portfolio Company's NAVs, calculated in accordance with their respective policies and procedures as set forth in their registration statements under the Act. Applicants state that the valuation policies and procedures are identical for the Funds and the Portfolio Company. Applicants further state that the Transaction is consistent with the policies of the Funds and the Portfolio Company and does not involve overreaching on the part of any person concerned.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Transaction will be effected at the NAV of the Portfolio Company's Interests determined in accordance with the Portfolio Company's registration statement under the Act. The NAV of the Units of each Fund for purposes of the Transaction will be determined in accordance with each Fund's registration statement under the Act.

2. The Transaction will comply with the terms of rule 17a–7(c), (d) and (f) under the Act.

3. At its next regular meeting following the Transaction, the Board of each Fund and the Portfolio Company, including a majority of the Independent Managers, will determine: (a) Whether the Units and Interests were valued in accordance with condition 1 and (b) whether the Transaction was consistent with the policies of each Fund and the Portfolio Company as reflected in its registration statement and reports filed under the Act.

4. The Funds and the Portfolio Company will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Transaction occurs, the first two years in an easily accessible place, a written record of the Transaction setting forth a description of each security transferred, the terms of the Transaction, and the information or materials upon which the determinations required by condition 3 were made.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3570 Filed 12–8–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50785; File No. SR–OPRA–2004–06]

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 Amend Guideline 2 of the Capacity Guidelines Adopted in Accordance With the Plan

December 2, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on October 19, 2004, the Options Price Reporting Authority (''OPRA'')[3] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The proposed amendment would amend Guideline 2 of the Capacity Guidelines (''Guideline 2'') adopted in accordance with the Plan. The Commission is publishing this notice to solicit comments from interested persons on the proposed Plan amendment.

I. Description and Purpose of the Amendment

OPRA states that there are two purposes to the proposed amendment to Guideline 2. Guideline 2 describes the process to be followed by the Independent System Capacity Advisor (''ISCA'') under the Plan in soliciting and considering capacity projections and requests from the parties to the Plan. Among other things, Guideline 2 requires the ISCA to repeat this process on a quarterly cycle. The first purpose of the proposed amendment to Guideline 2 is to reduce the frequency of the capacity review cycle to no less frequently than semi-annually. OPRA states that, based on the experience of the ISCA and the parties to the Plan with this process, it is now apparent that, by requiring the solicitation and review of capacity projections on a quarterly cycle, Guideline 2 fails to take into account that it takes more than 3 months for the complete cycle of solicitation, discussion, revision, and review of these projections to be completed.[4] For this reason, the ISCA suggested, and the parties to the Plan agreed, that a six-month cycle for the capacity projection and review process would be more realistic. In the view of the ISCA and the parties to the Plan, a six-month cycle for this process would provide the ISCA with sufficiently current capacity projections to assure that the OPRA System would be able to meet the capacity needs of the parties as they may change from time to time.

The second purpose of the proposed amendment concerns the provision of Guideline 2 that requires the ISCA, once it has received capacity projections and requests from all of the parties and has estimated the cost of any modifications to the OPRA System necessary to accommodate these projections and requests, to furnish its cost estimates to each party requesting additional

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, 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.

[4] The ISCA's initial solicitation and review of capacity projections commenced in January 2004. Under the quarterly cycle required by Guideline 2, the second solicitation and review would have had to commence in April 2004. OPRA states that, when OPRA's Policy Committee met on March 1, 2004, it was plain that the January review would not be completed by April. Accordingly, OPRA waived the April 2004 solicitation and review and agreed that the next solicitation would call for projections to be furnished to the ISCA no later than July 1, 2004, which was done. According to OPRA, the Commission's representative at the March 1, 2004 meeting agreed that a one-time waiver of the ISCA's quarterly capacity review would not require a formal amendment of the Capacity Guidelines. OPRA believes that this suggests that waivers of quarterly reviews on a regular basis would require such an amendment, as this filing proposes.

capacity. After receiving the estimate, the party is able to reduce the amount of additional capacity it requested in light of the estimated cost, or to withdraw its request altogether. Guideline 2, however, does not contemplate that a party would be able to increase the amount of additional capacity it is requesting at this stage of the process. The ISCA has recommended to OPRA, and OPRA has concurred, that Guideline 2 should be amended to permit a party either to reduce or increase the amount of additional capacity it is requesting once it has received the ISCA's initial cost estimates. OPRA believes that providing the parties to the Plan with this additional flexibility is justified not only because, by the time these estimates are received, there may be changes to a party's projection of the capacity it would need, but also because the ISCA's cost estimates may themselves be based on implementing changes to the system that would result in greater additional capacity being available than the aggregate amount of added capacity initially requested by the parties. In such an event, OPRA believes that the parties to the Plan should have an opportunity to adjust their requests upward if they so desire in order to receive an allocation of any additional capacity that may be available.[5]

The text of the proposed revised Capacity Guideline 2 is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

2. *Procedures and Timetable to be Followed by the ISCA; Reports to OPRA.* The OPRA Plan requires each of the parties, independently and from time to time, to project the amount of system capacity it will need, and to communicate to the ISCA, privately and in writing, requests for system capacity based on its projections in accordance with procedures developed by the ISCA. An applicant to become a party will likewise have to inform the ISCA, at least six months prior to the time it proposes to commence trading, concerning the initial amount of system capacity it will need. The costs of providing initial system capacity to an applicant in accordance with its request, as determined by the ISCA, will be included in the applicant's Participation Fee payable under Section 1(b) of the OPRA Plan. The ISCA will describe to the parties (and to applicants to become parties) the specific information that it wishes to receive from them for this purpose, the format in which the information is to be presented, and when the information is to be provided, provided that the ISCA shall solicit and consider capacity projections and requests from the parties no less frequently than semi-annually [quarterly]. The ISCA may also request additional information pertaining to System capacity from the parties at any time, subject to the confidentiality requirements described above.

As promptly as practicable after each due date for the receipt of capacity projections and requests from the parties, the ISCA will complete its review of the material furnished by the parties and any other information it deems relevant, and will present a written report to OPRA's Policy Committee concerning the extent and timing of any modifications to the OPRA System that it determines are necessary to meet the capacity needs of the parties in accordance with their requests. Whenever the ISCA believes it will not be able to meet this timetable for furnishing its report to OPRA, it will promptly notify the Executive Director of OPRA in writing, explaining why the timetable can not be met and providing a date when it believes the report will be available.

Before presenting any report to OPRA that includes proposed modifications to the OPRA System, the ISCA shall discuss the proposed modifications with the OPRA Processor and with representatives of the parties (which may include OPRA's Policy Committee and its Technical Committee) individually or collectively, and it may also discuss the proposed modifications with other persons (such as OPRA's administrative officers, vendors and subscribers) whose views the ISCA believes may be of assistance. Among other things, the ISCA will furnish to each party that has submitted a request for additional capacity an estimate of the cost to that party of obtaining the capacity it has requested, following receipt of which, the party will be afforded an opportunity to *increase* or reduce the amount of additional capacity it is requesting or to withdraw its request in its entirety. Applicants to become parties shall also have an opportunity to discuss their initial capacity requests with the ISCA, to receive cost estimates, and to modify their initial requests. Persons with whom the ISCA discusses OPRA System capacity matters shall be required to agree in writing not to disclose to any of the other parties any information pertaining to a party's individual capacity projections or capacity requests, except in the form of aggregate capacity projections or requests that do not identify the individual capacity projections or requests of any of the parties.

* * * * *

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.[6]

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–2004–06 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–2004–06. 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

[5] OPRA states that, although Capacity Guideline 5(a) makes it clear that the ISCA is not authorized to implement system changes that would provide more capacity than has been requested by the parties unless the changes are approved by 75% of the parties, the ISCA may find it prudent for reasons of economy and efficiency to recommend modifying the system to provide more capacity than has been requested on the reasonable assumption that at least 75% of the parties would approve such a recommendation. Telephone conversation between Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, and Karl Varner, Special Counsel, Division of Market Regulation (''Division''), Commission, and David Liu, Attorney, Division, Commission, on November 30, 2004.

[6] 17 CFR 240.11Aa3–2.

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–2004–06 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3576 Filed 12–8–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50789; File No. SR–OPRA–2004–05]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan To Revise Two Fees Charged by OPRA to Professional Subscribers to OPRA's Basic Service

December 3, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on October 14, 2004, the Options Price Reporting Authority (''OPRA'')[3] 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''). On December 1, 2004, OPRA submitted Amendment No. 1 to the proposal.[4] The proposed OPRA Plan amendment would revise two of the fees charged by OPRA to professional subscribers for OPRA's Basic Service. 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

OPRA states that one of the purposes of the proposed amendment is to offer a ''30-day free trial'' period to new professional subscribers to OPRA's Basic Service. The free trial would apply to those new professional subscribers that sign OPRA's Professional Subscriber Agreement, which obligates them to pay monthly access fees to OPRA on either a per-device basis or on the basis of OPRA's professional subscriber enterprise rate, and that indicate on such agreement that they wish to subscribe for a 30-day free trial period. Unless the subscriber provides written notice of cancellation to OPRA prior to the end of the 30-day trial period, the subscriber would be obligated to pay OPRA's device-based or enterprise rate access fees commencing with the 31st day after the initiation of service. The 30-day free trial would not apply to any other fees that may otherwise apply, including direct or indirect access fees, synthesized speech service fees or usage-based fees payable by vendors who furnish OPRA data to professional subscribers.

According to OPRA, the other purpose of the proposed amendment is to impose a cap on the monthly usage-based fees payable by vendors who provide OPRA data to professional subscribers pursuant to a Subscriber Agreement between the vendor and the subscriber, rather than pursuant to a Professional Subscriber Agreement between OPRA and the subscriber that imposes device-based fees or an enterprise rate fee.[5] OPRA states that, although vendor's usage-based fees are currently capped for OPRA data provided to nonprofessional subscribers, heretofore there has been no cap on usage-based fees payable by vendors on account of OPRA data provided to professional subscribers. OPRA proposes to cap the monthly fee payable by a vendor on account of a usage-based fee service provided to any one professional subscriber at the highest per-device fee applicable to a professional subscriber had such professional subscriber paid OPRA directly for such OPRA data (currently $32.25), multiplied by the number of the professional subscriber's authorized user IDs. OPRA believes that this would assure that the capped usage-based fee payable on account of any professional subscriber in any month does not exceed the highest per-device fee that would have applied if the professional subscriber had been subject to device-based fees.[6]

OPRA states that these proposed fee changes are intended to encourage professionals to become OPRA subscribers by expanding the fee choices available to them and to their vendors. The text of the proposed rule change is available at the principal office of OPRA, and at the Commission.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,[7] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to, or use of, OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and 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. 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

[7] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, 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.

[4] *See* letter from Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, to David Liu, Attorney, Division of Market Regulation, Commission, dated November 20, 2004. Amendment No. 1 made technical updates to the fee schedule contained in Exhibit II of the filing.

[5] OPRA states that professional subscribers who enter into Subscriber Agreements with vendors for which usage-based fees apply do not need to enter into Professional Subscriber Agreements with OPRA, and do not pay device-based or enterprise rate access fees to OPRA.

[6] Under OPRA's published policies, each authorized subscriber ID is treated as the equivalent of one device for purposes of applying the professional subscriber device-based fee.

[7] 17 CFR 240.11Aa3–2(c)(3)(i).

[8] 17 CFR 240.11Aa3–2(c)(2).