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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–17647 Filed 8–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50110; File No. SR–OPRA–2004–04]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Regarding the Temporary Waiver of Charges by OPRA Relating to the Dynamic Throttle

July 28, 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 July 9, 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 July 27, 2004, OPRA submitted Amendment No. 1 to the proposal.[4] The proposed OPRA Plan amendment would waive temporarily the imposition of the charge that would otherwise be imposed upon a participant exchange that utilizes the ''dynamic throttle'' pursuant to Section III(g)(iii) of the OPRA Plan and Guideline 6(h) of the Capacity Guidelines that constitute part of the OPRA Plan. OPRA proposes to apply the waiver during a temporary period ending on September 10, 2004. 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

The purpose of the proposed amendment to the OPRA Plan is to temporarily waive the charge imposed upon a participant exchange that utilizes the dynamic throttle feature of the OPRA System, which permits a participant to gain automatic access to unused, excess System capacity on a short-term, interruptible basis. Section III(g) of the OPRA Plan and Guideline 6(h) of the Capacity Guidelines require any participant exchange using the dynamic throttle to access additional capacity to pay for that capacity at a rate that is 150% of the fully allocated cost of that capacity, as determined by OPRA's Independent System Capacity Advisor (''ISCA'').

The proposed waiver of this charge would apply during the period ending on September 10, 2004, which is the date when OPRA anticipates full implementation of an enhancement to its communications network that was recently developed by the Securities Industry Automation Corporation (''SIAC''), and designated by SIAC as the Secure Financial Transaction Infrastructure (''SFTI''). Once SFTI is fully implemented, all recipients of OPRA data would need to be able to access the data over a high bandwidth network, which certain data recipients are not yet able to do. OPRA believes that, among other things, full implementation of SFTI would permit SIAC to provide additional capacity to OPRA's participant exchanges who request it pursuant to procedures provided for in the OPRA Plan.

OPRA had originally intended to implement SFTI on June 30, 2004, after which it would cease to support lower bandwidth ''legacy'' connections currently relied upon by some data recipients. However, because several vendors and one OPRA participant would not be able to access the new higher bandwidth connection on June 30th, OPRA recently determined to delay the cutover to SFTI until September 10, 2004, by which time all persons who access the OPRA network would be expected to be able to connect to SFTI.

According to OPRA, as a consequence of delaying the cutover to SFTI, the date when participant exchanges would be able to increase their current allocation of System capacity by receiving an allocation of the increase through SFTI would likewise be delayed. OPRA believes that this delay could be especially problematic for a new options exchange, such as the BSE, which may need additional capacity to support its expanding options market.

Since there is unused, excess capacity presently available in the System, OPRA believes that an obvious response to this problem would be to utilize OPRA's dynamic throttle to provide temporary, additional capacity to any exchange that might need it until the System's capacity is increased on a permanent basis during the cutover to SFTI on September 10, 2004.[5] However, as described above, the OPRA Plan and the Capacity Guidelines currently require the imposition of a charge on any participant exchange that obtains additional, temporary capacity by means of the dynamic throttle. OPRA states that the purpose of this charge is to discourage any participant exchange from submitting an unrealistically low request for permanent capacity in order to lower its costs, and then relying on the operation of the dynamic throttle to make up for any shortfall in its allocation of System capacity.

Although OPRA continues to believe that it is justified in imposing a charge on a participant exchange that makes use of the dynamic throttle under ordinary circumstances, it does not believe it would be fair to impose this charge under the present circumstances where a participant exchange could be prevented from obtaining a greater permanent allocation of capacity simply

[5] 17 CFR 200.30–3(a)(1).

[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. (''BSE''), 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 Deborah L. Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 26, 2004. Amendment No. 1 added specific language to Section III(g) and Capacity Guideline 6(h) of the OPRA Plan describing the temporary waiver.

[5] OPRA states that it has been advised by the Options Clearing Corporation, acting in its capacity as the ISCA, that it concurs with OPRA's decision to delay the implementation of SFTI until September 10, 2004, and expects the dynamic throttle to provide whatever additional capacity may be needed by any of the exchanges prior to the anticipated cutover to SFTI on that date.

because OPRA has delayed the implementation of SFTI as an accommodation to data recipients who are not yet able to connect to the upgraded network. For this reason, OPRA proposes to waive the imposition of the special charge on exchanges that utilize the dynamic throttle until September 10, 2004, when SFTI is expected to be fully implemented.

OPRA does not anticipate any further delay in the implementation of SFTI beyond September 10, 2004, based on assurances that all data recipients would be able to connect to SFTI by that date. In the unlikely event that a further delay in the implementation of SFTI may be necessary, and if, as a result, OPRA should determine to waive the imposition of the dynamic throttle charge beyond that date, OPRA states that such a determination would be treated as a separate OPRA Plan amendment and would be the subject of a separate filing under Rule 11Aa3–2 of the Act.[6]

The text of the proposed revised Section III(g) of the Plan and Capacity Guideline 6(h) is set forth below. Proposed new language is in *italic*.

* * * * *

III. *Administration of the Plan*

(a)–(f) [No change]

(g) *Capacity Planning; Allocation of System Capacity.*

(i)–(ii) [No change]

(iii) To the extent and subject to the conditions and limitations set forth in the Capacity Guidelines, under circumstances when the capacity of the System is unable to meet the aggregate requests for capacity that have been submitted to and approved by the ISCA, the ISCA shall be authorized to allocate available System capacity among the parties. In addition, the Capacity Guidelines shall provide for the utilization of a ''dynamic throttle'' that is capable of automatically and instantaneously making available to a party with an immediate need for additional capacity, on a short-term interruptible basis, any unused capacity, subject to the conditions that the party receiving such unused capacity must pay for it at a rate that is determined by the ISCA to be greater than the fully allocated cost of such additional capacity to the extent provided in the Capacity Guidelines (*except that during a temporary period ending September 10, 2004, no such payment shall be required to be made by a party receiving unused capacity by operation of the dynamic throttle*), and must relinquish such capacity to the party or parties to which it had originally been allocated whenever such party or parties need it. Amounts paid by a party for the use of excess capacity made available to it by operation of the dynamic throttle shall be added to OPRA's general revenues.

* * * * *

6. *Capacity Allocation.*

(a)–(g) [No change]

(h) The authority of the ISCA to allocate excess capacity in accordance with paragraphs (a)–(g) of this Guideline 6 is in addition to the automatic, short-term, interruptible allocation of unused capacity that may be made by the ''dynamic throttle'' that is incorporated within the OPRA System. Section III(g) of the OPRA Plan provides that any party receiving an allocation of unused capacity pursuant to the operation of the dynamic throttle must pay for it at a rate determined by the ISCA, which is to exceed the fully allocated cost of such additional capacity to the extent provided in these guidelines. *Section III(g) also provides that the requirement to pay for unused capacity made available by operation of the dynamic throttle does not apply during a temporary period ending September 10, 2004.* Accordingly, *except during the period when the payment requirement does not apply as aforesaid,* the ISCA is directed to apply a multiple of 150% to the fully allocated cost of capacity for purposes of arriving at the rate at which a party shall be charged for capacity made available to it pursuant to the operation of the dynamic throttle.

* * * * *

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 changing the way in which costs are distributed to OPRA's participant exchanges, 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 Comment

- 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–2004–04 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–2004–04. 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–2004–04 and should be submitted on or before August 24, 2004.

[6] 17 CFR 240.11Aa3–2.

[7] 17 CFR 240.11Aa3–2(c)(3)(i).

[8] 17 CFR 240.11Aa3–2(c)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–17652 Filed 8–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50105; File No. SR–NASD–2003–176]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Chief Executive Officer Certification and Designation of Chief Compliance Officer

July 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On December 31, 2003, notice of the proposal was published in the **Federal Register**.[3] On March 8, 2004, the NASD filed Amendment No. 1 to the proposed rule change.[4] On July 15, 2004, the NASD filed Amendment No. 2 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing new NASD Rule 3013 and accompanying Interpretive Material (''IM'') 3013 to require each member to designate a chief compliance officer (''CCO'') and further require the member's chief executive officer (''CEO'') to certify annually to having in place a process to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules, and the federal securities laws. Below is the text of the proposed rule change. Proposed new language is in *italics*.

* * * * *

3013. Annual Certification of Compliance and Supervisory Processes

(a) Designation of Chief Compliance Officer

Each member shall designate and specifically identify to NASD on Schedule A of Form BD a principal to serve as chief compliance officer.

(b) Annual Certification

Each member shall have its chief executive officer (or equivalent officer) certify annually, as set forth in IM–3013, that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer has conducted one or more meetings with the chief compliance officer in the preceding 12 months to discuss such processes.

IM–3013. Annual Compliance and Supervision Certification

The NASD Board of Governors is issuing this interpretation to the requirement under Rule 3013(b), which requires that the member's chief executive officer (or equivalent officer) execute annually[i] *a certification that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations. The certification shall state the following:*

* * * * *

Annual Compliance and Supervision Certification

The undersigned is the chief executive officer (or equivalent officer) of [name of member corporation/partnership/sole proprietorship] (the ''Member''). As required by NASD Rule 3013(b), the undersigned makes the following certification:

1. The Member has in place processes to:

(a) Establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations;

(b) Modify such policies and procedures as business, regulatory and legislative changes and events dictate; and

(c) Test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with NASD rules, MSRB rules and federal securities laws and regulations.

2. The undersigned chief executive officer (or equivalent officer) has conducted one or more meetings with the chief compliance officer in the preceding 12 months, the subject of which satisfy the obligations set forth in IM–3013.

3. The Member's processes, with respect to paragraph 1 above, are evidenced in a report reviewed by the chief executive officer (or equivalent officer), chief compliance officer, and such other officers as the Member may deem necessary to make this certification, and submitted to the Member's board of directors and audit committee.

4. The undersigned chief executive officer (or equivalent officer) has consulted with the chief compliance officer and other officers as applicable (referenced in paragraph 3 above) and such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate, in

---

[9] 17 CFR 200.30–3(a)(29).

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

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 48961 (Dec. 23, 2003), 68 FR 75704. The Commission received six comments on the proposal. Letters to Jonathan G. Katz from: Laura Singer, Vice President and General Counsel, E*Trade Brokerage Holdings, Inc. (Feb. 11, 2004); George R. Kramer, Vice President and Acting General Counsel, Securities Industry Association, Paul A. Merolla, Executive Vice President, SIA Compliance and Legal Division, and Paul Saltzman, Executive Vice President and General Counsel, The Bond Market Association (Feb. 6, 2004); Joan Hinchman, Executive Director, President, and CEO, National Society of Compliance Professionals, Inc. (Feb. 5, 2004); and Christiane G. Hyland, Senior Vice President and General Counsel, Empire Corporate FCU (Jan. 21, 2004); and letters from Stephen A. Batman, CEO, 1st Global Capital Corp. (Jan. 21, 2004) and Herbert A. Pontzer, SVP/Chief Compliance Officer, NFP Securities, Inc. (Feb. 4, 2004). The comments are available online at *www.sec.gov/rules/sro/nasd/nasd2003176.shtml.*

[4] *See* letter from Philip A. Shaikun, Assistant General Counsel, NASD, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated March 8, 2004 (''Amendment No. 1''). In Amendment No. 1, NASD added a requirement that the mandated meetings between the CEO and CCO include discussion of compliance system deficiencies, risks and resources.

[5] *See* letter from Philip A. Shaikun, Assistant General Counsel, NASD, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated July 15, 2004 (''Amendment No. 2''). In Amendment No. 2, NASD eliminated the CCO certification requirement and added to the accompanying interpretive material a description of the CCO's role in the member's compliance scheme and the CEO certification required under this proposed rule.

[i] *Members must ensure that each ensuing annual certification is effected no later than on the anniversary date of the previous year's certification.*