

19. In addition, Section 17 Applicants submit that the proposed in-kind portfolio security transactions are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Further, Section 17 Applicants note that securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Funds to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming Replaced Funds and purchasing Replacement Funds. Therefore, there will be no change in value to any contractowner as a result of the Substitutions.

### Conclusion

Applicants assert that for the reasons summarized above that the proposed Substitutions and related transactions meet the standards of Section 26(c) of the Act and are consistent with the standards of Section 17(b) of the Act and that the requested orders should be granted.

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

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58424; File No. SR-OPRA-2008-03]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Options Price Reporting Authority's Academic Waiver Policy

August 26, 2008.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on August 11, 2008, the Options Price Reporting Authority ("OPRA") 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").<sup>3</sup>

The proposed amendment would revise OPRA's "Academic Waiver Policy."<sup>4</sup> The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

### I. Description and Purpose of the Plan Amendment

Pursuant to its Academic Waiver Policy, OPRA waives its fees for universities that wish to use its data for research and educational instruction purposes. An OPRA academic waiver is only for OPRA's own data fees, and only for devices or User IDs used by students and faculty for research purposes and in classroom environments. As is stated in the Policy, even if a university receives an academic waiver, the university must execute an OPRA Professional Subscriber Agreement and, if the university will control entitlement of its devices or User IDs, the university must also execute an Indirect Circuit Connection Rider, describe its use of OPRA data and its entitlement control process on "Exhibit A" to the Rider, and make reports to OPRA in accordance with the Rider of its devices or User IDs that are entitled to receive OPRA data.

The purpose of the revisions of OPRA's Academic Waiver Policy is, in general, to update the language of the Policy and emphasize certain aspects of the Policy. The proposed revisions do not change the Policy in any fundamental respect.

Among the changes that OPRA is proposing in order to update the language of the Policy are changes to eliminate a reference to "annual administration fees" (since OPRA's fees do not include an annual administration fee) and to incorporate references to "User IDs" in addition to "devices" (since OPRA permits its Vendors, and its Professional Subscribers that pay "device-based fees" and control their own enablement processes, to make reports to OPRA with respect to the

<sup>1</sup> 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.oprapdata.com>.

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 seven participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, the NASDAQ Stock Market LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

<sup>4</sup> OPRA has not previously filed the Policy pursuant to Rule 608 of Regulation NMS under the Act, and OPRA is proposing to formalize the Policy as part of its national market system plan by so filing it.

"User IDs" that they enable for access to OPRA data as an alternative to the "devices" that they enable).

Among the aspects of the Policy that are emphasized in the revised Policy are that academic institutions that control their own enablement processes must make reports to OPRA with respect to the devices or User IDs that they have enabled for OPRA data, just as other OPRA Subscribers that control their own enablement process must.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, and <http://oprapdata.com>.

### II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 under the Act,<sup>5</sup> OPRA designated 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, and pursuant to (b)(3)(iii) of Rule 608 under the Act,<sup>6</sup> OPRA designated this amendment as one involving solely technical or ministerial matters thereby qualifying the amendment for effectiveness upon filing. OPRA states that it will implement the revised form of the Academic Waiver Policy upon filing with the Commission.

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 608(b)(2) under the Act<sup>7</sup> 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. 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](mailto:rule-comments@sec.gov). Please include File

<sup>5</sup> 17 CFR 242.608(b)(3)(i).

<sup>6</sup> 17 CFR 242.608(b)(3)(iii).

<sup>7</sup> 17 CFR 242.608(b)(2).

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The OPRA Plan is a national market system plan approved by the Commission pursuant to Section

No. SR-OPRA-2008-03 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OPRA-2008-03. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2008-03 and should be submitted on or before September 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58398; File No. SR-NYSE-2008-069]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Waiving Compliance With DRS Participation Rules for Foreign Private Issuers

August 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 30, 2008, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

NYSE proposes to amend Section 501.00 of its Listed Company Manual to waive application of this section to any listed company that is a foreign private issuer and that submits a letter from an independent home country counsel certifying that a home country law or regulation prohibits compliance.<sup>2</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Currently, Section 501.00 of NYSE's Listed Company Manual ("Manual")

requires that all listed equity securities must be eligible for participation in a direct registration system operated by a securities depository. As the laws of certain countries may prohibit compliance with this rule, NYSE believes it is appropriate to waive its application to foreign private issuers upon provision of a letter from independent counsel confirming that such a prohibition exists.

Accordingly, NYSE proposes to amend Section 501.00(A) of its Manual to waive application of that section to any listed company that is a foreign private issuer and that submits to NYSE a letter from an independent home country counsel certifying that a home country law or regulation prohibits such compliance. All other foreign private issuers will be required to comply with Section 501.00.

NYSE also proposes to further modify Section 501.00(A) and to eliminate Section 501.00(B) to remove text relating to transition periods that have since expired.

###### 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act because it requires foreign private issuers to comply with the same requirement as U.S. companies that listed equity securities must be eligible for participation in a direct registration system unless the foreign private issuer is prohibited from doing so under its home country laws.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NYSE will notify

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Changes to the rule text can be found at <http://www.nyse.com>.

<sup>3</sup> The Commission has modified the text of the summaries prepared by NYSE.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 200.30-3(a)(29).