

OPTIONS PRICE REPORTING AUTHORITY
CAPACITY GUIDELINES
[Effective January 6, 2005]

Section 4.7 of the OPRA Plan provides that certain functions pertaining to planning the capacity of the OPRA System, determining how the costs of modifying the System should be allocated among the parties and allocating available System capacity among the parties under specified circumstances where allocation is required are delegated to an Independent System Capacity Advisor (“ISCA”) selected by OPRA in accordance with the Plan. The Plan gives the ISCA considerable flexibility and authority in performing the functions delegated to it under the Plan, provided that in exercising its authority the ISCA must adhere to “Capacity Guidelines” adopted by OPRA in accordance with the Plan. The Capacity Guidelines adopted by OPRA for this purpose are as follows:

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.

Although the ISCA ordinarily is expected to provide the parties with the System capacity they have requested, it may provide less than all of the capacity that has been requested if it determines (a) that the capacity requests of one or more of the parties are unreasonable, or (b) that it is not reasonable to develop or maintain a System that has capacity sufficient to satisfy the requests of the parties. The ISCA may find a party’s request to be unreasonable, in accordance with (a) above, only if it concludes that a party does not have a reasonable need for all of the capacity it has requested within the timeframe to which the request applies. The ISCA may determine, in accordance with (b) above, that it is not reasonable to develop or maintain a System with all of the capacity that has been requested if it concludes that it is not technically feasible to do so, or that a significant number of OPRA vendors cannot or will not carry the amount of message traffic disseminated by such a System.

In accordance with Guideline 2, the ISCA will periodically solicit and receive requests for system capacity from each party to the Plan based on each party’s projected capacity needs. Subject to the conditions and limitations set forth in these Guidelines, the

ISCA will develop and implement a plan for modifying the OPRA System to the extent it determines modifications are necessary to provide reasonable assurance that the parties will be provided with the System capacity requested. The ISCA will endeavor to satisfy the capacity requests of the parties within six months of the due date for furnishing capacity requests to the ISCA. In performing its function, the ISCA is expected to consult with representatives of the parties, individually and collectively, as well as with OPRA's administrative officers, OPRA's Processor and such other persons that the ISCA believes may be of assistance to it. The ISCA will maintain in confidence all of the information it receives from the parties pertaining to their individual capacity requests, except as it may need to share this information with OPRA's Processor and other persons for planning purposes. In no event will capacity projections or requests received from one party be shared with any of the other parties except in the form of aggregate capacity projections and requests that do not identify the individual capacity projections and requests of any of the parties.

The ISCA will maintain internal safeguards and procedures adequate to ensure compliance with Section 4.7 of the Plan. These safeguards and procedures must be sufficient to assure that confidential information provided to the ISCA by the parties is not shared with any of the other parties except in the form of aggregate capacity requests or other aggregate information that does not identify the individual capacity requests of any of the parties, and to further assure that such information will not be used by the ISCA in any of its other business activities in a manner that may result in its being made available to any of the other parties or that is otherwise inconsistent with the confidentiality of such information. Prior to the time it first exercises its authority under the Plan, the ISCA shall have furnished a written description of these internal safeguards and procedures to the Commission.

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 3.2(a) 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. 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.

3. Information to be Included in ISCA Reports to OPRA. Every report furnished by the ISCA pursuant to Guideline 2 shall contain the following information together with such other information as the ISCA may determine to include:

a. The current capacity of the OPRA System measured in messages per second; the peak aggregate demand for System capacity experienced within the past 24 months; the aggregate demand for System Capacity projected for the period covered by the report, whether or not the ISCA believes it is necessary to increase the total amount of System capacity in order to accommodate the aggregate capacity requests submitted by the parties.

b. If the ISCA has determined that modifications to the System are necessary to satisfy the capacity requests of the parties, the report shall include a detailed description of any new hardware or software and any other modifications to the System that the ISCA has determined is needed, together with a detailed itemization of the total costs of such modifications. If the ISCA believes there are alternative ways to provide the capacity that has been requested, the above information shall be provided for each of these alternatives, together with a statement of the ISCA's reasons for choosing one of these alternatives. If for any reason the ISCA believes the OPRA System should be

modified so as to provide more or less capacity than has been requested by the parties, this should also be explained in the report.

c. A statement to the effect that the ISCA has discussed its recommendations with the Processor and that the Processor agrees with the determinations made by the ISCA, or if it does not agree, what different approaches the Processor would recommend and why.

d. A projected timetable for implementing the modifications the ISCA has determined should be made to the OPRA System, together with a statement that the Processor and any other providers of goods or services needed to implement the modifications agree that the timetable is reasonable.

e. How the costs of the modifications to the System are to be allocated among the parties in accordance with Guideline 7 below, and when payment by the parties of their allocated share of costs is to be made. This should be accompanied by a statement of the basis for the cost allocation, to the extent this can be presented in a manner that does not disclose the individual capacity projections and requests of the parties.

4. Implementation of the ISCA's Report.

If the ISCA's report reflects a determination to modify the OPRA System in order to meet the capacity requests of the parties, the OPRA Policy Committee shall be afforded an opportunity to meet with the ISCA to discuss the report and the manner of its implementation.

Subject to the limitations on its authority set forth in Guideline 5 below, the ISCA may take whatever action it deems to be necessary or appropriate to implement the System modifications it has determined to make (including contracting for goods and services from the Processor and other vendors), provided that it may not commence taking such action any sooner than 10 days following the date its report is furnished to the parties unless OPRA agrees to waive this waiting period. Any commitments made or entered into by the ISCA within the scope of its authority under the Plan and these Guidelines shall be in the name of and on behalf of OPRA, and the parties shall be obligated to pay their respective share of the costs of any modifications to the System so authorized in the manner reflected in the report.

The ISCA shall promptly notify OPRA's Executive Director whenever it has entered into contracts or made other commitments with the Processor or other vendors pertaining to modifications to the OPRA System, and shall provide the Executive Director with copies of all such contracts, work orders or other commitments, and with reasonable progress reports as the work is underway.

5. Limitations on the Authority of the ISCA. The ISCA's authority to modify the OPRA System and to obligate the parties to pay the costs of such modifications is subject to the following:

a. The ISCA may not authorize a modification to the OPRA System to increase its capacity in any respect beyond the capacity that reflects the aggregate capacity requests of the parties unless at least 75% of the parties consent to such greater increase.

b. The ISCA may not authorize a modification to the OPRA System that, together with other capacity increases previously authorized by the ISCA, represents an increase in the total capacity of the System in excess of 15,000 mps over the immediately preceding twelve months unless at least 75% of the parties consent to such increase.

c. The ISCA may not authorize a modification to the OPRA System if the Processor disagrees with any material aspect of the manner or scope of the modification unless at least 75% of the parties consent to such modification.

d. The ISCA may not authorize a modification to the OPRA System that makes major changes to the System, such as changing the types of servers used in the System or changing the communication protocols used in the network unless at least 75% of the parties consent to such modification.

6. Capacity Allocation. (a) In the event the capacity of the OPRA System is not sufficient to satisfy the capacity requests of one or more of the parties, the ISCA is authorized to allocate available System capacity among the parties, but only to the extent specified in this Guideline. This situation could arise, for example, (i) during the transition period prior to full implementation of the new procedures under the revised Plan; (ii) during the period between the time a new party commences to trade options and the time when it has received the capacity it has requested in its initial capacity request under Guideline 2; (iii) during the period between the time that the ISCA has determined to modify the capacity of the System to satisfy the requests of the parties and the time that the modified System becomes operational; or (iv) at any time when the ISCA has determined to modify the System to provide less capacity than has been requested because of the application of limits to the authority of the ISCA under these guidelines, or because the ISCA for some other reason has determined not to modify the System as requested.

(b) If a party is not provided with the capacity it has requested during the initial transition period for implementing the revised capacity planning provisions under the revised Plan (i.e., prior to the time the parties have been furnished with the capacity asked for in the initial round of requests to the ISCA), any allocation of capacity that may be authorized by the ISCA shall be in accordance with the allocation formula set forth in Attachment A to these Guidelines.

(c) If, at the time a new party proposes to commence trading options as set forth in its initial request for capacity submitted under Guideline 2, the new party has not received the capacity it requested, and if at that same time there is excess capacity available in the OPRA System that has not been provided to any of the parties, the ISCA may allocate to the new party all or a portion of any such excess System capacity in order to provide the new party with capacity determined by the ISCA to be sufficient to satisfy the reasonable needs of the new party until it has been provided with the capacity it initially requested. In no event, however, may the ISCA allocate capacity to a new party that is greater than the capacity initially requested by the new party, nor may the ISCA allocate to a new party capacity that has previously been provided to any of the other parties.

(d) In the event of a major systems failure or other catastrophic event that prevents the OPRA System from providing each of the parties with the capacity to which it would otherwise be entitled, for the duration of the emergency the capacity previously provided to each party will be proportionately reduced to reflect the overall reduction in available capacity. Additionally, for the duration of any such emergency the ISCA may implement a disproportionate temporary allocation of available capacity among the parties, but only if such disproportionate allocation is approved by at least 75% of the parties, and is approved by any party or parties that would be required to give up a disproportionate share of capacity in any such allocation.

(e) In any other circumstance where the OPRA system is not capable of providing sufficient capacity to meet the aggregate requests of the parties, the ISCA is authorized to allocate System capacity among the parties in a fair and equitable manner, subject to paragraphs (f) and (g), taking into account those factors that the ISCA believes are appropriate. Without limiting the discretion of the ISCA in this regard, the following are some of the factors that the ISCA may consider as bearing upon the allocation of capacity:

i. The relative demonstrated need of each of the parties for capacity as determined by the ISCA.

ii. The extent to which a party's past requests for additional capacity may not have been satisfied. (A capacity request submitted by a party to the ISCA is not considered for allocation purposes until six months after the date of its submission.)

iii. The extent to which a party has effectively mitigated its message traffic.

(f) Notwithstanding the foregoing, in no event may the ISCA allocate capacity to a party under paragraph (e) above beyond the total capacity that has been requested by that party (exclusive of capacity requests made within six months preceding the date of any such allocation) unless the allocation is approved by at least 75% of the parties.

(g) Except as provided in paragraphs (b) and (d) above, the ISCA has no authority to make an allocation of capacity that would require any party to give up any

capacity previously provided to that party in response to its request. Thus, for example, in the circumstance where an allocation of capacity by the ISCA is authorized under paragraph (e) of this guideline, the capacity available for allocation is limited to any excess capacity that may be available in the System that has not previously been provided to any other party.

(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 4.7 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 4.7 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.

7. Allocation of Costs.

(a) Section 7.1(a)(iii)(A) – (F) of the OPRA Plan shall govern the allocation of OPRA’s costs (including the amortization of purchased hardware and software) accrued in a single calendar year up to a ceiling of \$5,000,000, such ceiling being subject to adjustment on an annual basis pursuant to the affirmative vote of at least 75% of the parties.

(b) ISCA is responsible for allocating among the parties OPRA’s costs above the ceiling specified in paragraph 7(a) above (other than costs allocated to an applicant to be a party and included in the applicant’s Participation Fee in accordance with Guideline 2) in a fair and equitable manner, giving such weight as it believes is appropriate to the following factors, among others:

1. Each party’s relative share of the capacity provided by the modification the costs of which are being allocated;
2. Whether specific costs are attributable solely to a party’s request for additional capacity, in which event they may properly be allocated entirely to that party, or instead whether they are attributable to the cumulative impact of prior system modifications, in which event they may properly be allocated in whole or in part to all of the parties who shared in the capacity resulting from those prior modifications;

3. The extent to which the costs subject to allocation are directly attributable to the modification of the System (e.g., costs of hardware, software, development, testing, etc.) or are associated with general aspects of the operation of OPRA (e.g., general overhead and administrative costs).

Allocation Formula for Guideline 6(b)

The following Allocation Formula cannot be amended except with the unanimous approval of the parties.

Part A. Definitions.

(a) “Relevant calendar quarter” means:

(i) For the capacity allocation commencing on May 1 of each year, the months of January, February, and March.

(ii) For the capacity allocation commencing on August 1 of each year, the months of April, May, and June.

(iii) For the capacity allocation commencing on November 1 of each year, the months of July, August, and September.

(iv) For the capacity allocation commencing on February 1 of each year, the months of October, November, and December.

(b) “Customer contracts” means options contracts executed on a national securities exchange and cleared in a customer account at a registered clearing agency.

(c) “Options class” means all options (put options and call options) covering the same underlying security, including the same group or index of securities.

(d) “Included class” means any options class listed by a party:

(i) For which such party executes during the relevant calendar quarter an average of at least 15 customer contracts per day if the options class is multiply-traded; or

(ii) For which such party executes during the relevant calendar quarter an average of at least 25 customer contracts per day if the options class is not multiply-traded.

(e) “Capacity credit” means, for each party that is operating an options market, for each options class that is an included class for that party, an amount equal to:

(i) If the options class is a multiply-traded options class, the average number of quote messages for that options class received by OPRA between 3:00

p.m. and 4:00 p.m. eastern time during the relevant calendar quarter from all parties for which such class is an included class, divided by the number of such parties; and

(ii) If the options class is not a multiply-traded options class, the average number of quote messages for that options class received by OPRA between 3:00 p.m. and 4:00 p.m. eastern time during the relevant calendar quarter from the party trading such class.

(f) “Allocation percentage” for a party means the total of all such party’s capacity credits divided by the total of all capacity credits for all parties.

(g) “New Exchange Share” means 40 percent of OPRA System capacity divided by the number of parties that are operating an options market.

Part B. Calculation of Capacity Allocation for Purposes of Guideline 6(b).

(a) In accordance with Capacity Allocation Guideline 6(b), during the initial transition period for implementing the revised capacity planning provisions, commencing on the first of February, May, August, and November of each year during such period and continuing in effect until the first day of the third succeeding month, each party that operates an options market will receive an allocation of OPRA System capacity in an amount equal to:

(1) Such party’s New Exchange Share, if so elected pursuant to paragraph (b) of this Part B; or

(2) The aggregate of:

(A) One-third of OPRA System capacity divided by the number of parties that are operating an options market; plus

(B) The product of multiplying total OPRA System capacity reduced by the allocation of any New Exchange Shares and further reduced by the total allocation of capacity pursuant to subparagraph (a)(2)(A), times such party’s allocation percentage.

(b) Not later than the fifth business day following the end of the relevant calendar quarter, each party that on the last day of the relevant calendar quarter has been operating an options market for fewer than 270 calendar days may, by written notice to OPRA, elect to accept a capacity allocation commencing with the next succeeding relevant calendar quarter, equal to the New Exchange Share in lieu of the capacity allocation that it would otherwise receive under subparagraph (a)(2).

(c) OPRA will calculate the capacity allocation specified in paragraph (a) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the parties. Alternatively, OPRA can contract with the Processor or with another third party to perform this calculation. OPRA will notify the parties and the Commission of the capacity allocation promptly after such calculation is made. The capacity allocation provided for in this Part B shall be implemented by the Processor during the initial transition period described in paragraph (a) whenever it determines that total capacity demand of all parties exceeds the total available OPRA System capacity, and shall continue in effect until the earlier of the time such total demand is less than 80% of total available OPRA system capacity, or the end of the initial transition period. The Processor shall be required to notify promptly each party, the ISCA and the Commission whenever total capacity demand reaches 90% of total available system capacity, as well as whenever capacity allocation procedures under Part B go into effect or are discontinued.