

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>10</sup> Specifically, the Commission believes that the proposed OPRA Plan amendment, as amended, which would permit OPRA to provide a best bid and offer market data service to vendors, is consistent with section 11A of the Act<sup>11</sup> and rule 11Aa3-2 thereunder<sup>12</sup> in that it is 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.

Specifically, the Commission believes that OPRA's proposal to permit vendors to disseminate last sale information and a BBO is consistent with section 11A of the Act<sup>13</sup> because the combination of the consolidated BBO and the last sale reports would include the minimum essential pricing information market participants need to make informed investment decisions. Furthermore, the Commission notes that all markets would have an equal opportunity to be represented in the BBO. OPRA's proposed BBO service should make it easier for vendors to disseminate this minimum essential market information as an alternative to the full quotation information or in addition to such information.

Finally, the Commission notes that it is simultaneously approving OPRA's proposal to change its vendor agreement, which will affect the manner in which vendors may disseminate information to end users.<sup>14</sup> Specifically, under OPRA's vendor agreement proposal, vendors could choose to disseminate only the BBO and last sale information and exclude from the BBO the quotation size, or the market identifier associated with a BBO, or both, so long as in excluding this information the vendor did not discriminate on the basis of the market in which quotations are entered.

It is therefore ordered, pursuant to section 11A of the Act,<sup>15</sup> and rule

11Aa3-2 thereunder,<sup>16</sup> that the proposed OPRA Plan amendment, as modified by Amendment Nos. 1 and 2 (SR-OPRA-2002-01) be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47230; File No. SR-OPRA-2002-03]

### Options Price Reporting Authority; Order Approving an Amendment to the Options Price Reporting Authority Plan To Revise the Required Form of Vendor Agreement

January 22, 2003.

#### I. Introduction

On July 12, 2002, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 11Aa3-2 thereunder,<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").<sup>3</sup> The amendment would revise the form of Vendor Agreement that is required to be entered into between OPRA and vendors of options information under section VII(b) of the OPRA Plan. Notice of the proposal was published in the **Federal Register** on November 21, 2002.<sup>4</sup> The Commission received no

<sup>16</sup> 17 CFR 240.11Aa3-2.

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

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

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> 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).

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 participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

<sup>4</sup> See Securities Exchange Act Release No. 46839 (November 14, 2002), 67 FR 70269.

comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

OPRA's Vendor Agreement governs the terms and conditions under which vendors redistribute options market data to subscribers and other end users of the information. The proposed revisions would update the Vendor Agreement and consolidate a series of riders to the Vendor Agreement. In addition, the revised Vendor Agreement would consolidate several different forms of agreements between vendors and their customers into a single standard form "Subscriber Agreement," without making any significant substantive changes to the current forms.

The revised Vendor Agreement would also include new provisions to govern the redistribution by vendors of OPRA's new BBO (best bid and offer) Service.<sup>5</sup> In this regard, the revised Vendor Agreement would permit a vendor to satisfy its obligation to include consolidated options market data in its market information service if, at a minimum, the service would include options last sale information and the consolidated BBO provided by OPRA. This would permit a vendor to include additional unconsolidated information in its service so long as this required minimum consolidated information is included. Further, the revised Vendor Agreement would permit a vendor to exclude from its BBO service either the quote size or the market identifier associated with a BBO or both, so long as in excluding information the vendor would not discriminate on the basis of the market in which quotations are entered. In addition, if a vendor were to exclude the market identifier associated with the BBO from a dynamically updated service, it would be required to make that information available to recipients of the dynamically updated service through an inquiry-only service provided without additional cost. Finally, because OPRA's BBO Service provides for the inclusion of an approximation of the size associated with the BBO rather than the actual size, the revised Vendor Agreement would require any vendor that includes size in its BBO service to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service.

After careful review, the Commission finds that the proposed OPRA Plan

<sup>5</sup> See Securities Exchange Act Release No. 47231 (January 22, 2003) (File No. SR-OPRA-2002-01) (order granting permanent approval). See also Securities Exchange Act Release No. 46992 (December 13, 2002), 67 FR 78031 (December 20, 2002).

<sup>10</sup> In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78k-1.

<sup>12</sup> 17 CFR 240.11Aa3-2.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> See Securities Exchange Act Release No. 47230 (January 22, 2003) (order approving File No. SR-OPRA-2002-03).

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

amendment is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>6</sup> The Commission believes that the proposed OPRA Plan amendment is consistent with section 11A of the Act<sup>7</sup> and rule 11Aa3-2 thereunder<sup>8</sup> in that it is 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.

Specifically, the Commission notes that the Vendor Agreement governs the terms and conditions under which vendors are permitted to redistribute options market data to subscribers and other end users of the information, and includes new provisions to implement various aspects of OPRA's best bid and offer ("BBO") Service, which the Commission recently approved.<sup>9</sup> In particular, the revised Vendor Agreement would allow a vendor, subject to certain limitations, to exclude information regarding quotation size and market identification from its redistribution of OPRA's BBO Service. The Commission notes that if a vendor excludes either the quotation size or market identifier from its service, or both, it must not discriminate on the basis of the market in which quotations were entered. In addition, if a vendor excludes the market identifier associated with the BBO from a dynamically updated service, it would be required to make that information available to recipients of the dynamically updated service through an inquiry-only service provided without additional cost. The Commission believes that this provision of the proposal is consistent with the purposes of section 11A of the Act because vendors would be required to make available to their subscribers the information investors need to make informed investment decisions.

It is therefore ordered, pursuant to section 11A of the Act,<sup>10</sup> and rule 11Aa3-2 thereunder,<sup>11</sup> that the proposed OPRA Plan amendment, (SR-OPRA-2002-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47220; File No. SR-ISE-2002-24]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change Relating to Quotation Size and Notice of Filing and Order Granting Accelerated Approval of an Amendment to the Proposal

January 21, 2003.

On October 11, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> a proposed rule change that would require ISE quotations to be firm for their published sizes for all orders entered by ISE members, regardless of whether such orders are for the accounts of customers or broker-dealers. The proposal would allow ISE to eliminate its current distinction between the sizes of quotations for all orders, except for trades involving the interaction of ISE market maker quotations. On November 1, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**.<sup>3</sup> No comments letters were received on the proposal. On November 21, 2002, the ISE submitted a letter to withdraw proposed paragraph (c) of ISE rule 805, which would have limited market makers from sending more than one order every fifteen seconds in an option on the same underlying security.<sup>4</sup> This order approves the proposed rule change, as amended by the ISE letter, publishes notice of the ISE letter, and grants accelerated approval to ISE's withdrawal of proposed ISE rule 805(c).

The proposal would require that all ISE quotations be firm for all incoming

orders for their full disseminated size, except for matching quotations of ISE market makers. Specifically, each ISE Primary Market Maker and Competitive Market Maker would enter a quotation with a single size, available in full for all incoming orders, whether from customers, broker-dealers, ISE market makers or market makers on other exchanges, except for ISE market maker quotations. In the case of ISE market maker quotations, the ISE proposes to establish by rule that ISE market makers must be firm for at least one contract for quotations of other ISE market makers. To implement this proposal, the ISE would require a limited exemption from rule 11Ac1-1 (the "Quote rule")<sup>5</sup> to permit the Exchange to establish by rule a quotation size for which a responsible broker or dealer is obligated to trade with matching ISE market maker quotations, provided that such responsible broker or dealer is firm to all other customer and broker-dealer orders for the amount of its quotation size communicated to the ISE.<sup>6</sup>

Finally, the ISE proposes two technical changes to update its rules. First, the Exchange proposes to delete language from ISE rule 804 regarding the "enhanced size pilot" that expired on October 31, 2002. Second, the Exchange proposes to delete language from ISE rule 805 regarding limited exemptive authority that expired a year after the Exchange commenced trading.

Interested persons are invited to submit written data, views and arguments concerning the ISE Letter, including whether it is consistent with the Act. Persons making written submissions should file six copies

<sup>5</sup> 17 CFR 240.11Ac1-1

<sup>6</sup> In connection with this proposal, the ISE submitted a separate letter requesting an exemption from certain requirements of the Quote rule. See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division, Commission, dated October 10, 2002. Concurrent with approval of this proposal, the Commission granted ISE's request for a limited exemption from the Quote rule. Specifically, the Commission determined to grant responsible brokers or dealers on the ISE an exemption from their obligations under rule 11Ac1-1(c)(1) to communicate to the ISE their quotation sizes applicable to the quotations of ISE market makers, provided that: (1) Such responsible brokers or dealers promptly communicate to the ISE the quotation sizes for which they are obligated to execute at their published quotation any order, other than a quotation by an ISE market maker; (ii) such responsible brokers or dealers comply with their obligations under paragraph (c)(2) of rule 11Ac1-1 by trading with quotations by other ISE market makers, in an amount up to the size established by the ISE; and (iii) the ISE and its responsible broker or dealers do not rely on paragraphs (d)(1) and (2) of the Quote rule. See letter from Robert Colby, Deputy Director, Division, Commission, to Michael Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003.

<sup>6</sup> In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> 17 CFR 240.11Aa3-2.

<sup>9</sup> See *supra* note .

<sup>10</sup> 15 U.S.C. 78k-1.

<sup>11</sup> 17 CFR 240.11Aa3-2.

<sup>12</sup> 17 CFR 200.30-3(29).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 46723 (October 25, 2002), 67 FR 66693.

<sup>4</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 20, 2002 ("ISE letter").