

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58434; File No. SR-OPRA-2008-02]

### Options Price Reporting Authority; Order Approving an Amendment, as Modified by Amendment No. 1 Thereto, to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend OPRA's Vendor Agreement and Related Documents and To Adopt a New Policy

August 27, 2008.

#### I. Introduction

On May 30, 2008, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").<sup>3</sup> On July 1, 2008, OPRA submitted Amendment No. 1 to the proposed amendment to the OPRA Plan. The proposed OPRA Plan amendment, as modified by Amendment No. 1, would modify OPRA's Vendor Agreement in several respects, including revising OPRA's definition of the term "Nonprofessional." In connection with the revision of the term "Nonprofessional," the proposed OPRA Plan amendment would also amend OPRA's "Electronic Form of Subscriber Agreement" and "Hardcopy Form of Subscriber Agreement" and adopt a new policy. The proposed OPRA Plan amendment, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 22, 2008.<sup>4</sup> The Commission received no comment letters in response to the Notice.

<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 11A of the Act and Rule 608 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SEC Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.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> See Securities Exchange Act Release No. 58173 (July 16, 2008), 73 FR 42631 ("Notice").

This order approves the proposed OPRA Plan amendment, as modified by Amendment No. 1.

#### II. Description of the Proposal

The proposed Amendment to OPRA's Vendor Agreement has several purposes.

##### A. Section 5: Definition of "Nonprofessional"; Revision of forms of Subscriber Agreement; and New Policy

OPRA proposes to revise its definition of the term "Nonprofessional."<sup>5</sup> OPRA's current definition of the term "Nonprofessional" specifies that a person must be an "individual" in order to qualify as a Nonprofessional. OPRA has concluded that this aspect of the definition should be revised to state that a "legal person" may qualify as a Nonprofessional if the legal person is either an individual (a "natural person") or a "qualifying trust."<sup>6</sup>

The Addendum for Nonprofessionals that is attached to OPRA's form of Subscriber Agreement currently states that a person must use OPRA Data "solely in connection with [the person's] individual personal investment activities" in order to qualify as a Nonprofessional. OPRA has concluded that this language also should be revised to clarify that a natural person may qualify as a Nonprofessional if the person uses OPRA Data for the person's own benefit and for the benefit of other members of the person's immediate family and qualifying trusts of which the person is the trustee or custodian, and to include a parallel statement with respect to qualifying trusts to the effect that a qualifying trust may constitute a Nonprofessional only if the trust uses OPRA Data only for the benefit of the trust.<sup>7</sup>

##### B. Section 14: Reporting and Record Keeping Requirements

OPRA also proposes clarifying changes to four provisions in Section 14

<sup>5</sup> The definition currently appears in Section 5 of OPRA's Vendor Agreement and in OPRA's "Electronic Form of Subscriber Agreement" and "Hardcopy Form of Subscriber Agreement." These two forms are Attachments B-1 and B-2 to OPRA's form of Vendor Agreement. OPRA's form of Vendor Agreement and its forms of Subscriber Agreements are available on OPRA's Web site, <http://www.opradata.com>. OPRA is proposing changes to Section 5 of its form of Vendor Agreement and in its Electronic Form of Subscriber Agreement and Hardcopy Form of Subscriber Agreement to implement the revised definition.

<sup>6</sup> The term "qualifying trust" is proposed to be defined essentially to refer to a trust established for the benefit of one or more members of the trustee's immediate family.

<sup>7</sup> OPRA is also proposing to adopt a new policy entitled "Policy with Respect to Definition of the Term 'Nonprofessional.'"

of the Vendor Agreement, which describes the reports and record keeping that OPRA requires of Vendors. Specifically, the revised language makes clear that: (1) Pursuant to paragraph 14(a), OPRA requires only summary information on a monthly basis with respect to Subscribers that have entered into Subscriber Agreements with the Vendor; (2) a Vendor's reports to OPRA pursuant to paragraph 14(a) are to be provided electronically in a form reasonably satisfactory to OPRA; (3) whereas reports made pursuant to paragraph 14(a) may contain summary information with respect to Subscribers that have entered into Subscriber Agreements with the Vendor, reports made pursuant to paragraph 14(b) must include all information in the Vendor's list of Subscribers described in the first sentence of paragraph 14(a); (4) pursuant to 14(c)(3), a Vendor is not required to retain hardcopy originals of signed hardcopy Subscriber Agreements and may instead retain copies, either in hardcopy form or in electronic form, provided that copies that are maintained electronically are maintained in a "non-rewriteable, non-eraseable format;"<sup>8</sup> and (5) a Vendor is required to retain records with respect to its agreements with a Subscriber for at least three years after it discontinues furnishing OPRA Data to that Subscriber, and requires a Vendor to retain records with respect to the actual use of OPRA Data for at least three years after the records are created.

##### C. Section 19: Provisions for Modifying the Vendor Agreement

OPRA is proposing to modify the language in paragraph 19(a) so that it clearly states that, if OPRA wishes to use paragraph 19(a) to implement a change in the Vendor Agreement after complying with the applicable requirements of the Act, OPRA must furnish written notice of the change to the Vendor, following which the Vendor need not "opt in" to the change in order to maintain its status as a Vendor, but may "opt out" of the change by terminating its Vendor Agreement if it is unwilling to accept the change. The revised paragraph makes clear that, if a Vendor timely gives notice of termination of its Vendor Agreement following its receipt of notice of a modification of the Vendor Agreement, the unmodified Vendor Agreement will constitute the agreement between the

<sup>8</sup> This phrase is used in Rule 17a-4(f)(2)(ii)(A), 17 CFR 240.17a-4(f)(2)(ii)(A). Rule 17a-4(f) describes the circumstances in which brokers and dealers may retain certain records in electronic form.

Vendor and OPRA until the effective date of the Vendor's termination.<sup>9</sup>

#### D. Section 21: "Assignment" Provision

Section 21 of the Vendor Agreement currently states that the Vendor may not assign the Vendor Agreement without the consent of OPRA "except to a successor corporation upon merger or consolidation of Vendor, or to a corporation acquiring all or substantially all of the property, assets and business of Vendor." OPRA is proposing to modify that language to accommodate other business entities in addition to corporations.

### III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>10</sup> Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act<sup>11</sup> and Rule 608 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, and to remove impediments to, and perfect the mechanism of, a national market system.

The Commission notes that OPRA's proposed changes to the definition of the term "Nonprofessional" are designed to add clarity to the definition and better align the definition language with Vendors' and Subscribers' current understanding of the term. In addition, the Commission notes that OPRA's proposed changes to Sections 14, 19, and 21 are designed to add clarity and specificity to these provisions. The Commission believes that the proposed OPRA Plan amendment should help to assure the availability of information with respect to quotations and transactions in listed options and would thereby further one of the principal objectives for a national market system set forth in Section 11A(a)(1)(C)(iii) of the Act. Therefore, the Commission believes that OPRA's proposal is consistent with Section 11A of the Act<sup>13</sup> and Rule 608 thereunder.<sup>14</sup>

<sup>9</sup>OPRA also proposes to delete current paragraph 19(b) (modifications relating Electronic Subscriber Agreement) and paragraph 19(c).

<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 242.608.

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

<sup>14</sup> 17 CFR 242.608.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act,<sup>15</sup> and Rule 608 thereunder,<sup>16</sup> that the proposed OPRA Plan amendment (SR-OPRA-2008-02), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58425; File No. SR-CBOE-2008-88]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to the Demutualization of Chicago Board Options Exchange, Incorporated

August 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 21, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CBOE is filing this proposed rule change in connection with its plan to restructure from a Delaware non-stock corporation to a Delaware stock corporation that will be a wholly owned subsidiary of CBOE Holdings, Inc. ("CBOE Holdings"), a holding company organized as a Delaware stock corporation. As part of this Restructuring Transaction, a Certificate of Incorporation and Bylaws will be adopted for CBOE Holdings.<sup>3</sup> In

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

<sup>16</sup> 17 CFR 242.608.

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

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

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

<sup>3</sup> The term "Restructuring Transaction" is defined in proposed CBOE Rule 1.1(hhh) as "the

addition, the Exchange's Certificate of Incorporation and Constitution will be replaced with a new Certificate of Incorporation and Bylaws as a result of the Restructuring Transaction. Finally, the Exchange's Rules will be amended to address, among other things, trading access to the Exchange after the Restructuring Transaction.<sup>4</sup>

The text of the proposed Certificate of Incorporation of CBOE Holdings, the proposed Bylaws of CBOE Holdings, the proposed Certificate of Incorporation of the Exchange, the proposed amendments to the Rules of the Exchange, the proposed Voting Agreement between CBOE Holdings and the Exchange, and the proposed deletion of the Constitution of the Exchange is available on CBOE's Web site (<http://www.cboe.org/Legal>), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### Purpose

###### (1) The Restructuring Transaction

CBOE is filing this proposed rule change in connection with its plan to restructure from a Delaware non-stock corporation owned by its members to a

restructuring of the Exchange from a non-stock corporation to a stock corporation and wholly owned subsidiary of CBOE Holdings, Inc."

<sup>4</sup> The substance of the proposed rule change and its filing under Section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)), and Rule 19b-4 thereunder (CFR 240.19b-4), have been approved by the Board of Directors of the Exchange. The Exchange must obtain, but has not yet obtained, formal approval from the Board of Directors of the Exchange, as well as approval from the membership, for the changes set forth in this proposed rule change. Once it has obtained those approvals, the Exchange plans to file a technical amendment to this proposed rule change to reflect those approvals. Once those approvals are obtained, no further action by the Exchange in connection with this proposed rule change will be required.