

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49958; File No. SR-OPRA-2004-02)

July 1, 2004

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information and Amendment No. 1 Thereto to Eliminate from the Plan References to the Fee Exemption Pilot Currently Provided for in the Plan

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 May 7, 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 June 23, 2004, OPRA submitted Amendment No. 1 to the proposal.⁴ The proposed amendment would eliminate from the OPRA Plan references to the fee exemption pilot that expired on May 31, 2004. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment, as amended by Amendment No. 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., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc. (“ISE”), 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 Flynn, Assistant Director, Division of Market Regulation, Commission, dated June 22, 2004, replacing in its entirety the initial proposal filed on May 7, 2004. Amendment No. 1 made technical corrections to the proposed rule text and purpose section.

I. Description and Purpose of the Amendment

The purpose of the proposed OPRA Plan amendment is to eliminate from the OPRA Plan references to the fee exemption pilot currently provided for in the OPRA Plan. The fee exemption pilot was added to Section VII(d)(vi) of the OPRA Plan in August 2000. It provides a temporary exemption from OPRA fees for members of exchanges that are parties to the OPRA Plan and that act as brokers or dealers on traditional exchange trading floors or as specialists or market makers on electronic exchanges or electronic facilities of exchanges. For the duration of the pilot, Section V(e) of the OPRA Plan also provides that parties to the OPRA Plan may access OPRA information on their trading floors or at their other business locations without being obligated to pay fees to OPRA. The temporary exemption for members of parties and for the parties themselves was originally scheduled to expire on May 31, 2002, but was extended by OPRA until May 31, 2004.⁵

OPRA states that the temporary fee exemption was added to the OPRA Plan shortly before the commencement of trading on the all-electronic ISE in order to eliminate what could otherwise have been viewed as discrimination between devices on the trading floors of traditional exchanges, which had never been subject to information fees, and devices used by market makers on electronic exchanges, which, absent the exemption, would have been subject to OPRA fees. OPRA states that, at the time the temporary fee exemption was adopted, it recognized that an alternative way to avoid discriminating among different types of exchanges would be to subject all devices used to access OPRA information, whether on-floor or off-floor, to OPRA's information fees. OPRA believes that this would be the effect of the proposed

⁵ See Securities Exchange Act Release Nos. 43109 (August 2, 2000), 65 FR 48769 (August 9, 2000) (SR-OPRA-00-06), and 46032 (June 5, 2002), 67 FR 40356 (June 12, 2002) (SR-OPRA-2002-02).

amendment, which, upon its effectiveness, would make all devices that are used to access options market information furnished by OPRA subject to OPRA's information fees.

OPRA also proposes to amend the OPRA Plan to confirm that the receipt of options market data by an exchange over devices maintained by such exchange at its business locations would not involve redistribution of the data by such exchange, notwithstanding that members of such exchange could be able to access the information over those devices. OPRA proposes to amend the definitions of "vendor" and "subscriber" set forth in paragraphs (k) and (l) of Section II of the OPRA Plan to acknowledge that an exchange making options market information available to its members over devices maintained by an exchange at the exchange's business locations would not be engaged in "redistributing" the information. Accordingly, neither the exchange nor its members who access options market data in this way would need to enter into vendor or subscriber agreements with OPRA. However, upon the expiration of the fee exemption pilot, all devices maintained by exchanges for the receipt of OPRA information would be subject to OPRA's information fees.

Finally, as a matter of "housekeeping," OPRA proposes to delete from Section V(c)(i) of the OPRA Plan language concerning the introduction of OPRA's BBO Service in 2003 since the BBO Service is now already in place.

The text of the proposed OPRA Plan amendment, as amended, is set forth below.

Proposed new language is in *italics*; deletions are in brackets.

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II. Definitions

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(k) “Vendor” means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor in connection with such person’s business of distributing, publishing, or otherwise furnishing such information to other persons; provided, however, that a party to the Plan who receives consolidated Options Information over interrogation, display or other communications devices maintained by or on behalf of the party at any of its business locations shall not be deemed to be a Vendor solely because members of the party have access to consolidated Options Information over such devices at such locations. If a party makes consolidated Options Information available to its members or to any other persons (other than the party’s own employees or agents) over any other devices or at any other locations, the party shall be deemed to be a Vendor.

(l) “Subscriber” means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor for [its] such person’s own use, other than in connection with [its] such person’s activities as a Vendor, provided, however, that a member of a party to the Plan shall not be deemed to be a Subscriber solely because the member has access to consolidated Options Information over interrogation, display or other communications devices maintained by or on behalf of such party at one or more of such party’s business locations.

III. Administration of the Plan

(a) [No Change]

(b) Authority of Policy Committee. Except as otherwise expressly provided in the Plan, the OPRA Policy Committee shall make all policy decisions on behalf of OPRA in

furtherance of the functions and objectives of OPRA under the Exchange Act and under the Plan, including but not limited to the following:

(1) – (3) [No change]

(4) determining the level of fees to be paid to [the parties by] OPRA by parties, Vendors, Subscribers[,] or [others for] other approved persons for access or other services related to consolidated options Last Sale Reports or consolidated Quotation Information;

(5) – (7) [No change]

(c) – (h) [No change]

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V. Collection and Dissemination of Options Last Sale Reports and Quotation Information

(a) – (b) [No change]

(c) Dissemination of Last Sale Reports, Quotation Information and Other Information.

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of consolidated Options Information, on fair and reasonable terms over a network or networks to the parties, Vendors, Subscribers and other approved persons. Such information shall include consolidated Last Sale Reports and consolidated Quotation Information for all series of options for which the parties are required to provide current market information to OPRA in accordance with paragraphs (a) – (b) of this Section V, and [Not later than March 31, 2003, or upon the earlier completion of modifications to the OPRA system necessary to enable the System to carry the BBO, such information] shall also include the BBO for all such series of options. [Once the

BBO is available through the OPRA System,] OPRA may offer a complete options market data service consisting of the BBO combined with consolidated Last Sale Reports and Quotation Information, or OPRA may offer a limited service consisting of the BBO combined with consolidated Last Sale Reports only while separately continuing to offer Last Sale Reports and complete Quotation Information. Only such consolidated market information and related information, together with other information that satisfies the conditions of paragraph (iv) of this Section V(c) or is approved by OPRA, shall be disseminated through the System.

(ii) – (iv) [No change]

(d) [No change]

[(e) For the duration of the pilot period described in subparagraph (d)(vi) of Section VII of the Plan, each of the parties to the Plan is entitled to access Options Information without obligation to pay information fees or facilities charges to OPRA, provided that such access is provided only on the party's trading floor or at its other business locations, and provided further that the Options Information is used by the party only in connection with the operation, surveillance or regulation of its market in Eligible Securities. This entitlement extends to any other self-regulatory organization that performs regulatory or surveillance functions for a party.]

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VII. Vendors, Subscribers and Other Approved Persons

(a) Approval Required. Consolidated Options Information shall be disseminated through the OPRA System only to the parties, Vendors, Subscribers and other categories of persons that have been approved by OPRA and have entered into agreements with or for the benefit of OPRA and are in full compliance therewith. OPRA may, in its discretion, require

that Vendors, Subscribers or other approved persons be separately approved to receive consolidated Last Sale Reports and/or consolidated Quotation Information relating to each of FCO Securities, Index Option Securities or other categories of Eligible Securities. Any Vendor, Subscriber, or other approved person may be disapproved or its previous approval may be terminated upon a determination by OPRA that such action is necessary or appropriate in the public interest or for the protection of investors, or in the event such person violates any provision of any contract or agreement pursuant to which such person receives consolidated Last Sale Reports, consolidated Quotation Information or other Options Information. Any person adversely affected by final action of OPRA in disapproving or revoking prior approval of the privilege of receiving consolidated Last Sale Reports or consolidated Quotation Information shall be entitled to have such action reviewed in accordance with the applicable rules and regulations of the Securities and Exchange Commission.

(b) – (c) [No change]

(d) Fees and Charges.

(i) General. OPRA may impose information fees and/or facilities charges upon all persons who have access to Options Information, including parties, Vendors, Subscribers or other approved [persons in accordance with the agreements between OPRA and such] persons. A schedule of OPRA’s effective fees and charges is attached as Exhibit A hereto. Except as provided in paragraphs (ii) and (iii) below, changes in these fees and charges may be made by the affirmative vote of not less than two-thirds of all of the parties. Upon approval in accordance with this Section VII(d) and, in the case of fees and charges subject to approval only by parties who provide a market in FCO Securities or Index Option Securities, upon not less than 30 days prior written

notice to the other parties, changes in fees and charges may be put into effect upon OPRA's filing notice thereof with the Securities and Exchange Commission, subject to any required notice period in the agreements between OPRA and the persons subject to the fees or charges in question. Any change in a fee or charge that has taken effect as stated above may be summarily abrogated by the Securities and Exchange Commission within 60 days of the date of filing the same with the Commission if the Commission determines that it is appropriate in furtherance of the purposes of the Exchange Act that such change not be put into effect until it has been reviewed and approved by the Commission. The abrogation of a change in a fee or charge by the Commission shall not affect the validity of the revised fee or charge during the period it was in effect, except that if the Commission should ultimately disapprove the change, OPRA shall refund the excess of any fees or charges paid to it over the fees or charges as finally approved by the Commission.

(ii) – (v) [No change]

[(vi) Temporary Exemption from Subscriber Fees and Charges for Certain Members of Parties. During a pilot period that end on May 31, 2002, or on such later date as OPRA may determine, except as OPRA's schedule of effective fees and charges may expressly provide to the contrary, a member of a party who acts in the capacity of a broker or dealer on a party's trading floor, or a member of a party who acts as a specialist or registered market maker on an electronic exchange or other electronic facility maintained by the party, shall not be subject to OPRA's information fees or facilities charges in respect of those terminals or other devices that are used by the member for the sole purpose of obtaining access to OPRA Information in connection

with its performing the above activities. Such members who have access to OPRA Information at off-floor locations will be required to enter into Subscriber agreements with OPRA, except that the provisions of those agreements pertaining to payment of fees to OPRA will not apply.]

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II. Implementation of Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3-2 of the Act.⁶

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, as amended, 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. Please include File Number SR-OPRA-2004-02 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-2004-02. 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

⁶ 17 CFR 240.11Aa3-2.

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-2004-02 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(29).