

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58434; File No. SR-OPRA-2008-02)

August 27, 2008

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

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")¹ and Rule 608 thereunder,² an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").³ 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

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ 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 S.E.C. 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.

proposed OPRA Plan amendment, as modified by Amendment No. 1, was published for comment in the Federal Register on July 22, 2008.⁴ The Commission received no comment letters in response to the 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."⁵ 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."⁶

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.

⁴ See Securities Exchange Act Release No. 58173 (July 16, 2008), 73 FR 42631 ("Notice").

⁵ 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, 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.

⁶ 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.

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.⁷

B. Section 14: Reporting and Record Keeping Requirements.

OPRA also proposes clarifying changes to four provisions in Section 14 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,"⁸ and (5) a

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

⁸ 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 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 Vendor and OPRA until the effective date of the Vendor’s termination.⁹

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.

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

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.¹⁰ Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act¹¹ and Rule 608 thereunder¹² 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 Act¹³ and Rule 608 thereunder.¹⁴

¹⁰ 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).

¹¹ 15 U.S.C. 78k-1.

¹² 17 CFR 242.608.

¹³ 15 U.S.C. 78k-1.

¹⁴ 17 CFR 242.608.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,¹⁵ and Rule 608 thereunder,¹⁶ 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.¹⁷

Florence E. Harmon
Acting Secretary

¹⁵ 15 U.S.C. 78k-1.

¹⁶ 17 CFR 242.608.

¹⁷ 17 CFR 200.30-3(a)(29).