

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58973; File No. SR-OPRA-2008-04)

November 18, 2008

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Options Price Reporting Authority's Policies with Respect to Device-Based Fees

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on November 12, 2008, the Options Price Reporting Authority ("OPRA") 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").<sup>3</sup> The proposed amendment would revise OPRA's "Policies with Respect to Device-Based Fees."<sup>4</sup> The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

The primary purpose of this filing is to amend the language of the current version of OPRA's Policies with Respect to Device-Based Fees to confirm their application to third party

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<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 (formerly Rule 11Aa3-2). 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 Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Alternext US LLC, and NYSE Arca, Inc.

<sup>4</sup> OPRA most recently amended its Policies with Respect to Device-Based Fees in File No. SR-OPRA-2007-02, Release No. 34-55455.

payment arrangements. A secondary purpose of this filing is to make a few additional changes in the Policies.

### Background

OPRA uses the term “device-based fees” to refer to fees that are determined by counting “devices” or “User IDs” that are enabled to receive OPRA data. If a person signs a Professional Subscriber Agreement with OPRA, OPRA collects device-based fees with respect to the receipt of the data by the Professional Subscriber.<sup>5</sup> OPRA’s Policies with Respect to Device-Based Fees, as their title suggests, describe various policies with respect to OPRA’s device-based fees.

OPRA invoices most Professional Subscribers that pay device-based fees directly, and the Professional Subscribers pay the device-based fees directly to OPRA. Some Professional Subscribers establish arrangements with third parties pursuant to which the third parties (each, a “third party payor”) agree to pay OPRA’s fees for the Professional Subscribers’ use of OPRA data. This kind of payment arrangement is usually memorialized using an OPRA form agreement entitled “Third Party Billing Agreement.”<sup>6</sup>

### Primary Purpose of Filing

The sections of the Policies entitled “Counting Devices and User IDs” and “Professional Subscriber’s Responsibility to Verify Invoices” are applicable to device-based fees that a third party payor has agreed to pay, and OPRA is proposing to add an express statement to this effect to the Policies.

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<sup>5</sup> A person may also become an OPRA Professional Subscriber by entering into a “Subscriber Agreement” with a “Vendor” – an entity that has entered into a Vendor Agreement with OPRA that authorizes the entity to redistribute OPRA Data to third persons. If a person becomes a Professional Subscriber by signing a Subscriber Agreement with a Vendor, the Vendor pays “usage-based fees” to OPRA. The Policies with Respect to Device-Based Fees are not relevant to usage-based fees.

<sup>6</sup> OPRA filed its current form of Third Party Billing Agreement in File No. SR-OPRA-2007-01, Release No. 34-55454.

The section of the Policies entitled “Counting Devices and User IDs” states a longstanding OPRA policy that OPRA does not require a Professional Subscriber that pays device-based fees directly to OPRA to pay more than one fee with respect to any device or User ID that is enabled to receive OPRA information, even if the device or User ID is enabled to receive OPRA information from more than one source or “service.” OPRA proposes to amend this section to state more explicitly that OPRA applies this policy on a “payor by payor” basis. For example, if a particular device is receiving data from one service that is being paid for by the Professional Subscriber and a second service that is being paid for by a third party payor, OPRA requires that the Professional Subscriber pay a device-based fee for the device and that the third party payor also pay a device-based fee for the device.

#### Secondary Purpose of Filing

OPRA is also proposing to amend a paragraph in the Policies that describes how a Professional Subscriber may count its devices and User IDs to state explicitly that the paragraph is relevant only to those Professional Subscribers that have been authorized to enable their own devices and User IDs to receive OPRA information. OPRA authorizes Professional Subscribers to enable their own devices and User IDs pursuant to OPRA’s form “Indirect (Vendor Pass-Through) Circuit Connection Rider” or form “Direct Circuit Connection Rider.” The “enablement” process is controlled, for all other Professional Subscribers, by the Vendors providing service to these Subscribers, and for these Subscribers, the Vendors report this information to OPRA and this paragraph in the Policies is not relevant. OPRA is also proposing to make a few additional self-explanatory changes in the language of the Policies.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission’s Public Reference Room, and <http://opradata.com>.

## II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph to (b)(3)(iii) of Rule 608 under the Act,<sup>7</sup> OPRA designated this amendment as one involving solely technical or ministerial matters thereby qualifying the amendment for effectiveness upon filing. OPRA states that it will implement the revised form of the Policies upon filing with the Commission.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act<sup>8</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or 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.

## 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 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](mailto:rule-comments@sec.gov). Please include File No. SR-OPRA-2008-04 on the subject line.

### Paper Comments:

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<sup>7</sup> 17 CFR 242.608(b)(3)(iii).

<sup>8</sup> 17 CFR 242.608(b)(2).

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OPRA-2008-04. 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 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2008-04 and should be submitted on or before [insert 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Acting Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(29).