

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66564; File No. SR-OPRA-2012-02)

March 9, 2012

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Amend OPRA's Fee Schedule

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 March 8, 2012, 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 Nonprofessional Subscriber Fee and Usage-based Vendor Fee and adopt a new Enterprise Rate Nonprofessional Subscriber Fee. 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 purpose of the amendment is to make a set of changes in OPRA's Fee Schedule as follows: OPRA's Nonprofessional Subscriber Fee would be increased from \$1.00 per

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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 nine participants to the OPRA Plan are BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

Nonprofessional Subscriber<sup>4</sup> per month to \$1.25 per Nonprofessional Subscriber per month. The cap on OPRA's Usage-based Vendor Fees for receipt of OPRA data by Nonprofessional Subscribers would be increased commensurately to \$1.25 per Nonprofessional Subscriber per month.<sup>5</sup> OPRA would also establish a new monthly "Enterprise Rate Nonprofessional Subscriber Fee" that would cap each Vendor's combined obligation for Nonprofessional Subscriber Fees and Usage-based Vendor Fees for Nonprofessional Subscribers at \$375,000 per month.

OPRA's Nonprofessional Subscriber Fee and Usage-based Vendor Fees were established at their current levels effective on January 1, 2000.<sup>6</sup> OPRA has not increased these fees since then in large part because of the simplicity of having the Nonprofessional Subscriber Fee and the cap on Usage-based Vendor Fees for receipt of OPRA data by a Nonprofessional Subscriber each set at \$1.00. However, the effect over a period of twelve years has been to increase the

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<sup>4</sup> OPRA defines a "Subscriber," in general, as an entity or person that receives OPRA data but does not redistribute it to third parties, and defines a "Nonprofessional Subscriber" as a Subscriber who is a "Nonprofessional." OPRA's definition of the term "Nonprofessional" is stated in its forms of "Electronic Subscriber Agreement" and "Hardcopy Subscriber Agreement." These forms are available on OPRA's website, [www.opradata.com](http://www.opradata.com).

<sup>5</sup> OPRA's Fee Schedule provides that a Vendor may determine the fee that it pays with respect to its distribution of current OPRA data to a Nonprofessional Subscriber in one of two ways: either the Vendor may pay OPRA's flat monthly Nonprofessional Subscriber Fee (currently \$1.00/month, proposed in this filing to be increased to \$1.25/month), or the Vendor may count the Nonprofessional Subscriber's queries for OPRA data and pay Usage-based Vendor Fees based on the actual usage of OPRA data by the Nonprofessional Subscriber, subject to a cap that OPRA has always set at the amount of the Nonprofessional Subscriber Fee. Many Vendors prefer to pay the flat Nonprofessional Subscriber Fee, even though their aggregate fees on the basis of Usage-based Vendor Fees might be lower and could not be greater, due to the administrative simplicity of doing so and the fact that the cost on a per Subscriber basis of doing so is very small.

<sup>6</sup> See File No. SR-OPRA-99-02; Release No. 34-42152 (November 17, 1999). In File No. SR-OPRA-99-02, OPRA reduced the Nonprofessional Subscriber Fee from \$2.50 per Nonprofessional Subscriber to the current \$1.00 per Nonprofessional Subscriber.

ratio of OPRA's Professional Device Fee as compared to the Nonprofessional Subscriber Fee. (For the year 2000, OPRA's weighted average Professional Device Fee was approximately \$12.55 per device; it is now \$25.00/device.<sup>7</sup>) OPRA believes that increasing its Nonprofessional Subscriber Fee will restore an appropriate balance between its revenues derived from Professional Subscriber Device-based Fees on the one hand and Nonprofessional Subscriber Fees and Usage-based Vendor Fees for Nonprofessional Subscribers on the other hand.

In response to input from the Vendor community, OPRA is proposing to introduce an "Enterprise Rate Nonprofessional Subscriber Fee." The Enterprise Rate Nonprofessional Subscriber Fee would limit the maximum aggregate amount of Nonprofessional Subscriber Fees and Usage-based Vendor Fees with respect to Nonprofessional Subscribers that any Vendor would be required to pay with respect to its Nonprofessional Subscribers. The proposed Enterprise Rate Nonprofessional Subscriber Fee is \$375,000 per month.

OPRA anticipates that these proposed changes in its fees will result in an increase in its revenues of approximately \$1,700,000 on an annual basis at current usage rates.<sup>8</sup> OPRA believes that this increase will restore the relationship of its fees for Nonprofessional Subscribers

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<sup>7</sup> In the year 2000, OPRA had a sliding scale for its Professional Subscriber Fees, with different rates based on whether a Professional Subscriber was a Member of one or more of the Exchanges that were parties to the OPRA Plan and on the Professional Subscriber's number of devices; OPRA's Professional Subscriber Fees ranged from \$10.50/device for an Exchange Member with 750 or more devices to \$27.00/device for a non-Member with nine or fewer devices. Over the course of several years, OPRA made incremental changes in its Professional Subscriber Fees to eliminate all distinctions in these fees based on a Professional Subscriber's status as a member or nonmember of an exchange that is a party to the OPRA Plan or on the Subscriber's total number of OPRA-enabled devices. See File No. SR-OPRA-2004-01; Release No. 34-49382 (February 25, 2004).

<sup>8</sup> This projection is approximate for several reasons, among them that the fee increase may cause some Vendors to review their lists of Nonprofessional Subscribers for inactive accounts and may cause some Vendors to begin paying Usage-based Vendor fees rather than Nonprofessional Subscriber Fees.

to its fees for Professional Subscribers and represent an appropriate contribution to covering the overall costs of OPRA and its member exchanges to which these fees may properly be applied.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, <http://opradata.com>, and on the Commission's website at [www.sec.gov](http://www.sec.gov).

## II. Implementation of the OPRA Plan Amendment

OPRA designated this amendment as qualified to be put into effect upon filing with the Commission in accordance with clause (i) of paragraph (b)(3) of Rule 608 under the Act.<sup>9</sup> OPRA intends to implement the amendment on May 1, 2012.

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>10</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

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<sup>9</sup> 17 CFR 242.608(b)(3)(i).

<sup>10</sup> 17 CFR 242.608(b)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-OPRA-2012-02 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OPRA-2012-02. 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 comments on the Commission's Internet website (<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 website viewing and printing 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-2012-02 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(29).