

VIA EMAIL AND FEDERAL EXPRESS

January 10, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: SEC Release No. 34-63400 – File No. SR-OPRA-2010-04

Dear Ms. Murphy:

NYSE Euronext, on behalf of its subsidiary options exchanges, NYSE Arca Inc. (“NYSE Arca”) and NYSE Amex LLC (“NYSE Amex”), appreciates the opportunity to comment on the Options Price Reporting Authority (“OPRA”) proposal (“Proposal”)¹ with the Securities and Exchange Commission (“SEC” or “Commission”) to revise the Data Recipient Interface Specification and the Participant Interface Specification to provide that participants may submit quotations in listed options in which either the bid or the offer is non-firm. We believe that accommodating such quotations is inappropriate because OPRA has not explained how such quotations would be consistent with the requirements of Rule 602 of Regulation NMS under the Securities Exchange Act of 1934 (“Exchange Act”). For this reason, we believe that the Proposal is inconsistent with the Exchange Act, and we respectfully urge the Commission to suspend the Proposal pursuant to Section 19(b)(3)(C) of the Exchange Act and disapprove the Proposal pursuant to Section 19(b)(2)(B) of the Exchange Act.

Discussion

The purpose of Rule 602 of Regulation NMS is to require all registered national securities exchanges to display their best available bids and offers. Specifically, Rule 602(a)(1)(i) of Regulation NMS requires that “[e]ach national securities exchange shall at all times such exchange is open for trading, collect, process, and make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges” on that exchange. In addition, Rule 602(a)(3)(i) of Regulation NMS

¹ See Securities Exchange Act Release No. 63400 (November 30, 2010), 75 FR 76058 (December 7, 2010) (SR-OPRA-2010-04).



provides an exception to that requirement if “the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available pursuant [Rule 602(a)(1)] in a manner that accurately reflects the current state of the market on such exchange.”

The change in functionality set forth in the Proposal could effectively allow an options exchange to skirt its obligation under Rule 602 by displaying a non-firm quote in place of the best available firm quote on that side of the market. In its filing, OPRA states the proposed indicators would be used when a market center is in the process of collecting liquidity during an auction or when there is a price driven integrity pause. However, neither of those situations meets the standard under Rule 602 of being unable to collect and process the best bid or offer available on the exchange. Liquidity collected during an auction is either firm, and should be disseminated to OPRA as part of a firm quote, or non-firm, in which case neither side of the quote should be disseminated to OPRA. Further, none of the OPRA participant exchanges have a “price driven integrity pause” within their rules.

The proposal by OPRA would accommodate exchanges that are capable of collecting and processing the best bid and offer in subject securities, but choose not to. In our view, if an exchange has a firm best bid or best offer available in its system, then the two-sided quotation should be processed and transmitted to OPRA. An exchange should not be provided the means to mask one side of the quotation in the hopes a better bid or offer arrives. If an exchange is incapable of making available an accurate bid or offer, it should avail itself of the existing “non-firm” indicator in use by OPRA and inform the market that it is unable to display a two-sided quotation.²

We agree with OPRA that it is not optimal to use a zero bid or zero offer to indicate that a quotation on one side is not available. However, the zero bid/offer does not allow an exchange to substitute a potentially misleading non-firm bid or offer in place of an available firm bid or offer. In addition the zero bid/offer mechanism will continue to serve the purpose of clearly communicating to the market that a quote is not available on one side of the market without requiring exchanges and vendors to perform costly and extensive programming changes to accommodate a one-sided firm quote.

Conclusion

Rule 602 necessarily obligates securities exchanges to disseminate the best bid and best offer available on the market at all times, unless unusual circumstances prevent the exchange from doing so. This rule is integral to the conduct of a fair and orderly market by providing public investors firm prices where securities may be bought or sold. Allowing OPRA to adopt one-

² See OPRA Participant Input Specification (December 22, 2010), Section 4.15, Page 19, Message Types for Category k Equity and Index Quotes with Size.



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sided non-firm indicators will allow an exchange to transmit non-firm quotes even in cases where the exchange has firm quotes available.

Accordingly, we respectfully urge the Commission to suspend and disapprove the Proposal.

Very truly yours,

Janeth McHinnery