

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65794; File No. SR-OPRA-2011-03)

November 21, 2011

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan to Implement New Policies Regarding Reporting and Usage-Based Vendor 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 7, 2011, 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 implement a new set of policies entitled “Policies with respect to Reporting and Usage-based Vendor Fees.” 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

OPRA’s proposed “Policies with respect to Reporting and Usage-based Vendor Fees” (the “Policies”) are comprised of three sections. The first section describes OPRA policies

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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.

relating to the reports that OPRA requires in order to determine the fees that are payable to OPRA by Vendors' and Professional Subscribers. The second and third sections describe OPRA policies pertaining to "Usage-based Vendor Fees."<sup>4</sup> Usage-based Vendor Fees are one of the types of fees that are payable to OPRA by Vendors. OPRA is not proposing to change the amount of any of its fees, but rather to clarify its reporting requirements and the circumstances in which certain fees are payable.

(1) Policies with Respect to Reporting. Section 1 of the new Policies summarizes OPRA's reporting requirements for Vendors and for Professional Subscribers that have an obligation to report their usage of OPRA data directly to OPRA. (These Professional Subscribers are sometimes referred to as "internal distributors."<sup>5</sup>) OPRA has not previously summarized its requirements in a single document. As described in Section 1, OPRA requires that a Vendor report to OPRA with respect to:

- The Professional Subscribers to which the Vendor is providing bulk data feeds of OPRA Data (enabling these Professional Subscribers to act as internal distributors).

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<sup>4</sup> "Usage-based Vendor Fees" or "usage-based fees" are fees that are payable by each Vendor with respect to access to OPRA Data by the Vendor's Subscribers on a "Per Query" or "meter-based" basis. Usage-based fees are applicable, at the election of the Vendor, to queries for "quote packets" or "options chains." The rates for usage-based fees are stated, and the terms "quote packet" and "options chain" are defined, in OPRA's Fee Schedule. OPRA's Fee Schedule is available on OPRA's website, [www.opradata.com](http://www.opradata.com).

<sup>5</sup> Professional Subscribers that are obliged to report their usage of OPRA data directly to OPRA are sometimes referred to as "internal distributors" because they have the independent ability to entitle access to OPRA data by their employees. These Professional Subscribers must have entered into Professional Subscriber Agreements directly with OPRA, and must also have entered into either a Direct Circuit Connection Rider or an Indirect (Vendor Pass-Through) Circuit Connection Rider with OPRA. OPRA sometimes refers to the data service to a Professional Subscriber that enables the Professional Subscriber to act as an internal distributor as a "bulk data feed," and that term is defined in the Policies for that purpose.

- The Professional Subscribers that have entered into Professional Subscriber Agreements directly with OPRA and that have devices and/or User IDs entitled by the Vendors.<sup>6</sup>
- The Professional Subscribers to which the Vendor distributes OPRA data and for whose access it pays OPRA usage-based fees (i.e., Professional Subscribers to which it distributes OPRA data on a “Per Query” or “meter-based” basis).
- The Non-Professional Subscribers to whom the Vendor distributes OPRA data on a “Per Query” or “meter-based” basis and for whose access it pays OPRA usage-based fees.
- The Non-Professional Subscribers to whom the Vendor distributes OPRA data and for whose access it pays OPRA Nonprofessional Subscriber Fees.<sup>7</sup>
- Any voice-synthesized market data service provided by the Vendor.

Also as described in Section 1, OPRA requires that a Professional Subscriber that is an internal distributor report to OPRA with respect to the devices and User IDs that have been entitled by the Professional Subscriber to have access to OPRA data.

(2) Policies Relating to Usage-Based Fees. Section 2 of the Policies describes OPRA’s longstanding policies with respect to three questions that Vendors occasionally ask relating to OPRA’s usage-based fees.

Paragraph 2(a) states OPRA’s policy with respect to a Vendor that wishes to have access to OPRA data other than in connection with its activities as a Vendor - that is, to have access to

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<sup>6</sup> OPRA uses these reports to generate invoices for “Professional Subscriber Device-based Fees” that it sends directly to these Professional Subscribers.

<sup>7</sup> OPRA’s Fee Schedule permits a Vendor to pay fees with respect to the receipt of OPRA data by a Nonprofessional Subscriber in one of two ways: either by counting quote packets or options chains and paying usage-based fees or by paying the “Nonprofessional Subscriber Fee”. The usage-based fees for Nonprofessional Subscribers are subject to a monthly cap, currently \$1.00/month/Nonprofessional, and the Nonprofessional Subscriber Fee is a flat fee, also currently \$1.00/month/Nonprofessional.

OPRA data in a “Subscriber” capacity as well as in its “Vendor” capacity. Such a Vendor has two choices. First, the Vendor may enter into a Professional Subscriber Agreement with OPRA and pay “device-based fees” directly to OPRA with respect to its access to OPRA data.

Alternatively, the Vendor may enter into a Subscriber Agreement with a second, unaffiliated, Vendor to permit employees of the first Vendor to have access to OPRA data on a metered usage basis. In that case, the second Vendor will be responsible for tracking and reporting the access to OPRA data by employees of the first Vendor. OPRA is occasionally asked whether a Vendor can track and report the internal usage on a metered basis of the Vendor itself or its affiliates and pay usage-based fees with respect to this internal usage. Paragraph 2(a) states OPRA’s longstanding policy that this alternative is not permitted.

Paragraph 2(b) states OPRA’s policy that a Vendor must report with respect to its dissemination of OPRA data to a Professional Subscriber entirely on either a “meter-based” basis (in which case, the Vendor is responsible for paying Usage-based Vendor Fees for its dissemination of OPRA data to the Professional Subscriber) or on a “device-based” basis (in which case, the Professional Subscriber is responsible for paying device-based fees with respect to the Vendor’s dissemination of OPRA data to the Professional Subscriber).

The policy described in paragraph 2(c) states that, if a device or User ID is capable of receiving OPRA information from one Vendor for which a Professional Subscriber pays device-based fees and from a second Vendor for which the second Vendor pays usage-based fees, both types of fees must be paid by the respective payors. OPRA has had a longstanding policy - stated in OPRA’s “Policies with respect to Device-Based Fees,”<sup>8</sup> – that a Professional Subscriber is not required to pay more than one device-based fee with respect to any device or User ID that

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<sup>8</sup> OPRA’s Policies with respect to Device-Based Fees are available on OPRA’s website, [www.opradata.com](http://www.opradata.com).

is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or “service.” Paragraph 2(c) affirms that, if a device or User ID is capable of receiving OPRA information from one Vendor for which the Professional Subscriber pays device-based fees and from a second Vendor for which the second Vendor pays usage-based fees, OPRA requires that both types of fees be paid by the respective payors.

(3) Guidelines for Vendors’ Quote Counting Systems. Section 3 describes OPRA’s guidelines with respect to Vendors’ quote counting systems or “quote meters.” This section replaces a Policy currently on the OPRA website that, although it is entitled “Auditing,” actually describes OPRA’s requirements with respect to quote meters. Section 3 states that a quote meter must comply with the following requirements:

- The quote meter must be able to recognize and count “quote packets” and/or “options chains”<sup>9</sup> for all data service of the Vendor that is provided to Subscribers on a usage basis, except that:
  - If the Vendor is “capping” the fee payable by the Vendor for any Nonprofessional Subscriber at the monthly maximum amount stated in OPRA’s Fee Schedule, the quote meter needs to be able to count usage only up to the maximum amount.
  - If the Vendor is “capping” the fee payable by the Vendor for any Professional Subscriber at the monthly maximum amount stated in OPRA’s Fee Schedule, the quote meter needs to be able to count usage only up to the maximum amount.

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<sup>9</sup> These terms are defined in OPRA’s Fee Schedule.

- The quote meter must not count usage for any Nonprofessional Subscriber for which the Vendor is paying the Nonprofessional Subscriber Fee. (The service to these Nonprofessional Subscribers is not on a usage basis.)<sup>10</sup>
- The quote meter must count usage separately for each option listed in a portfolio format or a market minder service. (For example, quote packets for a portfolio with five options series would constitute five quote packets.)
- The quote meter must count all “current” OPRA market data (i.e., all OPRA data that was sent to the Vendor within the preceding 15 minutes). (Data that is no longer current - i.e., that is delayed data - is not subject to reporting and payment of usage-based fees to OPRA.)

A Vendor’s quote counting system must be able to comply with these requirements if the system is to be able to count quotes in a manner that results in an accurate determination of the Usage-based Vendor Fees that the Vendor owes to OPRA. Section 3 of the Policies provides a more accurate description of these requirements than OPRA’s current policy entitled “Auditing” does.

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

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<sup>10</sup> OPRA’s systems and Fee Schedule treat Nonprofessional Subscriber Fees and Usage-based Vendor Fees that are paid by Vendors with respect to access to OPRA data by Nonprofessionals separately.

## 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>11</sup> The Policies describe and refine longstanding OPRA technical policies with respect to the applicability of its fees, particularly its Usage-based Vendor Fee and Nonprofessional Subscriber Fee. Accordingly, OPRA will implement 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>12</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-2011-03 on the subject line.

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<sup>11</sup> 17 CFR 242.608(b)(3)(i).

<sup>12</sup> 17 CFR 242.608(b)(2).

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-2011-03. 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-2011-03 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(29).