

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53753; File No. SR-OPRA-2006-01)

May 2, 2006

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 Revise OPRA's Professional Subscriber Agreement and Its Direct Circuit Connection Rider and Indirect Circuit Connection Rider

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 April 21, 2006, 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 OPRA Plan amendment would revise OPRA's Professional Subscriber Agreement ("PSA"), which is required to be entered into between OPRA and professional subscribers to options information under Section VII(c) of the OPRA Plan, and amend the Direct Circuit Connection Rider and Indirect Circuit Connection Rider to the PSA. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

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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 OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six 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, Inc., the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

I. Description and Purpose of the Amendment

OPRA states that the purpose of the proposed amendment is to revise the PSA that is required to be entered into between OPRA and professional subscribers to options information under Section VII(c) of the OPRA Plan, to amend the Direct Circuit Connection Rider and the Indirect Circuit Connection Rider to the PSA to conform the language of these documents to OPRA's Vendor Agreement as revised in 2002, and to make certain other updating revisions.<sup>4</sup>

Significant changes that OPRA proposes to the PSA and the Riders are described below. In addition, OPRA proposes certain non-substantive editorial revisions, which are not described below but are reflected in the new PSA and the Riders thereto.

Professional Subscriber Agreement

OPRA has updated the list of participant exchanges. In addition, OPRA has supplemented the definition of the term "Information" by adding the phrase "other information transmitted over the information reporting system administered by OPRA."<sup>5</sup> According to OPRA, this "other information" would include real-time values of various indexes that underlie options traded on the markets of the participant exchanges, data with respect to open interest, and systems messages.

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<sup>4</sup> OPRA's Vendor Agreement was revised in SR-OPRA-2002-03, and was approved by the Commission on January 22, 2003. See Securities Exchange Act Release No. 47230 (January 22, 2003), 68 FR 4259 (January 28, 2003).

<sup>5</sup> This change would conform the definition of the term "Information" in the PSA to the definition of the term "OPRA Data" in the Vendor Agreement and the Direct and Indirect Circuit Connection Riders. As described below, OPRA would use the revised PSA only on a prospective basis. OPRA believes that it is more desirable to maintain continuity in the use of the term "Information" in the PSA than to change the PSA to use the term that is used in its other contract forms.

Section 7 of the PSA, which describes OPRA's inspection right, has been revised to refer explicitly to the Subscriber's records with respect to its use of Information to say explicitly that the inspection would be limited to confirming compliance with the provisions of the PSA, and to clarify that, upon request, OPRA would maintain the confidentiality of the Subscriber's confidential information. According to OPRA, these latter two points are consistent with language that is in the current Direct Circuit Connection Rider.<sup>6</sup>

Section 11, which describes OPRA's right to make changes in the data that it disseminates and in the means of dissemination, has been revised to conform to Section 15 of the Vendor Agreement and the current Direct Circuit Connection Rider.<sup>7</sup>

Section 14, which currently provides that the PSA is subject to applicable provisions of the Act, has been expanded to provide that the PSA and any Riders would constitute the complete agreement between OPRA and the Subscriber, and that the PSA would supersede any prior agreements entered between OPRA and the Subscriber, except that any previously executed Riders would remain in effect unless terminated or superseded in accordance with their terms. The PSA has been expressly made subject to Illinois law, making it consistent in this respect with the current Vendor Agreement and the Direct and Indirect Circuit Connection Riders.

A new Section 15 has been added to provide that the Subscriber could assign the PSA without the consent of OPRA only to a successor to its business, subject to OPRA's right to

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<sup>6</sup> See Section 4 of the current form of the Direct Circuit Connection Rider. Because the language on these points is being added to the PSA and because every Subscriber that agrees to a Direct Circuit Connection Rider also must have agreed to the PSA, this language is being deleted from the Direct Circuit Connection Rider.

<sup>7</sup> See Section 7 of the current form of Direct Circuit Connection Rider. As with Section 4 of the Direct Circuit Connection Rider, because this language is being added to the PSA, it is being deleted from the Direct Circuit Connection Rider.

terminate without cause upon thirty days notice. A comparable provision is contained in the Direct and Indirect Circuit Connection Riders.<sup>8</sup>

Section 16 (formerly Section 15) has been revised to state that if an exchange ceases to be a Participant Exchange in OPRA, that exchange would cease to be a party to the PSA, but that the PSA would remain in effect between the Subscriber and the remaining Participant Exchanges. A comparable provision is contained in the current Vendor Agreement and in the Direct and Indirect Circuit Connection Riders.

The PSA previously included a sentence stating that "Subscriber remains responsible for all fees due to OPRA hereunder, even if a third party has agreed to pay such fees on behalf of Subscriber." That sentence has been deleted, and OPRA is revising its form "Third Party Billing Agreement" to state expressly that OPRA would look only to an approved third party payor for payment of OPRA's fees that it would otherwise expect a Subscriber to pay. These changes are intended to make it easier for Subscribers and third party payors to conclude, in appropriate situations, that payment of OPRA's fees by third party payors is eligible for the Section 28(e) safe harbor.

#### Direct Circuit Connection Rider and Indirect Circuit Connection Rider to the PSA

The definitions have been modified to track the definitions in the revised Vendor Agreement. In addition, obsolete terminology, including references to OPRA's "high speed transmission" and to aspects of OPRA's direct access charge that are no longer in effect, has been eliminated.

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<sup>8</sup> See Section 8 of the revised form of each Rider.

In the Direct Circuit Connection Rider, the Subscriber's obligation to pay applicable direct access fees has been moved without substantial change into a separate section, which would parallel the structure of the current Indirect Circuit Connection Rider.

The description of Subscriber's rights to use OPRA Data has been expanded to incorporate terms from the revised Vendor Agreement with respect to delayed data and historical data.

Subscriber's record-keeping, reporting, and auditing obligations with respect to its use of OPRA Data have been more fully described in a manner that is consistent with the way OPRA currently imposes these obligations and with the language of the Vendor Agreement.

Several provisions of the Riders have been deleted because they are redundant with the provisions of the proposed amended PSA. These include provisions describing OPRA's right to conduct inspections, OPRA's disclaimer of warranty, the proprietary rights of the OPRA Participant Exchanges to the OPRA Data, OPRA's right to make changes to OPRA Data and the means by which OPRA Data is transmitted, and the fact that the Riders are subject to Illinois law.

The provisions governing the effectiveness and termination of the Riders and the integration of the Riders with the PSA have been revised to treat separately the PSA and each Rider. These provisions would make clear that any revised PSA or Rider entered into by a Subscriber would supersede only the specific agreement it is intended to replace.

## II. Implementation of the OPRA Plan Amendment

Pursuant to paragraphs (b)(3)(ii) and (iii) of Rule 608 under the Act,<sup>9</sup> OPRA designates this amendment as concerned solely with the administration of the OPRA Plan and/or as

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<sup>9</sup> 17 CFR 242.608(b)(3)(ii) and (iii).

involving solely technical or ministerial matters, thereby qualifying for effectiveness upon filing. OPRA states that it will begin to use the proposed revised PSA and the Direct and Indirect Circuit Connection Riders upon filing with the Commission. However, OPRA states that these revised documents would be used only on a prospective basis, and existing Professional Subscribers would not be required to re-execute the revised forms of agreements. The only exception would be that an existing Professional Subscriber who subsequently enters into one or both of the revised Circuit Connection Riders would at that time be required to sign the revised PSA, since certain substantive provisions have been eliminated from the Riders only because they have been included in the revised PSA.

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 and 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>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-2006-01 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OPRA-2006-01. 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. 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-2006-01 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 Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris  
Secretary

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