

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61367; File No. SR-OPRA-2009-01)

January 15, 2010

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to Revise the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Serve as the Operating Agreement for OPRA LLC

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 December 28, 2009, 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 the OPRA Plan for the sole purpose of enabling it to serve as the Limited Liability Company Agreement of OPRA LLC. 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 proposes to change its structure from a committee of national securities exchanges acting jointly pursuant to the OPRA Plan to a limited liability company organized under the Delaware Limited Liability Company Act of which its participating national securities exchanges

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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 NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

will be members. The restructured OPRA will be known as Options Price Reporting Authority, LLC (“OPRA LLC”). To facilitate the restructuring of OPRA, the OPRA Plan is proposed to be revised for the sole purpose of enabling it to serve as the Limited Liability Company Agreement (sometimes referred to as the “Operating Agreement”) of OPRA LLC. The OPRA Plan as proposed to be revised was attached as Exhibit A to the filing.

The purpose of the amendment to the OPRA Plan is to permit the Plan to serve as the Operating Agreement for OPRA LLC, which is the entity that is proposed to succeed to OPRA in its current structure. In 1975, when OPRA was first established as a registered securities information processor (“SIP”), unlike other SIPs in existence at that time, OPRA was not organized as an association pursuant to Articles of Association or as any other form of organization. Instead, OPRA simply served as the name used to describe a committee of registered national securities exchanges acting jointly in accordance with a national market system plan to provide consolidated last sale reports and quotation information in accordance with Commission rules and policies that were the predecessors of what is now contained in Rules 601 and 602 under Regulation NMS. This structure has served OPRA well over the years. However, OPRA has recently been advised that the very lack of a clear identity for OPRA as an entity could give rise to uncertainty as to the nexus between OPRA or its constituent exchanges and various states for purpose of the application of certain state tax laws to OPRA’s activities. OPRA has been told that in order to resolve this uncertainty OPRA should restructure itself so it clearly is an entity separate and apart from its constituent exchanges, and that the best way to do this is for OPRA to become a limited liability company organized under the Delaware Limited Liability Company Act (“Delaware Act”).

In order to accomplish this, it is necessary for the OPRA Plan to be amended to incorporate various provisions that will enable it to serve as the Operating Agreement of a limited liability company under the Delaware Act. This is reflected in the amendment to the OPRA Plan filed herewith. In preparing this amendment, care was taken to limit revisions to the current OPRA Plan only to those that are necessary to accommodate its structure as an LLC (much of which consists of new language added for federal and state income tax purposes), and not to change any of the provisions of the Plan that govern the way in which OPRA performs its activities as a registered SIP. Thus although the governance structure of OPRA needs to be described in terms that apply to an LLC under the Delaware Act, the essence of its governance remains unchanged, so that OPRA will continue to be governed by its constituent exchanges, each of which has one vote on matters that come before them, subject to Commission filing and approval requirements under the Exchange Act. Likewise, OPRA's financial structure, including the fees it charges and how it allocates fees and expenses among the exchanges, is not changed by this amendment. The various forms of agreements that OPRA enters into with vendors, subscribers and others who access the market data it provides will be changed only as necessary to reflect the change in OPRA's structure. OPRA's procedures for the admission of new exchanges to membership in OPRA, the way in which OPRA conducts its capacity planning activities with the assistance of an independent system capacity advisor and all other operational aspects of OPRA's activities will also not be changed.

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 Web site at [www.sec.gov](http://www.sec.gov).

## II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph to (b)(3)(ii) of Rule 608 under the Act,<sup>4</sup> OPRA designated this amendment as one concerned solely with the administration of the Plan, or involving the governing or constituent documents relating to any person authorized to implement or administer the Plan on behalf of its sponsors. Accordingly, OPRA intends to put the Plan amendment into effect upon filing it with the Commission, having previously filed the necessary documents with the State of Delaware to cause OPRA to be restructured as an LLC, concurrently herewith amending its Form SIP on file with the Commission to reflect the change in OPRA's structure, and taking such other steps as are necessary to assure that OPRA LLC is able to succeed to the rights and obligations of OPRA under the various contracts OPRA has entered into with vendors, subscribers, other users of its market data, its processor and others who perform administrative functions on behalf of OPRA, and its independent system capacity advisor.

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>5</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.

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<sup>4</sup> 17 CFR 242.608(b)(3)(ii).

<sup>5</sup> 17 CFR 242.608(b)(2).

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-2009-01 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-2009-01. 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, 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-2009-01 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 Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(29).