

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64819; File No. SR-OPRA-2011-02)

July 6, 2011

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 Adopt a New Hosted Solution Fee and Other Changes to the 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 June 24, 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 make several change to the fees payable by OPRA Vendors and to the terms that describe when those fees are payable. 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 this amendment is to make several changes in the fees payable by OPRA Vendors and in the terms that describe when those fees are payable.

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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.

The first change is to adopt a new fee (referred to in this filing as the “Hosted Solution Fee”) that will be payable by any OPRA Vendor that supplies OPRA Data to a “Hosted Solution” sponsored by a “Client Organization.” The terms “Hosted Solution” and “Client Organization” are defined in a revised Policy entitled “Policy with respect to Hosted Solutions.” The revised Policy replaces a Policy entitled “OPRA Policy on Persons Providing Internet Access to Real-Time OPRA Data.” The definitions of the terms “Hosted Solution” and “Client Organization” are described below.

The second change is to permit a Client Organization that sponsors a Hosted Solution that displays delayed OPRA Data not to pay a Redistribution Fee as a result of its sponsorship of the Hosted Solution.

The third change is to add a new footnote to OPRA’s Fee Schedule to clarify the circumstances in which an OPRA Vendor may pay OPRA’s “Internet Service Only” Redistribution Fee (\$650/month) instead of the standard Redistribution Fee (\$1500/month).

(a) New Hosted Solution Fee; Revised Policy

OPRA is proposing to adopt a new fee, referred to in this filing as the “Hosted Solution Fee.” The fee will be payable by OPRA Vendors that supply OPRA Data to “Hosted Solutions.” A “Hosted Solution” is a market data delivery vehicle, such as a website or a page on a website, that satisfies certain requirements: (i) the delivery vehicle displays “current” or “delayed” OPRA Data,<sup>4</sup> and the OPRA Data is displayed only on a “per inquiry” basis<sup>5</sup>; (ii) the delivery vehicle is

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<sup>4</sup> OPRA defines the term “current” to refer to OPRA Data that has been transmitted to the Vendor within the immediately preceding 15 minutes, and the term “delayed” to refer to OPRA Data that is no longer current. See paragraph 1(e) of the OPRA form of Vendor Agreement, available on OPRA’s website ([www.opradata.com](http://www.opradata.com)).

<sup>5</sup> The requirement that the OPRA Data is displayed only on a “per inquiry” basis means that an offering of OPRA Data on a bulk data feed basis does not qualify as a Hosted

offered (“sponsored”) by a second company (a “Client Organization”); (iii) the delivery vehicle is administered by the OPRA Vendor;<sup>6</sup> and (iv) the delivery vehicle clearly and prominently identifies the OPRA Vendor that administers the delivery vehicle.

The Hosted Solution Fee would be payable by the OPRA Vendors that administer Hosted Solutions, not the Client Organizations that sponsor Hosted Solutions. For current OPRA Data the Hosted Solution Fee would be \$100 per month per Hosted Solution. For delayed OPRA Data the Hosted Solution Fee would be \$50 per month per Hosted Solution. The Hosted Solution Fee would also include two “Enterprise Fee” alternatives: an OPRA Vendor would be authorized to provide delayed OPRA Data to an unlimited number of Hosted Solutions for an Enterprise Fee of \$5,000 per month, or would be authorized to provide current and/or delayed OPRA Data to an unlimited number of Hosted Solutions for an Enterprise Fee of \$10,000 per month.<sup>7</sup> The Hosted Solution fee would be in addition to any other applicable fees payable by the Vendor, including the Redistribution Fee, Usage-based Vendor Fees, Nonprofessional Subscriber Fees and Direct Access Fee.<sup>8</sup>

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Solution. (A recipient of OPRA Data on a bulk data feed basis has the ability to select data for display on a continuous basis and to format the display.)

<sup>6</sup> The delivery vehicle is “administered” by the OPRA Vendor if the Vendor controls the OPRA Data that is displayed or distributed via the delivery vehicle. For current OPRA Data, this means that the OPRA Vendor is responsible for assuring that each person having access to the OPRA Data either has a Subscriber Agreement in place with the Vendor or has a Professional Subscriber Agreement in place with OPRA. (This is stated in paragraph 3 of the revised Policy.)

<sup>7</sup> For example, if an OPRA Vendor were to administer four Hosted Solutions, three of which display current OPRA Data with two of those being sponsored by one Client Organization and the third being sponsored by another Client Organization, and one of which displays delayed OPRA Data, the Hosted Solution Fee payable by the OPRA Vendor would be \$350/month.

<sup>8</sup> These fees are all described in OPRA’s Fee Schedule.

The current Policy applies only to “an Internet site on which there is a link or a framed page through which OPRA data provided by a person that is an OPRA Vendor may be accessed.” OPRA believes that “links” and “framed pages” are now used relatively rarely, and that the more common arrangement is for the upstream Vendor to supply data to the website of the downstream client of the Vendor in response to queries to the website.<sup>9</sup> Accordingly, OPRA believes that there is uncertainty under its current Policy as to the circumstances in which the downstream entity that sponsors a website must itself become a Vendor and pay a Redistribution Fee. The revised Policy addresses this uncertainty by replacing the references to “links” and “framed pages” with the more general “Hosted Solution” definition.

The revised Policy also differs from the existing Policy in that it eliminates an alternative arrangement that OPRA believes has never been used. The existing Policy contemplates, as an alternative to the ordinary arrangement in which the upstream Vendor controls the entitlement process for persons who have access to current OPRA Data via a downstream client’s website, that the downstream client may become a “Correspondent Subscriber” and control the entitlement process. To become a Correspondent Subscriber for a Vendor, a person must enter into a “Correspondent Subscriber Agreement” with the Vendor and the Correspondent Subscriber Agreement must be approved by OPRA.<sup>10</sup> No OPRA Vendor has ever submitted a form of Correspondent Subscriber Agreement to OPRA for approval, and accordingly OPRA believes that the Correspondent Subscriber alternative has never been used to comply with the existing Policy. The revised Policy eliminates the Correspondent Subscriber alternative.

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<sup>9</sup> The terms “upstream” and “downstream” are used in this filing with reference to the “flow” of OPRA Data; an entity is “upstream” from a second entity if the first entity is supplying OPRA Data to the second entity.

<sup>10</sup> OPRA’s requirements with respect to Correspondent Subscriber Agreements are set out in Section 7 of the OPRA Vendor Agreement.

(b) No Redistribution Fee for a Client Organization that sponsors a Hosted Solution displaying delayed OPRA Data

In general, if a legal person redistributes current or delayed OPRA Data “externally” (i.e., outside its own organization), OPRA classifies the person as a “Vendor,” requires the person to execute a Vendor Agreement with OPRA and requires the person to pay an OPRA Redistribution Fee. The existing Policy entitled “OPRA Policy on Persons Providing Internet Access to Real-Time OPRA Data” states that OPRA does not regard a person as a Vendor if the person does no more than sponsor a website on which real time (*i.e.*, current) OPRA Data is displayed, and accordingly allows such a person not to pay a Redistribution Fee.

The revised Policy extends these concepts so that they apply to delayed OPRA Data as well as current OPRA Data. Accordingly, the revised Policy provides that OPRA will not regard a person as a Vendor if the person does no more than sponsor a Hosted Solution on which either current or delayed OPRA Data is displayed, and accordingly allows such a person not to pay a Redistribution Fee.

(c) Clarification of circumstances in which an OPRA Vendor may pay OPRA’s “Internet Service Only” Redistribution Fee

OPRA has always referred to the basic fee payable by each OPRA Vendor as the “Redistribution Fee.” The standard Redistribution Fee has been \$1500 per month for many years. OPRA implemented an “Internet service only” Redistribution Fee effective January 1, 1999, applicable in lieu of the standard Redistribution Fee to any Vendor whose redistribution of OPRA Data is made solely by means of the Internet.<sup>11</sup>

When OPRA implemented the “Internet service only” Redistribution Fee, an “Internet service only” was a service that was generally for retail customers and not for high traffic

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<sup>11</sup> The “Internet Service only” fee implemented effective January 1, 1999 was \$600 per month. The fee was changed to its current \$650/month in 2002.

volumes. More recently, Vendors have occasionally asked OPRA if they qualify for the “Internet service only” Redistribution Fee in circumstances in which the Fee is not applicable, such as where a Vendor is providing a data feed to a downstream Vendor. OPRA is proposing to add a footnote to its Fee Schedule to provide additional guidance as to the circumstances in which a Vendor is eligible to pay the “Internet service only” Redistribution Fee. The footnote would state that a Vendor does not qualify for the “Internet service only” rate if the Vendor redistributes OPRA Data via dedicated lines or if the Vendor redistributes OPRA Data to the systems of one or more downstream Vendors or to one or more Hosted Solutions.

(d) Rationale for the Changes to OPRA’s Fees

OPRA anticipates that these changes may result in a small incremental increase in its revenues, with the Hosted Solution Fees that it receives at least partially offset by revenues that it will not receive from firms that sponsor Hosted Solutions as Client Organizations rather than becoming Vendors. OPRA believes that its overall fee structure is appropriately adjusted by requiring certain Vendors to pay Hosted Solution Fees while providing relief from paying the OPRA Redistribution Fee to Client Organizations that sponsor Hosted Solutions. OPRA believes that the amounts that it is proposing for the new Hosted Solution Fees are reasonable in terms of the value received by Vendors, and will represent an appropriate revenue contribution to covering the overall costs of OPRA and its member exchanges of collecting, consolidating, processing, disseminating and assuring the reliability and integrity of options market information.

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>12</sup> OPRA intends to implement the amendment effective as of the first day of a calendar quarter after having given OPRA Vendors at least 30-days notice of the revised fees and the revised Policy.

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>13</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>12</sup> 17 CFR 242.608(b)(3)(i).

<sup>13</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-2011-02 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-2011-02. 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-2011-02 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>14</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(29).