

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65796; File No. SR-OPRA-2011-05)

November 21, 2011

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan to Adopt a Policy Named “Policy with respect to Disaster Recovery Facilities”

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 adopts a policy named “Policy with respect to Disaster Recovery Facilities” (the “Policy”). 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 OPRA’s Policy with respect to Disaster Recovery Facilities is to address the fees that are payable to OPRA for a disaster recovery facility (a “DR facility”) maintained by an OPRA Vendor or Professional Subscriber.

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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 Policy states that a Vendor or Professional Subscriber that operates a DR facility at which it needs to have access to OPRA data should be certain that its agreements with OPRA accommodate the DR facility. The Policy states that, if a Vendor or Professional Subscriber operates multiple sites that act as “hot” back-up sites for each other, OPRA will consider the sites not to be DR facilities.

The Policy states that, if a Vendor is operating a DR facility and uses OPRA data at the site for purposes solely associated with operating the DR facility in furtherance of the Vendor’s activities as a Vendor, OPRA does not charge fees specifically for the DR facility, with one exception: If the Vendor has a live direct circuit connection to receive OPRA data from OPRA’s processor at the DR facility, OPRA’s Direct Access Fee is applicable.<sup>4</sup>

With respect to a Professional Subscriber, the Policy states that OPRA’s standard Device-Based Fees will be applicable if a Professional Subscriber is operating a DR facility and has devices that are enabled to receive current OPRA data at the facility even when the site is not in actual use, but that these fees will not be applicable if devices at the site are not enabled to receive current OPRA data when the site is inactive. The Policy states that OPRA would not consider a device to be subject to fees if the device is temporarily enabled for current OPRA data solely for testing purposes. The Policy states that, as is the case for a Vendor that has a live direct circuit connection at its DR facility, if a Professional Subscriber has a live direct circuit connection at its DR facility, OPRA’s Direct Access Fee will be applicable. Finally, the Policy states that, if devices at a DR facility are enabled to receive current OPRA data during an

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<sup>4</sup> OPRA's base Direct Access Fee is currently, and for many years has been, \$1000/month. (See the OPRA Fee Schedule, available on OPRA's website, [www.opradata.com](http://www.opradata.com).) The base Direct Access Fee includes one backup circuit connection. OPRA's Direct Access Fee is payable by Vendors and Professional Subscribers that have direct circuit connections to OPRA's processor.

emergency, those devices will become fee-liable, but that OPRA will provide offsetting credits for devices that are unable to receive current OPRA data at the affected primary site as reasonably demonstrated by the Professional Subscriber to be appropriate in the circumstances.<sup>5</sup>

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).

## 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>6</sup> The Policies describe and refine longstanding OPRA technical policies with respect to obligations of Vendors and Professional Subscribers to pay the fees described in OPRA's Fee Schedule with respect to their disaster recovery sites. 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>7</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

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<sup>5</sup> Footnote 3 of the Policy notes that many OPRA Professional Subscribers count "User IDs" that are enabled to receive OPRA information as a surrogate for counting "devices," and pay Device-based Fees on the basis of their "User IDs" rather than their "devices." (See OPRA's "Policies with respect to Device-based Fees" for more information about counting User IDs instead of devices; these Policies are also available on OPRA's website.) Footnote 3 of the Policy notes that a disaster would probably not affect a Professional Subscriber's User ID count, and therefore would not affect the Device-based Fees payable by a Professional Subscriber that counts User IDs.

<sup>6</sup> 17 CFR 242.608(b)(3)(i).

<sup>7</sup> 17 CFR 242.608(b)(2).

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-2011-05 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-2011-05. 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-2011-05 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>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(29).