

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67648; File No. SR-OPRA-2012-04)

August 14, 2012

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 Implement a New Fee for “Non-Display Applications”

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 August 1, 2012, 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 fee for “Non-Display Applications.” 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 the proposed amendment is to implement a new fee for “Non-Display Applications.” OPRA proposes to define the term “Non-Display Application” in a new footnote to its Fee Schedule. The definition would state that a “Non-Display Application” is an

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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 ten participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC, NYSE Amex, LLC n/k/a NYSE MKT LLC, and NYSE Arca, Inc.

application used by a Professional Subscriber that: (i) is capable of accessing OPRA market data, (ii) does not display the data in a form for direct use by a human being and (iii) is used for purposes of generating orders and/or quotations on an automated basis for purposes other than complying with the Rules of one or more of the OPRA Participant Exchanges. The definition would state that the term includes any application that is used for “black box” trading, automated trading, algorithmic trading and/or program trading. The definition would also state that the term does not include any application that is used only to generate two-sided continuous quotations, in fulfillment of the obligation to act in a market-making capacity pursuant to the Rules of one or more of the OPRA Participant Exchanges, of a Professional Subscriber that has been designated by such Exchange or Exchanges to act as a dealer/specialist for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder,<sup>4</sup> and that the term also does not include an application that is used solely to perform surveillance, risk management or portfolio management functions in support of a firm’s trading operations.<sup>5</sup>

The new fee would be payable by Professional Subscribers<sup>6</sup> that receive access to OPRA Data via data feed transmission, either from an OPRA Vendor or from OPRA’s processor, for

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<sup>4</sup> Market-makers use “autoquote” applications to fulfill their obligation under Exchange rules to generate two-sided continuous quotations. These applications would be within the definition of the term “Non-Display Application” if this language were not included in the definition. OPRA believes that it would not be fair to market-makers to impose a new fee on them for performing an obligation that has existed for many years and that exists to provide liquidity to the markets of the Exchanges.

<sup>5</sup> OPRA believes that it would not be fair to impose a new fee on the use of applications that perform these support and monitoring functions.

<sup>6</sup> OPRA defines a “Subscriber,” in general, as an entity or person that receives OPRA Data but does not redistribute it to third parties, and a “Professional Subscriber” as any Subscriber that does not qualify as a “Nonprofessional Subscriber.” In essence, a Nonprofessional Subscriber is an individual person that uses OPRA Data for personal, non-business use.

use in a Non-Display Application.<sup>7</sup> The fee would be payable on a “per installation” basis – that is, one fee would be payable for each Non-Display Application (sometimes referred to in this filing as a “trading engine”) that receives a data feed transmission. The term “installation” would be defined in a footnote to OPRA’s Fee Schedule as follows: “An ‘installation’ is a system of one or more servers operating as a unit to generate orders and/or quotations. Multiple servers may operate together to constitute an ‘installation.’ Conversely, two or more ‘installations’ may reside on a single server or network if each generates a separate stream of orders and/or quotations.” OPRA proposes that the new Non-Display Application Fee be \$500/installation/month, with an “Enterprise Fee” alternative of \$7500/month that would permit a Professional Subscriber to receive access to OPRA Data for use in an unlimited number of Non-Display Application installations.

Under OPRA’s Fee Schedule as currently in effect, the OPRA fees that apply to a Non-Display Application would depend on the number of servers in the trading engine that receive OPRA Data, whether the trading engine receives OPRA Data directly from OPRA’s processor (i.e., via a “direct connect”) or from an OPRA Vendor (i.e., via, an “indirect connect”) and whether the Professional Subscriber is already paying the OPRA Indirect Access Fee. A typical trading engine may include multiple servers, several of which are enabled to receive access to OPRA Data. For example, if a trading engine is comprised of four servers and the Professional

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<sup>7</sup> To receive OPRA Data via a data feed transmission, a Subscriber must enter into a Professional Subscriber Agreement directly with OPRA and either a “Direct Circuit Connection Rider to Professional Subscriber Agreement” (if the Professional Subscriber receives the data feed transmission directly from OPRA’s processor) or a “Indirect (Vendor Pass-Through) Circuit Connection Rider to Professional Subscriber Agreement” (if the Professional Subscriber receives the data feed transmission from an OPRA Vendor). OPRA’s forms of Professional Subscriber Agreement, Direct Circuit Connection Rider to Professional Subscriber Agreement and Indirect (Vendor Pass-Through) Circuit Connection Rider to Professional Subscriber Agreement are all posted on OPRA’s website, [www.opradata.com](http://www.opradata.com).

Subscriber is already paying the OPRA Indirect Access Fee, the OPRA fees that currently would apply would be \$100/month (the device-based fee for four servers); if the trading engine is comprised of four servers and the Professional Subscriber is not already paying the OPRA Indirect Access Fee, the OPRA fees that currently would apply would be \$700/month (the device-based fee for four servers plus an Indirect Access Fee for the datafeed of \$600).

Because the Non-Display Application Fee would be on a “per installation” basis, a Professional Subscriber that has multiple trading engines would pay a fee for each of them (up to fifteen, when the Enterprise Fee would be available). The Non-Display Application Fee for a trading engine would include the device-based fees with respect to the servers and other devices that comprise the trading engine, up to the amount of the Non-Display Application Fee. For example, for the trading engine described above comprised of four servers, in 2012 the total fees would be \$500/month, not \$600/month (the sum of \$500 plus four times \$25.00). For a trading engine comprised of 22 servers, the Professional Subscriber would be required to pay device-based fees in excess of the Non-Display Application Fee, and in 2012 the total fees for the trading engine would be \$550/month. If a Professional Subscriber has three Non-Display Applications residing on a single server, each of them would be subject to the Non-Display Application Fee, and in 2012 the total Non-Display Application Fees for the three trading engines would be \$1500/month. If a Professional Subscriber were receiving a data feed from an OPRA Vendor solely for use in one or more trading engines, the Professional Subscriber would not be obligated to pay the Indirect Access Fee in addition to the new fee.

It would also be possible that a Professional Subscriber would connect a Non-Display Application to a “direct” data feed from OPRA’s processor rather than an “indirect” data feed from an OPRA Vendor. In this case, the Professional Subscriber would be required to pay the

Direct Access Fee as well as the Non-Display Application Fee, even if the direct data feed to the trading engine is the only data feed received by the Professional Subscriber.<sup>8</sup>

As noted above, any Professional Subscriber that wants to receive an indirect data feed of OPRA Data must sign an Indirect Access Rider to its Professional Subscriber Agreement, and any Professional Subscriber that wants to receive a direct data feed of OPRA data must sign an Direct Access Rider to its Professional Subscriber Agreement. In either case, the Professional Subscriber must provide OPRA with an “Exhibit A” to the Rider, in which it describes its intended use of the OPRA data, and both Riders require Professional Subscribers to report their use of OPRA data on a monthly basis. These requirements would apply to a Professional Subscriber that wants to have a Non-Display Application receive OPRA data. OPRA’s current form of Exhibit A should provide OPRA staff with the information that it needs to generate invoices for the Non-Display Application Fee.

OPRA believes that the use of Non-Display Applications by active trading firms is becoming increasingly common, and that this use has resulted, and will continue to result, in a significant reduction in the number of devices and user IDs that are reported to it.<sup>9</sup> OPRA

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<sup>8</sup> OPRA believes that it is fair and appropriate to charge a Direct Access Fee for a “direct” data feed connection to a Non-Display Application, but not to charge an Indirect Access Fee for an “indirect” data feed connection to a Non-Display Application, because of the differences in the Indirect Access Fee and the Direct Access Fee: The Indirect Access Fee is \$600/month per Professional Subscriber, regardless of the number of indirect data feed connections that a particular Subscriber has, whereas the Direct Access Fee is \$1,000/month for the first circuit connection, with no charge for one back-up circuit connection and a charge of \$100 per connection for any additional connections. These differences, in turn, reflect that OPRA does not directly provide additional service when a Professional Subscriber adds additional indirect connections (because an OPRA Vendor is providing the additional connections), but that OPRA does provide additional service when a Professional Subscriber adds additional direct connections.

<sup>9</sup> In 2004, an average of 223,000 devices and User IDs were reported to OPRA in each month of the year. In 2011, an average of 164,000 devices and User IDs were reported to OPRA in each month of the year, a reduction over that eight year period of approximately

believes that its Fee Schedule as revised to include the new Non-Display Application Fee will more fairly allocate to Non-Display Applications a share of the overall costs of OPRA and its member exchanges to which OPRA's fees may properly be applied.

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>10</sup> OPRA intends to implement the amendment on October 1, 2012.

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>11</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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26%. OPRA does not have a basis for estimating the portion of that reduction that might be due to the use of Non-Display Applications, but does believe that the use of Non-Display Applications contributed to the reduction.

<sup>10</sup> 17 CFR 242.608(b)(3)(i).

<sup>11</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-2012-04 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-2012-04. 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-2012-04 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(29).