

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50147; File No. SR-OPRA-2004-02)

August 4, 2004

Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information and Amendment No. 1 Thereto to Eliminate from the Plan References to the Fee Exemption Pilot Currently Provided for in the Plan

On May 7, 2004, the Options Price Reporting Authority (“OPRA”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 11Aa3-2 thereunder,² an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan”).³ On June 23, 2004, OPRA submitted Amendment No. 1 to the proposal.⁴ The proposed amendment would eliminate from the OPRA Plan references to the fee exemption pilot that expired on May 31, 2004. Notice of the proposal, as modified by Amendment No. 1, was

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder. 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, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

⁴ See letter from Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated June 22, 2004, replacing in its entirety the initial proposal filed on May 7, 2004.

published in the Federal Register on July 8, 2004.⁵ The Commission received no comment letters on the proposed OPRA Plan amendment. This order approves the proposal, as amended.

The purpose of the proposed OPRA Plan amendment is to eliminate references to the fee exemption pilot in Section VII(d)(vi) of the OPRA Plan that provided a temporary exemption from OPRA fees for members of exchanges that were parties to the OPRA Plan and that acted as brokers or dealers on traditional exchange trading floors or as specialists or market makers on electronic exchanges or electronic facilities of exchanges. OPRA also proposes to eliminate Section V(e) of the OPRA Plan, which provided that parties to the OPRA Plan could access OPRA information on their trading floors or at their other business locations without being obligated to pay fees to OPRA. OPRA states that the effect of the proposed amendment would be to make all devices that are used to access options market information furnished by OPRA subject to OPRA's information fees.

OPRA also proposes to amend the definitions of "vendor" and "subscriber" set forth in paragraphs (k) and (l) of Section II of the OPRA Plan to confirm that the receipt of options market data by an exchange over devices maintained by such exchange at its business locations would not involve redistribution of the data by such exchange, notwithstanding that members of such exchange could be able to access the information over those devices. Finally, as a matter of "housekeeping," OPRA proposes to delete from Section V(c)(i) of the OPRA Plan language concerning the introduction of OPRA's BBO Service in 2003 since the BBO Service is now in place.

⁵ See Securities Exchange Act Release No. 49958 (July 1, 2004), 69 FR 41312.

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.⁶ The Commission believes that the proposed OPRA Plan amendment is consistent with Section 11A of the Act⁷ and Rule 11Aa3-2 thereunder⁸ in that it is 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.

Specifically, given the expiration of the fee exemption pilot for accessing OPRA information, the Commission finds that it is appropriate to eliminate any references within the OPRA Plan to such fee exemption so as to avoid confusion. Moreover, the Commission believes that subjecting all devices used to access OPRA information, whether on-floor or off-floor, to OPRA's information fees should help to ensure that the various participants do not receive disparate treatment under the OPRA Plan. The Commission also believes that OPRA's proposed amendments to the definitions of "vendor" and "subscriber" and the deletion of language concerning the introduction of its BBO Service should promote clarity within the language of the OPRA Plan.

⁶ In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 240.11Aa3-2.

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,⁹ and Rule 11Aa3-2 thereunder,¹⁰ that the proposed OPRA Plan amendment (SR-OPRA-2004-02), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 240.11Aa3-2.

¹¹ 17 CFR 200.30-3(29).