

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51514; File No. SR-OPRA-2005-01)

April 8, 2005

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Clarify How the Requirements of the OPRA Plan Pertaining to Vendors Apply to Persons Who Redistribute OPRA Data Over the Internet

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 11Aa3-2 thereunder,² notice is hereby given that on March 30, 2005, the Options Price Reporting Authority ("OPRA")³ submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The proposed amendment would issue a written policy that clarifies how the requirements of the Plan pertaining to vendors would apply to persons who redistribute OPRA data over the Internet. The Commission is publishing this notice to solicit comments from interested persons on the proposed Plan amendment.

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ OPRA 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 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 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.

I. Description and Purpose of the Amendment

The purpose of the proposed Plan amendment is to adopt a written policy that would codify prior interpretations concerning how provisions of the Plan applicable to “vendors” would apply to persons who redistribute OPRA data by means of the Internet. In order to make this policy generally available to interested persons, OPRA proposes to publish it on its Web site, www.opradata.com. Because this policy pertains to the operation and implementation of the national market system facility administered by OPRA, OPRA proposes to treat the policy as part of the Plan and has filed it as an amendment to the Plan pursuant to Rule 11Aa3-2 under the Act.⁴

The Plan generally defines a “vendor” as a person who redistributes OPRA data (*i.e.*, options last sale and quotation reports and related information) to persons outside of its own organization. Persons who act as vendors are required to enter into vendor agreements with OPRA and pay applicable access and redistribution fees. As the Internet has increasingly been used as a means of providing OPRA data to subscribers and others, questions have arisen concerning exactly who among the various types of service providers involved in Internet transmission of OPRA data would be deemed to be performing the function of a vendor, and thereby be subject to the requirements of the Plan applicable to vendors. Although OPRA has informally adopted a policy that addresses these issues and has responded to questions in accordance with that policy, OPRA has not made its policy publicly available in writing until now. By making this policy available in writing on OPRA’s Web site, OPRA wishes to be able

⁴ 17 CFR 240.11Aa3-2.

to provide useful information to interested persons and avoid having to respond to individual questions on this topic.

The policy would include the following elements:

(A) A person who redistributes OPRA data to other persons outside of its own organization would be a “vendor” under the Plan. This would include persons who utilize the Internet as the means of redistribution.

(B) A person whose only function is to maintain an Internet site, on which there is a link or framed page through which OPRA data is provided by another person who is an OPRA vendor, would not itself be treated as a vendor, if certain additional conditions are satisfied. These additional conditions would be the following: (i) the person has no other involvement in the redistribution of OPRA data; (ii) the Internet site maintained by that person clearly and prominently identifies the vendor who provides the OPRA data through the link or framed page and states that such vendor is responsible for providing the data; and (iii) either the vendor, who is identified as providing the data, controls access to the data and pays applicable usage-based fees to OPRA, or the person, who maintains the Internet site and is not a vendor, is instead a “correspondent subscriber” who has entered into a Correspondent Subscriber Agreement with the vendor and who limits access to the link or framed page and pays fees to OPRA in accordance with that Agreement.

The text of the proposed policy is set forth below. Text additions are in italics.

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OPRA POLICY ON PERSONS PROVIDING INTERNET ACCESS

TO REAL TIME OPRA DATA

1. A person that redistributes OPRA data “externally” – i.e., outside its own organization – is a “Vendor” for OPRA’s purposes and is required to execute a Vendor Agreement with OPRA and pay a Redistribution Fee.¹ This is true regardless of the method used to redistribute OPRA data, and extends to the redistribution of OPRA data by means of the Internet.

2. Notwithstanding paragraph 1 above, OPRA does not regard a person as a Vendor, and the person will not be required to enter into a Vendor Agreement or pay a Redistribution Fee, if the person does no more than maintain 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, and if each of the following additional conditions is satisfied:

- The person maintaining the Internet site has no involvement in the redistribution of OPRA data other than through a link or framed page on that Internet site;
- The Internet site clearly and prominently identifies the Vendor who provides OPRA data through the link or framed page on that site as the Vendor responsible for furnishing the data;
- Either:
 - o The Vendor who provides OPRA data through a linked site or framed page has control of the entitlement or enablement process for each person who has access to OPRA data by means of the linked site or framed page and pays applicable usage-based fees to OPRA in respect thereof; or

¹ OPRA’s Usage-based Vendor Fee and Direct Access Fee may also apply.

- o The person who maintains the Internet site is a “Correspondent Subscriber” as defined in OPRA’s Vendor Agreement – that is, the person has entered into and is in compliance with (i) a Professional Subscriber Agreement with OPRA and (ii) a Correspondent Subscriber Agreement with the Vendor who provides OPRA data through the link or framed page on the Internet site that satisfies the requirements of Section 7 of the Vendor’s Vendor Agreement with OPRA – and limits access to OPRA data by means of the link or framed page to persons with whom it has entered into a Subscriber Agreement and in respect of whom it pays applicable usage-based fees to OPRA.

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II. Implementation of Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3-2 of the Act.⁵

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

⁵ 17 CFR 240.11Aa3-2.

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. Please include File Number SR-OPRA-2005-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-OPRA-2005-01. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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-2005-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz
Secretary

⁶ 17 CFR 200.30-3(a)(29).