

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>10</sup> Specifically, the Commission believes that the proposed OPRA Plan amendment, as amended, which would permit OPRA to provide a best bid and offer market data service to vendors, is consistent with section 11A of the Act<sup>11</sup> and rule 11Aa3-2 thereunder<sup>12</sup> 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 or otherwise in furtherance of the purposes of the Act.

Specifically, the Commission believes that OPRA's proposal to permit vendors to disseminate last sale information and a BBO is consistent with section 11A of the Act<sup>13</sup> because the combination of the consolidated BBO and the last sale reports would include the minimum essential pricing information market participants need to make informed investment decisions. Furthermore, the Commission notes that all markets would have an equal opportunity to be represented in the BBO. OPRA's proposed BBO service should make it easier for vendors to disseminate this minimum essential market information as an alternative to the full quotation information or in addition to such information.

Finally, the Commission notes that it is simultaneously approving OPRA's proposal to change its vendor agreement, which will affect the manner in which vendors may disseminate information to end users.<sup>14</sup> Specifically, under OPRA's vendor agreement proposal, vendors could choose to disseminate only the BBO and last sale information and exclude from the BBO the quotation size, or the market identifier associated with a BBO, or both, so long as in excluding this information the vendor did not discriminate on the basis of the market in which quotations are entered.

It is therefore ordered, pursuant to section 11A of the Act,<sup>15</sup> and rule

11Aa3-2 thereunder,<sup>16</sup> that the proposed OPRA Plan amendment, as modified by Amendment Nos. 1 and 2 (SR-OPRA-2002-01) be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-47230; File No. SR-OPRA-2002-03]**

### Options Price Reporting Authority; Order Approving an Amendment to the Options Price Reporting Authority Plan To Revise the Required Form of Vendor Agreement

January 22, 2003.

#### I. Introduction

On July 12, 2002, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 11Aa3-2 thereunder,<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").<sup>3</sup> The amendment would revise the form of Vendor Agreement that is required to be entered into between OPRA and vendors of options information under section VII(b) of the OPRA Plan. Notice of the proposal was published in the **Federal Register** on November 21, 2002.<sup>4</sup> The Commission received no

comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

OPRA's Vendor Agreement governs the terms and conditions under which vendors redistribute options market data to subscribers and other end users of the information. The proposed revisions would update the Vendor Agreement and consolidate a series of riders to the Vendor Agreement. In addition, the revised Vendor Agreement would consolidate several different forms of agreements between vendors and their customers into a single standard form "Subscriber Agreement," without making any significant substantive changes to the current forms.

The revised Vendor Agreement would also include new provisions to govern the redistribution by vendors of OPRA's new BBO (best bid and offer) Service.<sup>5</sup> In this regard, the revised Vendor Agreement would permit a vendor to satisfy its obligation to include consolidated options market data in its market information service if, at a minimum, the service would include options last sale information and the consolidated BBO provided by OPRA. This would permit a vendor to include additional unconsolidated information in its service so long as this required minimum consolidated information is included. Further, the revised Vendor Agreement would permit a vendor to exclude from its BBO service either the quote size or the market identifier associated with a BBO or both, so long as in excluding information the vendor would not discriminate on the basis of the market in which quotations are entered. In addition, if a vendor were to exclude the market identifier associated with the BBO from a dynamically updated service, it would be required to make that information available to recipients of the dynamically updated service through an inquiry-only service provided without additional cost. Finally, because OPRA's BBO Service provides for the inclusion of an approximation of the size associated with the BBO rather than the actual size, the revised Vendor Agreement would require any vendor that includes size in its BBO service to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service.

After careful review, the Commission finds that the proposed OPRA Plan

<sup>10</sup> 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).

<sup>11</sup> 15 U.S.C. 78k-1.

<sup>12</sup> 17 CFR 240.11Aa3-2.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> See Securities Exchange Act Release No. 47230 (January 22, 2003) (order approving File No. SR-OPRA-2002-03).

<sup>15</sup> 15 U.S.C. 78k-1.

<sup>16</sup> 17 CFR 240.11Aa3-2.

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

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> 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).

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 five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

<sup>4</sup> See Securities Exchange Act Release No. 46839 (November 14, 2002), 67 FR 70269.

<sup>5</sup> See Securities Exchange Act Release No. 47231 (January 22, 2003) (File No. SR-OPRA-2002-01) (order granting permanent approval). See also Securities Exchange Act Release No. 46992 (December 13, 2002), 67 FR 78031 (December 20, 2002).