

time as there is no longer any open interest in physical delivery FCOs traded on the Phlx that are subject to the separate FCO service access fee. The Commission believes that OPRA's proposal, which would amend various provisions of the OPRA Plan and the OPRA Fee Schedule in order to reflect the elimination of the separate fees for access to market data concerning FCOs that currently apply to certain FCOs traded on the Phlx, is appropriate in light of Phlx's decision to cease listing new series of physical delivery FCOs to replace expiring series. The proposed amendment would maintain the same fee structure after the temporary exception would otherwise expire on December 31, 2007. Further, once the remaining positions in existing classes of physical delivery FCOs listed on the Phlx are closed-out, access to market data for all options, including dollar-settled FCOs and all other FCO securities will require payment of the same fee, OPRA's basic service access fee.

Finally, the Commission finds that it is appropriate to put the proposed OPRA Plan amendment, as modified by Amendment No. 1, into effect summarily upon publication of notice on a temporary basis not to exceed 120 days to extend for a brief period the temporary exception provided for in section VIII(c)(iii) of the OPRA Plan and thus preserve the status quo. Absent such extension, the ISE would become subject to the separate FCO service access fee. Accordingly, the Commission finds that 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 mechanism of, a national market system to approve the proposed OPRA Plan amendment, as modified by Amendment No. 1 thereto, on a temporary basis not to exceed 120 days.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act,<sup>12</sup> and Rule 608 thereunder,<sup>13</sup> that the proposed OPRA Plan amendment (SR-OPRA-2007-03), as modified by Amendment No. 1, be, and it hereby is, approved on a temporary basis not to exceed 120 days.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56950; File No. SR-OPRA-2007-04]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment To Revise OPRA's Fee Schedule

December 12, 2007.

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 October 16, 2007 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> Specifically, OPRA proposes to revise the device-based professional subscriber fees charged by OPRA in respect of its Basic Service. Similarly, the proposal would make a conforming change to OPRA's Enterprise Rate Professional Subscriber Fee ("Enterprise Rate"). On November 14, 2007, OPRA submitted a revised Exhibit I, which it requested be substituted for the Exhibit I attached to the original filing.<sup>4</sup> On December 11, 2007, OPRA submitted a further revised Exhibit I, which it asked be substituted for the Exhibit I submitted on November 14, 2007.<sup>5</sup> The Commission is

<sup>14</sup> 17 CFR 200.30-3(a)(29).

<sup>15</sup> 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 six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, Inc. ("ISE"), the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. ("Phlx").

<sup>4</sup> The second revised Exhibit I reflects technical changes and sets forth the entire OPRA Fee Schedule. As originally filed, Exhibit I included only that portion of the OPRA Fee Schedule pertaining to OPRA's professional subscriber fees.

<sup>5</sup> The revised Exhibit I made technical changes to the prior version of Exhibit I and corrected an

publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

## I. Description and Purpose of the Amendment

The purpose of the amendment is to make incremental increases in OPRA's device-based professional subscriber fees in respect of its Basic Service and in respect of the Enterprise Rate charged to those subscribers who elect that rate in place of device-based fees. These increases would be phased in over a three-year period. Specifically, OPRA proposes to increase the current \$20 monthly per device fee by \$1.00 in each of the years 2008, 2009, and 2010. OPRA also proposes to increase the Enterprise Rate, currently a monthly fee of \$20 times the number of a subscriber's U.S.-based registered representatives, by this same amount in each of these years. These increases would become effective on January 1 of each year.

OPRA's Basic Service currently consists of market data and related information pertaining to equity options, index options, and most (soon to be all) foreign currency options ("OPRA Data").<sup>6</sup> Professional subscribers are persons who subscribe to receive OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. OPRA's Enterprise Rate is based on the number of a professional subscriber's U.S.-based registered representatives and independent investment advisers who contract with the subscriber to provide advisory services to the subscriber's customers.

The proposed increases in the device-based professional subscriber fees and in the Enterprise Rate are intended to generate additional revenues for OPRA and its participating exchanges that are needed to cover actual and anticipated increases in the costs of collecting, consolidating, processing, and disseminating options market

outdated reference to the "NASD," which is now called "FINRA."

<sup>6</sup> Commencing January 1, 1996, OPRA data pertaining to foreign currency options ("FCOs") was made subject to separate FCO Service access fees. However, pursuant to an exception for FCOs first listed on any exchange on or after December 6, 2005, these separate access fees do not currently apply to most of the FCOs traded on the Phlx, or to any of the FCOs traded on the ISE, which are the only two exchanges currently providing a market in FCOs. OPRA has recently filed a Plan amendment (SR-OPRA-2007-03) that proposes the elimination of all remaining separate access fees for FCOs. Upon the effectiveness of that amendment, which OPRA anticipates will occur no later than March 14, 2008, access to market information pertaining to all FCOs would be included within OPRA's Basic Service and would require payment only of OPRA's Basic Service access fees.

<sup>12</sup> 15 U.S.C. 78k-1.

<sup>13</sup> 17 CFR 242.608.

information and assuring the reliability and integrity of that information. According to OPRA, these increases reflect the costs of continuing enhancements to and upgrades of the OPRA system and related exchange systems since the time these fees were last adjusted in order to enable OPRA, its participant exchanges, and its vendors to handle a greater volume of market information as a result of the continuing expansion of listed options trading and to provide a greater degree of redundancy and security in the OPRA system. Past and projected expansion of options trading reflects such factors as an increase in the number of exchanges that trade options and in the number of options classes and series traded on each exchange, and actual and anticipated growth in the number of quotes on account of the ongoing implementation of quoting in penny intervals. The fee increases also take into account the loss of revenue on account of the elimination of separate fees for access to OPRA's FCO Service.<sup>7</sup> OPRA estimates that the overall effect of the proposed increases in professional subscriber fees would be to increase revenues derived from these fees by approximately 5% in each of the three years covered by the proposal, before giving effect to the elimination of the FCO access fee upon the discontinuation of OPRA's separate FCO Service.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, and <http://opradata.com>.

## II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 under the Act,<sup>8</sup> OPRA designated this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to, or use of, OPRA facilities, thereby qualifying for effectiveness upon filing. In order to give persons subject to these fees advance notice of the changes, the first of these fee changes is not proposed to be implemented until January 1, 2008.

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>9</sup> if it appears to the Commission that such action is necessary or 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.<sup>10</sup>

## 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-2007-04 on the subject line.

### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OPRA-2007-04. 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 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-2007-04 and should be submitted on or before January 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56941; File No. 4-551]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

December 11, 2007

On October 30, 2007, the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NYSE Arca, Inc. ("NYSE Arca"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participants") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> a proposed plan for the allocation of regulatory responsibilities ("Plan").<sup>3</sup> The Plan was published for comment on November 9, 2007.<sup>4</sup> The Commission received no comments on the Plan. This order approves and declares effective the Plan.

<sup>11</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 17 CFR 240.17d-2.

<sup>3</sup> See *infra* Section II (describing the proposed Plan).

<sup>4</sup> See Securities Exchange Act Release No. 56731 (November 1, 2007), 72 FR 63637 (File No. 4-551) ("Notice").

<sup>7</sup> See *id.*

<sup>8</sup> 17 CFR 242.608(b)(3)(i).

<sup>9</sup> 17 CFR 242.608(b)(2).

<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change pursuant to Rule 608(b)(3) under the Act, the Commission considers the period to commence on December 11, 2007, the date on which OPRA submitted the second revised Exhibit I. See 17 CFR 242.608(b)(3).