

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65797; File No. SR-NYSEArca-2011-83]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates Relating to Executed Qualified Contingent Cross Orders

November 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 15, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) to more clearly describe the fees and rebates relating to executed Qualified Contingent Cross (“QCC”) orders. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule to more clearly describe

the fees and rebates relating to executed QCC orders. Specifically, the Exchange proposes to memorialize the intent set forth in its rule filing adopting the fee for executed QCC orders, which states that the fees relating to executed QCC orders “will apply to each side of the transaction.”<sup>3</sup> As such, the Exchange intends to amend the Fee Schedule to reflect that the fee of \$.10 for executed QCC orders is charged per contract side. To parallel this language, the Exchange also proposes to amend the Fee Schedule to reflect a rebate to the Floor Broker of \$.05 per contract side instead of \$.10 per contract for executed QCC orders. There is no change to the amount rebated to the Floor Broker for executed QCC orders. As stated in the rule filing implementing the Floor Broker rebate,<sup>4</sup> the QCC rebate is credited to the executing Floor Broker, who handles both contract sides with respect to such orders. Thus, the Floor Broker receives a total rebate of \$.10 for both contract sides together. The proposed change to the text of the Fee Schedule will take effect on November 15, 2011.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Specifically, the Exchange believes that the proposed change is equitable, because it will reduce confusion for all market participants relating to the way fees are charged and rebated for executed QCC orders. The Fee Schedule will state that the fee of \$.10 for executed QCC orders applies per contract side, as stated in the rule filing adopting the fee for QCC orders.<sup>7</sup> In addition, the Fee Schedule will state that the rebate credited to the executing Floor Broker on a QCC order is \$.05 per contract side, for a total of \$.10 for both contract sides handled by the Floor Broker.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-83 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-NYSEArca-2011-83. This file number should be included on the subject line if email 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

<sup>3</sup> See Securities Exchange Act Release No. 64596 (June 3, 2011), 76 FR 33797 (June 9, 2011) (SR-NYSEArca-2011-36).

<sup>4</sup> See Securities Exchange Act Release No. 65730 (November 10, 2011) (SR-NYSEArca-2011-79).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> See note 3, supra.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 Web site 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEArca-2011-83 and should be submitted on or before December 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65794; File No. SR-OPRA-2011-03]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan To Implement New Policies Regarding Reporting and Usage-Based Vendor Fees

November 21, 2011.

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 November 7, 2011, 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 set of policies entitled "Policies with respect to Reporting and Usage-based Vendor Fees." 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

OPRA's proposed "Policies with respect to Reporting and Usage-based Vendor Fees" (the "Policies") are comprised of three sections. The first section describes OPRA policies relating to the reports that OPRA requires in order to determine the fees that are payable to OPRA by Vendors' and Professional Subscribers. The second and third sections describe OPRA policies pertaining to "Usage-based Vendor Fees."<sup>4</sup> Usage-based Vendor Fees are one of the types of fees that are payable to OPRA by Vendors. OPRA is not proposing to change the amount of any of its fees, but rather to clarify its reporting requirements and the circumstances in which certain fees are payable.

(1) *Policies with Respect to Reporting.* Section 1 of the new Policies summarizes OPRA's reporting requirements for Vendors and for Professional Subscribers that have an obligation to report their usage of OPRA data directly to OPRA. (These Professional Subscribers are sometimes referred to as "internal distributors."<sup>5</sup>)

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 nine participants to the OPRA Plan are BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

<sup>4</sup> "Usage-based Vendor Fees" or "usage-based fees" are fees that are payable by each Vendor with respect to access to OPRA Data by the Vendor's Subscribers on a "Per Query" or "meter-based" basis. Usage-based fees are applicable, at the election of the Vendor, to queries for "quote packets" or "options chains." The rates for usage-based fees are stated, and the terms "quote packet" and "options chain" are defined, in OPRA's Fee Schedule. OPRA's Fee Schedule is available on OPRA's Web site, [www.opradata.com](http://www.opradata.com).

<sup>5</sup> Professional Subscribers that are obliged to report their usage of OPRA data directly to OPRA are sometimes referred to as "internal distributors" because they have the independent ability to entitle access to OPRA data by their employees. These Professional Subscribers must have entered into Professional Subscriber Agreements directly with OPRA, and must also have entered into either a Direct Circuit Connection Rider or an Indirect

OPRA has not previously summarized its requirements in a single document. As described in Section 1, OPRA requires that a Vendor report to OPRA with respect to:

- The Professional Subscribers to which the Vendor is providing bulk data feeds of OPRA Data (enabling these Professional Subscribers to act as internal distributors).
- The Professional Subscribers that have entered into Professional Subscriber Agreements directly with OPRA and that have devices and/or User IDs entitled by the Vendors.<sup>6</sup>
- The Professional Subscribers to which the Vendor distributes OPRA data and for whose access it pays OPRA usage-based fees (*i.e.*, Professional Subscribers to which it distributes OPRA data on a "Per Query" or "meter-based" basis).
- The Non-Professional Subscribers to whom the Vendor distributes OPRA data on a "Per Query" or "meter-based" basis and for whose access it pays OPRA usage-based fees.
- The Non-Professional Subscribers to whom the Vendor distributes OPRA data and for whose access it pays OPRA Nonprofessional Subscriber Fees.<sup>7</sup>
- Any voice-synthesized market data service provided by the Vendor.

Also as described in Section 1, OPRA requires that a Professional Subscriber that is an internal distributor report to OPRA with respect to the devices and User IDs that have been entitled by the Professional Subscriber to have access to OPRA data.

(2) *Policies Relating to Usage-Based Fees.* Section 2 of the Policies describes OPRA's longstanding policies with respect to three questions that Vendors occasionally ask relating to OPRA's usage-based fees.

Paragraph 2(a) states OPRA's policy with respect to a Vendor that wishes to have access to OPRA data other than in connection with its activities as a Vendor—that is, to have access to OPRA

(Vendor Pass-Through) Circuit Connection Rider with OPRA. OPRA sometimes refers to the data service to a Professional Subscriber that enables the Professional Subscriber to act as an internal distributor as a "bulk data feed," and that term is defined in the Policies for that purpose.

<sup>6</sup> OPRA uses these reports to generate invoices for "Professional Subscriber Device-based Fees" that it sends directly to these Professional Subscribers.

<sup>7</sup> OPRA's Fee Schedule permits a Vendor to pay fees with respect to the receipt of OPRA data by a Nonprofessional Subscriber in one of two ways: Either by counting quote packets or options chains and paying usage-based fees or by paying the "Nonprofessional Subscriber Fee". The usage-based fees for Nonprofessional Subscribers are subject to a monthly cap, currently \$1.00/month/Nonprofessional, and the Nonprofessional Subscriber Fee is a flat fee, also currently \$1.00/month/Nonprofessional.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<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