

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 amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at [http://dtcc.com/downloads/legal/rule\\_filings/2013/nscs/SR-NSCC-2013-802.pdf](http://dtcc.com/downloads/legal/rule_filings/2013/nscs/SR-NSCC-2013-802.pdf). 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 No. SR-NSCC-2013-802 and should be submitted on or before May 22, 2013.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69448; File No. SR-OPRA-2013-01]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Revise Usage-Based Vendor Fees

April 25, 2013.

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 April 11, 2013, 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 revises its 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

The purpose of the amendment is to make changes in OPRA's Usage-based Vendor Fees. Usage-based Vendor Fees are fees that are payable by each OPRA Vendor on the basis of access to current OPRA data by OPRA "Subscribers" (end users of current OPRA data) that have entered into Subscriber Agreements with the Vendor. OPRA permits Vendors to pay Usage-based Vendor Fees on either a "quote packet" basis or an "options chain" basis.<sup>4</sup> OPRA is proposing to increase the Usage-based Vendor Fee based on counting quote packets from \$0.005 per quote packet to \$0.0075 per quote packet, and to increase the Usage-based Vendor Fee based on counting options chains from \$0.02 per options chain to \$0.03 per options chain.

In essence, an OPRA Subscriber may obtain access to OPRA data in one of two ways: Either by signing a Professional Subscriber Agreement directly with OPRA, in which case the Subscriber pays Professional Subscriber Device-Based Fees directly to OPRA; or by entering into a Subscriber Agreement with an OPRA Vendor, in which case

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

<sup>4</sup> The term "quote packet" is defined in footnote 6 to OPRA's Fee Schedule as consisting of any one or more of the following values for a single series of options or a related index: last sale, bid/ask and related market data. The term "options chain" is also defined in footnote 6 to OPRA's Fee Schedule; an "options chain" consists of up to all series of put and call options on the same underlying security or index. (OPRA's Fee Schedule is available on OPRA's Web site, [www.opradata.com](http://www.opradata.com).)

the Vendor pays Usage-based Vendor Fees to OPRA for the Subscriber's access to current OPRA data.

OPRA's Usage-based Vendor Fees were established at their current levels effective on January 1, 2000.<sup>5</sup> In the thirteen years since then OPRA's Professional Subscriber Device-Based Fee has, on a weighted average basis, more than doubled.<sup>6</sup> Moreover, over the period from the year 2000 through the year 2012, the average number of series in each class of options for which OPRA disseminates data has almost doubled.<sup>7</sup>

OPRA's Usage-based Vendor Fees for receipt of OPRA data by Nonprofessional Subscribers and by Professional Subscribers are each subject to monthly caps. For Nonprofessional Subscribers the cap is \$1.25 per Nonprofessional Subscriber per month. For Professional Subscribers the cap is the per-device fee applicable to the Professional Subscriber (currently \$26.00 per month) times the number of the Professional Subscriber's User IDs.

<sup>5</sup> See File No. SR-OPRA-99-02; Release No. 34-42152 (November 17, 1999). In File No. SR-OPRA-99-02, OPRA reduced the quote packet Usage-based Vendor Fee from a range of \$0.01-\$0.02 (with the actual amount determined on the basis of total usage) to the current \$0.005 per quote packet, and implemented the alternative options chain Usage-based Vendor Fee at the current \$0.02 per options chain.

<sup>6</sup> In the year 2000, OPRA's weighted average Professional Subscriber Fee was approximately \$12.55 per device; it is now \$26.00 per device. (In the year 2000, OPRA had a sliding scale for its Professional Subscriber Fees, with different rates based on whether a Professional Subscriber was a Member of one or more of the Exchanges that were parties to the OPRA Plan and on the Professional Subscriber's number of devices. OPRA's Professional Subscriber Fees in the year 2000 ranged from \$10.50/device for an Exchange Member with 750 or more devices to \$27.00/device for a non-Member with nine or fewer devices. Over the course of several years, OPRA made incremental changes in its Professional Subscriber Fees to eliminate all distinctions in these fees based on a Professional Subscriber's status as a member or nonmember of an exchange that is a party to the OPRA Plan or on the Subscriber's total number of OPRA-enabled devices. See File No. SR-OPRA-2004-01; Release No. 34-49382 (February 25, 2004)).

<sup>7</sup> The term "class" refers to all options based on the same underlying interest (e.g., the same security or same index). The term "series" refers to all options in the same class that have otherwise identical terms (including put or call, expiration month and exercise price). As of December 31, 2000, there was an average of 67.7 series per class for which OPRA disseminated data; as of December 31, 2012 there was an average of 132.7 series per class. This increase in the number of series per class means that a Subscriber today receives approximately ninety-five percent more data in an options chain than the Subscriber did twelve years ago. It does not mean that a Subscriber receives more data in a quote packet, but OPRA believes that the current ratio of the options chain fee to the quote packet fee (four to one) is appropriate, and that an appropriate adjustment to these fees is to increase each of them by fifty percent.

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

<sup>2</sup> 17 CFR 242.608.

OPRA is not currently proposing an increase in either of these caps.<sup>8</sup>

At current usage rates, these changes in OPRA's fees would result in an increase in its revenues of approximately \$1,500,000 on an annual basis if the changes do not cause any Subscribers to hit their applicable fee caps and do not cause any Vendors to discontinue providing access to current OPRA data to their Subscribers. (OPRA believes that these factors are likely to cause the actual increase in OPRA's revenue to be less than this amount.) OPRA believes that increasing its Usage-based Vendor Fees will restore a more appropriate balance to the relationship between its revenues derived from Professional Subscriber Device-based Fees on the one hand and Usage-based Vendor Fees on the other hand, and that an increase in its revenues resulting from these fee increases will represent an appropriate contribution to covering the overall costs of OPRA and its member exchanges to which these fees may properly be applied.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, <http://opradata.com>, and on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

## II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 of Regulation NMS under the Act, OPRA designated this amendment as establishing or changing fees or other charges collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities. In order to give persons subject to these fees advance notice of the changes, OPRA proposes to provide notice of the changes to OPRA Vendors on or about May 1, 2013, and to put the changes into effect on June 1, 2013.

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, or 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.

## 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-OPRA-2013-01 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-OPRA-2013-01. 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 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 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 10:00 a.m. and 3:00 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-2013-01 and should be submitted on or before May 22, 2013.

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. 34-69450; File No. SR-NASDAQ-2013-031]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend the Attestation Requirement of Rule 4780 To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to the Retail Price Improvement Program Will Qualify as "Retail Orders"

April 25, 2013.

On February 19, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to allow Retail Member Organizations ("RMOs") to attest that "substantially all," rather than all, orders submitted to the Retail Price Improvement Program qualify as "Retail Orders." The proposed rule changes were published for comment in the **Federal Register** on March 11, 2013.<sup>3</sup> To date, the Commission has received one comment on the proposal.<sup>4</sup> The Exchange submitted a response to the comment on April 24, 2013.<sup>5</sup>

Section 19(b)(2) of the Act<sup>6</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the

<sup>10</sup> 17 CFR 200.30-3(a)(29).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 69039 (March 5, 2013), 78 FR 15392.

<sup>4</sup> See Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

<sup>5</sup> See Letter to the Commission from Jonathan F. Cayne, Associate General Counsel, NASDAQ OMX, dated April 24, 2013.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> The cap for Nonprofessional Subscribers is at an amount equal to OPRA's Nonprofessional Subscriber Fee. OPRA recently increased its Nonprofessional Subscriber Fee, and increased the cap for Nonprofessional Subscribers at that time. (See File No. SR-OPRA-2012-02, Release No. 34-66564 (March 9, 2012)). Because the cap for Professional Subscribers is stated with reference to OPRA's Professional Subscriber Device-Based Fee, it adjusts automatically in lockstep with the Professional Subscriber Device-Based Fee.

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