

## Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the requested order, the operation of the Subadvised Fund in the manner described in the application, will be approved by a majority of the Subadvised Fund's outstanding voting securities, as defined in the Act, or in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Subadvised Fund will hold itself out to the public as employing the Multi-Manager Structure described in the application. The prospectus will prominently disclose that the Manager has the ultimate responsibility, subject to oversight by the Board, to oversee the Wholly-Owned Sub-Advisers and recommend their hiring, termination, and replacement.

3. Subadvised Funds will inform shareholders of the hiring of a new Wholly-Owned Sub-Adviser within 90 days after the hiring of the new Wholly-Owned Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Manager will not enter into a Sub-Advisory Agreement with any sub-adviser that is not a Wholly-Owned Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Members, and the nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

6. Whenever a sub-adviser change is proposed for a Subadvised Fund, the applicable Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Subadvised Fund and its shareholders, and does not involve a conflict of interest from which the Manager or any sub-adviser that is an affiliated person of the Manager derives an inappropriate advantage.

7. The Manager will provide general management services to each

Subadvised Fund, including overall supervisory responsibility for the general management and investment of each Subadvised Fund's assets and, subject to review and approval of the Board, will: (a) Set each Subadvised Fund's overall investment strategies; (b) evaluate, select and recommend Wholly-Owned Sub-Advisers to manage all or a portion of each Subadvised Fund's assets; (c) allocate and, when appropriate, reallocate each Subadvised Fund's assets among Wholly-Owned Sub-Advisers; (d) monitor and evaluate the Wholly-Owned Sub-Advisers' performance; and (e) implement procedures reasonably designed to ensure that the Wholly-Owned Sub-Advisers comply with each Subadvised Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Subadvised Fund, or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a sub-adviser to a Subadvised Fund except for ownership of interests in the Manager or any entity, except a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Manager.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-67210; File No. SR-OPRA-2012-03]**

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan To Revise the Definition of the Term "Nonprofessional"

June 15, 2012.

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 May 31, 2012, 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 revise OPRA's definition of the term "Nonprofessional." 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 proposed amendment is to revise OPRA's definition of the term "Nonprofessional."

A person may become an OPRA "Subscriber" in one of two ways.<sup>4</sup> The first way is that the person may sign a "Professional Subscriber Agreement" directly with OPRA. In this case, the person pays fees directly to OPRA on the basis of the number of the person's "devices" and/or "UserIDs."

The second way is that the person may enter into a "Subscriber Agreement," not directly with OPRA, but with an OPRA "Vendor"—an entity that has entered into a "Vendor Agreement" with OPRA authorizing the entity to redistribute OPRA Data to third persons. In this case, OPRA collects fees from the Vendor with respect to the receipt of the OPRA Data by the person entering into the Subscriber Agreement. If the person qualifies as a "Nonprofessional Subscriber," OPRA caps the fee that it charges the Vendor, and the fees that the person is required to pay to the Vendor may be less than they would be if the person is classified as a "Professional Subscriber."<sup>5</sup>

<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 SE.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 ten 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, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, LLC n/k/a NYSE MKT LLC, and NYSE Arca, Inc.

<sup>4</sup> OPRA defines a "Subscriber," in general, as an entity or person that receives OPRA Data for the person's own use.

<sup>5</sup> OPRA's Fee Schedule provides that a Vendor may determine the fee that it pays with respect to its distribution of current OPRA data to a Nonprofessional Subscriber in one of two ways: Either the Vendor may pay OPRA's flat monthly Nonprofessional Subscriber Fee (currently \$1.25/month), or the Vendor may count the

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

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

OPRA's current definition of the term "Nonprofessional" is set out in an "Addendum for Nonprofessionals" that is attached to its Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement. These two forms, in turn, are Attachments B-1 and B-2 to OPRA's form of Vendor Agreement.<sup>6</sup>

One element of OPRA's current definition of the term "Nonprofessional" specifies that to qualify as a "Nonprofessional" a person must not be "a securities broker-dealer, investment advisor, futures commission merchant, commodities introducing broker or commodity trading advisor, member of a securities exchange or association or futures contract market, or an owner, partner, or associated person of any of the foregoing."<sup>7</sup> For persons employed by securities broker-dealers, OPRA has interpreted the term "associated person" in this language with reference to the definition of the term "associated person of a broker or dealer" in Section 3(a)(18) of the Securities Exchange Act of 1934 (the "Act").<sup>8</sup> That definition includes within its scope "any employee" of a broker or dealer, and accordingly employees of broker/dealers have not been eligible to be Nonprofessionals.

Two inconsistencies created by this language have been brought to OPRA's attention. First, OPRA's language on this point is different from the counterpart language in the definition of "Nonprofessional" used by the Consolidated Tape Association ("CTA") and the "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges

on an Unlisted Trading Privilege Basis" ("Nasdaq/UTP Plan"). CTA and the Nasdaq/UTP Plan define the term "Nonprofessional" substantially identically, and by reference to whether the person seeking to qualify as a Nonprofessional is required to register in some capacity, not by reference to whether the person is an associated person of an entity or person that is required to register in some capacity.<sup>9</sup> Second, because the definition of the term "associated person" is defined differently in the commodity futures industry, a person who is employed by a commodity futures merchant (subject to regulation under the Commodity Exchange Act) may be able to qualify as a Nonprofessional under the language of the current OPRA definition even though a person who is employed by a securities broker to perform identical functions cannot.<sup>10</sup>

In order to eliminate these inconsistencies, OPRA proposes to replace paragraphs 1(c) and 1(d) of each Addendum for Nonprofessionals with a new paragraph 1(c) that tracks the counterpart language used by CTA and the UTP/Nasdaq Plan. In essence the

<sup>9</sup> The term "Nonprofessional Subscriber" is defined by CTA as follows:

"Nonprofessional Subscriber" refers to any natural person who receives market data solely for his/her personal, non-business use and who is not a Securities Professional, meaning that the person is:

(a) Not registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange/association, or any commodities/futures contract market/association

(b) Not engaged as an "investment adviser," as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); and

(c) Not employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

See the CTA "Nonprofessional Subscriber Policy," available at <http://www.nyxd.com/Docs/Market-Data/Policies>.

<sup>10</sup> For example, the term "Associated Person" is defined in the Regulations of the Commodity Futures Trading Commission (the "CFTC") with respect to a futures commission merchant as follows:

(aa) Associated person. This term means any natural person who is associated in any of the following capacities with:

(1) A futures commission merchant as a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged[.]

17 CFR 1.3(aa). The definition defines the term "associated person" in a similar manner for natural persons associated with other entities that are subject to regulation under the Commodity Exchange Act.

revised language will allow a person who is not himself or herself registered in some capacity with the Commission or the CFTC, but who is employed by an entity that is so registered, to qualify as a "Nonprofessional" for purposes of the person's personal, non-business-related, investment activities. OPRA believes that the changes that it is proposing in its definition of the term "Nonprofessional" will add clarity to the definition and more closely align the language of the definition with the definitions used by CTA and the UTP/Nasdaq Plan.

OPRA believes that, in the vast majority of cases, its definition of the term "Nonprofessional" and those of CTA and the UTP/Nasdaq Plan have always classified Subscribers as Professionals or Nonprofessionals consistently. OPRA believes that revising its definition in the manner described in this filing will reduce the small subset of cases in which its definition and those of CTA and the UTP/Nasdaq Plan generate different results.

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

OPRA is proposing to begin to permit Vendors to use revised versions of its Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement as soon as this filing has been approved by the Commission in accordance with paragraph (b)(1) of Rule 608 of Regulation NMS under the Securities Exchange Act of 1934. OPRA will send notice to Vendors advising them of the change and informing them that, if they believe that they have Subscribers who can be classified as Nonprofessionals under the revised definition, they may reclassify them after the Subscribers have agreed to a new Subscriber Agreement that includes a revised Addendum for Nonprofessionals. The change in the definition will not require Vendors to take any action with respect to their existing populations of Nonprofessionals, since all persons who qualify as Nonprofessionals under OPRA's current definition will continue to qualify under the revised definition.

## 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

Nonprofessional Subscriber's queries for OPRA data and pay Usage-based Vendor Fees based on the actual usage of OPRA data by the Nonprofessional Subscriber, subject to a cap that OPRA has always set at the amount of the flat Nonprofessional Subscriber Fee.

<sup>6</sup> These forms are posted on OPRA's Web site, [www.opradata.com](http://www.opradata.com). OPRA most recently amended them in File No. SR-OPRA-2008-02; Release No. 34-58434 (August 27, 2008).

<sup>7</sup> See Paragraph 1(c) in each Addendum for Nonprofessionals (emphasis added).

<sup>8</sup> The complete definition of the term "associated person" in the Act is: "The term 'person associated with a broker or dealer' or 'associated person of a broker or dealer' means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof)." (Emphasis added.)

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-2012-03 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-2012-03. 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 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-2012-03 and should be submitted on or before July 13, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67211; File No. SR-ISE-2012-53]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Rules and Fees Related to the Second Market**

June 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 6, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. 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 eliminate the rules and fees related to the listing and trading of low-volume options classes in what is known as the Second Market. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### **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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

##### **1. Purpose**

When the ISE was launched in 2000, it began trading options on approximately 900 equity securities that qualified for options trading pursuant to the listing standards contained in ISE Rule 502. The listing standards for underlying securities is uniform across all of the options exchanges, and while there were many additional underlying equity securities that qualified for options trading under these standards, ISE did not list options on these securities although they were traded on one or more of the other options exchanges. In general, the Exchange had chosen not to list and trade these options classes because of their low average daily trading volume ("ADV").

In 2006, however, the Exchange decided to pursue this segment of the market and adopted rules for the listing and trading of these low-volume options classes that qualified for listing under Rule 502 in a "Second Market."<sup>3</sup> While the Exchange's total volume modestly increased by listing these low-volume options classes, ISE does not believe the separate structure has added any appreciable value. In particular, all of the market makers that participate in the Second Market are also market makers in the First Market, so the creation of the Second Market did not attract additional market makers. On the other hand, the Exchange believes that the cost associated with maintaining the infrastructure to support the two separate structures outweighs the benefits of maintaining the Second Market. Accordingly, ISE proposes to eliminate the Second Market structure altogether and incorporate the securities currently traded thereunder into the First Market.

The consolidation of securities into the First Market will be accomplished through database changes by the Exchange's Technology staff. The Exchange notes that the elimination of the Second Market will be seamless for ISE Members. No action will be required on part of ISE Members. Additionally, options listed on the Exchange, whether in the First Market or the Second Market, must meet the qualification standards in Chapter 5. The Exchange is not making any changes to these listing standards and all options listed on the

<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. 54580 (October 6, 2006), 71 FR 60781 (October 16, 2006) (SR-ISE-2006-40).

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