

the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-06 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Jill M. Peterson,

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50789; File No. SR-OPRA-2004-05]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan To Revise Two Fees Charged by OPRA to Professional Subscribers to OPRA's Basic Service

December 3, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on October 14, 2004, the Options Price Reporting Authority ("OPRA")<sup>3</sup> 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"). On December 1, 2004, OPRA submitted Amendment No. 1 to the proposal.<sup>4</sup> The proposed OPRA Plan

amendment would revise two of the fees charged by OPRA to professional subscribers for OPRA's Basic Service. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

#### I. Description and Purpose of the Amendment

OPRA states that one of the purposes of the proposed amendment is to offer a "30-day free trial" period to new professional subscribers to OPRA's Basic Service. The free trial would apply to those new professional subscribers that sign OPRA's Professional Subscriber Agreement, which obligates them to pay monthly access fees to OPRA on either a per-device basis or on the basis of OPRA's professional subscriber enterprise rate, and that indicate on such agreement that they wish to subscribe for a 30-day free trial period. Unless the subscriber provides written notice of cancellation to OPRA prior to the end of the 30-day trial period, the subscriber would be obligated to pay OPRA's device-based or enterprise rate access fees commencing with the 31st day after the initiation of service. The 30-day free trial would not apply to any other fees that may otherwise apply, including direct or indirect access fees, synthesized speech service fees or usage-based fees payable by vendors who furnish OPRA data to professional subscribers.

According to OPRA, the other purpose of the proposed amendment is to impose a cap on the monthly usage-based fees payable by vendors who provide OPRA data to professional subscribers pursuant to a Subscriber Agreement between the vendor and the subscriber, rather than pursuant to a Professional Subscriber Agreement between OPRA and the subscriber that imposes device-based fees or an enterprise rate fee.<sup>5</sup> OPRA states that, although vendor's usage-based fees are currently capped for OPRA data provided to nonprofessional subscribers, heretofore there has been no cap on usage-based fees payable by vendors on account of OPRA data provided to professional subscribers. OPRA proposes to cap the monthly fee payable by a vendor on account of a usage-based fee service provided to any

one professional subscriber at the highest per-device fee applicable to a professional subscriber had such professional subscriber paid OPRA directly for such OPRA data (currently \$32.25), multiplied by the number of the professional subscriber's authorized user IDs. OPRA believes that this would assure that the capped usage-based fee payable on account of any professional subscriber in any month does not exceed the highest per-device fee that would have applied if the professional subscriber had been subject to device-based fees.<sup>6</sup>

OPRA states that these proposed fee changes are intended to encourage professionals to become OPRA subscribers by expanding the fee choices available to them and to their vendors. The text of the proposed rule change is available at the principal office of OPRA, and at the Commission.

#### II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2 under the Act,<sup>7</sup> OPRA designates 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. 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 11Aa3-2(c)(2) under the Act,<sup>8</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.

#### 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

<sup>6</sup> Under OPRA's published policies, each authorized subscriber ID is treated as the equivalent of one device for purposes of applying the professional subscriber device-based fee.

<sup>7</sup> 17 CFR 240.11Aa3-2(c)(3)(i).

<sup>8</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>1</sup> 17 CFR 200.30-3(a)(29).

<sup>2</sup> 15 U.S.C. 78k-1.

<sup>3</sup> 17 CFR 240.11Aa3-2.

<sup>4</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), 22 S.E.C. Docket 484 (March 31, 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 six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

<sup>5</sup> See letter from Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, to David Liu, Attorney,

Division of Market Regulation, Commission, dated November 20, 2004. Amendment No. 1 made technical updates to the fee schedule contained in Exhibit II of the filing.

<sup>6</sup> OPRA states that professional subscribers who enter into Subscriber Agreements with vendors for which usage-based fees apply do not need to enter into Professional Subscriber Agreements with OPRA, and do not pay device-based or enterprise rate access fees to OPRA.

- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR-OPRA-2004-05 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-OPRA-2004-05. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-05 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50794; File No. PCAOB-2004-08]

### Public Company Accounting Oversight Board; Notice of Filing and Order Granting Accelerated Approval of Proposed Temporary Transitional Rule Relating to PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements"

December 3, 2004.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on December 1, 2004, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule, described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons and is approving the proposal on an accelerated basis.

#### I. Board's Statement of the Terms of Substance of the Proposed Rule

On November 30, 2004, the Board adopted a temporary transitional provision for PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements." (PCAOB Rule 3201T). The proposed rule text is set out below.

#### SECTION 3. PROFESSIONAL STANDARDS

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##### Part 1—General Requirements

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#### Rule 3201T. Temporary Transitional Provision for PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements."

(a) Notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file *Management's annual report on internal control over financial reporting* in reliance on SEC Release No. 34-50754, Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Specified Provisions of Exchange Act Rules 13a-1 and 15d-1 (November 30, 2004), a registered public accounting firm and its associated persons need not:

(1) Date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, provided that the date of the auditor's report on management's assessment of the effectiveness of internal control over financial reporting is later than the date of the auditor's report on the issuer's financial statements; or

(2) Add a paragraph to the auditor's separate report on the financial statements of an issuer that refers to a separate report on management's assessment of the effectiveness of internal control over financial reporting.

(b) This temporary rule will expire on July 15, 2005.

#### II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule.

##### A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

##### (a) Purpose

The Board adopted the proposed rule in response to an exemptive order of the Commission (the Exemptive Order).<sup>1</sup> The Exemptive Order allows certain issuers an additional 45 days to file *Management's annual report on internal control over financial reporting*, required by Item 308(a) of Regulation S-K, and the related Attestation report of the *registered public accounting firm*, required by Item 308(b) of Regulation S-K. The proposed rule would temporarily relieve auditors, in connection with the audit of an issuer relying on the Exemptive Order, from certain provisions of PCAOB Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements* ("Auditing Standard No. 2"). The proposed rule would permit eligible auditors to date a report on management's assessment of the effectiveness of internal control over financial reporting later than the date of the report on the same issuer's financial statements. The proposed rule would also permit these auditors to omit reference in the auditor's separate report on the issuer's financial statements to the auditor's report on management's

<sup>1</sup> Exchange Act Release No. 50754 (Nov. 30, 2004).

<sup>9</sup> 17 CFR 200.30-3(a)(29).