Commission, MS O–12D3, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46992; File No. SR–OPRA–2002–01]

Options Price Reporting Authority; Notice of Filing and Order Approving for 120 Days an Amendment to the Options Price Reporting Authority Plan To Establish a Best Bid and Offer Market Data Service

December 13, 2002.

I. Introduction

On February 26, 2002, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and rule 11Aa3–2 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'' or ''Plan'').[3] The proposed amendment would add to the Plan terms governing the provision by OPRA of a best bid and offer (''BBO'') for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors. Notice of the proposal was published in the **Federal Register** on March 15, 2002.[4] The Commission received two comment letters on the proposed OPRA Plan amendment.[5] On May 30, 2002, OPRA submitted Amendment No. 1 to the proposal.[6] On June 13, 2002, OPRA submitted a letter in response to the comments.[7] On October 4, 2002, OPRA submitted Amendment No. 2 to the proposal.[8] This order approves the proposal as modified by Amendments No. 1 and 2 for 120 days, and solicits comment on Amendments No. 1 and 2.[9]

II. Description and Purpose of the Amendment

Under the proposed Plan amendment, OPRA proposes to add a consolidated BBO service that would disseminate the best bid and offer, subject to certain exceptions, for each options series.[10] The BBO for any series of options would be the highest priced bid and the lowest priced offer currently being quoted on any of OPRA's participant exchanges. Subject to the price and size increments discussed below, if the same best priced bid or offer is quoted on more than one exchange, the exchange that is quoting at that price for the largest number of options contracts would be identified by OPRA as the market that is quoting the best bid or offer. If the same best bid or offer for the same number of options contracts is quoted on more than one exchange, the exchange that was first in time to quote that bid or offer for that number of contracts would be identified as the BBO. Thus, OPRA would prioritize the BBO on the basis of price, size, and time.

The proposed BBO Guidelines provide that the minimum price increment for purposes of the BBO would be no less than five cents,[11] and that, absent a change in the price of the BBO, the minimum size increment for purposes of the BBO would be no fewer than ten contracts. In other words, to displace the current BBO by improving the price at which an options series is quoted, the price improvement must be at least five cents per contract and, to displace the current BBO by increasing the number of contracts covered by a quote at the same price as the current BBO, the new bid or offer must be for at least ten contracts more than the current BBO. This would not preclude markets from disseminating bids and offers that improve the current BBO by less than five cents (to the extent such quotes may be permitted under applicable exchange rules) or that increase the size at a given quotation by fewer than ten contracts. Such price or size improvements, however, would not be reflected in the BBO disseminated by OPRA. Thus, the BBO, as provided by OPRA, could include an approximation of the size associated with the best bid and offer actually available.[12]

Currently, vendors are required to include the best bid and offer from each market and last sale reports for any series included in the market data service they provide. Under the proposal, OPRA vendors would have the option to disseminate to customers the consolidated BBO together with last sale reports for any series of options. In addition to the BBO service, OPRA would be obligated to continue to offer to vendors its full market data service, which includes the disseminated best bid and offer from each of OPRA's participant exchanges. The proposed amendment also would permit OPRA to contract with vendors separately for: (i) The last sale reports and the BBO; (ii) or for the last sale reports, the BBO, and quotation information from each market. OPRA also could contract separately with vendors for the full market data service that it currently offers.

In a separate proposal, OPRA proposes changes to its vendor agreement which, if approved, would

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] 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).

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 five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[4] *See* Securities Exchange Act Release No. 45532 (March 11, 2002), 67 FR 11727 (''Notice'').

[5] *See* letters from Devin Wenig, President, Investment Banking and Brokerage, Reuters America Inc., dated April 19, 2002 (''Reuters Letter''), and George W. Mann, Jr., Executive Vice President and General Counsel, Boston Stock Exchange Inc., dated May 1, 2002 (''BSE Letter''), to Jonathan G. Katz, Secretary, Commission.

[6] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division of Market Regulation (''Division''), Commission, dated May 29, 2002 (''Amendment No. 1''). In Amendment No. 1, OPRA proposes to complete the modifications to its system necessary to enable the system to provide the BBO service no later than March 31, 2003. In addition, OPRA proposes a technical correction to clarify that the Plan would still require the options exchanges to use the OPRA system as the exclusive means of disseminating options market information. Finally, OPRA proposes to provide examples under the BBO Guidelines to describe how OPRA would calculate the BBO.

[7] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated June 12, 2002 (''OPRA Letter'').

[8] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated October 2, 2002 (''Amendment No. 2''). In Amendment No. 2, OPRA proposes to eliminate the proposed ten contract minimum such that the disseminated BBO would include the actual size of the best bid and offer at the time each new price is disseminated.

[9] *See* Exchange Act rule 11Aa3–2(c)(4).

[10] OPRA represents that the BBO Service would be implemented no later than the end of the first quarter of 2003. This would be accomplished by providing dual feeds to vendors during a phase-in period, one with BBO information and one without it. *See* Amendment No. 1, *supra* note 6.

[11] The minimum price variation for option quotes under the rules of OPRA's participant exchanges is currently five cents for options trading under $3.00 per share per option contract. *See, e.g.*, Amex rule 952.

[12] *See* Amendment No. 1, *supra* note 6.

affect the manner in which vendors disseminate information to end users.[13] Specifically, under OPRA's vendor agreement proposal, vendors could choose to disseminate only the BBO and last sale information. Moreover, the proposal would permit vendors to exclude from the BBO the quotation size, or the market identifier associated with a BBO, or both, so long as in excluding this information the vendor would not discriminate on the basis of the market in which quotations are entered. In addition, if a vendor excludes the market identifier associated with the BBO, it would have to make that information available to recipients of the service through an inquiry service provided without additional cost. Further, the proposed vendor agreement would require any vendor that includes size in its BBO service to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 and 2 to the proposed Plan amendment, including whether Amendments No. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to Amendments No. 1 and 2 to the proposed plan amendment that are filed with the Commission, and all written communications relating to Amendments No. 1 and 2 to the proposed Plan amendment between the Commission and any person, other than those 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. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–01 and should be submitted by January 10, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendments No. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder.[14] Specifically, the Commission believes that the proposed OPRA Plan amendment, which would permit OPRA to provide a best bid and offer market data service to vendors, is consistent with section 11A of the Act[15] and rule 11Aa3–2[16] thereunder in that it is 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. Further, the Commission finds, as described further below, that it is appropriate to approve summarily the proposed OPRA Plan amendment as amended upon publication of this notice on a temporary basis for 120 days. The Commission believes 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 mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.[17]

The Commission received two comment letters regarding the proposed OPRA Plan amendment.[18] The two commenters generally did not oppose OPRA's initiative to establish a BBO for the options markets, but did express specific concerns regarding the terms of OPRA's proposed Plan amendment.

In particular, without opposing the dissemination of a BBO in the options markets, Reuters America Inc. (''Reuters'') stated that a BBO would not solve the problems caused by exponential growth in options data over the last ten years.[19] Reuters' comment letter principally focuses on the growth in options market data, which it concludes is ''out of proportion to the economic value of the data and threatens to overwhelm customer systems and adversely impact market transparency.''[20] Reuters urges the Commission to undertake a study prior to approving OPRA's proposal to determine what options information end users want, alternatives available for providing information, and what the technological and financial constraints are in doing so.

The Commission concurs with Reuters' general concerns regarding the growth in options market data message traffic. The Commission, however, does not believe that these concerns mean that the Commission should delay approval of a new service that will be optional to vendors. As OPRA noted, it intends that the BBO service would enable vendors to offer ''a useful market data service to those customers who do not need the full OPRA service without having to develop and maintain the large-capacity systems necessary to transmit the full options market data service to those customers.''[21] OPRA does not claim that the BBO service would be a panacea for all capacity-related concerns, and recognizes that, working with vendors and the Commission, it will continue to have to address this issue.[22] In addition, OPRA believes that, although no one can predict the potential capacity savings to vendors associated with the BBO service in comparison to OPRA's full service, such savings would be significant because every quotation change disseminated over OPRA's full service would likely not result in a corresponding change to OPRA's BBO quotation. Further, OPRA suggests that the capacity saving would be greatest if vendors were permitted to disseminate only the price of the BBO without the size or market identifier, as proposed in the Vendor Agreement Proposal.[23] Finally, OPRA emphasizes that its proposed BBO service is an alternative, not in addition, to its current full service.

The Commission agrees that the proposal would provide an appropriate alternative to OPRA's full service for vendors and subscribers that do not require the full service, and that, although the size disseminated with the BBO service could be an approximation of the actual size, the Commission believes this approximate size is a reasonable alternative for certain market participants. More exact size information will still be available to market participants through OPRA's full service. Therefore, the Commission believes that the proposal is consistent with the Act.[24] Moreover, although the

[13] *See* Securities Exchange Act Release No. 46839 (November 14, 2002) (File No. SR–OPRA–2002–03) (''Vendor Agreement Proposal'').

[14] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 240.11Aa3–2.

[17] *See* Exchange Act rule 11Aa3–2(c)(4).

[18] *See* BSE letter and Reuters letter, *supra* note 5.

[19] Reuters is a vendor of options market data. Reuters is an indirect wholly-owned subsidiary of Reuters Group PLC. *See* Reuters Letter, *supra* note 5.

[20] *See* Reuters letter, *supra* note 5.

[21] *See* OPRA letter, note 7.

[22] *See* OPRA letter, note 7.

[23] *See* OPRA letter, note 7. *See also* Vendor Agreement Proposal, *supra* note 13.

[24] Under the proposed revisions to the vendor agreement, a vendor would have to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service. *See* Vendor Agreement Proposal, *supra* note 13.

Commission agrees that the BBO service would not resolve all capacity issues related to options market data, it believes that the BBO service is a first step in addressing these concerns. Finally, the Commission notes that this service is an alternative to the current OPRA full service. Accordingly, for any options series that a vendor chooses to disseminate market data, the vendor could disseminate last sale information together with (i) the best bid and offer from each market, as the vendor agreement currently requires, or (ii) the BBO. The Commission believes that OPRA's proposal to permit vendors to disseminate last sale information and a BBO is consistent with the purposes of Section 11A of the Act because the BBO would include the essential pricing information market participants need to make informed investment decisions. Moreover, the BBO would not impede market competition because all markets have an equal opportunity to be represented in the BBO. The Commission believes that OPRA's proposed BBO service would make it easier for vendors to disseminate this minimum essential market information as an alternative to the full quotation information or in addition to such information.

The Boston Stock Exchange, Inc. (''BSE'') offered support for the proposal in general but criticized the priority used to determine the market identifier.[25] Specifically, the BSE suggested that the proposal could discourage competition by creating a disincentive for market makers to improve the price of their quotations. In particular, BSE argued that because the market identifier for the BBO could change based solely on an increase to the size of the BBO, OPRA's service would likely identify only those exchanges that disseminate quotations with large size. As a result, BSE suggested that order flow providers would direct their orders to exchanges that improve the size but merely match the price of the BBO, thereby creating a disincentive for an exchange to offer a better price as means of attracting order flow.

The Commission is not persuaded by BSE's arguments. An exchange would have its market identifier associated with the BBO by improving the price. Therefore, the Commission believes that the proposal would give market makers an incentive to improve either the price or the size of a quote, or both. Further, the Commission notes that most disseminated quotations in the options market are updated automatically in direct response to changes in the price of the underlying security. Thus, the Commission believes that in many instances a better quote results not from a market maker's incentive to be first in time to establish the best bid or offer but, rather, from a price change in the underlying security. For this reason, the Commission is not persuaded by the BSE's argument that OPRA's proposal to calculate the best bid or offer in the options market on the basis of price and then size priority.

BSE also suggested that the method proposed to calculate the BBO was unclear under the guidelines. The Commission believes that the changes to the proposal in Amendments No. 1 and 2 provide adequate clarification as to how the BBO would be calculated.[26]

Finally, the Commission also believes that the proposal is consistent with the Commission's position in its letter submitted as *amicus curiae* in an arbitration proceeding between OPRA and Reuters.[27] In this arbitration, OPRA challenged the validity of Reuters' limited service under which it provides only the last sale and quotation information for each options class generated by the ''primary market,'' defined as the market with the greatest volume for the prior month. The Commission submitted its views on whether Reuters' dissemination to customers of options prices only from the exchange with the highest volume is consistent with the OPRA Plan and the Act, particularly the goals of fostering transparency and competition. The Commission concluded it was not.

Specifically, the Commission took the position that the dissemination by securities information vendors of timely, accurate, and complete options quotation and transaction information to market participants, including public investors, is a critical component of the national market system as it relates to options. Accordingly, as the Commission urged in its *amicus* letter, this means that the market information disseminated by a vendor must include, at a minimum, for each series of options included in its service, the last sale information generated by all exchanges and the best bid and offer currently available in the marketplace.

The Commission believes that it is appropriate to approve the proposal summarily upon publication of notice of Amendments No. 1 and 2 to permit OPRA to complete the system modifications necessary to offer the BBO service to vendors and subscribers, along with the anticipated capacity savings, which the BBO service should provide, at the soonest practicable time.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[28] and rule 11Aa3–2(c)(4) thereunder,[29] that the proposed OPRA Plan amendment, as modified by Amendments No. 1 and 2, (SR–OPRA–2002–01) is approved until April 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

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[25] The BSE also raised concerns regarding firm quote obligations in the options markets generally. The Commission believes that these obligations are outside the scope of OPRA's function and are not relevant to the proposed amendment to the OPRA Plan.

[26] *See* Amendments No. 1 and 2, *supra* notes 1 and 2. *See* also, OPRA letter, *supra* note 7.

[27] *See* letter to Tamara B. Young, Case Administrator, American Arbitration Association, from Annette L. Nazareth, Director, Division, Commission, and David M. Becker, General Counsel, Commission, dated February 5, 2001.

[28] 15 U.S.C. 78k–1.

[29] 17 CFR 240.11Aa3–2(c)(4).

[30] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46994; File No. SR–NASD–2002–66]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Limit Order Protection and the Facilitation of Other Customer Orders on a Riskless Principal Basis

December 13, 2002.

I. Introduction

On May 28, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (Act) [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would modify NASD Interpretative Material 2110–2 to establish a riskless principal customer facilitation exemption. Notice of the proposed rule change appeared in the **Federal Register**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.