

**RAILROAD RETIREMENT BOARD****Agency Forms Submitted for OMB Review**

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s):**

*Collection title:* Evidence of Marital Relationship—Living with Requirements.

*Form(s) submitted:* G-124, G-124a, G-237, G-238, and G-238a.

*OMB Number:* 3220-0021.

*Expiration date of current OMB clearance:* 1/31/2003.

*Type of request:* Extension of a currently approved collection.

*Respondents:* Individuals or households, state, local or tribal government.

*Estimated annual number of respondents:* 1,100.

*Total annual responses:* 1,100.

*Total annual reporting hours:* 196.

*Collection description:* Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law marriage, termination of previous marriages and residency requirements.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

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**BILLING CODE 7905-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46674; File No. SR-OPRA-2002-05]

**Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Regarding Policies for Device-Based Fees**

October 17, 2002.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 4, 2002, the Options Price Reporting Authority ("OPRA")<sup>2</sup> submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would supplement OPRA's form of Professional Subscriber Agreement with a new document entitled "Policies With Respect To Device-Based Fees" (referred to in this filing as the "Device-Based Fees Policies"). 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**

The purpose of the proposed amendment to OPRA's national market system plan is to state in writing certain OPRA policies with respect to the way in which OPRA calculates "device-based fees" that are paid by Professional Subscribers.<sup>3</sup> The policies reflect

<sup>1</sup> 17 CFR 240.11Aa3-2.

<sup>2</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 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, 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).

<sup>3</sup> In essence, an OPRA Professional Subscriber may pay fees for its receipt of OPRA data in one of three ways. The first two ways are available to a Professional Subscriber that enters into a Professional Subscriber Agreement directly with OPRA; such a Subscriber pays fees for the receipt of OPRA data directly to OPRA, with the fees calculated using either "device-based" rates (the subject of the Device-Based Fees Policies) or "enterprise" rates (rates that are calculated on the basis of the number of "registered representatives"

existing OPRA practice, but OPRA has not previously reduced them to writing. OPRA has developed the Device-Based Fees Policies to make information with respect to its calculation of device-based fees more easily accessible to Professional Subscribers. The Device-Based Fees Policies address four subjects relating to device-based fees:

(a) *The Use of "User IDs" as a Surrogate or Supplement for Devices for Purposes of Calculating Device-Based Fees*

As the term "device-based" suggests, the basic method for calculating a Professional Subscriber's device-based fees is to determine the number of devices that the Professional Subscriber has that are capable of receiving OPRA information. However, OPRA permits Professional Subscribers to count "User IDs" as a surrogate or supplement for counting devices for purposes of calculating OPRA fees. A Professional Subscriber that wishes to count User IDs must comply with certain requirements, which are described in the Device-Based Fees Policies.

(b) *The Manner in Which OPRA Bills for the Use of OPRA Data by Entities That Are Affiliated With Each Other*

OPRA's policy is to permit a parent entity's status as a Professional Subscriber to encompass its wholly-owned subsidiaries. In all other situations OPRA's policy is to conduct its relationships with Professional Subscribers and other persons on an "entity-by-entity" basis, and not on a "family of affiliates" basis. The Device-Based Fees Policies describe two specific ways in which these policies may apply to the calculation of device-based fees. The first has to do with the aggregation of devices and/or User IDs across affiliated entities for purposes of determining the applicable device-based rate. The second relates to the availability of OPRA's member rate schedule for OPRA's Basic Service in a situation where either a parent entity is a member of an OPRA Exchange but its wholly-owned subsidiary is not (in this case, the member rate schedule is available for the parent and the subsidiary) or the parent entity is not a member of an OPRA Exchange but its

that work for the Professional Subscriber, subject to a monthly minimum). The third way is available to a Professional Subscriber that enters into an agreement with an OPRA vendor in a form prescribed by or that is acceptable to OPRA. In that case, the Vendor pays "usage-based" fees to OPRA (fees based on the volume of usage of OPRA data through the Vendor's service) for the Professional Subscriber's use of OPRA information, and the Professional Subscriber pays fees to the Vendor under the financial arrangements that they establish.

wholly-owned subsidiary is (in this case, the member rate schedule is not available to either the parent or the subsidiary, although it would be available to the subsidiary if it entered into a separate Subscriber Agreement with OPRA in its own name).

*(c) Policy With Respect to Devices and User IDs That Are Capable of Receiving OPRA Data From More Than One Source*

The Device-Based Fees Policies state OPRA's policy with respect to devices and User IDs that are capable of receiving OPRA data from more than one source; in essence the policy is that OPRA does not require that more than one fee be paid with respect to any device or User ID that is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or "service."

*(d) Professional Subscriber's Responsibility to Verify Invoices*

The fourth subject addressed in the Device-Based Fees Policies is the responsibility of each Professional Subscriber to verify that the invoices it receives from OPRA are accurate, and particularly to verify that it is not being billed twice for the same device or User ID. The Device-Based Fees Policies state that OPRA's policy is to correct a current invoice if a Professional Subscriber informs OPRA that the invoice is not accurate, and to correct its records so that the inaccuracy does not continue to be reflected in future bills, but not to provide refunds or credits for a double billing or other inaccuracy for any period of time prior to the period covered by the Professional Subscriber's current invoice.

The text of the proposed new document regarding policies with respect to Device-Based Fees is set forth below.

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**Policies With Respect To Device-Based Fees**

Professional Subscribers that enter into Professional Subscriber Agreements directly with OPRA pay fees for the use of OPRA information directly to OPRA. These fees may be calculated using either "device-based" rates or "enterprise" rates. (A Professional Subscriber that enters into a Subscriber Agreement with a Vendor does not pay fees directly to OPRA. Instead, the Vendor pays usage-based fees to OPRA for the Professional Subscriber's use of OPRA information, and the Professional Subscriber pays fees to the Vendor under the financial arrangements that

they establish.) The OPRA policies described in this document relate to device-based fees.

As the term "device-based" suggests, the basic method for calculating a Professional Subscriber's device-based fees is to determine the number of devices that the Professional Subscriber has that are capable of receiving OPRA information. However, if a Professional Subscriber complies with the requirements described in the section of this document entitled "System Requirements for Using User IDs to Calculate Device-based Fees," OPRA will permit the Professional Subscriber to count "User IDs" that are capable of receiving OPRA information as a surrogate for counting devices, and to pay fees based on the number of User IDs using the same *Fee Schedule for Professional Subscribers* that is used for device-based counts.

A Professional Subscriber cannot mix device-based counting and User ID-based counting at the same location, but a Professional Subscriber may use one type of counting at one location and the other at another location. If a Professional Subscriber uses both types of counting, OPRA will simply add the totals together for purposes of determining the Subscriber's monthly fee in accordance with the Fee Schedule.

*Billing for Affiliates*

OPRA's policy is to permit a parent entity to conduct business with OPRA on behalf of its wholly-owned subsidiaries as well as on its own behalf. In all other situations OPRA adheres to a general policy in its contract relationships with Professional Subscribers and other persons of conducting business on an "entity-by-entity" basis, and not on a "family of affiliates" basis. Thus, for example, OPRA would permit a wholly-owned subsidiary of a company that is a Professional Subscriber to receive OPRA information on the subsidiary's devices under the terms of the parent's Professional Subscriber Agreement, *i.e.*, without having a second Professional Subscriber Agreement in effect. But OPRA would require two entities that are "sister" affiliates of each other and that each wants to become a Professional Subscriber and to pay device-based fees to each sign a Professional Subscriber Agreement with OPRA.

This general policy is relevant to determinations of device-based fees in at least two respects:

- OPRA permits a parent entity to aggregate the devices and/or User IDs of its wholly-owned subsidiaries that are

under the parent's Professional Subscriber Agreement with its own devices and/or User IDs for purposes of determining the applicable device-based rate, but does not permit any other aggregation of devices or User IDs—even by entities that are in other affiliate relationships with each other—for purposes of determining the applicable device-based rate.

- If a parent entity that has entered into a Professional Subscriber Agreement is entitled to use the "Member" rate schedule for OPRA's Basic Service (because it is a member or associate member in good standing of one of the OPRA Participant Exchanges), then the "Member" rate schedule will also be available to the parent's wholly-owned subsidiaries that are under the parent's Professional Subscriber Agreement. If a parent entity that has entered into a Professional Subscriber Agreement is not entitled to use the "Member" rate schedule, then the "Member" rate schedule would not be available to a wholly-owned subsidiary that is under the parent's Professional Subscriber Agreement even if the subsidiary is a member or associate member in good standing of one of the OPRA Participant Exchanges. (This might be a situation in which the subsidiary should enter into its own Professional Subscriber Agreement, since it would then be entitled to use the "Member" rate schedule.) Except in the case in which a parent entity is entitled to use the "Member" rate schedule for itself and its wholly-owned subsidiaries, the availability of the "Member" rate schedule to any entity may not be extended to any other entity, including any affiliate of the entity that is entitled to use the "Member" rate schedule.

*System Requirements for Using User IDs to Calculate Device-Based Fees*

If a Professional Subscriber wants to use User ID counts rather than device counts for purposes of determining device-based fees at a particular location, the system(s) that control User ID entitlement at the location must satisfy the following requirements:

- The system(s) must assign a unique User ID to each person who will have access to OPRA information and must be capable of maintaining, for audit purposes, a record of the names of all users with access to the network together with their associated user IDs and their respective entitlements.
- The system(s) must be configured to preclude simultaneous access by the same user ID from more than one terminal on the network.

• The system(s) must have the ability to generate reports for the location detailing those persons entitled to access OPRA information, and to retain these reports for a period of three years for audit purposes.

In addition, the Professional Subscriber must have a policy in place prohibiting the sharing of User IDs, and must have procedures in place to assure reasonable compliance with the policy.

If any of these requirements is not satisfied (e.g., if the entitlement control system does not prohibit simultaneous access by the same User ID), device-based fees must be based on counting the devices that are capable of receiving OPRA information rather than on counting User IDs.

#### *Counting Devices and User IDs*

OPRA does not require that more than one fee be paid with respect to any device, or any User ID, that is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or "service." Thus, for example, if a particular device is receiving data from both a Vendor A service and a Vendor B service, OPRA does not require that the Professional Subscriber pay two device-based fees for that device. Similarly, if a particular device is receiving data from both a Vendor A service and a datafeed controlled by the Professional Subscriber itself, OPRA does not require that the Professional Subscriber pay two device-based fees for that device.

#### *Professional Subscriber's Responsibility to Verify Invoices*

Each Professional Subscriber is responsible for verifying that the invoices it receives from OPRA are accurate. In particular, each Professional Subscriber is responsible for verifying that it is not being billed twice for the same device or User ID. OPRA invoices each Professional Subscriber that has elected to pay device-based fees based on information that OPRA receives from Vendors (with respect to devices and User IDs that are under Vendor control) and from the Professional Subscriber itself (with respect to devices and User IDs that are under the control of the Professional Subscriber). It can be difficult for OPRA to recognize that a device or User ID reported as receiving OPRA information by two different Vendors, or by a Vendor and the Professional Subscriber, is in fact the same device or User ID.

If a Professional Subscriber informs OPRA that a current OPRA invoice double bills for a particular device or User ID or is otherwise inaccurate,

OPRA will correct the current invoice and its records so that the double billing or other inaccuracy does not continue. However, OPRA's policy is to not provide refunds or credits for a double billing or other inaccuracy for any period of time prior to the period covered by the Professional Subscriber's current invoice.

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

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2 under the Act,<sup>4</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>5</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. Further, OPRA intends to send a copy of the Policies to all current Professional Subscribers with the next monthly invoices that are sent out by OPRA following this filing, and to add the Policies to the package of materials that it supplies to vendors for distribution to persons intending to sign Professional Subscriber Agreements with OPRA. In addition, as soon as practicable OPRA intends to post a copy of the Policies on its website ([www.opradata.com](http://www.opradata.com)).

## **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. 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 the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the

proposed OPRA 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 also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2002-05 and should be submitted by November 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46718; File No. SR-CBOE-2002-48]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to Its Constitution and Rules Pertaining to the Governance of the Exchange**

October 24, 2002.

On August 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 amend CBOE's Constitution and Rules relating to governance of the Exchange. The principal governance proposal increases the public representation on the Exchange's Board of Directors ("Board") and three committees of the Board so that the Board and these three committees will be balanced between industry (member) and public directors. The Exchange also proposed to codify in its Constitution establishment of the Audit Committee, Compensation Committee, and Floor Directors Committee of the Board. It also proposed to amend its Constitution to clarify that the authority of the Vice Chairman of the Board to coordinate the activities of Exchange committees does not extend to the Executive, Audit or Compensation Committees. Finally, the

<sup>6</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>4</sup> 17 CFR 240.11Aa3-2(c)(3)(i).

<sup>5</sup> 17 CFR 240.11Aa3-2(c)(2).