February 2, 2001

Ms. Tamara B. Young
Case Administrator
American Arbitration Association
1633 Broadway – 10th Floor
New York, NY 10019-6708

RE: American Stock Exchange LLC, et al. v. Reuters Limited,
No. 13 113 00471 00 (American Arbitration Association)

Dear Ms. Young:

The Securities and Exchange Commission ("SEC" or "Commission") has authorized its staff to submit this letter, as amicus curiae, setting forth the Commission's views on the meaning of certain provisions of a national market system plan, the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"), implicated in the above-referenced arbitration proceeding involving exchanges that participate in the OPRA Plan and Reuters Limited ("Reuters"). Although the Commission understands that the arbitration panel has determined that it does not have the authority to invite the Commission to participate in this case as amicus curiae,[1] the Commission urges the panel to receive and consider this letter. As the expert agency charged with administering the federal securities laws, the Commission believes that its views on the meaning of relevant provisions of the OPRA Plan, as well as the securities laws under which the Commission approved the OPRA Plan, will assist the panel in rendering its decision.

The Commission is not taking a position on the factual issues in this proceeding in which the claimants allege breach of contract, on applicable state contract law, or on the ultimate resolution of the proceeding. Rather, because the contract contains provisions required by the OPRA Plan and states that the "respective rights and obligations of the parties . . . shall be

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[1] This understanding derives from the wording of the panel's September 20, 2000 memorandum. In conversations with Commission staff, however, counsel for both parties to this proceeding informed the staff that the panel orally opined that it did not have the authority to receive or request an amicus submission from the Commission. The Commission is not aware of any provision in the AAA's dispute resolution procedures that prohibits the panel from receiving an amicus submission.

subject to any applicable provisions of the Securities Exchange Act of 1934 (as amended) and any rules and regulations promulgated thereunder," the Commission is expressing its views on the meaning of the statutory and OPRA Plan provisions that give rise to the required contractual provisions.

The Commission's Interest in this Matter and Summary of its Position

The Commission is submitting this letter because of the potential harm to securities markets and market participants if the panel renders a decision based on an erroneous view as to the meaning of relevant statutory and OPRA Plan provisions.

With the enactment of Section 11A of the Securities Exchange Act of 1934 ("Exchange Act")[2] as part of the Securities Act Amendments of 1975,[3] Congress directed the Commission to facilitate the establishment of a national market system in accordance with the goals set forth in that section. In Section 11A(a)(1)(C) of the Exchange Act, Congress found, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) the availability to brokers, dealers, and investors of market information; (2) fair competition among exchange markets; and (3) the practicability of brokers executing investors' orders in the best market.[4] The Commission believes that the dissemination by securities information vendors,[5] like Reuters, 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. As a result, the Commission is required to ensure that the manner in which vendors disseminate options market data is consistent with the goals set forth by Congress in the Exchange Act.

To implement this objective, the Commission approved the OPRA Plan. One of the

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[2] 15 U.S.C. 78k-1.

[3] Pub. L. No. 94-29, 89 Stat. 97 (1975) ("1975 Amendments").

[4] 15 U.S.C. 78k-1(a)(1)(C).

[5] The Commission has broad authority to regulate securities information processors pursuant to Section 11A(b) of the Exchange Act. 15 U.S.C. 78k-1(b). The Commission exercised this authority when it adopted Rule 11Ac1-2 of the Exchange Act imposing certain requirements on "vendors," which it defined as "any securities information processor engaged in the business of disseminating transaction reports, last sale data or quotation information with respect to subject securities to brokers, dealers or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device." 17 CFR 240.11Ac1-2(a)(2). This rule does not apply to vendors of options market information. For a discussion of why the Commission did not extend this rule to such vendors, *see infra* notes { NOTEREF _Ref505504495 \h * MERGEFORMAT }-33 and accompanying text.

provisions of the OPRA Plan requires that agreements between OPRA and vendors prohibit vendors from "exclud[ing] reports or otherwise discriminat[ing] on the basis of the market in which a transaction or quotation took place." In the Commission's view, this provision is designed to assure that a vendor disseminates, at a minimum, the last sale information generated by all markets and the best quote currently available in the marketplace for those options classes it carries. When a vendor declines to disseminate such information, and instead disseminates information pertaining to any given class of multiply-traded options only from the exchange with the highest trading volume for that class in the previous month ("dominant exchange"), it contravenes this provision, and thwarts the goals of the Exchange Act—particularly the goals of fostering transparency and encouraging competition. This type of limited dissemination makes it possible, even probable, that smaller or newer exchanges, even if they have better prices, will be unsuccessful in widely disseminating their market information, thereby depriving market participants of that information and impairing exchange competition.

Issue Addressed

Reuters disseminates options market information—last sale reports and quotation information pertaining to any options class traded on more that one exchange—that is limited to information generated by the exchange with the highest trading volume for that class. The issue addressed by the Commission is whether such limited dissemination is consistent with the OPRA Plan and the goals of the securities laws pursuant to which the Commission approved the OPRA Plan.

Discussion

A. Transparency, Fair Competition, and Best Execution Are Cornerstones of the National Market System, as Envisioned by Congress.

During the early 1970s, the Commission sent a series of reports to Congress[6] that culminated in Congressional action directing the Commission to facilitate the restructuring of the securities markets in the United States, particularly the way in which market information is disseminated. The Commission's reports responded to a growing crisis that deeply affected investors: increasing market volume that could not be accommodated; fixed commission rates that caused inefficient relationships between market participants; and severely restricted public access to market information.

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6 SEC, Institutional Investor Study Report, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. (1971) ("Institutional Investor Study Report"); SEC, Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets (February 2, 1972) 37 FR 5286 (February 4, 1972) ("Future Structure Statement"); and SEC, Policy Statement of the Securities and Exchange Commission on the Structure of a Central Market System (March 29, 1973) reprinted in [1973] Sec. Reg. & L. Rep. (BNA) No. 196, at D-1 (April 4, 1973) ("Central Market System Policy Statement").

Specifically recognizing the public need for greater access to reliable, accurate market information, the Commission's reports focused on two objectives: unrestricted access to information and the consolidation of information. These objectives were embodied in the concept of a central market system, which the Commission first endorsed in a letter transmitting one of its reports, the Institutional Investor Study Report, to Congress in 1971. In that letter, the Commission stated that "[a] major goal and ideal of the securities markets and the securities industry has been the creation of a strong central market system for securities of national importance, in which all buying and selling interest in these securities could participate and be represented under a competitive regime." [7]

In the fall of 1971, the Commission held hearings to further define the emerging concept of a central market system. The Commission's hearings culminated in the issuance of its Statement on the Future Structure of the Securities Markets, which emphasized that "an essential step toward formation of a central market system is to make information on prices, volume, and quotes for all securities in all markets available to all investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell nor sell for less than the highest price a buyer is prepared to offer."[8] The Commission reiterated the importance of transparency[9] of market information in 1973, when it issued its Statement on the Structure of a Central Market System.[10] In this report, the Commission stated that securities can be valued accurately only when all indications of investor buying and selling interest are exposed to the greatest extent practicable, so as to increase the opportunity for demand to find supply.[11]

With the enactment of the 1975 Amendments, Congress unequivocally embraced the concept of a national market system, as endorsed by the Commission. Congress chose not to dictate the specific elements of a national market system, however, but to rely instead on an "approach designed to provide maximum flexibility to the Commission and the securities industry in giving specific content to the general concept of the national market system."[12]

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7 Letter of Transmittal accompanying the Institutional Investor Study Report, *supra* note { NOTEREF _Ref504882178 \h * MERGEFORMAT }, at XXIV.

8 Future Structure Statement, *supra* note { NOTEREF _Ref504882178 \h * MERGEFORMAT }, at 9.

9 *See infra* note { NOTEREF _Ref504880112 \h * MERGEFORMAT } and accompanying text.

10 *See* Central Market System Policy Statement, *supra* note { NOTEREF _Ref504882178 \h * MERGEFORMAT }.

11 *Id*. at 7.

12 H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 92 (1975).

Congress implemented this approach by adding Section 11A to the Exchange Act. Section 11A requires the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to facilitate the establishment of a national market system in accordance with the specific congressional findings and goals set forth in Section 11A(a)(1).

Three of the goals in Section 11A(a)(1)(C) are implicated in this proceeding: (1) the availability to brokers, dealers, and investors of quote and transaction information; (2) fair competition among exchange markets; and (3) the practicability of brokers executing investors' orders in the best market. The first goal is usually referred to as transparency, which has been defined to mean the "real-time dissemination of information about prices, volume, and trades."[13] Transparency is a central feature of the U.S. securities markets, and it "contributes to efficient price discovery, offsets the fragmentation of buying and selling interest on multiple exchanges, and facilitates the best execution of customers' orders by broker-dealers."[14] The achievement of the second goal assures, as relevant here, an equal opportunity for competing exchanges to disseminate their last sale reports and quotes, so that each exchange may compete for order flow on an equal basis.[15] Finally, the third goal reflects the importance of ensuring that brokers have sufficient information available to satisfy their best execution obligations to their customers.[16]

B. The Systems that Disseminate Options Quotation and Transaction Information Must Be Implemented in a Manner that is Consistent with Section 11A of the Exchange Act.

1. The Development of the OPRA System

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13 SEC, Division of Market Regulation, Market 2000, An Examination of Current Equity Market Developments 17 (January 1994).

14 Securities Exchange Act Release No. 43621 (November 27, 2000), 65 FR 75564 (December 1, 2000).

15 *See infra* note { NOTEREF _Ref505504495 \h * MERGEFORMAT } and accompanying text.

16 In accepting orders and routing them to an exchange for execution, brokers act as agents for their customers and owe them a duty of best execution. This duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. As a result, brokers must periodically assess the quality of competing markets. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996). Brokers must consider price in fulfilling their duty. In addition to price, a broker may consider factors such as: (1) the trading characteristics of the security involved; (2) the availability of accurate information affecting choices as to the most favorable market for execution and the availability of technological aids to process such information; and (3) the cost and difficulty associated with achieving an execution in a particular market. *See* SEC, *Report on the Practice of Preferencing* 89 n.207 (April 11, 1997).

When Congress enacted Section 11A of the Exchange Act, the trading of standardized options was relatively new.[17] In 1977, the Commission directed its staff to initiate a study examining some of the major issues pertaining to the structure of the standardized options markets.[18] In December 1978, the staff issued its report, which recognized Congress' intent to include options in a national market system and articulated a number of issues to be explored before the options markets could be fully integrated into the national market system.[19] One of these issues concerned the effect of trading standardized options on multiple markets.[20] The Options Study Report noted that "dispersion of order flow among market centers need not result in pricing inefficiencies [because] public dissemination of quotation and transaction information may to a large extent assure that professional and nonprofessional market participants are apprised, on a current and continuous basis, of those markets offering the most favorable execution opportunities (at least for orders of modest size) so that they have the opportunity to

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17 The trading of standardized options on securities exchanges began in 1973 with the organization of the Chicago Board Options Exchange ("CBOE") as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973), 1 S.E.C. Docket 11 (February 13, 1973).

18 Securities Exchange Act Release No. 14056 (October 17, 1977), 1977 WL 43320.

19 Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96-IFC3, December 22, 1978) ("Options Study Report").

20 The trading of standardized options on multiple markets commenced in 1976. However, the expansion of multiple trading was halted temporarily in mid-1977, when the options exchanges agreed voluntarily to suspend further expansion of their markets, due to the Commission's investigation into trading practices on the options markets. At that time, twenty-two options classes were being traded on more than one exchange. *See* Options Study Report, *supra* note 19, at 804. For the next thirteen years, the Commission deferred the expansion of multiple trading while the Commission and the exchanges studied the feasibility of developing market integration facilities. *See* Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980). During that period, the Commission approved an allocation plan that permitted the options exchanges to list new options for which they would be the sole market, and to remain the sole market for existing options that were not multiply-traded at that time. *See* Securities Exchange Act Release No. 16863 (May 30, 1980), 45 FR 37928 (June 5, 1980). On June 5, 1989, the Commission terminated the allocation plan by adopting Rule 19c-5 under the Exchange Act, 17 CFR 240.19c-5, which incorporates into the rules of all exchanges a prohibition against any "rule, stated policy, practice or interpretation" that precludes or conditions the listing of any stock option class listed on another exchange. *See* Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23693 (June 5, 1989).

direct. . . orders appropriately. . . ."[21] In other words, Commission staff concluded that the availability of quotation and transaction information from multiple markets allows market participants, including investors, to make informed investment decisions.

Shortly after the release of the Options Study Report, the options exchanges[22] filed the OPRA Plan for the collection, consolidation, and dissemination of options market information.[23] On March 18, 1981, the Commission approved the OPRA Plan as a national market system plan, and authorized the options exchanges to act jointly in planning, developing, operating, and regulating a national market system facility for disseminating market information in accordance with the terms of the OPRA Plan.[24] In addition, the Commission's order authorized the options exchanges to implement that facility on a permanent basis as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Exchange Act.[25]

2. The Provisions of the OPRA Plan Must Be Construed in a Manner That is Consistent With Section 11A of the Exchange Act.

The Commission approved the OPRA Plan (and subsequent amendments) on the grounds that it was consistent with the Exchange Act.[26] Therefore, all of the provisions of the OPRA

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[21] Options Study Report, *supra* note **{** NOTEREF _Ref505740615 \h * MERGEFORMAT **}**, at 842.

[22] The five signatories to the OPRA Plan that currently operate options markets are the American Stock Exchange, the CBOE, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange 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).

[23] The OPRA Plan was filed on January 31, 1979, as an amendment to OPRA's registration statement as a securities information processor ("SIP"). The Commission had approved OPRA's registration as a SIP in 1976. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4372 (January 29, 1976). At the request of Commission staff, the OPRA Plan was refiled on October 24, 1979 under Section 11A(a)(3)(B) of the Exchange Act, 15 U.S.C. 78k-1(a)(3)(B). *See* Securities Exchange Act Release No. 16519 (January 22, 1980), 45 FR 6677 (January 29, 1980). That section of the Exchange Act authorizes the Commission to require self-regulatory organizations to act jointly in planning, developing, operating, or regulating a national market system or subsystem.

[24] *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981) ("OPRA Approval Order").

[25] *Id.* at 484.

[26] *Id.*

Plan, including those relating to vendors, must be construed in a manner that is consistent with Section 11A of the Exchange Act. As relevant in this proceeding, one of the ways in which the OPRA Plan is consistent with, and furthers the goals of, Section 11A is by requiring the options exchanges to include provisions in their vendor agreements relating to the following:

> There shall be standards governing the services provided by vendors to subscribers which shall require that such services facilitate dissemination of last sale reports and quotation information in a manner that is consistent with applicable rules and regulations of the Securities and Exchange Commission and that is not discriminatory or contrary to the orderly operation and regulation of the options markets; and
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> Vendors shall not exclude reports or otherwise discriminate on the basis of the market in which a transaction or quotation took place, and the equipment used in connection with the display or retrieval of last sale reports or quotation information shall be capable of displaying all such reports or information regardless of the market where a transaction or quotation took place, and, unless exempted, shall identify such market.[27]

By precluding a vendor from excluding information or otherwise discriminating on the basis of the market in which a transaction or quotation took place, these provisions are intended to assure that vendors will be contractually obligated to disseminate market information in a manner consistent with the Exchange Act's goals of fostering transparency and fair competition, as well as facilitating best execution. Thus, when a vendor limits its dissemination of last sale and quotation information in such a way as to potentially deprive market participants of information they need to make informed investment decisions, and to deprive exchanges of the ability to compete equally through display of their quoted prices, that limited dissemination runs afoul of these provisions of the OPRA Plan. Accordingly, for the reasons described in more detail below, it is the Commission's view that, to be consistent with these provisions, a vendor's dissemination of market information to market participants must include, at a minimum, for each options class that the vendor carries, the last sale information generated by all exchanges

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[27] *See* paragraphs (b)(ii) and (iii) of Section VII of the OPRA Plan. The Commission solicited public comment on the OPRA Plan, including paragraphs (b)(ii) and (iii) of Section VII. *See* Securities Exchange Act Release No. 16519 (January 22, 1980), 45 FR 6677 (January 29, 1980). The Commission did not receive any comment relating to those provisions. *See* OPRA Approval Order, *supra* note **{** NOTEREF _Ref504883169 \h * MERGEFORMAT **}**.

and the best bid and offer ("BBO") currently available in the marketplace.

This view was evident in the Concept Release on Options Market Structure issued by Commission staff in 1989.[28] In that release, the staff stated "the OPRA infrastructure and the standards and procedures for collecting and disseminating market information are fundamentally adequate to support multiple trading," and further noted that all vendors, at that time, were disseminating quotation information from all markets trading a particular options class.[29] Accordingly, the staff concluded that it was unnecessary to apply the Display Rule[30] to the options markets. The Display Rule provides that, in disseminating quotations in individual stocks to customers, securities information vendors and brokers must include either: (1) the best bid and best offer from among reporting markets trading a particular security; or (2) a montage showing quotations from all reporting markets. Vendors and brokers must also provide the last sale prices from all stock markets.

In adopting the Display Rule, the Commission recognized that the manner in which vendors disseminate market information has implications for competition among markets and transparency of markets. Therefore, in requiring the dissemination of either the best bid and offer from among reporting markets or a montage showing quotations from reporting markets, and all last sale reports, the Commission sought to ensure that all markets would be able to compete through display of their quoted prices.[31] The rule also ensures that market participants are apprised of the best quote and all transaction prices for a stock.

Although the Commission staff concluded that, in 1989, it was unnecessary to extend the vendor display requirements to options, the staff nevertheless emphasized that the practices of vendors disseminating options information should be consistent with the goal of fair competition, and that those practices would be closely scrutinized as multiple trading of options continued to expand.[32] In particular, the staff stressed that the Commission would not permit "vendor practices that do not provide competing exchanges an adequate opportunity to disseminate their

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[28] *See* Securities Exchange Act Release No. 26871 (May 26, 1989), 54 FR 24058 (June 5, 1989) ("Concept Release").

[29] *Id.* at 24063.

[30] Exchange Act Rule 11Ac1-2, 17 CFR 240.11Ac1-2. The Display Rule, which applies to market information generated in the stock markets, requires, in addition to the vendor requirements discussed in the text, the dissemination of last sale reports and quotations in a particular security from all registered exchanges trading that security and any NASD members acting as market makers in that security ("reporting markets").

[31] *See* Securities Exchange Act Release No. 16590 (February 13, 1980), 45 FR 12391 (February 19, 1980).

[32] Concept Release, *supra* note { NOTEREF _Ref505504495 \h * MERGEFORMAT }, at 24063.

quotes, as would be the case, for example, were a vendor discriminatorily to eliminate information from competing markets."[33]

C. Dissemination of Quotation and Transaction Information Solely From the Market with the Highest Volume is Inconsistent with the OPRA Plan and Section 11A of the Exchange Act.

In the Commission's view, a vendor's dissemination of market information for a particular options class that reflects last sale and quotation information only from the dominant exchange "exclude[s] reports or otherwise discriminate[s] on the basis of the market in which a transaction or quotation took place," in contravention of the OPRA Plan. Thus, this manner of disseminating market information is contrary to the Congressional goals of Section 11A of the Exchange Act.

Because the dominant exchange does not necessarily disseminate the best quote for a particular options class, a vendor's dissemination of only that exchange's market information may deprive investors of the opportunity to know the best price available for an option in the marketplace as a whole. The Commission believes that certain basic pricing information, *i.e.*, the prices at which other trades in the same security were executed, as well as the best quoted price currently being offered in the marketplace as a whole, is essential to an investor's ability to make informed investment decisions, its broker's choice of the best market, and an investor's ability to monitor executions achieved by its broker. When a vendor disseminates market information that does not include essential pricing information, these purposes of Section 11A may not be fulfilled.

Moreover, the failure of vendors to disseminate the best price currently available, unless it is offered by the dominant exchange, has serious anticompetitive consequences for the markets, particularly smaller or newer exchanges. These exchanges would be less able to disseminate their market information, even if they offered better prices to investors. Therefore, the practice of disseminating only the dominant exchange's market information could substantially inhibit the ability of smaller and newer markets to compete for market share on an equal basis.

In addition, it is the Commission's view that the provisions of the OPRA Plan must apply to each discrete vendor service offering market information. The availability of complete market information on one service does not cure another service's deficiencies of excluding reports or otherwise discriminating on the basis of the market in which a transaction or quotation took place. This is because a subscriber to the limited service might not supplement the incomplete information through other means, to the ultimate detriment of investors and competition among exchanges.

The Commission recognizes that the amount of information disseminated by OPRA to

[33] *Id.*

vendors has grown dramatically in the past few years. This means that difficult choices must be made by all entities responsible for the timely dissemination of reliable market information. For example, the options exchanges have had to implement several quote message mitigation strategies, such as limiting the frequency of quote updates by their market markers and delisting options classes with little or no open interest. In addition, the Commission recently amended the OPRA Plan to provide for a formula for allocating, during peak usage periods, OPRA's limited systems capacity on a short-term basis.[34]

The growth in the amount of information disseminated by OPRA has resulted, in this case, in the invocation of the defense of impossibility or impracticability of performance. The Commission takes no position on any factual issue concerning that defense, including any claimed difficulty in implementing alternatives to Reuters' limited dissemination service, nor do we address applicable state contract law. The Commission notes, however, that in dealing with the increase in message traffic, vendors can make business decisions regarding the dissemination of options market information that would not run counter to the OPRA Plan's provisions and contravene the goals of Section 11A of the Exchange Act. For example, the OPRA Plan does not require vendors to carry market information on all options classes. Instead, vendors can choose to exclude particular classes from their dissemination services. This manner of disseminating information would not contravene the goals of Section 11A of the Exchange Act because a subscriber would be receiving the essential pricing information about the particular classes the vendor chooses to carry.

In addition, the Commission staff recommended in the Concept Release on Options Market Structure that "vendors might wish to offer quotation information for the more active multiply-traded series in the abbreviated form of a best bid or offer."[35] The Commission believes that a BBO would be consistent with the OPRA Plan and the purposes of Section 11A of the Exchange Act because a BBO would neither omit the essential pricing information market participants need to make informed investment decisions nor hinder market competition.

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[34] *See* Securities Exchange Act Release No. 43621 (November 27, 2000), 65 FR 75564 (December 1, 2000). The allocation formula adopted by the Commission as an amendment to the OPRA Plan took into consideration whether an options exchange's trading volume in an options class exceeded a minimum threshold before the exchange would be entitled to an allocation of capacity for that class. This use of trading volume as one component in the allocation of capacity was intended solely to discourage exchanges from listing classes without a sound business rationale, and only for the purpose of obtaining a higher allocation of capacity. The Commission took this action, after carefully weighing the competing interests and goals of the Exchange Act (fair competition among markets and the availability of timely and reliable market information), to assure the continued timely dissemination of last sale and quotation information. This, however, does not mean that individual vendors can unilaterally exclude reports or otherwise discriminate on the basis of a market's volume.

[35] Concept Release, *supra* note { NOTEREF _Ref505504495 \h * MERGEFORMAT }, at 24063.

Conclusion

The Commission approved the OPRA Plan on the grounds that it was consistent with the Exchange Act. That approval was based on the terms of the OPRA Plan, including the requirement that OPRA would, in its contracts with vendors, prohibit vendors from excluding information or otherwise discriminating on "the basis of the market in which a transaction or quotation took place. . . ." In the Commission's view, this requirement is intended to prevent limited dissemination of quotes and last sale reports based on trading volume.

Respectfully submitted,

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