available to the public at no charge. Some equated market data to a form of advertising for which markets should not charge consumers. These commenters argues that the Commission should ensure the availability and accessibility of market information; that even a small increase in fees will force them to give up access to delayed data services; and that reduced access to market data will reduce trading activity by same investors. These commetners argued, therefore, that the proposal will reduce overall market liquidity.

Some commenters claimed that the proposal discriminates against he small investor because real-time data, while far more useful than delayed data, in their view is not affordable to the average investor. They argued that the effect of the redistribution fee on vendors of delayed data will be to price the small investor our of the information market altogether.

A few commenters challenged whether the exchanges have a proprietary interest in quote or transaction data. They claimed that OPRA should not be entitled to charge for information that OPRA does not own. One commenter claimed that while the manner in which the information is displayed may be protected under copyright laws, OPRA has no exclusive right to the information itself.⁹

OPRA responded to these comments in a letter dated August 1, 1995.10 In its letter, OPRA stated that the Exchange Act contemplates the recovery of a portion of the costs of operating and maintaining exchange markets through fair, reasonable and nondiscriminatory fees for access to securities market information, and that the proposal is consistent with these standards. OPRA claimed that the fair allocation of costs among all persons that derive a commercial benefit from options market information will help level the playing field for all users of market data by eliminating an unintended subsidy for redistributors of less useful delayed data at the expense of more useful current information. OPRA noted that the proposal would not establish fees for end users of market data. Instead, the redistribution fee would apply to vendors. OPRA acknowledged, however, that vendors of securities market information most often pass their costs on the customers. Nevertheless, in OPRA's views, the

proposal would more fairly allocate distribution fees and would reduce fees payable by some vendors. OPRA stated that the proposal would reduce fees payable by vendors that receive direct access to OPRA data from \$2800 (current direct access charge) to \$2700 per month (the \$900 direct access change plus the \$1800 redistribution fee). Further, fees payable by vendors whose access includes indirect access to real-time and delayed data will be reduced from \$2800 (the current passthrough fee) to \$1800 per month (redistribution fee). Only vendors whose access is limited to indirect access to delayed data would be subject to higher fees (an increase from zero to \$1800 per

OPRA argued that most, if not all endusers will benefit from the proposed fee changes, assuming vendors of real-time data pass on their savings to real-time and delayed data subscribers. OPRA claimed that even customers of an indirect access vendor whose business is exclusively delayed data distribution should not see any significant increase in vendor charges. For example, OPRA stated that is such a vendor has 1,000 subscribers, the vendor would have to increase the subscriber charge by only \$1.80 per month in order to receiver the entire redistribution fee. In addition, OPRA claimed that the proposal would not impose any fee on redistributors or end-users of "historical" information, facilitating the affordability and availability of market data for long-term monitoring and analysis. OPRA also noted that it provides several methods by which an individual investor may access real-time data at a low cost.11

III. Discussion

Section 11A of the Exchange Act sets forth the standards under which the Commission must consider whether to approve fees proposed by exclusive securities information processors ("SIPs"), such as the pending OPRA proposal. Among other things, the proposal must assure that exchange members, brokers, dealers, SIPs, and investors would be able to obtain information with respect to quotations for and transactions in securities published or distributed by any self-regulatory organization or SIP on terms

that are not unfair, unreasonable, or unreasonably discriminatory. 12

The Commission believes that the proposed fee changes satisfy the standards set forth by Congress with regard to the permissible terms for access to market information and, therefore, believes that the proposed fees are consistent with the Exchange Act. In this case, the proposal represents a reduction in fees for several vendors; the delayed data fees do not appear unfairly to restrict access to market information; and the reduction in fees for access to current information will further other statutory goals. In addition, historical price information, such as is used for academic and analytical purposes, will continue to be available exclusive of OPRA fees. 13

In 1978, the Commission stated that three sections of the Exchange Act directly relate to the terms upon which securities information is obtained: (1) The standards set forth in Section 11A(b)(3) governing the registration of SIPSs; (2) the standards set forth in Section 11A(b)(5) for review of prohibitions or limitations on access to services of registered SIPS; and (3) the standards set forth in the Commission's rule-making authority under Section 11A(c).¹⁴ The Commission found that these sections permit a registered SIP to impose terms of access on vendors, including access fees.¹⁵ The Commission also noted that the ability to impose such terms is subject to Commission review as to fairness and reasonableness, and may be limited by the Commission's adoption of a rule specifically prohibiting the terms or fees as being unfair, unreasonable or unreasonably discriminatory.16

The Commission also has addressed the issue of whether, pursuant to a joint industry plan, charges for the retransmission, on a current and continuing basis, of consolidated market data are permissible.¹⁷ The Commission

⁹ See Letter from Carl Hendrix, to Jonathan G. Katz, Secretary, SEC (June 27, 1995).

¹⁰ See Letter from Michael L. Meyer, Schiff Hardin & Waite, Attorney for OPRA, to David Oestreicher, Attorney Division of Market Regulation, SEC (August 1, 1995).

¹¹ For example, OPRA excludes non-professional subscribes from its real-time data subscriber fees. Instead, OPRA charges that vendor at \$2.00 per month fee for each non-professional subscriber that receives real-time data from the vendor. Further, OPRA imposes no fees on end users of telephone dial-up services. Vendors of such services, however, are charged a port-based fee.

¹² 15 U.S.C. 78k-1; S. Rep. No 75, 94th Cong. 1st Sess. 9–12 (1975) ("Senate Report").

¹³ The Commission understands the concerns of commenters, including the potential consequences of fee increases. As a related matter, the Commission believes that user comment on proposed OPRA fees could be even more effective if sought prior to filing such fees with the Commission. The Commission encourages OPRA to solicit comment on fee proposals before filing those proposals for Commission review.

¹⁴ See Securities Exchange Act Release No. 15372 (November 29, 1978) ("OPRA Order").

¹⁵ Id.

¹⁶ *Id.* To date, the Commission has not exercised its rulemaking authority under Section 11A(c) of the Exchange Act with respect to the fees charged by registered SIPs.

¹⁷ See Securities Exchange Act Release No. 17161 (September 24, 1980) (Order approving proposed amendment to the Consolidated Tape Plan).