UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	)	
	)	
Bunker Ramo Corporation	)	File No. 4-280
GTE Information Systems Inc.	)	
Options Price Reporting Authority	)	

STATEMENT OF ASSOCIATED PRESS IN OPPOSITION TO LEVY OF ACCESS FEES BY THE OPTIONS PRICE REPORTING AUTHORITY

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INTRODUCTION

On May 19, 1978, the Securities and Exchange Commission (the "Commission") solicited comments in the above-captioned matter with respect to three issues: (1) whether the Options Price Reporting Authority ("OPRA"), as an exclusive securities information processor registered pursuant to Section 11A(b)(3) of the Securities Exchange Act of 1934 (the "Act"), may charge vendors an access fee * for receipt of options last sale transaction reports; (2) whether OPRA, irrespective of whether it may charge an access fee, may terminate its 1975 Vendors Agreements with Bunker Ramo and GTE Information Systems ("GTE"); and (3) whether OPRA may discontinue providing vendors the communications circuit which links said vendors to OPRA's central processor and enables them to receive the options last sale transaction reports. The Commission's request for views with respect to these issues arose out of a dispute between GTE and Bunker Ramo on the one hand and OPRA on the other concerning the latter's proposed termination of certain vendor agreements and proposed imposition of a monthly fee for receipt of OPRA's last sale reports. This dispute was brought before the Commission when OPRA notified GTE and Bunker Ramo that it would no longer provide them with last sale retransmission service.

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* The AP understands that the term "access fee," as used in this proceeding, refers to a charge intended by OPRA to reflect the costs of developing and operating a central processing unit which collects and consolidates last sale reports from the various options exchanges.

In this submission, the Associated Press (the "AP") will address the first issue raised by the Commission, i.e., whether an exclusive securities information processor may charge vendors a fee for receipt of options last sale reports, and certain broader implications of that question. This issue is of vital concern to the AP. The AP is a nonprofit cooperative of newspapers and broadcast stations which collects and dispenses news to its members. Because many newspaper members of the AP believe their business news coverage should include stock tables, the AP has collected such information from the various exchanges. The stock exchanges historically have treated the AP as a vendor, and through their agent, the Consolidated Tape Association ("CTA"), have imposed a monthly vendor access fee upon the AP. OPRA now seeks to impose a similar fee. The AP has acquiesced in the payment of such a monthly access charge in the case of Network A, after vigorously objecting to the charge, but, for the reasons outlined below, has maintained that access fees are inappropriate, both as a general matter and as specifically applied to the AP.

DISCUSSION

I. The Commission should postpone a decision in this matter until it has received comment on the broader issue of whether market information charges by self-regulatory organizations are appropriate.

The AP believes that before the Commission determines whether an exclusive securities information processor may charge a vendor an

access fee it must examine the broader issue of whether imposition of any charge by an exclusive processor for market information required to be disclosed is consistent with the purposes of the Act. Although as a technical matter the broader issue has not been raised directly by the Commission in this proceeding, as a practical matter the Commission has raised the issue indirectly, since resolution of whether a vendor may be charged an access fee by implication requires resolution of the appropriateness of market information fees in general.

The AP believes that it would be inappropriate for the Commission to determine the propriety of such fees in this proceeding. As evidenced by the absence to date of comment from such persons as the American and New York Stock Exchanges, who have an obvious stake in the outcome of any such fee determination, the Commission's proceedings in the Bunker Ramo-GTE-OPRA matter have received relatively little public attention. For this reason, the AP believes that the Commission should not take a position on the appropriateness of market information fees without first providing interested members of both the securities industry and the general public with a more widely publicized opportunity to present their views. Thus, the AP urges the Commission to postpone a decision in the pending

matter until, pursuant to a general rulemaking proceeding, it has received and examined comments on the broader question of the propriety of allowing exclusive securities information processors to impose charges for market information.

II. Costs of collecting and consolidating market information should be borne by self-regulatory organizations who have an affirmative duty to make market information available.

If the Commission determines that the broader, more general issue of the appropriateness of market information fees should be resolved in the context of this proceeding, it must find that such fees are at cross purposes with the Act and, hence, may not be imposed by an exclusive securities information processor.

One of the primary purposes of the Act is to provide investors with information sufficient to make informed investment decisions. The public availability of market information with respect to securities transactions plays an important role in facilitating informed investment decisions, as does the public availability of business information about a corporation whose securities are publicly traded. The Commission recognized this fact when it adopted Rule 17a-15 (the "Rule"). The Rule imposes upon national securities exchanges and associations an obligation to report market information with respect to transactions in listed securities. It also requires that the standards for and methods of reporting be calculated to ensure promptness, accuracy and completeness.*

* Rule 17a-15(b)(ii).

Section 11A of the Act, which was enacted after the Commission adopted Rule 17a-15, confirms the importance of the public availability of market information: subsection 11A(a)(1)(C)(iii) provides that it is "in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." Moreover, subsection 11A(c)(1) confirms the authority of the Commission to compel national securities exchanges and associations to make market information available to the public in the manner required by Rule 17a-15.* Thus, Section 11A confirms that the duty imposed upon self-regulators by Rule 17a-15 goes beyond the mere production of raw numbers and figures which record securities transactions; it encompasses the use of modern computer technology to collect and make available consolidated, accurate and properly sequenced market information.

Acting through OPRA, the options exchanges have contracted with the Securities Industry Automation Corporation ("SIAC") for the collection and consolidation of the type of information mandated by Rule 17a-15. As indicated above, there is no doubt that SIAC's basic

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* Subsection 11A(c)(1)(B) provides that the Commission may promultage rules to:

> assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information . . . .

function of consolidating, validating and sequencing last sale data is not an enhancement or refinement of the exchanges' duty; rather, it is an essential ingredient of OPRA's compliance, on behalf of its constituent exchanges, with the basic requirement of Rule 17a-15 to make last sale data available on a prompt and accurate basis.

Subsections 11A(c)(1)(C) and (D) imply that, in exercising its rulemaking authority under subsection 11A(c)(1), the Commission, in its discretion, may permit an exchange or association generally to impose reasonable charges in connection with delivery of last sale data, although such charges are not mandated. It must be noted, however, that access fees are not delivery charges. They are charges for collecting and consolidating market information and making it available to the public.

The distinction between access fees and information delivery charges is supported by the language of the Act itself. Subsection 11A(c)(1)(C) of the Act provides that the Commission may prescribe rules to

> assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information in such capacity . . . .

For the reasons set forth below, AP believes this language must be read to imply that the costs of developing and operating a system which collects, consolidates and makes available market information should be borne solely by the self-regulatory organizations charged with the duty of making market information available.

Subsection 11A(c)(1)(C) provides that the Commission, in its discretion, may allow a self-regulatory organization to impose "fair and reasonable terms" on a securities information processor for "obtain[ing] . . . such information . . . as is collected, processed or prepared for distribution or publication by any exclusive processor."* By definition, the act of obtaining does not include the acts of collecting, processing or preparing market information. The commonly accepted definition of obtaining means the act of gaining or attaining possession, i.e., getting, while the commonly accepted definitions of collecting, processing or preparing respectively refer to acts of bringing together, subjecting to a special treatment and making ready. It is clear, therefore, that to the extent Congress intended the word "terms" to mean charges, the reasonable terms contemplated by this subsection are those which the exclusive processor imposes on the securities information processor for gaining possession of the market information, namely the charges

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* Emphasis supplied.

for delivering the collected and consolidated market information from the central processor to the securities information processor.

Since subsection 11A(c)(1)(C), if it refers to charges at all, refers to charges other than those which reflect the costs of development and operation of a system which collects, consolidates and makes available market information, it is clear that if Congress intended that persons other than the self-regulatory organizations were to bear these latter costs it could have so indicated. But Congress did not.* Therefore, in view of Congress' provision for "terms" which reflect delivery, as opposed to collection and consolidation, costs, the AP believes that the only charges which exclusive processors may impose are those which reflect the actual costs of delivering the collected and consolidated data from the processor to the vendor or other user.

In other words, an exchange or association meets its disclosure obligation when it makes last sale data available for dissemination by or to others at a central location, and any costs of meeting this obligation

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* Subsection 11A(c)(1)(D), which also contains the word "obtain", expresses Congress' view that self-regulatory organizations and securities information processors have a duty to publish (i.e., disseminate) and distribute (i.e., deliver) market information which has been collected, processed or prepared for distribution or publication by any exclusive processor. The subsection further provides that unless the Commission declares otherwise everyone has the right to gain possession of (i.e., obtain) market information which has been disseminated or delivered on "terms" which are not unreasonably discriminatory. Thus, this subsection, like subsection 11A(c)(1)(C), if it refers to charges at all, refers to charges which reflect the costs of delivering collected and consolidated market information, not the costs of collecting and consolidating such information.

should be absorbed by that organization. Beyond that point, however, all processing, transmission, display and related costs may be borne by the user of the data.*

By way of analogy, a reporting corporation under the Act satisfies its disclosure obligations when it compiles certain information and files the appropriate reports with the Commission. No one would think of requiring persons who retrieve such data to pay the corporation a fee which reflects the corporation's costs of compiling and preparing the requisite information. On the other hand, no one would question imposition of reasonable charges for photocopying such data. A similar approach prevails under the many other reporting provisions of the securities laws and should prevail with respect to reporting market information.

Adoption of the above approach will make the Commission's regulatory burden in respect of the economics of disseminating market information more tolerable. As the submission of Bunker Ramo in this proceeding has observed, it may be extremely difficult for the Commission to regulate the reasonableness of the charges imposed by OPRA for access to market information. On the other hand, regulating certain charges for "delivery" of information, such as for on-line data base access, would not impose an intolerable burden on the Commission, since standard industry charges

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* For this reason, the AP also believes that the third issue raised in this proceeding, i.e., whether OPRA may discontinue providing vendors without charge the communications circuit which links such vendors to OPRA's central processor and enables them to receive the options last sale transaction reports, should be resolved in favor of OPRA. There is no duty to provide free remote delivery of market information.

for such services are readily available for comparative purposes. Further, if the Commission were to allow exclusive processors such as OPRA to impose charges for processing or transmission related services which go beyond collection and consolidation of last sale data, it would not have to regulate the reasonableness of such charges. These charges would be regulated by the forces of competition, since the exclusive processors would be competing with vendors in offering the services desired by users of market information. Thus, the Commission would not have to concern itself with regulating any charges imposed by exclusive processors, except in those limited cases where an independent standard of comparison already exists. There would be no need to engage in interminable cost studies and to wrestle with insoluble allocation problems, tasks which would drain the Commission's limited resources without necessarily producing an equitable result.

To summarize the AP's position on this point, if the Commission decides to resolve the basic question of charges by self-regulatory organizations for required market information in this proceeding, there is only one determination which is consistent with the purposes of the Act and which would not saddle the Commission with an impossible ratemaking responsibility: the Commission should find that no charges to users of market data by self-regulators are appropriate for the tasks of collecting and consolidating last sale data and making it available to users in a central location.

III. News associations such as the Associated Press should be expressly excluded from any determination that exclusive securities information processors may charge vendors an access fee.

If the Commission determines that an exclusive securities information processor may charge vendors an access fee which reflects system information processing costs, the Commission should make clear that its determination is limited to vendors and does not apply to news associations such as the AP. The AP is not part of the securities industry nor is it related to such industry in a business sense, as is a vendor such as Bunker Ramo. Rather, it is merely the operating agent for newspapers who share the expense of producing and receiving publishable stock tables. A vendor disseminates data on a real time basis to its customers, and its customers have an on-line interrogation capability. On the other hand, no one uses the AP data on a real time basis and none of its users has an interrogation capability.

At the time OPRA proposed to institute a high-speed transmission system the AP did not need such a system to service its newspaper members. Unlike vendors, the AP uses last sale prices only in a limited, internal sense.* The AP updates its computer files directly from time to time, but few if any prices transmitted in a given stock table are less than 15 minutes old, and there is no chance that a newspaper stock table could be published while any prices contained in it remain last sale data.

* The commonly accepted industry definition of last sale prices (as used in subscriber and vendor agreements for receipt of last sale data) is those prices which are no more than 15 minutes old from their first dissemination.

Thus, even if the Commission were to sanction vendor access fees for last sale data, it should not do anything which would leave OPRA free to charge the AP for the cost of a system which it did not need or request and which was instituted for the benefit of others.

Also, the AP believes that the imposition on it of access fees which in effect reflect information costs would be contrary to the Commission's and the Congress' desire to encourage prompt and widespread dissemination of market information to the investing public. When the Commission first proposed a composite tape more than six years ago in its Statement on the Future Structure of the Securities Markets (Feb. 2, 1972), it expressed its desire for prompt and complete dissemination of the trading information to be made available and urged the media to support this goal:

> It is hoped that the media will cooperate with the Commission and the self-regulatory organizations to modify present reporting methods to include this additional information. . . .

AP cooperated fully with the Commission's request and began presenting last sale stock data on a composite basis promptly after consolidated information became available. To sanction the imposition of access fees on the news media would contravene the spirit of cooperation in the dissemination of market information urged by the Commission.

Further, it should be noted that the ultimate users of the information disseminated by news associations such as the AP are those members of the investing public who have no realistic alternative sources of such information. Virtually all individual investors, and probably a large number of institutional investors, rely heavily on newspaper stock tables as a source of closing price information, as well as other valuable related data. Were such information to become unavailable, most individual investors would have no alternative source readily available, and in many cases their interest in securities trading might be dampened, if not completely eliminated. In short, many of the ultimate customers of the AP's members have nowhere else to turn for market information.

Finally, the AP believes that payment by it of an access fee which reflects information collection and processing costs constitutes payment for news. Securities market information, including last sales and related data, is clearly definable as spot news of significant importance to millions of readers. Payment by the AP for access to such news could seriously undermine its ability freely to gather other forms of news. There are numerous other sources of news information which conceivably could claim a proprietary interest in information now provided to the press without charge. For example, the various sports leagues which provide without charge their compilations of team standings, averages, ratings and other statistical data conceivably might request a fee for making them available. If the press found it necessary to pay for access

to such forms of information, which heretofore have been freely available, the scope and quality of news reporting could be seriously impaired and the public's right to know severely damaged.

CONCLUSION

For the foregoing reasons, the AP believes that it is particularly inappropriate for an exclusive securities information processor to impose access fees for the receipt of last sales data upon a news association. Moreover, as a general matter, the AP believes there is no justification for imposing access fees which reflect the costs of collecting and consolidating market information on any person and that such costs should be borne ultimately by the members of national securities exchanges and associations who benefit from its dissemination. Lastly, the AP urges the Commission to postpone a decision in the pending matter until it has instituted a general rulemaking proceeding on the issue of market information fees and has had an opportunity fully to examine and consider the views of persons other than those few who have made submissions in the instant matter.

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