

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79152; File No. SR-OPRA-2016-01)

October 25, 2016

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Amend the Professional Subscriber Device-Based Fees and Policies with Respect to Device-Based Fees

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on September 29, 2016, the Options Price Reporting Authority (“OPRA”) submitted to the Securities and Exchange Commission (“Commission”) an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan”).<sup>3</sup> The OPRA Plan Amendment would implement changes to the Professional Subscriber Device-Based Fee effective January 1, 2017. The OPRA Plan Amendment would also implement minor clarifying changes to the Policies with Respect to Device-Based Fees, effective immediately. The Commission is publishing this notice to provide interested persons an opportunity to submit written comments on the OPRA Plan amendment.

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<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>. 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 fourteen participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, EDGX Exchange, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, NYSE MKT LLC, and NYSE Arca, Inc.

I. Description and Purpose of the Plan Amendment

(a) Fee Schedule Amendments

The primary purpose of the proposed Fee Schedule amendments is to specify OPRA's Professional Subscriber Device-Based Fee effective commencing January 1, 2017 and make conforming changes in OPRA's Enterprise Rate Professional Subscriber Fee. OPRA's Enterprise Rate Professional Subscriber Fee is available to those Professional Subscribers that elect that rate in place of the regular OPRA device-based fees.<sup>4</sup>

Specifically, OPRA proposes, effective January 1, 2017, to: (1) increase the current \$29.50 monthly per device fee by \$1.00; (2) to increase the Enterprise Rate, currently a monthly fee of \$29.50 times the number of a Professional Subscriber's U.S.-based registered representatives, to be a monthly fee of \$30.50 times the number of the Subscriber's U.S.-based registered representatives; and (3) make conforming changes to the minimum monthly fee under the Enterprise Rate. "Professional Subscribers" are persons who subscribe to OPRA data, do not qualify for the reduced fees charged to "Nonprofessional Subscribers," and do not redistribute the OPRA data to third parties. OPRA permits the counting of "User IDs" as a surrogate for counting "devices" for purposes of its Professional Subscriber Device-based Fees.<sup>5</sup>

The number of devices reported to OPRA as subject to Professional Subscriber Device-Based Fees has been steadily trending downwards over many years. In 2008, OPRA received device-based fees, including enterprise fees, with respect to approximately 210,500 devices. In 2014, OPRA received device-based fees, including enterprise fees, with respect to approximately

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<sup>4</sup> OPRA's Enterprise Rate is based on the number of a Professional Subscriber's U.S. registered representatives and independent investment advisers who contract with the Subscriber to provide advisory services to the Subscriber's customers.

<sup>5</sup> See footnote 2 in the OPRA Fee Schedule and OPRA's Policies with respect to Device-based Fees.

148,400 devices, and in 2015 OPRA received device-based fees, including enterprise fees, with respect to approximately 141,300 devices. OPRA is receiving device-based fees in the third calendar quarter of 2016 with respect to approximately 135,500 devices – already a reduction of approximately 4.1% from 2015. OPRA believes that this long-term downward trend is the result of the increasing use of trading algorithms and automated trading platforms and other fundamental changes in the securities industry, and OPRA anticipates that this trend is likely to continue.

The proposed increase in the Professional Subscriber Device-Based Fees is consistent with OPRA’s past practice of making incremental \$1.00 increases in its monthly Professional Subscriber Device-Based Fees,<sup>6</sup> and OPRA believes that OPRA’s Professional Subscribers should not be surprised by the increase. The proposed increase in the Professional Subscriber Device-Based Fee – which is an increase of approximately 3.4% – will partially offset the impact on revenue of the reduction in the number of devices in 2016 as compared to 2015.

A secondary purpose of the proposed Fee Schedule amendments is to add the word “display” in the statements of the monthly Professional Subscriber Device-Based Fees for the periods commencing on January 1, 2016 and January 1, 2017. A few OPRA Professional Subscribers have asked whether, if a device is subject to the Professional Subscriber Device-Based Fees, it is therefore not subject to the OPRA Non-Display Use Fees, and suggested that a

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<sup>6</sup> The year 2015 was an exception: for 2015, OPRA implemented an increase of \$1.50 in its Professional Subscriber Device-Based Fee, because during 2015 one of OPRA’s member exchanges initiated after-hours trading, causing OPRA to incur additional expenses associated with data dissemination during expanded trading hours. OPRA implemented \$1.00/month increases in its Professional Subscriber Device-Based Fee for each of the years 2008-2014 and for the year 2016. *See*, Securities Exchange Act Release No. 72826, 79 FR 48777 (August 18, 2014) (File No. OPRA-2014-06) and Securities Exchange Act Release No. 77585, 81 FR 22668 (April 18, 2016) (File No. OPRA-2015-02).

Subscriber could perhaps avoid payment of Non-Display Use Fees by attaching a display monitor to a server even if the server is being used for Non-Display Use of OPRA data. OPRA believes that this suggestion is not consistent even with the current wording of the Fee Schedule, but that the addition of the word “display” will make the wording clearer in this respect.

(b) Changes in the Policies with respect to Device-Based Fees

The proposed changes in the Policies with respect to Device-Based Fees are for a purpose similar to the purpose described above of adding the word “display” in the OPRA Fee Schedule, namely to avert misreading the Policies as saying that, if a Professional Subscriber is paying Device-Based Fees with respect to a device, the payment of the Device-Based Fees in and of itself is a sufficient basis for not paying Non-Display Use Fees even if the Non-Display Use Fees would otherwise be applicable. No Professional Subscriber has actually suggested such a reading to OPRA, and OPRA believes that the suggestion would be untenable even in terms of the current phrasing of the Policies, but OPRA believes that it is appropriate to revise the Policies to make clearer that the Device-based Fees may not be the only fees applicable to a particular device that receives OPRA data.

The text of the amendment to the OPRA Plan is available at OPRA, the Commission’s Public Reference Room, the OPRA website at <http://opradata.com>, and on the Commission’s website at [www.sec.gov](http://www.sec.gov).

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 of Regulation NMS under the Act, OPRA designated this amendment as establishing or changing fees or other charges collected on behalf of all of the OPRA participant exchanges in connection with access to or use of OPRA facilities. OPRA proposes to implement the changes in the Professional Subscriber Device-Based Fee on

January 1, 2017. Implementation of the changes in the Professional Subscriber Device-Based Fee on January 1 is consistent with OPRA's prior practice with respect to changes in this fee, and will provide ample opportunity to give persons subject to this fee advance notice of the change. OPRA also proposes to implement the changes in the Policies with respect to Device-Based Fees immediately.

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 608(b)(2) under the Act<sup>7</sup> if it appears to the Commission that 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 the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.<sup>8</sup>

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the OPRA Plan amendment is consistent with the Act.

Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-OPRA-2016-01 on the subject line.

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<sup>7</sup> See 17 CFR 242.608(b)(2).

<sup>8</sup> See 17 CFR 242.608(b)(3)(iii).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OPRA-2016-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the OPRA Plan amendment that are filed with the Commission, and all written communications relating to the OPRA Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. All comments received will be posted without change; the Commission does

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OPRA-2016-01 and should be submitted on or before [insert 21 days from date of publication in the Federal Register].

By the Commission.

Robert W. Errett  
Deputy Secretary