

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81900; File No. SR-OPRA-2017-02)

October 19, 2017

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to Modify the OPRA Fee Schedule to Eliminate the Enterprise Rate Non-Professional Subscriber Fee and Amend the Non-Professional Subscriber Fee

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder,² notice is hereby given that on September 27, 2017, 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”).³ The OPRA Plan amendment would implement changes to the Non-Professional Subscriber Fee and Eliminate the Enterprise Rate Non-Professional Subscriber Fee effective January 1, 2018. The Commission is publishing this notice to provide interested persons an opportunity to submit written comments on the OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

(a) Fee Schedule Amendments

The purpose of the amendment is to eliminate OPRA’s Enterprise Rate Nonprofessional Subscriber Fee (“Enterprise Rate Nonpro Fee”) and to revise its Nonprofessional Subscriber Fee so that, instead of being a flat fee of \$1.25 per month per Nonprofessional Subscriber, the

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ 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 and a list of its fifteen participants are 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.

Nonprofessional Subscriber Fee will have five tiers, with the tier for a Vendor's first 75,000 Nonprofessional Subscribers subject to the current rate of \$1.25 per month and each of the successive higher tiers subject to a lower rate.

OPRA's Fee Schedule provides that a Vendor⁴ may determine the fee that it pays with respect to its distribution of current OPRA data to a Nonprofessional Subscriber⁵ in one of two ways: either the Vendor may pay OPRA's monthly Nonprofessional Subscriber Fee (currently \$1.25/month), or the Vendor may count the Nonprofessional Subscriber's queries for OPRA data and pay Usage-based Vendor Fees based on the actual usage of OPRA data by the Nonprofessional Subscriber, subject to a cap that OPRA has always set at the amount of the Nonprofessional Subscriber Fee.⁶

OPRA introduced the Enterprise Rate Nonpro Fee in 2012.⁷ The purpose of the Fee was to limit the maximum aggregate amount of Nonprofessional Subscriber Fees and Usage-based Vendor Fees with respect to Nonprofessional Subscribers that any Vendor would be required to pay with respect to its Nonprofessional Subscribers. OPRA's Enterprise Rate Nonpro Fee was

⁴ OPRA defines a "Vendor," in general, as an entity that receives OPRA data and redistributes it externally, that is, to persons other than its own employees and employees of its wholly-owned subsidiaries.

⁵ OPRA defines a "Subscriber," in general, as an entity or person that receives OPRA data but does not redistribute it to third parties, and defines a "Nonprofessional Subscriber" as a Subscriber who is a "Nonprofessional." OPRA's definition of the term "Nonprofessional" is stated in its forms of "Electronic Subscriber Agreement" and "Hardcopy Subscriber Agreement." These forms are available on OPRA's website, www.opradata.com. With a limited exception for certain personal trusts that is described in the Electronic Subscriber Agreement and Hardcopy Subscriber Agreement, a Nonprofessional Subscriber must be a natural person.

⁶ Many Vendors prefer to pay the flat Nonprofessional Subscriber Fee, even though their aggregate fees on the basis of Usage-based Vendor Fees might be lower and could not be greater, due to the administrative simplicity of doing so and the fact that the cost on a per Subscriber basis of doing so is very small.

⁷ See Securities Exchange Act Release No. 66564 (March 9, 2012) (File No. SR-OPRA-2012-02).

established at \$375,000 per month. When the Enterprise Rate Nonpro Fee was introduced, the fee provided a benefit to one OPRA Vendor, but OPRA's expectation was that the fee would provide an incentive for other Vendors to increase the number of Nonprofessional Subscribers to whom they distribute OPRA data.

OPRA's expectation for the Enterprise Rate Nonpro Fee has not been fulfilled. The fee continues to provide a benefit to only one OPRA Vendor, and it now appears to OPRA that this is likely to remain the case indefinitely.

Accordingly, OPRA is proposing to eliminate the Enterprise Rate Nonpro Fee and, at the same time, revise OPRA's Nonprofessional Subscriber Fee so that the fee has five tiers: \$1.25/month for a Vendor's first 75,000 Nonprofessional Subscribers, \$1.15/month for the Vendor's next 75,000 Nonprofessional Subscribers, \$1.00/month for the Vendor's next 100,000 Nonprofessional Subscribers, \$0.75/month for the Vendor's next 250,000 Nonprofessional Subscribers, and \$0.60/month for the Vendor's Nonprofessional Subscribers in excess of 500,000 Nonprofessional Subscribers.⁸

If all Vendors were to continue to distribute OPRA data to Nonprofessional Subscribers at their current rates, these changes would result in an increase in OPRA's annual revenues of approximately \$135,000. However, OPRA anticipates that, in fact, in the short term the Vendor that has had the benefit of the Enterprise Rate Nonpro Fee may reduce its distribution of OPRA data to Nonprofessional Subscribers and that these changes may therefore result in a decrease in OPRA's annual revenues. In the longer term, OPRA anticipates that it is possible that the tiered Nonprofessional Subscriber fees may accomplish OPRA's original expectation for the Enterprise

⁸ For example, a hypothetical Vendor that reports 310,000 Nonprofessional Subscribers in a month would pay total Nonprofessional Subscriber Fees of \$337,500 for the month: the sum of $(75,000 \times \$1.25) + (75,000 \times \$1.15) + (150,000 \times \$1.00) + (10,000 \times \$0.75)$.

Rate Nonpro Fee by providing an incentive for Vendors to increase the number of Nonprofessional Subscribers to whom they distribute OPRA data in view of the reduced fees in the higher tiers.

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.

(b) 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. In order to give persons subject to these fees advance notice of the changes, OPRA proposes that they go into effect on January 1, 2018.

(c) Phases of Development and Implementation

Not applicable.

(d) Impact on Competition

OPRA believes that the proposed amendment will impose no burdens on competition that are not justified in light of the purposes of the Act.

(e) Written Understandings or Agreements Among the Plan Participants

Not applicable.

(f) Approval of the Proposed Amendment

OPRA represents that the proposed amendments to the OPRA Fee Schedule were approved in accordance with the provisions of the OPRA Plan.

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 Act⁹ 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.¹⁰

II. 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. Please include File No. SR-OPRA-2017-02 on the subject line.

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-2017-02. 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

⁹ See 17 CFR 242.608(b)(2).

¹⁰ See 17 CFR 242.608(b)(3)(iii).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OPRA-2017-02 and should be submitted on or before [insert 21 days from date of publication in the Federal Register].

By the Commission.

Eduardo A. Aleman
Assistant Secretary