

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of Cboe BZX Exchange, Inc., Cboe
Exchange, Inc., Cboe C2 Exchange, Inc., and Cboe
EDGX Exchange, Inc.

For Review of Action Taken by Participants to the
Limited Liability Company Agreement of Options
Price Reporting Authority, LLC

Admin. Proc. File No. _____

APPLICATION FOR REVIEW OF ACTION TAKEN BY THE OPRA
MANAGEMENT COMMITTEE

Cboe BZX Exchange, Inc. (“BZX Options”), Cboe Exchange, Inc. (“Cboe Options”), Cboe C2 Exchange, Inc. (“C2 Options”) and Cboe EDGX Exchange, Inc. (“EDGX Options”) (collectively “Cboe”), submit this application pursuant to Rule 608(d)(1) of Regulation NMS of the Securities Exchange Act of 1934 (the “Exchange Act”)¹, for review of action taken by the OPRA Management Committee on September 6, 2023. On September 6, 2023, the OPRA Management Committee voted to adopt an interpretation that Section 5.2(c)(iii) of the Limited Liability Company Agreement of Options Price Reporting Authority, LLC (the “OPRA Plan”) requires a user receiving a streaming, real-time exchange proprietary data product to also receive the full feed of streaming, real-time data from OPRA.²

BACKGROUND

OPRA is a securities information processor that is registered as such in accordance with Section 11A(b) of the Exchange Act. OPRA’s members consist of the national securities exchanges that have been approved by the Securities and Exchange Commission (the “Commission” or “SEC”) to provide markets for the listing and trading of exchange-traded options. These exchanges have been authorized by the Commission, pursuant to Section 11A(a)(3)(B) of the Exchange Act, to act jointly as parties to the OPRA national market system plan. The OPRA Plan governs the process by which options market data are collected from OPRA Plan participant exchanges, consolidated, and disseminated.

Cboe Options, C2 Options, BZX Options, and EDGX Options are OPRA members, along with the following U.S. options exchanges: BOX Options Exchange, LLC, Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX Pearl, LLC, Nasdaq BX, Inc., Nasdaq

¹ 17 CFR 242.608(d).

² BZX Options, C2 Options, Cboe Options, and EDGX Options voted to reject OPRA Counsel’s interpretation.

GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE American LLC, and NYSE Arca, Inc. The OPRA Management Committee consists of one voting member representing each OPRA member and one alternate voting member representing each member who shall have a right to vote only in the absence of that member's voting member.

Prior to July 2001, OPRA was the exclusive provider of information regarding options quotes and transactions.³ On July 20, 2001, the Commission approved an amendment to the OPRA Plan which allowed exchanges to provide proprietary data to their members under certain conditions, including a requirement that members have “equivalent access” to consolidated options information.⁴ In its approval order, the Commission noted that the proposed amendment was intended to improve competition.⁵ On November 21, 2003, the Securities and Exchange Commission (“SEC”) approved amendments to a number of provisions of the OPRA Plan, including an amendment to expand the scope of who could receive proprietary data to include other “persons” in addition to exchange members.⁶ Non-substantive changes were made to the OPRA Plan when OPRA was reorganized as a limited liability company effective on January 1,

³ In 2000 and 2001, the Commission granted ISE and Cboe Options temporary exemptions from the exclusivity requirement. Those exemptions were granted pursuant to Exchange Act Rule 11Aa3-2(f), 17 CFR 240.11Aa3-2(f). See letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated May 25, 2000 and to Edward J. Joyce, President and Chief Executive Officer, CBOE, dated November 6, 2000. These letters, originally drafted to expire on May 26, 2001, were been extended until September 1, 2002. See letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated May 24, 2001 and to Edward J. Joyce, President and Chief Executive Officer, CBOE, dated May 24, 2001.

⁴ See Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR. 39218 (July 27, 2001) (SR-OPRA-2001-02).

⁵ *Id.*

⁶ See Securities Exchange Act Release No. 48822 (November 21, 2003), 68 FR. 66892 (November 28, 2003) (SR-OPRA-2003-01).

2010, but the substance of the provision relating to the dissemination of exchange proprietary data has otherwise been unchanged since 2003.

In particular, Section 5.2(c)(iii) of the OPRA Plan (“Equivalent Access Provision”) governs the dissemination of exchange proprietary data currently provides that:

(iii) A Member may disseminate its Proprietary Information in pursuant to subparagraph (ii) of this paragraph (c) provided that:

(A) such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information. For purposes of this clause (A), “consolidated Options Information” means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed “equivalent” if both kinds of information are equally accessible on the same terminal or work station; and

(B) a Member may not disseminate its Proprietary Information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA’s consolidated dissemination of Options Information.

In March 2023, certain OPRA Members asserted that the Equivalent Access Provision can only be satisfied where a recipient of an exchange proprietary data feed also maintains a streaming subscription to the full OPRA feed (*i.e.*, the usage-based data service that provides the ability to query OPRA data would not be deemed to satisfy the Equivalent Access Provision). Following months of discussion and deliberation between OPRA members, OPRA retained outside counsel to advise. Counsel’s interpretation was that the Equivalent Access Provision requires a user receiving a streaming, real-time exchange proprietary data product to also receive the full feed of streaming, real-time data from OPRA. On September 6, 2023, the OPRA Management Committee, by majority vote, jointly determined to adopt counsel’s interpretation

(the “Interpretation”). BZX Options, C2 Options, Cboe Options, and EDGX Options voted to reject OPRA Counsel’s interpretation.

Exchange Act Rule 608(d) provides aggrieved persons with the right to seek Commission review of action(s) taken pursuant to a national market system plan, such as the OPRA Plan.⁷ In considering such appeals, the Commission considers whether the action (or failure to act) is in accordance with the applicable provisions of the respective plan and that the applicable provisions are, and were, applied in a manner consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and the perfection of the mechanisms of a national market system.⁸ If the Commission makes such a finding, the Commission, by order, shall dismiss the proceeding.⁹ If the Commission does not make any such finding however, or if it finds that such action (or failure to act) imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, the Commission, by order, shall set aside such action and/or require such action with respect to the matter reviewed as the Commission deems necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, or to remove impediments to, and perfect the mechanisms of, a national market system.¹⁰

Pursuant to Rule 608(d), Cboe respectfully requests the Commission to set aside the September 6, 2023 Interpretation adopted by members of the OPRA Management Committee because: first, the plain language in the OPRA Plan and its Fee Schedule provides that the

⁷ 17 CFR 242.608(d).

⁸ 17 CFR 242.608(d)(3).

⁹ *Id.*

¹⁰ *Id.*

Equivalent Access Provision is satisfied when a person receiving proprietary data also has usage-based access to OPRA Consolidated Options Information; second, there are several additional fundamental deficiencies underlying the premise for which the Interpretation was based upon; and third, the Interpretation is not fair and reasonable as it does not "assure that all ... persons may obtain [market data] on terms which are not unreasonably discriminatory,"¹¹ Rather, the impact of the Interpretation of the Equivalent Access Provisions is that it unfairly discriminates against market participants that receive exchange proprietary data products and imposes a "burden on competition" that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹² This anti-competitive interpretation results in an adverse effect on the functioning of the national market system, the public interest, the protection of investors, and the maintenance of fair and orderly markets."¹³

ARGUMENT

Plain Language Reading

First, contrary to the finding in adopted Interpretation, the plain language in the OPRA Plan and its Fee Schedule provides that the Equivalent Access Provision is satisfied when a person receiving proprietary data also has usage-based access to OPRA Consolidated Options Information. Particularly, when applying the plain language of the Equivalent Access Provision, it is important to differentiate between the analytically separate issues of (1) how access must be provided – i.e., the meaning of “equivalent access” – with (2) what data a person who receives proprietary data must be able to access – i.e., “consolidated Options Information disseminated by

¹¹ 15 U.S.C. § 78k-1(c)(D).

¹² *Id.* § 78f(b)(5)(B).

¹³ *Id.* § 78f(b)(4).

OPRA for the same classes or series of options that are included in the Proprietary Information.”¹⁴ The plain language in the Equivalent Access Provision defines both *how* “equivalent access” must be provided and *what* OPRA data must be accessible to a person receiving proprietary data.

To apply the plain language in the Equivalent Access Provision, the meanings of “access” and “equivalent” must be examined. The term “access” is not separately defined in the OPRA Plan, but its ordinary meaning is “permission, liberty, or ability to . . . communicat[e] with a person or thing” or the “ability to obtain or make use of something.”¹⁵ There is no indication that “access” was intended to have a different meaning when it was used in Section 5.2(c)(iii)(A) of the OPRA Plan.

Further, the second sentence of Section 5.2(c)(iii)(A) defines the phrase “equivalent access.” The second sentence in Section 5.2(c)(iii)(A) states that “access to consolidated Options Information and access to Proprietary Information are deemed ‘equivalent’ if both kinds of information are equally accessible on the same terminal or work station.” Although the OPRA Plan does not separately define the term “accessible,” the plain meaning of that term is that something is “capable of being used or seen” and *does not* mean that whatever is accessible must actually be used by, or displayed to, someone.¹⁶ Applying those definitions, it is important to recognize the phrase “equivalent access” in Section 5.2(c)(iii)(A) does not define the scope or type of “consolidated Options Information” that proprietary data recipient must have “equivalent access” to and, instead, that phrase merely requires that both the OPRA consolidated options information and the proprietary data must both be accessible on the same terminal or work station.

¹⁴ See OPRA Plan, § 5.2(c)(iii)(A).

¹⁵ See Merriam-Webster Dictionary, definition of “access,” available at <https://www.merriam-webster.com/dictionary/access>.

¹⁶ See Merriam-Webster Dictionary, definition of “accessible,” available at <https://www.merriam-webster.com/dictionary/accessible>.

The next step in analyzing the meaning of the Equivalent Access Provision is to determine what OPRA data a person who receives proprietary data must have equivalent access to on the same terminal or work station. The underlying basis of the Interpretation never examines that question, but the language in the OPRA Plan provides the answer.

More specifically, the Equivalent Access Provision states that a person who receives “Proprietary Information” (a term that is defined in Section 5.2(c)(ii)) must “also have access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information.” “[C]onsolidated Options Information” is defined in the second sentence of Section 5.2(c)(iii)(A) as meaning “consolidated *Last Sale Reports* combined with *either consolidated Quotation Information or the BBO* furnished by OPRA” (emphasis added). “Last Sale Reports” is defined in the OPRA Plan as meaning “price, volume, or related information reflecting completed transactions in Eligible Securities¹⁷.” “Quotation Information” also is defined in the OPRA Plan as meaning “bids, offers, or related information pertaining to quotations in Eligible Securities, including information consisting of the BBO for Eligible Securities”¹⁸ Finally, “BBO” is defined in the OPRA Plan as meaning “at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the Members.”¹⁹

The “Basic Service” “quote packets” or “options chains” made available by OPRA pursuant to the “Usage-based Vendor Fee” option in OPRA’s Fee Schedule meet the definition of “consolidated Options Information.” That “Basic Service” includes “all last sale and quotations information pertaining to equity options and index options, including foreign currency index

¹⁷ “Eligible Securities” is defined in the OPRA Plan as meaning “each series of options contracts traded on or in the securities market maintained by a Member.” See OPRA Plan, § 1.1, at 2.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 1.

options.”²⁰ In addition, the Fee Schedule also states that a “quote packet” supplied in response to a usage-based query “consists of any one or more of the following values: last sale, bid/ask, and related market data for a single series of options or a related index” and that an “options chain” supplied in response to a usage-based query “consists of last sale, bid/ask, and related market data for up to all series of put and call options on the same underlying security or index.” Therefore, a person who has access to OPRA’s usage-based data service on his or her terminal or work station and can obtain quote packets and options chains has, by definition, equivalent access to “consolidated Options Information” because that person will have access to “Last Sale Reports,” “Quotation Information,” and the “BBO.”

In sum, the language in the OPRA Plan and in the OPRA Fee Schedule leads to the indisputable conclusion that, if a person who is receiving proprietary data also is authorized to access “consolidated Options Information” on a usage-based basis on his or her terminal or work station, that person will have the required “equivalent access” to “consolidated Options Information” from OPRA. In contrast, the assertion that a person receiving proprietary data can meet the requirements of the Equivalent Access Provision only if that person actually receives the full “streaming, real-time data [feed] from OPRA” would ignore the plain language in both the OPRA Plan and in the Fee Schedule and is not in accordance with the applicable provisions of such plan.

Flawed Analysis of Interpretation

There are several fundamental deficiencies and inaccuracies underlying the premises for which the Interpretation was based upon.

First, the Interpretation was based in large part that the premise that “access” – standing alone – is a term of art that is used both within the OPRA Plan as well as in market data generally. It was also asserted that “‘access’ is frequently associated with the manner *and type of data feed that a*

²⁰ See OPRA Fee Schedule at 1 and n.1.

user receives. No authority was cited to however, for the proposition that the word “access” is used anywhere “in market data” to define the *content* of data that a user might receive. In other words, rather than providing any evidence that the word “access” is a term of art that means only a streaming real-time full data service, the Interpretation is based upon a self-serving conclusion that “access” means that a person is required to receive the full OPRA streaming data feed if that person receives proprietary market data. As demonstrated above, that “term of art” definition is belied by the plain language in the OPRA Plan and Fee Schedule.

The Interpretation was also based upon the argument that because OPRA data can be provided in several ways for different fees, including through direct and indirect access, the word “access” defines the “type of data feed being received.” Once again, no authority for that proposition was provided to the OPRA Management Committee. Moreover, the Equivalent Access Provision does not refer to “access fees” at all, and that provision does not state that the definition of “consolidated Options Information” somehow hinges on the various fees that OPRA might charge for such information. Instead, the relevant inquiry under the Equivalent Access Provision is whether the person who receives proprietary data has equivalent access to “consolidated Options Information” – a phrase that *is specifically defined* in the OPRA Plan. In other words, although the Fee Schedule refers to forms of direct and indirect access and various fees, those references do not change how the OPRA Plan defines “consolidated Options Information.”

In addition, the claim that the term “access,” when combined with the term “equivalent,” should “be interpreted to refer to a requirement that a user receives a data feed from OPRA that is equivalent in content with the data feed being received through a proprietary data product” does not make sense. A data feed from OPRA, by definition, will never be substantively “equivalent in content” with the content of a “data feed being received through a proprietary data product” because OPRA provides *consolidated* market data, while proprietary data feeds provide data limited to only

one market or group of markets. Instead, so long as a person receiving proprietary data has equivalent access to “consolidated Options Information,” as that term is defined in the OPRA Plan, the requirements of the Equivalent Access Provision are satisfied.

Another premise of the Interpretation mistakenly focused on the differences between streaming, real-time full set of data available from OPRA and OPRA data provided through usage-based access in terms of the content of the data provided, how it is accessed and whether both types of data might be always available. The issue, however, is not whether there are any differences between the streaming “full set” data service and the usage-based data service – the issue is whether both of those services provide access to data that satisfies the definition of “consolidated Options Information.” Because both of those services do provide data that falls within the definition of “consolidated Options Information,” access to either service satisfies the Equivalent Access Provision. Put another way, the OPRA Plan does not define “consolidated Options Information” as meaning only the full OPRA subscriber streaming feed: data made available through OPRA’s “usage-based” option also meets the definition of “consolidated Options Information.”

The Interpretation was also based on an argument that a streaming real-time data feed is required because it is always *available* on a terminal or work station, while usage based-access requires that the user has to query to gain access to OPRA data. There is no requirement however, in the Equivalent Access Provision that the “Proprietary Information” and the “consolidated Options Information” always have to be simultaneously displayed on a person’s terminal or work station. Instead, both the proprietary data and the OPRA data must be “equally *accessible*,” which means only that both types of data are both “capable of being used or seen.

Moreover, an incorrect statement in Counsel’s Interpretation was provided to the OPRA Committee that “the full data stream [is] sitting within the user’s system,” while “usage-based access to data means that the data is residing with the vendor and the user has to query to gain access to a

specific piece of information at a given time”, thereby suggesting that usage-based access provides different or stale data. That statement is incorrect. Rather, the OPRA data feed and a usage-based query both provide real-time access to the same data content. In other words, the same data is always available via both services.

It was also wrongly claimed that Cboe’s reading of the Equivalent Access Provision would essentially make the term ‘equivalent’ redundant and unnecessary. However, “Equivalent” is used in Section 5.2(c)(iii)(A) to explain *where* “both kinds of information” – *i.e.* “Proprietary Information” and “consolidated Options Information” – must be “equally accessible,” specifically, “on the same terminal or work station.”

Although the “term of art” premise upon which the Interpretation is largely based on is not correct, it is telling that, even after asserting that “access” is a term of art “in market data generally”, prior statements made by exchanges to the effect that proprietary data product subscribers are *not* required to take (and pay for) the full streaming real-time OPRA data feed²¹ were dismissed as being not being probative. Thus, not only was no authority cited to support the term of art theory

²¹ See Securities Exchange Act Release No. 32675 (June 30, 2009), 74 FR 32675 (July 8, 2009) (SR-Phlx-2009-54), in which Nasdaq PHLX, LLC (“PHLX”) states: “[T]he TOPO data feed offers a competitive, lower-priced *alternative to the consolidated data OPRA feed* for users and situations where consolidated data is unnecessary ... Additionally, to the extent users can substitute the lower-priced TOPO data for the higher-priced consolidated data feed, those users will have the opportunity to pass the savings on to investors in the form of lower overall trading costs.” (emphasis added); and see Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145), in which two years later PHLX states “First, TOPO, TOPO Plus Orders, PHLX Orders and PHLX Depth of Market data feed offer a comprehensive, *competitive alternative to the consolidated data OPRA feed* for users and situations where consolidated data is unnecessary” (emphasis added). See also Securities Exchange Act Release No. 79556 (December 14, 2016), 81 FR 92935 (December 20, 2016) (SR-NASDAQ-2016-167), in which The Nasdaq Stock Market LLC stated: “[m]any customers that obtain information from OPRA do not also purchase ITTO and BONO, but in cases where customers buy both products, *they may shift the extent to which they purchase one or the other based on price changes*. OPRA constrains the price of ITTO and BONO because no purchaser would pay an excessive price for these products when similar data is also available from OPRA.” (emphasis added). See also NYSE Technology FAQ and Best Practices: Options, Section 6.3 at https://www.nyse.com/publicdocs/nyse/NYSE_Options_Technology_FAQ.pdf which is a publicly available document posted by OPRA Members NYSE American LLC and NYSE Arca, Inc. (collectively “NYSE”) that includes statements inconsistent with the adopted interpretation. Particularly, in a section titled “How do firms receive proprietary market data” NYSE states in relevant part: “[I]n addition, the Exchanges *recommend* that firms utilizing proprietary market data feeds maintain a connection to OPRA, and *have the ability to switch between the proprietary market data feeds and the OPRA feed*, in the event that one or the other fails” (emphasis added).

underlying the Interpretation, but several relevant statements made by OPRA members – which were conceded “to be inconsistent with a requirement that a person receiving a proprietary data feed also receive streaming real-time data from OPRA” were disregarded outright.

Unfair Discrimination and Burden on Competition

Lastly, the Interpretation is not fair and reasonable as it does not “assure that all ... persons may obtain [market data] on terms which are not unreasonably discriminatory.”²² In particular, the Interpretation of the Equivalent Access Provision would require vendors to purchase a streaming subscription to the full OPRA feed alongside any exchange proprietary data product. Such a requirement would be cost-prohibitive, especially where vendors are providing this data to individual retail investors who are more likely to be low volume users of market data and do not otherwise have the same best execution obligations as professional users. The requirement may also be technologically unfeasible for vendors when considering the growing and significant bandwidth requirements associated with the full streaming OPRA data feed. Accordingly, compliance with the Interpretation can have the practical effect of denying choice for individual data subscribers, which is antithetical to the SEC’s longstanding view on competition. In sum, query-based access to OPRA data may be more suitable for particular subscribers (including retail investors).

When the National Association of Securities Dealers, Inc. (“NASD”) first established a per-query fee structure, it noted its purpose was “to provide retail customers with a cost-effective alternative to calling their brokers for current market information.”²³ As NASD noted, retail investors might not be interested in subscribing to a costly service offered by a commercial

²² 15 U.S.C. § 78k-1(c)(D).

²³ See Securities Exchange Act Release No. 35393 (February 17, 1995), 60 FR 10625 (February 27, 1995) (SR-NASD-95-7).

vendor which frequently might include analytic information, ticker displays, and dynamically-updated quotation and transaction information.²⁴ NASD therefore asserted that the adoption of a query-based fee structure would provide individual investors a better ability to monitor the value of a portfolio, track intra-day activity in a given stock to facilitate an investment decision, or observe a market trend based on periodic queries for the current level of a popular stock index. When approving the proposed fee structure, the Commission similarly acknowledged:

“[the proposed per-query fee structure] and related fee are designed to accommodate the information needs of individual investors, particularly small investors who do not require the breadth of market data and analytic information that institutional investors and market makers typically require. . . . this service will allow firms and vendors to provide individual investors cost-effective access to market data without requiring users to acquire expensive hardware. . . . The NASD’s experience is that [subscriber fees and vendor supplied equipment] costs tend to discourage subscription by low-volume users. . . The Commission believes that the \$.01/ query fee is an equitable allocation of a reasonable fee and that it will be affordable to individual investors. The Commission, therefore, finds that the proposal is consistent with the Section 15A(b)(5) of the Act.”²⁵

Although, the Commission’s finding related to US equities pricing data, the underlying rationale applies with equal force to the options industry. The ability to choose the manner in which OPRA data is received (*i.e.*, either via a streaming subscription or on a query basis) to satisfy the Equivalent Access Provision may therefore similarly provide lower overall costs for US options market data users, which furthers access to market data generally and better equips investors, including retail investors, with the ability to make informed investment decisions.

Arguably, the most concerning consequence of the adopted Interpretation is the resulting discriminatory application of fees between market participants who choose to subscribe to

²⁴ *Id.*

²⁵ *See* Securities Exchange Act Release No. 35721 (May 16, 1995), 60 FR 98 (May 22, 1995) (SR-NASD-95-7).

exchange proprietary data products and those who do not. That discriminatory treatment arises because under the Interpretation only those market participants who do *not* also subscribe to exchange proprietary market data products may avail themselves of OPRA’s potentially more cost-effective usage-based data service. That scenario only serves to penalize those market participants who choose to subscribe to exchange proprietary data products because such participants (unlike those who do not subscribe to proprietary market data products) will be required to also subscribe to, and pay for, the more expensive full streaming OPRA data feed regardless of their needs. This is contrary to the mandate that all securities information processors (such as OPRA), “assure that all ... persons may obtain [market data] on terms which are not unreasonably discriminatory.”²⁶ Indeed, the Interpretation may limit not only access to market data services made available by OPRA, but also effectively limits access to critical exchange proprietary market data products for persons unwilling or unable to pay the more expensive full streaming OPRA data feed, which is inconsistent with the Act.

Finally, the Interpretation imposes a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁷ Particularly, for the reasons discussed above, the Interpretation could have the practical effect of rendering exchange proprietary market data products redundant, thereby entrenching OPRA’s feed as the only data source for options market participants. This de facto denial of choice for individual data subscribers is anti-competitive and adverse to the SEC’s longstanding view on competition. Moreover, under Cboe’s reading of the Equivalent Access Provision, market data providers, as well as OPRA, would have an incentive to price their market data products based on the value

²⁶ 15 U.S.C. § 78k-1(c)(D).

²⁷ Id. §7 8f(b)(5)(B).

relative to that of other markets, as they would otherwise risk that market participants would not subscribe to their products. As such, in the absence of the Interpretation, exchanges would be more incentivized to compete on the price or quality of their data (*e.g.*, by offering consistently better quotes) to generate potential subscriber interest in their data. This added incentive to compete, in turn, could enhance liquidity and have a beneficial effect on intermarket competition and also furthers the original intent of the Equivalent Access Provision - to improve competition.²⁸

CONCLUSION

In sum, the Interpretation is not "fair and reasonable,"²⁹ does not "assure that all ... persons may obtain [market data] on terms which are not unreasonably discriminatory,"³⁰ and does not "provide for the equitable allocation of reasonable ... fees ... among ... persons using [the SIPs'] facilities."³¹ Nor does it "promote just and equitable principles of trade" or "protect investors and the public interest."³² For the foregoing reasons, Cboe respectfully requests that the Commission review and set aside the Interpretation of the Equivalent Access Provision adopted by the OPRA Management Committee on September 6, 2023.

²⁸ *Supra* note 4.

²⁹ 15 U.S.C. § 78k1(c)(1)(C).

³⁰ *Id.* § 78k-1(c)(D).

³¹ *Id.* § 78f(b)(4).

³² *Id.* § 78f(b)(4).

Dated: September 29, 2023

Respectfully Submitted

/s/ Corinne Klott

Corinne Klott
Cboe Global Markets, Inc.,
433 West Van Buren St
Chicago, IL 60607
(312) 786-7793
cklott@cboe.com

Counsel for Applicants

Rule of Practice 420(c) Statement: Service upon the applicant may be accomplished by serving their attorneys at the address listed above.

CERTIFICATE OF SERVICE

I, Corinne Klott, certify that on this day of September 29, 2023, I caused a copy of the foregoing Application for Review of Action Taken by the OPRA Management Committee to be filed through the SEC's eFAP system and served by electronic mail on:

The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549
By eFAP: www.sec.gov/eFAP

Chris L. Bollinger
ArentFox Schiff LLP
Counsel for OPRA
233 S Wacker Dr
Suite 7100
Chicago, IL 60606
chris.bollinger@afslaw.com

James P. Dombach
Davis Wright Tremaine, LLP.
Counsel for OPRA
1301 L St. N.W.
5th Floor
Washington, DC 20001
JamesDombach@dwt.com

So sworn,

/s/ Corinne Klott

Corinne Klott
Dated: September 29, 2023