

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73712; File No. SR-OPRA-2014-03)

December 1, 2014

Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Amend OPRA's Definition of the term "Nonprofessional"

I. Introduction

On March 11, 2014, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").³ The proposed OPRA Plan amendment would revise the definition of the term "Nonprofessional." The proposed OPRA Plan amendment was published for comment in the Federal Register on August 18, 2014.⁴ The Commission received no comment letters in response to the Notice.

This order approves the proposed OPRA Plan amendment.

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 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 twelve participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, Miami International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC, NYSE MKT LLC, NYSE Arca, Inc., and Topaz Exchange, LLC (d/b/a ISE Gemini).

⁴ See Securities Exchange Act Release No. 72824 (August 12, 2014), 79 FR 48780 ("Notice").

II. Description of the Proposal

The purpose of the proposed amendment is to revise the definition of the term “Nonprofessional” as that term is used in the “Addendum for Nonprofessionals” that is attached to OPRA’s Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement.⁵

Paragraph (c) of OPRA’s current definition of the term “Nonprofessional” specifies that to qualify as a “Nonprofessional” a person must not be: “(i) registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange/association, or any commodities/futures contract market/association, (ii) engaged as an “investment adviser,” as that term is defined in the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require you to be so registered or qualified if you were to perform such functions for an organization not so exempt.” According to OPRA, a literal reading of this language could lead to the conclusion that a person who works outside of the United States as (for example) a securities broker could qualify as a “Nonprofessional,” because the person is not covered by clauses (i), (ii) or (iii) of Paragraph (c).

OPRA is not aware of any instances in which an OPRA Vendor has determined that Subscribers who work outside the United States qualify to be Nonprofessional Subscribers on the basis of reading the definition of the term “Nonprofessional” in this manner.⁶ However, OPRA

⁵ These two forms are Attachments B-1 and B-2 to OPRA’s Form of Vendor Agreement and they are available on OPRA’s website at www.opradata.com.

⁶ According to OPRA, the definition of the term “Nonprofessional Subscriber” used by the Consolidated Tape Association (“CTA”), which is substantively similar to OPRA’s definition in almost all respects, prevents a similar reading of its definition.

believes that it is appropriate to modify the language to prevent such a reading. Accordingly, OPRA proposes to modify the current definition by adding a phrase at the beginning of paragraph (c) to clarify that the current language applies to persons who work in the United States and adding a sentence to paragraph (c) to say that “For a natural person who works outside of the United States, a ‘Professional’ is a natural person who performs the same functions as someone who would be considered a ‘Professional’ in the United States.”

III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.⁷ Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act⁸ and Rule 608 thereunder⁹ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanisms of, a national market system. The proposed change to the definition of the term Nonprofessional is designed to clarify that the term is meant to apply to persons engaged in the same type of business whether they are located in the United States or elsewhere. The Commission believes that OPRA’s proposal is consistent with Section 11A of the Act¹⁰ and Rule 608 thereunder¹¹ because the proposal is designed to add clarity to OPRA’s existing term and should therefore help to avoid investor confusion. In addition, the Commission

⁷ In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608.

¹⁰ 15 U.S.C. 78k-1.

¹¹ 17 CFR 242.608.

notes that the proposed revisions to the term “Nonprofessional” will make the term used by OPRA consistent with the similar term used by CTA.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,¹² and Rule 608 thereunder,¹³ that the proposed OPRA Plan amendment (SR-OPRA-2014-03) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O’Neill
Deputy Secretary

¹² 15 U.S.C. 78k-1.

¹³ 17 CFR 242.608.

¹⁴ 17 CFR 200.30-3(a)(29).