

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72824; File No. SR-OPRA-2014-03)

August 12, 2014

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information to Amend OPRA's Definition of the Term "Nonprofessional"

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² notice is hereby given that on March 11, 2014, 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 proposed amendment revises definition of the term "Nonprofessional." The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Plan Amendment

The purpose of the proposed amendment is to revise OPRA's definition of the term "Nonprofessional."

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 (formerly Rule 11Aa3-2). 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 the Topaz Exchange, LLC (d/b/a ISE Gemini).

A person may become an OPRA “Subscriber” in one of two ways.⁴ The first way is that the person may sign a “Professional Subscriber Agreement” directly with OPRA. In this case, the person pays fees directly to OPRA on the basis of the number of the person’s “devices” and/or “UserIDs.”

The second way is that the person may enter into a “Subscriber Agreement,” not directly with OPRA, but with an OPRA “Vendor” – an entity that has entered into a “Vendor Agreement” with OPRA authorizing the entity to redistribute OPRA Data to third persons. In this case, OPRA collects fees from the Vendor with respect to the receipt of the OPRA Data by the person entering into the Subscriber Agreement. If the person qualifies as a “Nonprofessional Subscriber,” OPRA caps the fee that it charges the Vendor, and the fees that the person is required to pay to the Vendor may be less than they would be if the person is classified as a “Professional Subscriber.”⁵

OPRA’s definition of the term “Nonprofessional” is set out in an “Addendum for Nonprofessionals” that is attached to its Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement. These two forms, in turn, are Attachments B-1 and B-2 to OPRA’s form of Vendor Agreement.⁶

⁴ OPRA defines a “Subscriber,” in general, as an entity or person that receives OPRA Data for the person’s own use.

⁵ OPRA’s Fee Schedule provides that a Vendor may determine the fee that it pays with respect to its distribution of current OPRA data to a Nonprofessional Subscriber in one of two ways: either the Vendor may pay OPRA’s flat 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 flat Nonprofessional Subscriber Fee.

⁶ These forms are posted on OPRA’s website, www.opradata.com. OPRA most recently amended its Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement in File No. SR-OPRA-2012-03; Release No. 34-67589 (August 2, 2012).

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.” A narrow 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 literally described 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.⁷ However, OPRA believes that it is appropriate to modify the language to prevent this reading. OPRA proposes to accomplish this, essentially, by adding a phrase at the beginning of Paragraph (c) to say that the current language is applicable 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.” OPRA believes that the changes that it is

⁷ OPRA is aware that the definition of the term “Nonprofessional Subscriber” used by the Consolidated Tape Association (“CTA”), which is substantively identical to OPRA’s definition in almost all respects, prevents a similar literal reading of its definition.

proposing in its definition of the term “Nonprofessional” will add clarity to the definition and make clear that it is intended to generate equivalent results both inside and outside the United States.

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

II. Implementation of the OPRA Plan Amendment

OPRA is proposing to post revised versions of its Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement on its website, and to require Vendors to use the revised versions on a going-forward basis, as soon as this filing has been approved by the Commission in accordance with paragraph (b)(1) of Rule 608 of Regulation NMS under the Securities Exchange Act of 1934. If OPRA becomes aware that a Vendor has been misclassifying Subscribers who work outside the United States as Nonprofessional Subscribers on the basis of a literal reading of the current language of the Addendum for Nonprofessionals, OPRA will bring the matter to the attention of the Vendor and require the Vendor to use the revised Subscriber Agreements and to reclassify the affected Subscribers.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed 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-2014-03 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-2014-03. 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 proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed 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-2014-03 and should be submitted on or before [insert 21 days from date of publication in the Federal Register].

By the Commission.

Kevin M. O'Neill
Deputy Secretary