

April 5, 2004

Margaret H. McFarland
Deputy Secretary
U.S. Securities & Exchange Commission
450 Fifth Street, N.W.
Washington DC 20549

Re: SR-OPRA-2004-01

Dear Ms. McFarland,

The Securities Industry Association (SIA) is writing to express its opposition to the proposed fee increases for options market data. The approximately 5% annual increase in Options Price Reporting Authority (OPRA) professional fees has become an unwelcome annual certainty. SIA is concerned that the latest increase lacks reasonable justification. SIA believes that SEC oversight is needed to ensure that the OPRA market data fees reflect some reasonable connection to the costs incurred by OPRA. SIA urges the SEC to summarily abrogate the OPRA fee increase and require refiling and approval of the amendment.

The Commission may summarily abrogate the OPRA amendment and require refiling and approval of the amendment if it appears that such action is necessary or appropriate in the public interest; for the protection of investors and 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. For the reasons mentioned below, SIA does not believe the amendment meets the requirement of the Act.

SIA's primary objection is to the de facto "institutionalization" of an annual five percent rate increase. In the release, OPRA admits that its amendment would result in professional subscriber fee increases of "approximately 5% each year" for the next four years. In fact, SIA members that have projected the net effect of the proposed change indicate the increase is likely to be between 10 and 13 percent in the first year alone. The compounding effect would make the increase for those firms even more in subsequent years. OPRA also admits that the increase "would be at or below the rate at which OPRA has increased professional subscriber fees in the past." Thus, an annual 5% increase has been status quo for many years and would be for the next 4 as well. SIA has asked OPRA, several times over the last month, to provide a schedule of rate increases over the

last 10 years, but they have refused to provide the information. OPRA claims that the annual 5% increase is needed to defray “ever-increasing costs incurred by OPRA in collecting, processing, and disseminating options market data.” While citing increased costs, OPRA offers no cost data that would allow a reasonable investor or the SEC to evaluate OPRA’s explanation. Surely, such simplistic and unverified claims of increased costs cannot be considered to be serving the public interest, or protecting investors. Some scintilla of evidence or documentation of cost ought to be necessary.

The explanation for increased costs cited by OPRA only heightens SIA’s concern that OPRA operates with no accountability. OPRA includes the “expansion of options trading and the introduction of new services” as reasons for increasing costs. SIA does not believe that increased volume and message traffic should automatically result in higher costs to OPRA unless the system is at or above capacity and supplemental infrastructure is necessary to generate the excess market data. Anecdotally, we know that the system is not at or near capacity, but, more significantly, there is not even the simplest explanation or analysis from OPRA showing how volume is related to costs. Moreover, what OPRA neglects to mention is that market data revenues from expanded trading, and from per-quote fees in particular, will rise along with market volume, presumably defraying costs. At the very least, OPRA’s need to increase costs every time volume or message traffic increases shows a neglect for and a remarkably short-sighted approach to investing in OPRA’s infrastructure. If anything, the cost of the technology required to aggregate and distribute its product has continued to decrease in both nominal and real terms

Furthermore, it is not at all clear that OPRA should be able to charge investors for the cost of introducing “new services.” One shudders to think of the number of exchange marketing “experiments” that could wind up being subsidized by investors if this rationale became acceptable. It is telling that the introduction of NBBO dissemination in 2003, is given as an example of a “new service” that should result in higher fees for investors in 2004. The lack of an NBBO in this market kept spreads artificially wide and cost investors dearly for years. It is particularly ironic that investors should now have to foot the bill for so simple an investor protection measure that principals of equity, if not regulation, would place squarely at the feet of the exchanges.

Similarly, SIA questions the basic fairness of assigning to investors the cost of increased message traffic caused by “the entry of a new options exchange.” Moreover, there is no information or estimate of what these costs are likely to be. The same arguments apply to the next excuse cited by OPRA as causing increased costs - “changes in the trading and quoting methodologies used by the exchanges.” Surely, a balancing of the equities would dictate that the exchanges themselves should bear most if not all of this development of start up cost. Otherwise, investors end up subsidizing the competitive maneuvering of options exchanges.

It is clear that OPRA believes that fee increases do not require any justification and that approval of fee increases, no matter how lacking in substance, will be automatic. Prior to filing this change with the SEC, OPRA notified SIA of its intentions. When SIA

objected, OPRA revised its proposal to provide for modestly smaller increases. However, when SIA requested that there be no increases in some of those years, OPRA stopped negotiating and filed the original proposal with the SEC. This lack of good faith in a negotiation demonstrates an imbalance in the relative bargaining power of those that charge for market data and those that pay for it.

SIA believes that the SEC needs to play an active oversight role with respect to options market data. While SIA understands and agrees with the Commission that it should not be engaged in rate-setting, it is important that the SEC use its oversight authority to ensure that OPRA is to some degree accountable to investors for the costs it imposes on them. For example, the SEC could ask OPRA to make public its expected operating costs before approving a price increase. Without that element of accountability, proposals like this one cannot be found to be necessary or appropriate in the public interest; for the protection of investors, or otherwise meet the requirements of the Act.

We appreciate the opportunity to be heard on this important subject. If you have any questions regarding the views expressed in this letter. Or would like to meet with interested industry participants, please contact me at 212-618-0546 or atrager@sia.com.

Very truly yours,

Arthur L. Trager
Vice President and Managing Director,
Technology & Business Continuity Planning