

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-EMERALD-2023-16 and should be submitted on or before August 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-16390 Filed 8-1-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98012; File No. SR-OPRA-2023-01]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment To Modify the OPRA Fee Schedule Regarding Caps on Certain Port Fees

July 27, 2023.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on July 17, 2023, the Options Price Reporting Authority (“OPRA”) filed with the Securities and Exchange Commission (“Commission”) a proposed amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan”).<sup>3</sup> The proposed OPRA Plan amendment (“Amendment”) would amend the OPRA Fee Schedule. The Commission is publishing this notice to provide interested persons an opportunity to submit written comments on the Amendment.

The Amendment has been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.<sup>4</sup> The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment. Set forth in Section I, which was prepared and filed with the Commission by the Participants, is the statement of the purpose and summary of the

Amendment, along with information pursuant to Rule 608(a) under the Act.<sup>5</sup> A copy of the OPRA Fee Schedule, marked to show the proposed Amendment, is Attachment A to this notice.

#### I. Rule 608(a)

##### (a) Statement of Purpose

The purpose of the amendment is to amend the OPRA Fee Schedule to provide public notice of the fact that OPRA negotiated terms in the 2021 Processor Services Agreement (the “2021 Processor Agreement”) between OPRA and the Securities Industry Automation Corporation (“SIAC”) which impose caps on certain port fees that can be charged per month when SIAC, either directly or through a third party, provides direct access to OPRA data to any person authorized by OPRA to receive direct access to OPRA data.

Under the 2021 Processor Agreement, SIAC is OPRA’s “processor,” meaning that SIAC gathers the last sale and quote information from each of the OPRA members, consolidates that information, and disseminates the consolidated OPRA data. As the processor, SIAC works directly with OPRA members and data vendors to provide connectivity to SIAC. Connectivity to SIAC is currently provided by an affiliate of SIAC, the ICE Global Network (“IGN”), and IGN both sets and charges the port fees associated with that connectivity. OPRA, in contrast, does not provide access ports, it does not charge any port fees, it does not collect any fees on behalf of OPRA members in connection with access to SIAC, and it does not receive any portion of port fees charged by other entities. As a result, OPRA does not believe that the caps that OPRA negotiated with SIAC concerning the amount of port fees that can be charged either (1) establishes or changes a fee or charge collected on behalf of the members of the OPRA Plan in connection with access to, or use of, any OPRA facilities or (2) represents a fee or charge imposed by OPRA as contemplated by Rule 608(a)(5)(ii) of Regulation NMS.<sup>6</sup> Nonetheless, OPRA is submitting this proposed plan amendment because OPRA wishes to provide the public with notice of the contractual fee caps that it negotiated with SIAC and because Commission Staff requested that it do so.

In 2014, OPRA was engaged in a competitive bidding process involving firms that were seeking to become OPRA’s data processor for a five-year

term to begin in 2015. As part of that process, OPRA was considering many factors raised by the materials submitted by several entities in response to OPRA’s request for proposals. Although OPRA does not own, or have any control over, the myriad locations where a data recipient might choose to receive OPRA data and OPRA has no role in setting the port connection fees that might be charged by the entities that control access at those locations, OPRA requested that the two finalist bidders each outline any commitments that they could make to cap the 10G and 40G network connection fees that might be charged to data recipients and to the OPRA members during the term of the new processor agreement. In response, SIAC, the bidder that was eventually selected to continue as the OPRA processor, stated its expectation that the 10G port fee would not rise above the then current rate of \$16,000 per month (including the cross-connect) and that the 40G port fee would not rise above the then current rate of \$20,500 per month (including the cross-connect).

As OPRA negotiated the terms of a new processor agreement with SIAC, OPRA’s Management Committee requested that SIAC’s expectation that port fees would not increase above the existing levels be included in the agreement, and SIAC agreed. SIAC also agreed to the inclusion of a provision providing that, whenever higher capacity ports might become available during the term of the agreement, OPRA would have the right to approve a cap on the port fees that could be charged for those higher capacity ports.

Effective as of January 1, 2015, OPRA and SIAC entered into a new Processor Agreement for a term ending on December 31, 2020 (the “2015 Processor Agreement”). Consistent with the parties’ negotiations, the 2015 Processor Agreement contained the following provision:

During the Term, SIAC will provide, directly or through a third party, access to OPRA Data to any person authorized by OPRA to receive direct access to OPRA Data for total fees not to exceed \$16,000 per month per 10G port and \$20,500 per month per 40G port, in each case, inclusive of cross-connect (whether or not such fees also cover direct access to data in addition to the OPRA Data). If and when during the Term, direct access to the OPRA Data becomes available via higher capacity ports, SIAC will provide, directly or through a third party, access to OPRA Data to any person authorized by OPRA to receive direct access to OPRA Data for total fees not to exceed an amount approved by OPRA (such approval not to be unreasonably withheld) and not inconsistent with the 10G and 40G port rates.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> 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 participants are available at <https://www.opraplan.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.

<sup>4</sup> 17 CFR 242.608(b)(2).

<sup>5</sup> 17 CFR 242.801(a).

<sup>6</sup> 17 CFR 242.608(a)(5)(ii).

In sum, although OPRA does not set or charge port fees, OPRA used the negotiation process as an opportunity to ensure that SIAC's ability to increase the amount of port fees would be capped during the term of the 2015 Processor Agreement for all OPRA data recipients, including OPRA members, who were authorized to receive direct access to OPRA data.

In 2019, as the end of the term of the 2015 Processor Agreement approached, OPRA engaged in another competitive process of soliciting and considering bids from interested entities to act as OPRA's data processor. Among the many factors assessed by OPRA, OPRA considered the port fees that bidders proposed to charge, and SIAC agreed to maintain the existing terms of the 2015 Processor Agreement regarding the port fee cap provisions applicable to OPRA direct data recipients, including OPRA members.

Effective as of January 1, 2021, OPRA and SIAC entered into the 2021 Processor Agreement, which runs for a term ending on January 1, 2026. In the 2021 Processor Agreement, the parties agreed as follows:

#### **Port Fees**

During the Term of the Agreement, SIAC will provide, directly or through a third party, access to OPRA Data to any person authorized by OPRA to receive direct access to OPRA Data for total fees not to exceed \$16,000 per month per 10G port and \$20,500 per month per 40G port, in each case, inclusive of cross-connect (whether or not such fees also cover direct access to data in addition to the OPRA Data). If and when during the Term, direct access to OPRA Data becomes available via higher capacity ports, SIAC will provide, directly or through a third party, access to OPRA Data to any person authorized by OPRA to receive direct access to OPRA Data for total fees not to exceed an amount approved by OPRA (such approval not to be unreasonably withheld) and not inconsistent with the 10G and 40G port rates.

There will be no One-Time Fee charged for existing OPRA Members and data Customers as of the Effective Date. Ongoing charges for connecting to the IGN will continue to apply at their then-current rates.

In the provision quoted above, OPRA and SIAC agreed that SIAC, and any third-parties that SIAC utilized to provide direct access to OPRA data, would continue to abide by the port fee caps that were originally established in the 2015 Processor Agreement through December 31, 2026.

In September 2021, SIAC, in accordance with the terms of the 2021 Processor Agreement, notified OPRA

that OPRA data would become available over 100G ports. SIAC also requested that OPRA approve a \$30,000 per month port fee cap, inclusive of cross connect, for such 100G ports.

In 2021, after OPRA's Technical Committee considered SIAC's request and approved it, OPRA's Management Committee also approved a \$30,000 per month port fee cap with respect to 100G ports. Following that approval, Commission Staff, which attends the meetings of OPRA's Management Committee, informed OPRA that it should submit a filing to the Commission with respect to the port fee caps. Although, as noted above, OPRA does not believe that the contractual port fee caps represent a fee charged by OPRA that falls within the scope of Rule 608(a)(5)(ii), OPRA is making this filing because it would like to provide notice to the public of the existence of the port fee caps that it has negotiated with SIAC. In connection with this filing, OPRA requested that SIAC confirm that it has complied with its obligations under the contractual port fee cap provisions contained in both the 2015 Processor Agreement and in the 2021 Processor Agreement and SIAC confirmed that it has complied with those provisions.

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](http://www.sec.gov).

#### **(b) Manner of Implementation of Amendment**

OPRA proposes to add the proposed amendment to the OPRA Fee Schedule following Commission approval of the amendment pursuant to paragraph (b)(1) and (b)(2) of Rule 608 of Regulation NMS under the Act. OPRA states that the monthly caps on 10G and 40G port fees have been in effect since 2015 and the contractual cap on 100G port fees has been in effect since 2021.

#### **(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 Plan Members**

Not applicable.

#### **(f) Approval of Proposed Amendment**

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

## **II. Solicitation of Comments**

The Commission seeks comment on the Amendment. Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Amendment is consistent with the Act and the rules thereunder. Comments may be submitted by any of the following methods:

#### **Electronic Comments**

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-OPRA-2023-01 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-2023-01. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available

publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-OPRA-2023-01 and should be submitted on or before August 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

**Attachment A—Proposed Changes to  
Options Price Reporting Authority Fee  
Schedule**

**ATTACHMENT A**

**PROPOSED CHANGES TO THE OPTIONS PRICE REPORTING AUTHORITY FEE SCHEDULE**

[Additions are *italicized*; Deletions are [bracketed].]

Description	Basic Service <sup>1</sup>
Professional Subscriber Device-Based Fees (Monthly fee applicable to persons that enter into Professional Subscriber Agreements directly with OPRA): These fees are subject to written policies, which are available at <a href="http://www.opradata.com">www.opradata.com</a> . <sup>2,3,4</sup>	\$30.50 per display device commencing January 1, 2017 \$31.50 per display device commencing January 1, 2018
Nonprofessional Subscriber Fees: Monthly fees payable by every vendor that furnishes OPRA Data to nonprofessional subscribers (other than nonprofessional subscribers in respect of whom a vendor elects to pay usage-based vendor fees).	Up to 75,000: \$1.25 per nonprofessional subscriber ("nonpro") 75,001–150,000: \$1.15 per nonpro 150,001–250,000: \$1.00 per nonpro 250,001–500,000: \$0.75 per nonpro 500,001 +: \$0.60 per nonpro
Usage-based Vendor Fee (Applicable in respect of professional subscribers who enter into Subscriber Agreements with Vendors in place of Professional Subscriber Agreements with OPRA, and in respect of nonprofessional subscribers to Basic Service in place of flat monthly Nonprofessional Subscriber Fee): Monthly fee payable in arrears by a vendor with respect to the use of OPRA Data by persons that enter into Subscriber Agreements with vendors. Usage-based vendor fees apply to each "quote packet" or, if elected in writing by the vendor with respect to the Basic Service, to each "options chain." <sup>5</sup> All inquiries are counted for purposes of calculating usage-based fees, except that requests for "delayed" and "historical" OPRA Data are not counted. <sup>6</sup>	\$0.0075 per "quote packet" or \$0.03 per "options chain", subject to a stated maximum amount per month <sup>7</sup>
Redistribution Fee: Monthly fee payable by every vendor that redistributes OPRA Data to any person, whether on a current or delayed basis, except that this fee does not apply to a Vendor whose redistribution of OPRA Data is limited solely to "historical" OPRA Data.	\$1,500; \$650 (Query service only) <sup>8</sup>
Subscriber Indirect Access Fee: A monthly fee payable by every professional subscriber that receives indirect access to OPRA Data via a data feed transmission from an OPRA vendor. This fee shall not apply to a subscriber (i) that receives a data feed transmission on a single, stand-alone computer for the sole purpose of providing a single-screen display of OPRA Data for the subscriber's internal use, (ii) whose access and entitlement to OPRA Data received via a data feed transmission is controlled by an authorized control service provider or by the vendor furnishing the data feed transmission, or (iii) that receives a data feed transmission solely for any Non-Display Use.	\$600
Direct Access Fee: Monthly fee payable by every vendor and professional subscriber that has been authorized by OPRA to receive OPRA Data directly from OPRA's processor. This charge includes one primary and one back-up circuit connection at the processor. Additional circuit connections are available at a monthly charge of \$100 per connection.	\$1,000
Monthly Non-Display Use Fees: <sup>9</sup>	
Category 1 Non-Display Use: .....	\$2000 per Enterprise <sup>10</sup>
Category 2 Non-Display Use: .....	\$2000 per Enterprise <sup>10</sup>
Category 3 Non-Display Use: .....	\$2000 per Platform <sup>11</sup>
Voice-Synthesized Market Data Service Fee: Monthly fee payable in arrears by every vendor or professional subscriber that offers a voice-synthesized market data service. (To offer such a service, a professional subscriber must enter into a Voice-Synthesized Market Data Service Rider to its Professional Subscriber Agreement.) The fee is based on the number of active simultaneously accessible ports of the voice-synthesized computer facility of the vendor or professional subscriber through which the service is furnished. Alternatively, a vendor (but not a professional subscriber) may elect in writing to pay a usage-based fee for OPRA Data accessed over vendor's voice-synthesized market data service as an alternative to the port-based fee. All inquiries are counted for purposes of calculating usage-based fees, except that requests for "delayed" and "historical" OPRA Data are not counted.	Port-based fee, same as device-based Professional Subscriber Fee treating each port as one device; or usage-based fee at a rate of \$0.005 per "quote packet" or \$0.02 per "options chain".
Control Service Fee: A monthly fee payable by every authorized control service provider that offers a market information electronic data control service to OPRA subscribers and in connection therewith has entered into a Data Control Service Agreement with OPRA.	\$2,800
Television Display Fee: A monthly fee payable by every Vendor that has entered into a Television Dissemination Rider with OPRA.	\$0.50 per 1,000 households reached <sup>12</sup>

<sup>7</sup> 17 CFR 200.30-3(a)(85).

## PROPOSED CHANGES TO THE OPTIONS PRICE REPORTING AUTHORITY FEE SCHEDULE—Continued

[Additions are *italicized*; Deletions are [bracketed].]

Description	Basic Service <sup>1</sup>
Hosted Solution Fee: Monthly fee payable by each Vendor with respect to Hosted Solutions that it administers on behalf of third parties. (The term “Hosted Solution” is defined in OPRA’s document entitled “Policy with respect to Hosted Solutions.”) The Current Data “Enterprise” alternative entitles the Vendor to provide to third parties an unlimited number of Hosted Solutions disseminating current and/or delayed OPRA Data; the Delayed Data “Enterprise” alternative entitles the Vendor to provide to third parties an unlimited number of Hosted Solutions disseminating delayed OPRA Data.	<ul style="list-style-type: none"> <li>• Current Data: \$100 per Hosted Solution or \$10,000 Enterprise</li> <li>• Delayed Data: \$50 per Hosted Solution or \$5000 Enterprise</li> </ul>

**Third Party Fee Caps**

The fees in the table above are charged by OPRA itself for OPRA Data.

<sup>1</sup> OPRA’s Basic Service includes all last sale and quotation information pertaining to equity options and index options, including foreign currency index options.

<sup>2</sup> Copies of these Policies will be mailed to any Subscriber upon request. Among other things, these Policies describe the circumstances in which a Professional Subscriber may count “User IDs” that are capable of receiving OPRA information as a surrogate for counting “devices,” that display OPRA information, and pay OPRA’s Professional Subscriber Fees based on the number of its User IDs rather than on the number of its devices.

<sup>3</sup> OPRA offers new Professional Subscribers the opportunity to receive OPRA’s Basic Service on a “free trial” basis—that is, without payment of Professional Subscriber Device-Based Fees—for the first 30 days. In order to qualify for the 30-day free trial, a new Subscriber must sign a Professional Subscriber Agreement and indicate on the Agreement that it wishes to subscribe for a 30-day free trial period. Unless the Subscriber notifies OPRA in writing before the end of the 30-day trial period that it wishes to cancel its subscription to OPRA’s Basic Service, the Subscriber will be obligated to pay access fees to OPRA at the device-based rate (or the alternative Enterprise Rate) commencing on the 31st day following the day its subscription to the Basic Service was initiated.

<sup>4</sup> As an alternative to the Device-Based Professional Subscriber Fee, OPRA’s Enterprise Rate Professional Subscriber Fee is available to those Subscribers that (i) are members or associate members in good standing of one or more of the exchanges that are parties to the OPRA Plan, and (ii) elect to pay Subscriber Fees at the Enterprise Rate by signing the Enterprise Rate Amendment to the Subscriber Agreement. The Enterprise Rate Subscriber Fee in effect commencing January 1, 2017, is a monthly fee of \$30.50 times the number of a Subscriber’s registered representatives based in the United States, its territories and possessions as reported by FINRA, subject to a minimum monthly fee of \$6,100 per subscriber, and commencing January 1, 2018, the monthly fee becomes \$31.50 per registered representative as so reported subject to a minimum monthly fee of \$6,300; in each case subject to adjustment in accordance with the Enterprise Rate Amendment to the Subscriber Agreement. (In reporting the number of its registered representatives, Subscriber need not include persons previously registered as representatives who are at the time of the report legally prohibited from acting as registered representatives (because, for example, their registrations have lapsed, been suspended, or terminated) and who are not so acting.) Payment of the Enterprise Rate Professional Subscriber Fee entitles Subscriber to access OPRA’s Basic Service at any of its locations in the United States, its territories and possessions, except that Subscribers who pay the Enterprise Rate Professional Subscriber Fee on the basis of more than 7,000 registered

representatives (*i.e.*, a monthly fee in excess of \$213,500 in 2017 and \$220,500 in 2018) are entitled to access OPRA’s Basic Service at any of their locations worldwide. In addition, payment of the Enterprise Rate Professional Subscriber Fee by a Subscriber allows OPRA’s Basic Service to be made available to independent investment advisers who are under contract with the Subscriber to provide investment advisory services to the Subscriber’s customers. All such investment advisers will be deemed to be registered representatives of the Subscriber for purposes of calculating the Subscriber’s Enterprise Rate Professional Subscriber Fee.

<sup>5</sup> A “quote packet” 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; an “options chain” 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.

<sup>6</sup> OPRA Data becomes “delayed” after at least 15 minutes have passed since the information was first transmitted by OPRA, OPRA’s processor or an OPRA Participant to vendors. OPRA Data derived from a given trading day of an options market becomes “historical” upon the opening of trading on the next succeeding trading day of that market.

<sup>7</sup> Usage-based Vendor Fees for Basic Service may not exceed the following maximum monthly amounts: For a professional subscriber, the monthly fee is capped at the highest per-device fee applicable to a professional subscriber times the number of the professional subscriber’s authorized user IDs; for a nonprofessional subscriber, the monthly fee is capped at \$1.25.

<sup>8</sup> A Vendor’s Service qualifies for the “Query service only” rate if the Vendor’s Service provides access to OPRA Data only on a “query” basis without any auto-refreshing capability and does not redistribute OPRA Data via dedicated lines or to the systems of one or more other Vendors (sometimes referred to as “downstream Vendors”) or to one or more Hosted Solutions.

<sup>9</sup> Non-Display Use refers to the accessing, processing or consuming by an OPRA data recipient (either an OPRA vendor or an OPRA professional subscriber that has entered into a Professional Subscriber Agreement directly with OPRA) of OPRA market data, whether delivered directly from OPRA’s processor and/or indirectly from an OPRA vendor, for a purpose other than in support of the data recipient’s display or further internal or external redistribution of the OPRA data, and whether or not the use of the OPRA data is made on a device that is also displaying the OPRA data. Non-Display Use includes, without limitation, trading (such as in a “black box” or a trading engine that performs automated trading, algorithmic trading or program trading, or generates arbitrage or program trading orders); automated order or quote generation and/or order pegging; price referencing for algorithmic trading; operations control programs; investment analysis; order verification; surveillance programs; risk management; compliance; and portfolio valuation.

OPRA recognizes three categories of Non-Display Use. Category 1 applies when a data recipient’s

Non-Display Use is on its own behalf. Category 2 applies when a data recipient’s Non-Display Use is on behalf of its clients. Category 3 applies when a data recipient’s Non-Display Use is for the purpose of internally matching buy and sell orders within the data recipient. Matching buy and sell orders includes matching customer orders on the data recipient’s own behalf and/or on behalf of its clients. Category 3 includes, but is not limited to, use in trading platform(s), such as exchanges, alternative trading systems (“ATSs”), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, and systematic internalization systems. The Category 1 Non-Display Fee shall not apply in the case of an OPRA data recipient during any complete calendar month during which the data recipient (i) has a single UserID (a single natural person) that uses OPRA data for Non-Display Use for the benefit of that UserID and (ii) is not a broker-dealer and does not place more than 390 orders in listed options per day on average during the calendar month (counting orders for this purpose in accordance with the rules of the OPRA Participant exchanges to which it submits orders during the month) for its own beneficial account(s).

The Non-Display Use charges apply separately for each of the three categories of Non-Display Use. One, two or three categories of Non-Display Use may apply to one organization. Professional Subscriber servers and other devices that are used solely for Non-Display Use are not subject to Professional Subscriber Device-Based Fees, but if a Professional Subscriber uses a server or other device for a Non-Display Use and also to display OPRA data the Professional Subscriber will be subject to the applicable Non-Display Use fees and to the Professional Subscriber Device-Based Fee.

An organization that uses data for Category 3 Non-Display Use must count each “Platform” (this term is defined in footnote 12) that uses data on a non-display basis. For example, an organization that uses OPRA Data for the purposes of operating an ATS and also for operating a broker crossing system not registered as an ATS would be required to pay two Category 3 Non-Display Use fees.

An OPRA data recipient must make a declaration to OPRA of its Non-Display Use of OPRA data upon commencing the Non-Display Use and thereafter upon any change in the recipient’s Non-Display Use. In addition, each OPRA data recipient will be required to make an annual declaration to OPRA of its Non-Display Use of OPRA data. OPRA will not require monthly reporting with respect to Non-Display Use of OPRA data.

<sup>10</sup> An “Enterprise” is an OPRA data recipient together with the wholly-owned subsidiaries of the data recipient.

<sup>11</sup> A “Platform” is a platform for internally matching buy and sell orders. Matching buy and sell orders includes matching customer orders on a data recipient’s own behalf and/or on behalf of its clients. The term “Platform” includes, but is not restricted to, exchanges, alternative trading systems (ATSs), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, and systematic internalization systems.

In addition, in order to directly access OPRA Data as made available by OPRA's processor, the Securities Industry Automation Corporation ("SIAC"), direct data recipients must procure connectivity to the OPRA Data at a location where SIAC, or a third party utilized by SIAC, makes it available. OPRA has contractually capped the connectivity or "port" fees that SIAC, or any third party utilized by SIAC, may charge to provide direct connectivity to OPRA Data. The port fee caps are:

- \$16,000 per month per 10 Gb port
- \$20,500 per month per 40 Gb port
- \$30,000 per month per 100 Gb port

Each of these fee caps is inclusive of cross-connect fees and apply regardless of whether or not such fees also cover direct access to other data in addition to OPRA Data.

These connectivity fees are not charged, collected, or retained by OPRA. OPRA is including these port fee caps in its Fee Schedule so that market participants can better ascertain the recurring costs associated with obtaining direct access to OPRA Data.

[FR Doc. 2023-16392 Filed 8-1-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98005; File No. SR-CBOE-2023-019]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Make Permanent the Operation of its Pilot Program That Allows the Exchange to List P.M.-Settled Third Friday-of-the-Month Mini-SPX Index Options and Mini-Russell 2000 Index Options Series

July 27, 2023.

#### I. Introduction

On April 19, 2023, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant

<sup>12</sup> The term "households reached" is defined in the Television Dissemination Rider. Prorating of the "per 1,000 households reached" fee (but not the monthly maximum) is permitted if Vendor displays OPRA Data for less than its entire business day, based upon the number of minutes current OPRA Data is displayed by Vendor divided by 390 (or such other number as OPRA reasonably designates from time to time to represent the number of minutes that the U.S. markets are open for trading). Vendor may simulcast over multiple television channels and not be charged more than once for households reached that have access to multiple simulcast channels.

to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make permanent the operation of its pilot program ("Program") that permits the Exchange to list p.m.-settled third Friday-of-the-month Mini-SPX Index ("XSP") options and Mini-Russell 2000 Index ("MRUT"). The proposed rule change was published for comment in the **Federal Register** on April 28, 2023.<sup>3</sup> On June 9, 2023, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission did not receive any comment letters on the proposed rule change. The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to make permanent a pilot program that permits the Exchange to list and trade cash-settled XSP and MRUT options with third Friday-of-the-month expiration dates ("Expiration Friday") whose exercise settlement value is derived from closing prices on the last trading day prior to expiration ("p.m.-settled XSP" and "p.m.-settled MRUT," respectively, and collectively, the "Pilot Products").

In July 2013, the Commission approved the Program to list and trade p.m.-settled XSP options on a pilot basis.<sup>7</sup> In February 2021, the Commission approved a rule change that amended the Program to allow the exchange to list and trade p.m.-settled MRUT options.<sup>8</sup> In approving the Program, the Commission noted its concern about the potential impact on the market at expiration for the underlying component stocks for a p.m.-

settled, cash-settled index options.<sup>9</sup> However, the Commission also recognized the potential impact was unclear.<sup>10</sup> The Commission approved the Program on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.<sup>11</sup> In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis in connection with the Program.<sup>12</sup> The Exchange has filed to extend the operation of the Program on multiple occasions<sup>13</sup> and it is currently set to expire on the earlier of November 6, 2023, or the date on which the Program is approved on a permanent basis.<sup>14</sup>

Since the Program's inception in 2013 for XSP and 2021 for MRUT, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange's experience with the Program, pursuant to the XSP and MRUT Approval Orders.<sup>15</sup> Specifically, the Exchange states it has submitted annual pilot reports to the Commission that contain an analysis of volume, open interest, and trading patterns.<sup>16</sup> The analysis examines trading in the Pilot Products, as well as trading in the securities that comprise the underlying indexes. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The Exchange states it has also submitted periodic interim reports that contain some, but not all, of the information contained in the annual reports (together with the annual reports, the "pilot reports").<sup>17</sup> The Exchange states that, during the course of the Program, it has provided

<sup>9</sup> See XSP Approval Order, 78 FR at 47811; and MRUT Approval Order, 86 FR at 9109. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options); 65256 (September 2, 2011), 76 FR 55969, 55970-76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options); and 68888 (February 8, 2013), 78 FR 10668, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on CBOE).

<sup>10</sup> See XSP Approval Order, 78 FR at 47811; and MRUT Approval Order, 86 FR at 9109.

<sup>11</sup> See XSP Approval Order, 78 FR at 47811; and MRUT Approval Order, 86 FR at 9109.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR-CBOE-2014-004); and 96222 (November 3, 2022), 87 FR 67736 (November 9, 2022) (SR-CBOE-2022-054).

<sup>14</sup> See Securities Exchange Act Release No. 97446 (May 5, 2023), 88 FR 30365 (May 11, 2023).

<sup>15</sup> See *supra* note 12.

<sup>16</sup> See Notice, 88 FR at 26361.

<sup>17</sup> See *id.*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 97366 (April 24, 2023), 88 FR 26359 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 97678, 88 FR 39285 (June 15, 2023). The Commission designated July 27, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055) ("XSP Approval Order").

<sup>8</sup> See Securities Exchange Act Release No. 91067 (February 5, 2021) 86 FR 9108 (February 11, 2021) (SR-CBOE-2020-116) ("MRUT Approval Order").