

and have recently been told that their competitors may not be paying the fees on the basis of the “datafeed” argument. OPRA recognizes that equal treatment for persons similarly situated is an essential aspect of its operations, and believes that elimination of the word “datafeed” is important to providing equal treatment for persons making Non-Display Use of OPRA data. Similarly, OPRA believes that it is appropriate to provide relief from the Non-Display Fee for all data recipients that make limited Category 1 Non-Display Use of OPRA data within the scope of the exception. Finally, OPRA believes that it is appropriate to reinforce the concept that Non-Display Use Fees would be applicable if Non-Display Use is being made of OPRA data, even if the Non-Display Use is being made on a device that is subject to Professional Subscriber Device-Based Fees, again in furtherance of the fundamental concept that persons similarly situated should be treated equally.

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

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 of Regulation NMS under the Act, OPRA designated this amendment as establishing or changing fees or other charges collected on behalf of all of the OPRA Participant exchanges in connection with access to or use of OPRA facilities. OPRA proposes to implement the revisions in the Non-Display Use Fee footnotes that are described in this amendment on November 1, 2016. According to OPRA, implementation of the revisions as of that date will permit OPRA to provide persons that may be affected by these changes with thirty days’ notice of the changes.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act¹⁰ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or 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.¹¹

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 email to rule-comments@sec.gov. Please include File No. SR–OPRA–2016–02 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–2016–02. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the OPRA Plan amendment that are filed with the Commission, and all written communications relating to the OPRA 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 Web site 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–2016–02 and should be submitted on or before November 21, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–26136 Filed 10–28–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79152; File No. SR–OPRA–2016–01]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend the Professional Subscriber Device-Based Fees and Policies with Respect to Device-Based Fees

October 25, 2016.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder,² notice is hereby given that on September 29, 2016, 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 OPRA Plan Amendment would implement changes to the Professional Subscriber Device-Based Fee effective January 1, 2017. The OPRA Plan Amendment would also implement minor clarifying changes to the Policies with Respect to Device-Based Fees, effective immediately. The Commission is publishing this notice to provide interested persons an opportunity to submit written comments on the 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 fourteen participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, EDGX Exchange, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, NYSE MKT LLC, and NYSE Arca, Inc.

¹⁰ See 17 CFR 242.608(b)(2).

¹¹ See 17 CFR 242.608(b)(3)(iii).

I. Description and Purpose of the Plan Amendment

(a) Fee Schedule Amendments

The primary purpose of the proposed Fee Schedule amendments is to specify OPRA's Professional Subscriber Device-Based Fee effective commencing January 1, 2017 and make conforming changes in OPRA's Enterprise Rate Professional Subscriber Fee. OPRA's Enterprise Rate Professional Subscriber Fee is available to those Professional Subscribers that elect that rate in place of the regular OPRA device-based fees.⁴

Specifically, OPRA proposes, effective January 1, 2017, to: (1) Increase the current \$29.50 monthly per device fee by \$1.00; (2) to increase the Enterprise Rate, currently a monthly fee of \$29.50 times the number of a Professional Subscriber's U.S.-based registered representatives, to be a monthly fee of \$30.50 times the number of the Subscriber's U.S.-based registered representatives; and (3) make conforming changes to the minimum monthly fee under the Enterprise Rate. "Professional Subscribers" are persons who subscribe to OPRA data, do not qualify for the reduced fees charged to "Nonprofessional Subscribers," and do not redistribute the OPRA data to third parties. OPRA permits the counting of "User IDs" as a surrogate for counting "devices" for purposes of its Professional Subscriber Device-based Fees.⁵

The number of devices reported to OPRA as subject to Professional Subscriber Device-Based Fees has been steadily trending downwards over many years. In 2008, OPRA received device-based fees, including enterprise fees, with respect to approximately 210,500 devices. In 2014, OPRA received device-based fees, including enterprise fees, with respect to approximately 148,400 devices, and in 2015 OPRA received device-based fees, including enterprise fees, with respect to approximately 141,300 devices. OPRA is receiving device-based fees in the third calendar quarter of 2016 with respect to approximately 135,500 devices—already a reduction of approximately 4.1% from 2015. OPRA believes that this long-term downward trend is the result of the increasing use of trading algorithms and automated trading platforms and other fundamental changes in the securities

⁴ OPRA's Enterprise Rate is based on the number of a Professional Subscriber's U.S. registered representatives and independent investment advisers who contract with the Subscriber to provide advisory services to the Subscriber's customers.

⁵ See footnote 2 in the OPRA Fee Schedule and OPRA's Policies with respect to Device-based Fees.

industry, and OPRA anticipates that this trend is likely to continue.

The proposed increase in the Professional Subscriber Device-Based Fees is consistent with OPRA's past practice of making incremental \$1.00 increases in its monthly Professional Subscriber Device-Based Fees,⁶ and OPRA believes that OPRA's Professional Subscribers should not be surprised by the increase. The proposed increase in the Professional Subscriber Device-Based Fee—which is an increase of approximately 3.4%—will partially offset the impact on revenue of the reduction in the number of devices in 2016 as compared to 2015.

A secondary purpose of the proposed Fee Schedule amendments is to add the word "display" in the statements of the monthly Professional Subscriber Device-Based Fees for the periods commencing on January 1, 2016 and January 1, 2017. A few OPRA Professional Subscribers have asked whether, if a device is subject to the Professional Subscriber Device-Based Fees, it is therefore not subject to the OPRA Non-Display Use Fees, and suggested that a Subscriber could perhaps avoid payment of Non-Display Use Fees by attaching a display monitor to a server even if the server is being used for Non-Display Use of OPRA data. OPRA believes that this suggestion is not consistent even with the current wording of the Fee Schedule, but that the addition of the word "display" will make the wording clearer in this respect.

(b) Changes in the Policies With respect to Device-Based Fees

The proposed changes in the Policies with respect to Device-Based Fees are for a purpose similar to the purpose described above of adding the word "display" in the OPRA Fee Schedule, namely to avert misreading the Policies as saying that, if a Professional Subscriber is paying Device-Based Fees with respect to a device, the payment of the Device-Based Fees in and of itself is a sufficient basis for not paying Non-Display Use Fees even if the Non-Display Use Fees would otherwise be applicable. No Professional Subscriber

⁶ The year 2015 was an exception: For 2015, OPRA implemented an increase of \$1.50 in its Professional Subscriber Device-Based Fee, because during 2015 one of OPRA's member exchanges initiated after-hours trading, causing OPRA to incur additional expenses associated with data dissemination during expanded trading hours. OPRA implemented \$1.00/month increases in its Professional Subscriber Device-Based Fee for each of the years 2008–2014 and for the year 2016. See, Securities Exchange Act Release No. 72826, 79 FR 48777 (August 18, 2014) (File No. OPRA–2014–06) and Securities Exchange Act Release No. 77585, 81 FR 22668 (April 18, 2016) (File No. OPRA–2015–02).

has actually suggested such a reading to OPRA, and OPRA believes that the suggestion would be untenable even in terms of the current phrasing of the Policies, but OPRA believes that it is appropriate to revise the Policies to make clearer that the Device-based Fees may not be the only fees applicable to a particular device that receives OPRA data.

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

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (b)(3)(i) of Rule 608 of Regulation NMS under the Act, OPRA designated this amendment as establishing or changing fees or other charges collected on behalf of all of the OPRA participant exchanges in connection with access to or use of OPRA facilities. OPRA proposes to implement the changes in the Professional Subscriber Device-Based Fee on January 1, 2017. Implementation of the changes in the Professional Subscriber Device-Based Fee on January 1 is consistent with OPRA's prior practice with respect to changes in this fee, and will provide ample opportunity to give persons subject to this fee advance notice of the change. OPRA also proposes to implement the changes in the Policies with respect to Device-Based Fees immediately.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act⁷ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or 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.⁸

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

⁷ See 17 CFR 242.608(b)(2).

⁸ See 17 CFR 242.608(b)(3)(iii).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-OPRA-2016-01 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-2016-01. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the OPRA Plan amendment that are filed with the Commission, and all written communications relating to the OPRA 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 Web site 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-2016-01 and should be submitted on or before November 21, 2016.

By the Commission.

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79149; File No. SR-BatsBZX-2016-65]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to BZX Rule 11.13, Order Execution and Routing

October 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 12, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.13(b)(1) to describe when an order marked as "short" may be eligible for routing when a short sale price test restriction is in effect.

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.13(b)(1) to describe when an order to sell marked⁵ as "short"⁶ may be eligible for routing when a short sale price test restriction is in effect. Under Rule 201 of Regulation SHO,⁷ a short sale order in a covered security⁸ generally cannot be executed or displayed by a Trading Center,⁹ such as the Exchange, at a price that is at or below the current national best bid ("NBB")¹⁰ when a short sale circuit breaker is in effect for the covered security (the "short sale price test restriction").¹¹

Under Rule 11.13(b)(1), an order marked "short" when a short sale price test restriction is in effect is not eligible for routing by the Exchange. If an order is ineligible for routing due to a short sale price test restriction and such order is an Immediate or Cancel ("IOC") Order¹² or a BZX Market Order,¹³ then

⁵ 17 CFR 242.200(g).

⁶ The term "short sale" is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." 17 CFR 242.200(a).

⁷ See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

⁸ Rule 201(a)(1) of Regulation SHO defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

⁹ Rule 201(a)(9) of Regulation SHO states that the term "Trading Center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) of Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.200(a)(9); 17 CFR 242.600(b)(78).

¹⁰ 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

¹¹ 17 CFR 242.201(b)(1).

¹² See Exchange Rule 11.9(b)(1).

¹³ See Exchange Rule 11.9(a)(2). The Exchange also proposes to remove the reference to BZX Market Orders in Rule 11.13(b)(1) as BZX Market Orders with a time-in-force of Day that are ineligible for routing due to a short sale price test restriction pursuant to Rule 201 of Regulation SHO

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).