

Applicants submit that the ADR Portfolio has substantially outperformed the Foreign Equity Portfolio. Moreover, the total expenses of the Substituted Portfolio will not rise above the current level of 1.30% as can the Foreign Equity Portfolio's expenses. Should Contract owners with current allocations in the Eliminated Portfolio determine that another investment is more appropriate, they will be able to transfer their Contract value to any of the remaining investment divisions available under the Contract without incurring any charges.

16. The Substitution (1) Will be effected by redeeming shares of the Eliminated Portfolio on the Automatic Selection Date at net asset value and using the proceeds to purchase shares of the Substituted Portfolio as net asset value on the same date; (2) Contract owners will not incur any fees or charges as a result of the transfer of account values from the Eliminated Portfolio; (3) All Contract values will remain unchanged and fully invested; (4) The Substitution will not increase Contract or Separate Account fees and charges after the Substitution; (5) Contract owners' rights and GWL&A's obligations under the Contracts will not be altered in any way; and (6) All expenses incurred in connection with the Substitution, including legal, accounting and other expenses, will not be borne by Contract owners as they will be paid by either GWL&A or GW Capital Management, LLC. The Substitution will be effected as net asset value in conformity with section 22 of the 1940 Act and Rule 22c-1 thereunder. In addition, as of the date of filing this amended and restated Application, Applicants represent that to the best of their knowledge, the Substitution will not result in any adverse federal income tax consequences to Contract owners.

#### Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of securities.

3. Applicants represent that the purposes, terms and conditions of the Substitution are consistent with the protections for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent.

4. Any Contract owner who does not want his or her assets allocated to the Substituted Portfolio would be able to transfer assets to any one of the other investment divisions available under his/her Contract without charge. Such transfers could be made prior to or after the Automatic Selection Date.

#### Conclusion

In light of the foregoing facts and representations, Applicants believe that the request to allow the Substitution meets the applicable standards of an order under Section 26(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42152; File No. SR-OPRA-99-02]

#### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Revising Certain of its Subscriber Fees

November 17, 1999.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 27, 1999, the Options Price Reporting Authority ("OPRA"),<sup>1</sup> submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment revises or eliminates certain

<sup>1</sup> OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("PHLX").

of the facilities and access fees charged by OPRA in respect of its Basic Service. Fee revisions consist of proposed reductions in usage-based fees for access to OPRA's dial-up market data service, voice-synthesized market data service and radio paging service, a proposed reduction in the nonprofessional subscriber fee, and a proposed increase in OPRA's device-based information fee payable by professional subscribers. In addition, OPRA proposes to eliminate its port-based dial-up market data service utilization fee.

OPRA has designated this proposal as concerned solely with establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3-2(c)(3)(i) under the Act.<sup>2</sup> The Commission is publishing this notice to solicit comments from interested persons on the proposed amendment.

#### I. Description and Purpose of the Amendment

The purpose of the amendment is to revise certain of the fees payable to OPRA by professional and nonprofessional subscribers and vendors for access to OPRA's Basic Service, which consists of market data and related information pertaining to equity and index options ("OPRA Data").<sup>3</sup> The revisions reflect significant decreases in various usage-based vendor fees and in the nonprofessional subscriber fee, and a modest increase in the professional subscriber fee. In addition, OPRA proposes to eliminate its port-based dial-up market data service utilization fee.

Specifically, OPRA proposes to decrease the three usage-based fees which apply to vendors who provide a dial-up market data service (which may include an Internet service) or a radio paging service, and to vendors or subscribers who provide a voice-synthesized market data service. Currently, usage-based fees for these three services range from two cents to one cent (\$.02-\$.01) per quote packet, depending on total usage. OPRA proposes to reduce all three usage-based fees to a flat rate fee of one-half cent (\$.005) per quote packet, and to institute new usage-based fees for access to these services of two cents (\$.02) per "options chain," which may be elected as an alternative to the per quote packet fee.

<sup>2</sup> 17 CFR 240.11Aa3-2(c)(3)(i).

<sup>3</sup> No changes are proposed at this time for fees charged to vendors and subscribers for access to information pertaining to foreign currency options provided through OPRA's FCO Service.

An "options chain" may include quotes on all series of options on the same underlying interest. Since a single options chain may include many separate quote packets covering different series of put and call options on a single underlying interest, this alternative usage-based fee will generally result in lower fees as compared with straight quote-based pricing.

In addition, OPRA is proposing to cap total usage-based fees payable by a vendor in any month for the use of its dial-up service by any individual nonprofessional subscriber so that such fees will not exceed an amount equal to the monthly nonprofessional subscriber fee, which is proposed to be reduced to \$1.00 per month. Under the proposed change to usage-based fees, a vendor who provides a dial-up service to its customers will still be able to choose whether to pay information fees on account of this service on the basis of the number of requests for quotes actually made by its customers, or by paying a flat-rate nonprofessional subscriber fee of \$1.00 per month for each of its customers who qualify as nonprofessional subscribers. However, if a vendor elects to pay usage-based fees, the monthly fee for each nonprofessional subscriber will not exceed the flat-rate nonprofessional subscriber fee.

OPRA also proposes to reduce the monthly nonprofessional subscriber fee from the current rate of \$2.50 per nonprofessional subscriber to a rate of \$1.00 per nonprofessional subscriber. This will substantially lower the cost of access to real time options market information for those nonprofessional investors who subscribe to this information by paying a flat monthly fee. Also, because as described above, the monthly nonprofessional subscriber fee is proposed to serve as a cap on usage-based fees for dial-up services provided to nonprofessional subscribers, reducing this fee will result in lower costs for vendors who provide dial-up (or Internet) services to this category of investors.

OPRA proposes to increase device-based professional subscriber<sup>4</sup> fees by amounts ranging from 5.00% to 6.25% of the existing fees. Professional subscriber fees charged to members will continue to be discounted by 2% for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system. OPRA

estimates that the overall effect of the proposed increase in professional subscriber fees will be to increase revenues derived from device-based professional subscriber fees by approximately 5.15%. As an alternative to device-based fees, professional subscribers may pay an enterprise rate fee based on the number of their U.S. registered representatives. No changes are proposed to be made to the enterprise rate fee.

The proposed increase in the amount of the professional subscriber fee is intended to increase OPRA revenues derived from device-based subscriber fees in order to offset revenues lost as a result of the reductions in usage-based fees and nonprofessional subscriber fees described above. It is also intended to generate additional revenue to cover actual and anticipated increases in the costs of collecting, consolidating, processing, and transmitting options market information necessitated by the continued expansion of the listed options business, including major improvements and upgrades in the OPRA system to enable it to handle that expansion.

Finally, OPRA is proposing to eliminate its port-based fee currently imposed on vendors who offer a dial-up market data utilization service. The port-based fee has been an alternative to the usage-based fee, which is proposed to be reduced as described above, for vendors who provide a dial-up service to customers who may not all be professional or nonprofessional subscribers. The elimination of this port-based fee reflects that in recent years, as communications technology has continued to improve, a single high-capacity port may now be used by a vendor to provide a dial-up service to the same number of customers that once required tens or even hundreds of ports. As a result, the number of ports used by a vendor no longer serves as a meaningful measure of the extent of the vendor's total service. Thus a port-based fee no longer provides a fair and equitable way to allocate among vendors the fees imposed by OPRA on providers of a dial-up service, which is why OPRA proposes to eliminate it.

## II. Solicitation of Comments

Pursuant to Rule 11Aa3-2(c)(3),<sup>5</sup> because the amendment is concerned solely with changing fees charged on behalf of OPRA, the amendment is effective upon filing with the Commission. To give persons subject to these fees advance notice of the changes, OPRA proposes to put the

revised fees into effect commencing January 1, 2000. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2),<sup>6</sup> if it appears to the Commission 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.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, 450 Fifth Street, N.W., Washington, D.C., 20549-0609. Copies of the submission, all subsequent amendments, and 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 withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-99-02 and should be submitted by December 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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<sup>4</sup> Professional subscribers are those persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers.

<sup>5</sup> 17 CFR 240.11Aa3-2(c)(3).

<sup>6</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(29).