

advisory fee they pay would not be affected.

### **Applicant's Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Trust will disclose in its registration statement the Limited Fee Disclosure.

2. The Adviser or Advisory Affiliate will not enter into a Portfolio Management Agreement with any Affiliated Manager without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

3. At all times, a majority of each Trust's Board will be persons each of whom is not an "interested person" of the Trust as defined in Section 2(a)(19) of the Act ("Independent Trustees"), and the nomination of new or additional Independent Trustees to be at the discretion of the then existing Independent Trustees.

4. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Trust. The selection of such counsel will remain within the discretion of the Independent Trustees.

5. The Adviser or Advisory Affiliate will provide the Board of each Trust, no less than quarterly, information about the Adviser's or Advisory Affiliate's profitability for each Portfolio relying on the relief requested in this application. Such information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

6. Whenever a Manager is hired or terminated, the Adviser or Advisory Affiliate will provide the Board information showing the expected impact on the Adviser's or Advisory Affiliate profitability.

7. When a Manager change is proposed for a Portfolio with an Affiliated Manager, each Trust's Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or Advisory

Affiliate, or the Affiliated Manager derives an inappropriate advantage.

8. Before an Existing Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of its outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a New Portfolio whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 11 below, by the sole initial shareholder(s) before offering shares of that New Portfolio to the public.

9. For each Trust's Portfolio relying on the requested order, the Adviser's or Advisory Affiliate will provide general management services, including overall supervisory responsibility for the general management and investment of the Portfolio's securities portfolio, and, subject to review and approval by the Trust's Board will (i) set the Portfolio's overall investment strategies; (ii) select Managers; (iii) when appropriate, allocate and reallocate the Portfolio's assets among multiple Managers; (v) monitor and evaluate the performance of Managers; and (v) ensure that the Managers comply with the Portfolio's investment objectives, policies and restrictions.

10. Within 60 days of the hiring of any new Manager, shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) will be furnished all information about the new Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager. The Adviser or Advisory Affiliate will meet this condition by providing shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Schedule 14A under the Exchange Act, except as modified by the order to permit Limited Fee Disclosure.

11. Each Trust will disclose in its prospectus the existence, substance, and

effect of any order granted pursuant to the application. In addition, each Portfolio relying on the requested order will hold itself out to the public as employing the Manager of Managers Strategy described in this application. The prospectus will prominently disclose that the Adviser or Advisory Affiliate has ultimate responsibility (subject to oversight by the Board) to oversee the Managers and recommend their hiring, termination, and replacement.

12. No trustee or officer of the Trusts or director or officer of the Adviser or Advisory Affiliate will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Manager except for (i) ownership of interests in the Adviser or Advisory Affiliates or any entity that controls, is controlled by, or is under common control with the Adviser or Advisory Affiliates; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IC-23600; 812-11144]

### **Quantitative Group of Funds, et al.; Notice of Application**

December 15, 1998.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** Applicants, Quantitative Group of Funds (the "Trust") and Quantitative Advisors, Inc. (the "Adviser"), request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

**FILING DATES:** The application was filed on May 11, 1998, and amended on August 31, 1998, and November 23, 1998. Applicants have agreed to file an

amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 55 Old Bedford Road, Lincoln, Massachusetts 01773.

**FOR FURTHER INFORMATION CONTACT:** Edward P. Macdonald, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. no. 202-942-8090).

### Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust consists of six separate series ("Funds")

2. The Adviser, registered under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as investment adviser for the Trust under an investment advisory agreement ("Adviser Agreement"). Under the Adviser Agreement, the Adviser is responsible for providing investment advisory and administrative services to the Funds and is also responsible for selecting subadvisers ("Fund Managers"), subject to the ultimate approval of the board of trustees for each Fund (the "Board"). The Trust pays the Adviser a fee for its services with respect to each Fund.

3. Under agreements between Fund Managers and the Adviser ("Fund Manager Agreements") each Fund Manager provides day-to-day portfolio management services to its respective Fund. Each Fund currently uses a single Fund Manager. All Fund Managers are

registered under the Advisers Act, and none of the Fund Managers is an affiliated person of the Adviser within the meaning of section 2(a)(3) of the Act. The Adviser pays each Fund Manager out of the fees it receives from each Fund.

4. In selecting Fund Managers, the Adviser considers a number of criteria, including the nature of the strategy employed by the Fund Manager, the Fund Manager's performance in utilizing investment strategies similar to those used by the Funds, and the Fund Manager's reputation in the community. The Adviser monitors the Fund Managers' investment programs and performance on a daily basis and reports these results to the Board quarterly. In addition, the Adviser reviews brokerage matters, oversees compliance by the Funds with various federal and state statutes and carries out the directives of the Board.

5. Applicants request relief from section 15(a) of the Act and rule 18f-2 under the Act to permit the Adviser to enter into and amend fund Manager Agreements without shareholder approval.<sup>1</sup> The requested relief will not extend to a Fund Manager that is an "affiliated person" of either the Trust or the Adviser, as defined in section 2(a)(3) of the Act other than by reason of serving as Fund Manager to a Fund ("Affiliated Fund Manager").

### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that an exemption is appropriate in the public interest and consistent with the

<sup>1</sup> Applicants request that the relief apply to any registered open-end investment company that in the future is advised by the Adviser or any person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser and which operates in substantially in the same manner as the Trust. Applicants also request that the relief apply to any series of the Trust that may be created in the future. Applicants state that all existing investment companies that currently intend to rely on the requested order have been named as applicants, and any other existing or future investment companies that subsequently rely on the requested order will comply with the terms and conditions in the application.

protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' investors rely on the Adviser to provide overall management and operational services to the Funds, while the Fund Managers are responsible for the day-to-day management of the Funds. Applicants state that the Funds have employed an Adviser/Fund Manager structure since their inception in 1985, and that the Adviser has significant experience in selecting Fund Managers. Applicants assert that the requested relief will permit them to use that structure more efficiently. Applicants note that the Adviser Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a new Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of the order granted pursuant to the application. In addition, each Fund will hold itself out of the public as employing the "manager of managers" approach described in the application. The prospectuses will prominently disclose that the Adviser has ultimate responsibility to oversee the Managers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management and administrative services to the Funds, including overall supervisory responsibility for the general management and investment of the Funds' securities portfolios, and, subject to review and approval by each Board with respect to its respective Fund, will: (i) set the Funds' overall investment strategies; (ii) select Fund Managers; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Fund Managers; (iv) monitor and evaluate the performance of Fund Managers; and (v) ensure that

the Fund Managers comply with the relevant Fund's investment objectives, policies and restrictions.

4. At all times, a majority of the Board will be persons who are not "interested persons," within the meaning of section 2(a)(19) of the Act, of the Fund ("Independent Trustees"), and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

5. The Adviser will not enter into a Fund Manager's Agreement with any Affiliated Manager without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a Fund Manager change is proposed for a Fund with an Affiliated Manager, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Fund Manager derives an appropriate advantage.

7. No director, trustee or officer of the Funds or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle over which such persons do not have control) any interest in any Fund Manager except for: (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Fund Manager or an entity that controls, is controlled by, or is under common control with a Fund Manager.

8. Within 90 days of the hiring of any new Fund Manager, shareholders will be furnished all information about the new Fund Manager or Fund Manager Agreement that would be included in a proxy statement, including any change in the disclosure caused by the addition of a new Fund Manager. The information will include disclosure as to the level of fees to be paid to the Adviser and each Fund Manager. Each Fund will meet this condition by providing shareholders, within 90 days of the hiring of a Fund Manager, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 ("Exchange Act"). The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40791; File No. SR-OPRA-98-03]

### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Revising Certain of Its Facilities and Access Fees

December 15, 1998.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Exchange Act"), notice is hereby given that on December 7, 1998, the Options Price Reporting Authority ("OPRA"),<sup>1</sup> submitted to the Securities and Exchange Commission ("SEC" or "Commission") and amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment revises certain of the fees payable to OPRA by professional and nonprofessional subscribers and vendors for access to OPRA's Basic Service. 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 Exchange 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 modest increases in the professional and nonprofessional subscriber fees and certain port-based vendor fees, and decreases in the redistribution fee and in various usage-based vendor fees that are alternatives to port-based fees.

Specifically, OPRA is proposing to increase the nonprofessional subscriber fee from a flat monthly rate of \$2.00 to \$2.50. OPRA is also proposing to increase device-based professional subscriber fees by varying amounts, and to increase the enterprise rate professional subscriber fee payable by the largest subscribers (those with more than 20,000 registered representatives) from \$7.50 to \$10.00 per registered representative. Professional subscribers are those persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. The enterprise rate is available to professional subscribers as an alternative to device-based fees. The change in the enterprise rate for the largest subscribers will bring that fee for those subscribers to the same level that currently applies to subscribers with 20,000 or fewer registered representatives. Concurrently with this revision, the coverage of the enterprise rate will be extended to all of a subscriber's locations worldwide at no added cost for subscribers with at least 7,000 U.S. registered representatives. (Previously, the enterprise rate covered U.S. locations only.)

In proposing an increase of the professional subscriber fee, this amendment represents the fourth stage of a four-year fee revision program that was first described in 1995. Like the first three stages, this amendment is intended to increase OPRA revenues derived from device-based subscriber fees in order to permit a greater share of the costs of collecting, consolidating, processing and transmitting options market information to be covered by professional subscriber fees. 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 these fee revisions will increase revenues derived from device-based professional subscriber fees by approximately 7.6%.

<sup>3</sup>Proposed revisions to fees charged to subscribers for access to information pertaining to foreign currency options provided through OPRA's FCO Service are being proposed in a separate filing. See File No. SR-OPRA-98-4.

<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").

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