creating and filing the information required by the Form. The total burden hours for Form N–54C would be 8 hours per year in the aggregate. The estimated annual burden of 8 hours represents a decrease of 4 hours over the prior estimate of 12 hours. The decrease in burden hours is attributable to a decrease in the number of respondents from 12 to 8.

• *Form N–6F under the Investment Company Act of 1940, Notice of Intent to Elect to be Subject to Sections 55 through 65 of the Investment Company Act of 1940*

Certain companies may have to make a filing with the Commission before they are ready to elect on Form N–54A to be regulated as a business development company.[1] A company that is excluded from the definition of ''investment company'' by section 3(c)(1) of the Investment Company Act of 1940 because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such a company, under certain conditions, would not lose its exclusion if it notifies the Commission on Form N–6F [17 CFR 274.15] of its intent to make an election to be regulated as a business development company. The company only has to file a Form N–6F once.

It is estimated that approximately 0 respondents per year file with the Commission a Form N–6F. Form N–6F requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the Form. The total burden hours for Form N–6F would be 0 hours per year in the aggregate but we are requesting one hour for administrative purposes. The estimated annual burden of 1.0 hour represents no change from the prior estimate of 1.0 hour.

The estimates of average burden hours for Forms N–54A, N–54C and N–6F are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The collections of information under Forms N–54A, N–54C and N–6F are mandatory. The information provided by such Forms is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 11, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4043 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

[1] A company might not be prepared to elect to be subject to Sections 55 through 65 of the Investment Company Act of 1940 because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47363; File No. SR–CTA/CQ–2002–01]

Consolidated Tape Association; Order Approving the Fourth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Second Substantive Amendment to the Restated Consolidated Quotation Plan

February 12, 2003.

I. Introduction

On December 16, 2002, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan Participants (''Participants'') [1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans''), pursuant to Rule 11Aa3–2 [2] under the Securities Exchange Act of 1934 (''Act''). The proposal represents the 4th substantive amendment made to the Second Restatement of the CTA Plan (''4th Amendment'') and the 2nd substantive amendment to the Restated CQ Plan (''2nd Amendment''), and reflects several changes unanimously adopted by the Participants. The proposed amendments would introduce a capacity planning process into the Plans and would allocate among the Participants the costs associated with their capacity needs under the Plans. Notice of the proposed amendments was published in the **Federal Register** on December 26, 2002.[3]

Through the Notice, and pursuant to Rule 11Aa3–2(c)(4) under the Act,[4] the Commission granted temporary summary effectiveness to the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan. The Commission received no comments on the proposed amendments. The summary effectiveness expires on June 26, 2002.[5] This order approves the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan on a permanent basis.

II. Description of the Proposed Amendments

Through the proposed amendments to the Plans, the Participants have introduced a new capacity planning process into the Plans. The Participants will engage in the capacity planning process on a semi-annual basis. The proposed capacity planning process requires each Participant to submit its projected capacity needs directly to the Securities Industry Automation Corporation (''SIAC'' or ''Processor''), the processor under both Plans. The process avoids any need for Participants to share their individual capacity needs with one another. SIAC will provide each Participant with aggregate capacity projections for all Participants, but will not provide any individual Participant's capacity projections with any other Participant.

Under the proposed plan:

Semi-Annual Planning Cycles:

1. At the start of each semi-annual capacity planning cycle, each Participant will develop and submit to SIAC an initial set of projected capacity needs.

2. Once it receives all of the initial sets of projected capacity needs, SIAC will aggregate the initial projected capacity requirements for all of the Participants and will notify each Participant as to:

[1] Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC (''AMEX''); Boston Stock Exchange, Inc. (''BSE''); Chicago Board Options Exchange, Inc. (''CBOE''); Chicago Stock Exchange, Inc. (''CHX''); Cincinnati Stock Exchange, Inc. (''CSE''); National Association of Securities Dealers, Inc. (''NASD''); New York Stock Exchange, Inc. (''NYSE''); Pacific Exchange, Inc. (''PCX''); and Philadelphia Stock Exchange, Inc. (''PHLX'').

[2] 17 CFR 240.11Aa3–2.

[3] Securities Exchange Act Release No. 47030 (December 18, 2002), 67 FR 78832 (''Notice'').

[4] 17 CFR 240.11Aa3–2(c)(4).

[5] Pursuant to Rule 11Aa3–2(c)(4) under the Act, 17 CFR 240.11Aa3–2(c)(4), summary effectiveness granted to national market system plans (or provisions thereof) may not exceed 120 days in length.

a. the initial aggregate capacity projections for all Participants;

b. the percentage of capacity requirements attributable to that Participant; and

c. the amount of any projected excess capacity or any projected deficit capacity.

(SIAC determines the excess or deficit by comparing the capacity that the then existing systems under the Plans can provide and the aggregate projected capacity needs of the Participants.)

3. Each Participant will then notify the Processor of its final projected capacity needs.

4. Based on the information that SIAC provides, CTA and the CQ Operating Committee will determine and advise SIAC of any increase or decrease that they propose to make to the capacity of their respective systems. However, in directing SIAC to make any proposed change, the Participants must cause the system to have no less capacity than the capacity necessary to meet the aggregate projected capacity requirements for the system for all Participants.

5. SIAC will then submit to each Participant a proposal for increasing or decreasing total system capacity and each Participant's proportionate share of the estimated costs for implementing any change. Each Participant's proportionate share of the costs will reflect that Participant's percentage of the final projected capacity requirements for all Participants.

6. SIAC will bill each Participant directly and each Participant will pay SIAC for the services that SIAC renders to it. The cost of the services for each Participant will be its proportionate share of the total cost to all of the Participants.

7. Each Participant will be entitled to use its proportionate share of the final capacity requirements of all Participants and, at no extra cost, of any excess capacity. If the Processor determines that a Participant is using more than its proportionate share of the aggregate capacity and the excess capacity, that Participant may be subject to a fine. The proceeds from any such fine will be distributed to each of the other Participants in accordance with their proportionate shares.

Intra-Cycle Capacity Transfers:

1. In between the semi-annual capacity planning cycles, a Participant may seek to increase or decrease the amount of capacity available to it by notifying SIAC of its desire for more or less capacity. Under those circumstances, a Participant may purchase additional capacity only if another Participant has submitted to SIAC an unfilled request to sell a portion of its capacity or if excess capacity exists in the system at that time. A Participant may sell some of its capacity only if another Participant has submitted to SIAC an unfilled request to purchase additional capacity.

2. If SIAC is able to match Participants' requests to buy and sell capacity within a planning cycle, SIAC will effect the sale for the Participants without revealing either Participant's identity.

3. If a Participant determines to acquire available excess capacity, SIAC shall adjust each Participant's proportionate share of system costs based on the new amount of capacity available to the Participant acquiring the available excess capacity.

4. On a periodic basis, SIAC will determine and inform each Participant of the total amount of the system capacity currently available, whether it is available from available excess capacity or from a Participant that seeks to sell capacity.

Under this plan, SIAC will not disclose to any Participant:

1. The initial or final projected capacity requirements of any other Participant;

2. The percentage of the aggregate amount of capacity attributable to any other Participant; or

3. Any other Participant's between-planning-cycles request to increase or decrease capacity.

The Participants requested that the proposed amendments to the Plans become effective summarily upon publication of notice of the proposed amendments, on a temporary basis not to exceed 120 days, so that the proposed new capacity planning process could be implemented on January 1, 2003, the date of the next capacity planning cycle.[6] The Commission put the proposed amendments to the Plans into effect summarily upon publication of the Notice on December 26, 2002.[7]

III. Discussion

The Commission finds that the proposed amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[8] and, in particular, Section 11A(a)(1)[9] of the Act and Rule 11Aa3–2 thereunder.[10]

The Commission notes that, pursuant to Rule 11Aa3–2(c)(4) under the Act[11], it put the proposed 4th Amendment to the CTA Plan and the proposed 2nd Amendment to the CQ Plan into effect summarily upon publication of the proposed amendments. Rule 11Aa3–2(c)(4) under the Act provides that a proposed amendment may be put into effect summarily upon publication of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors and 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 Act. The Commission believes that summary effectiveness of the proposed amendments was necessary and appropriate for the new capacity planning process to take effect on January 1, 2003, the date of the next capacity planning cycle.

The Commission believes that an efficient capacity planning process is essential to the proper operation of CTA and administration of the CTA and CQ Plans. The Commission further believes that the proposed amendments to the Plans incorporating a new capacity planning process should address this need. The Commission notes that, under the new capacity planning process, each Participant will be required to submit its projected capacity needs directly to SIAC, and will not have to share its individual capacity needs with other Participants. Furthermore, SIAC will be responsible for providing each Participant with aggregates of both initial and final capacity projections for all Participants, and for directly billing each Participant for its proportionate share of the costs based on its percentage of the final projected capacity requirements for all Participants. The Commission finds that the proposed amendments incorporating this new capacity planning process into the Plans are consistent with Section 11A of the Act[12] and the rules and regulations thereunder.

[6] Telephone conversation between Thomas E. Haley, Chairman, CTA, and Kathy A. England, Assistant Director, Sapna C. Patel, Attorney, Ian K. Patel, Attorney, Division of Market Regulation, Commission, on December 17, 2002. *See also* letter from Thomas E. Haley, Chairman, CTA, to Kathy A. England, Assistant Director, Division, Commission, dated December 16, 2002. The Commission notes that the original filing of the proposed amendments to the Plans incorrectly stated that the proposed amendments would take effect upon filing with the Commission because they are concerned solely with the administration of the Plans.

[7] *See* Notice, *supra* note 3.

[8] In approving the proposed plan amendments, the Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 240.11Aa3–2.

[11] 17 CFR 240.11Aa3–2(c)(4).

[12] 15 U.S.C. 78k–1.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [13] and paragraph (c)(2) of Rule 11Aa3–2 [14] thereunder, that the proposed 4th Amendment to the CTA Plan and the proposed 2nd Amendment to the CQ Plan are approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4093 Filed 2–19–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47345; File No. SR–Amex–2002–89]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Crossing Procedures for Clean Agency Crosses

February 11, 2003.

On November 5, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as principal. The Amex filed an amendment to the proposed rule change on December 23, 2002.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on January 7, 2003.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of section 6 of the Act [6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [7] in that the Rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change, while eliminating the opportunity for specialists and Registered Traders to effect a proprietary transaction to provide price improvement to one side of a clean cross or the other, preserves auction market principles by providing the possibility of price improvement (because members must follow Amex Rule 151 crossing procedures), and by requiring that members trade with other market interest having time priority at that price before trading with any part of the cross transaction. In addition, the Commission believes that the proposal will enhance competition among markets in the execution of agency crosses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [8], that the proposed rule change, as amended (SR–AMEX–2002–89), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4045 Filed 2–19–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47346; File No. SR–CBOE–2002–26]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Increasing Position and Exercise Limits for Options on the DIAMONDS Trust

February 11, 2003.

I. Introduction

On May 20, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase position and exercise limits for options on the DIAMONDS Trust (''DIA''). The proposed rule change was published for comment in the **Federal Register** on November 6, 2002.[3] The Commission received no comments on the proposal. On February 4, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, and notices and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The CBOE proposes to increase position and exercise limits for options on the DIA from 75,000 to 300,000 contracts on the same side of the market. Consistent with the reporting requirement for QQQ options, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether

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[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2(c)(2).

[15] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated December 20, 2002, and enclosures (''Amendment No. 1''). Amendment No. 1 corrected a typographical error in the text of the proposed amendment.

[4] Securities Exchange Act Release No. 47113 (December 31, 2002), 68 FR 818.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2). proposed rule change, as amended (SR–Amex-2002–89), be, and hereby is, approved.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46743 (October 30, 2002), 67 FR 67673 (November 6, 2002).

[4] *See* Letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 3, 2003 (''Amendment No. 1''). In Amendment No. 1, the CBOE corrected erroneous text in CBOE Rule 4.13(b) to maintain the reporting requirement level for DIA options specified in CBOE Rule 4.13 at 10,000 contracts. Amendment No. 1 also corrected similar references to the reporting requirement level that were contained in the SEC Rule 19b–4 filing.