

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47030; File No. SR-CTA/CQ-2002-01]

### Consolidated Tape Association; Notice of Filing and Summary Effectiveness of 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

December 18, 2002.

Pursuant to Rule 11Aa3-2<sup>1</sup> under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 16, 2002, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan Participants ("Participants")<sup>2</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the CTA and CQ Plans (collectively, the "Plans"). 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.

The Commission is putting into effect summarily the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan, and publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans generally.

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

##### A. Rule 11Aa3-2

The Participants propose to introduce a 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:

##### 1. Semi-Annual Planning Cycles

a. 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.

b. 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:

- i. the initial aggregate capacity projections for all Participants;
- ii. the percentage of capacity requirements attributable to that Participant; and
- iii. 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.)

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

d. 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.

e. 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.

f. 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.

g. 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.

##### 2. Intra-Cycle Capacity Transfers

a. 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.

b. 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.

c. 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.

d. 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 believe that the filing of the proposed amendments is in fulfillment of the national market system objectives regarding the dissemination of market information as

<sup>1</sup> 17 CFR 240.11Aa3-2.

<sup>2</sup> 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").

anticipated by Sections 11A(a)(1)(C),<sup>3</sup> 11A(a)(1)(D)<sup>4</sup> and 11A(a)(3)(B)<sup>5</sup> of the Act.

*B. Governing or Constituent Documents*  
Not applicable.

*C. Implementation of Amendment*

The Participants have requested that the proposed amendments to the Plans become effective summarily upon publication of notice of the amendments, on a temporary basis not to exceed 120 days, so that the proposed new capacity planning process can be implemented on January 1, 2003, the date of the next capacity planning cycle.<sup>6</sup>

*D. Development and Implementation Phases*

The Participants propose to commence to plan for their capacity needs pursuant to the new process with the next capacity planning cycle, which begins on January 1, 2003.

*E. Analysis of Impact on Competition*

The Participants believe that the proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D)<sup>7</sup> of the Act.

*F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan*

The forms of agreement between the Participants and SIAC have been revised to reflect the new obligations of the Participants and the Processor in respect of the new capacity planning process.

*G. Approval by Sponsors in Accordance with Plan*

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the Restated CQ Plan, each of the

Participants has approved the amendments.

*H. Description of Operation of Facility Contemplated by the Proposed Amendment*

Not applicable.

*I. Terms and Conditions of Access*

Not applicable.

*J. Method of Determination and Imposition, and Amount of, Fees and Charges*

Not applicable.

*K. Method and Frequency of Processor Evaluation*

Not applicable.

*L. Dispute Resolution*

Not applicable.

**II. Rule 11Aa3-1**

*A. Reporting Requirements*

Not applicable.

*B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

The proposed amendments provide a new process pursuant to which the Participants under the Plans can plan for the capacity needs of the systems that they use to gather market data from their respective marketplaces for consolidation and distribution to the public.

*C. Manner of Consolidation*

Not applicable.

*D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

*E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*F. Terms of Access to Transaction Reports*

Not applicable.

*G. Identification of Marketplace of Execution*

Not Applicable.

**III. Date of Effectiveness of the Proposed Amendment**

The Commission has determined, pursuant to Rule 11Aa3-2(c)(4)<sup>8</sup> under the Act, that the proposed amendments, which generally implement a new capacity planning process, will become effective summarily upon publication of

this notice of amendments in the **Federal Register** on a temporary basis not to exceed 120 days. The Commission believes that it is appropriate to put the proposed amendments into effect summarily because they should provide for the maintenance of fair and orderly markets, and should remove impediments to, and perfect the mechanism of, a national market system. By granting temporary summary effectiveness, the Participants can begin to plan their capacity needs pursuant to the proposed capacity planning process for the January 1, 2003 capacity planning cycle.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments to the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the proposal 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 inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of CTA. All submissions should refer to File No. SR-CTA/CQ-2002-01 and be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-32472 Filed 12-24-02; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>3</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>4</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>5</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>6</sup> Telephone conversation between Thomas F. Haley, Chairman, CTA, and Kathy A. England, Assistant Director, Sapna C. Patel, Attorney, Ian K. Patel, Attorney, Division of Market Regulation ("Division"), 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's 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.

<sup>7</sup> 15 U.S.C. 78k-1(c)(1)(D).

<sup>8</sup> 17 CFR 240.11Aa3-2(c)(4).

<sup>9</sup> 17 CFR 200.30-3(a)(27).