

*B. Governing or Constituent Documents*  
Not applicable.

*C. Implementation of Amendment*

The Participants have manifested their approval of the proposed amendments to the CTA and CQ Plans by means of their execution of the proposed amendments. The proposed amendments would become effective upon Commission approval of the proposed amendments. The Participants will commence to pay the fees that are the subject of the exemption in the billing cycle that follows the Commission's approval of these proposed amendments.

*D. Development and Implementation Phases*

See Item I.C. above.

*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>8</sup> of the Act.

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

The Participants do not anticipate that they will enter into any new written understandings or agreements relating to the interpretation of the Plans or to conditions for becoming a sponsor or participant in the Plans.

*G. Approval by Sponsors in Accordance With Plan*

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each of the Participants has approved the proposed amendments.

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

Not applicable.

*I. Terms and Conditions of Access*

By removing the exemptions, the proposed amendments would subject the Participants to the same fee schedule as all other recipients and users of market data.

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

The proposed amendments do not change the method for determining, and

the amount of, fees and charges. However, the proposed amendments do impose charges for regulation, surveillance and other previously exempted purposes on the Participants.

*K. Method and Frequency of Processor Evaluation*

Not applicable.

*L. Dispute Resolution*

Not applicable.

**II. Rule 11Aa3-1<sup>9</sup>**

*A. Reporting Requirements*

Not applicable.

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

Not applicable.

*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*

By removing the Participant Fee Exemptions, the proposed amendments would subject the Participants to the same fee schedule as all other persons seeking access to the Participants' transaction reports.

*G. Identification of Marketplace of Execution*

Not Applicable.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CTA/CQ-2003-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2003-01 and be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-32181 Filed 12-30-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48984; File No. SR-CTA/CQ-2003-02]**

**Consolidated Tape Association; Notice of Filing of the Sixth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Fourth Substantive Amendment to the Restated Consolidated Quotation Plan and Amendment No. 1 Thereto**

December 23, 2003.

Pursuant to Rule 11Aa3-2<sup>1</sup> under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on November 28, 2003, 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 6th substantive amendment made to the Second

<sup>10</sup> 17 CFR 200.30-3(a)(27).

<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.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; Pacific Exchange, Inc.; and Philadelphia Stock Exchange, Inc.

<sup>8</sup> 15 U.S.C. 78k-1(c)(1)(D).

<sup>9</sup> 17 CFR 240.11Aa3-1.

Restatement of the CTA Plan and the 4th substantive amendment to the Restated CQ Plan, and reflects several changes unanimously adopted by the Participants. The proposed amendments would separate the functions of administering the contracts into which vendors and others enter for the purpose of receiving and using market data. On December 23, 2003, the Participants submitted Amendment No. 1 to the proposed amendments.<sup>3</sup> The Commission is publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans.

## I. Description and Purpose of the Amendments

### A. Rule 11Aa3-2<sup>4</sup>

Since 1989, NYSE has performed certain administrative functions on behalf of the Network B Administrator.<sup>5</sup> These functions include procuring and maintaining the contracts by which vendors and others receive and use the market data that both Network A and Network B make available.<sup>6</sup> NYSE executes the Consolidated Vendor Form on behalf of itself, the Network B

<sup>3</sup> See letter to Jonathan G. Katz, Secretary, Commission, from Thomas E. Haley, Vice President of Market Data, NYSE dated December 22, 2003 ("Amendment No. 1"). Amendment No. 1 makes a technical correction to the proposed amendments.

<sup>4</sup> 17 CFR 240.11Aa3-2.

<sup>5</sup> In 1989, the Participants introduced the Consolidated Vendor Form and that form of vendor agreement is still in use. See Securities Exchange Act Release No. 27498 (December 4, 1989), 54 FR 50828 (December 11, 1989). The Consolidated Vendor Form applies to the receipt and use of Network B market data, as well as Network A market data. Pursuant to delegated authority, NYSE has administered that consolidated vendor form on behalf of the Network B Participants as well as on behalf of the Network A Participants. Prior to the introduction of that form of vendor agreement, NYSE administered the Network A vendor agreements on behalf of the Network A Participants and the Amex administered the Network B vendor agreements on behalf of the Network B Participants.

<sup>6</sup> The form of contract that is the subject of the proposal is the form of contract (the Consolidated Vendor Form) that the Participants require "Customers" to enter into for their receipt and use of the market data that the Participants make available under the Plans. "Customers" include (1) vendors, (2) internal and other data redistributors, and (3) those that internally use market data for the purposes that are subject to the Plans' program classification charges. The Consolidated Vendor Form constitutes Exhibit C to each Plan.

End users that do not redistribute data and do not use it for the purposes that are the subject of the program classification charges receive the data pursuant to "subscriber" forms of agreement. NYSE, as the Network A administrator, currently administers the Network A form of that agreement. The Amex, as the Network B administrator, currently administers a Network B form of that agreement. The amendments do not propose any change to those subscriber forms.

administrator and the other Plan Participants.

The Participants propose to once again divide the contract-administration function between the Network A administrator (NYSE) (for the receipt and use of Network A market data) and the Network B administrator (Amex) (for the receipt and use of Network B market data). To make the separation of contract functions possible, the amendments propose to replace the Consolidated Vendor Form with two new forms, a "Network A Consolidated Vendor Form" and a "Network B Consolidated Vendor Form."

Under the proposal, the Amex would assume all contract-administration functions for the Network B Consolidated Vendor Form and would execute those forms on behalf of itself and the other Network B Participants. The NYSE would continue to perform the contract-administration functions for Network A and would execute the Network A Consolidated Vendor Form on behalf of itself and the other Network A Participants.

In terms of substance, the Network A Consolidated Vendor Form and the Network B Consolidated Vendor Form would offer the same terms and conditions as does the Consolidated Vendor Form. The only difference would be that the Consolidated Vendor Form governs the receipt and use of both Network A and Network B market data, whereas the Network A Consolidated Vendor Form governs the receipt and use of Network A market data and the Network B Consolidated Vendor Form will govern the receipt and use of Network B market data.

The Participants originally submitted the Consolidated Vendor Form to the Commission on October 16, 1989.<sup>7</sup> They made certain revisions to the form in response to changes recommended by commenters and re-filed the Consolidated Vendor Form for immediate effectiveness in August 1990.<sup>8</sup> In conjunction with its submission of amended and restated CTA and CQ Plans in December 1995, the Participants submitted a revised version of the Consolidated Vendor Form to the Commission. That revised version made non-substantive changes to conform the form's language to the language in the Plans and to provide greater clarity and standardization in the definitions. The Commission approved the restated Plans, including

<sup>7</sup> See Securities Exchange Act Release No. 27498 (December 4, 1989), 54 FR 50828 (December 11, 1989).

<sup>8</sup> See Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990).

the revised version of the Consolidated Vendor Form, in May 1996.<sup>9</sup> The amendments propose the first changes to the Consolidated Vendor Form since then.

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 anticipated by sections 11A(a)(1)(C),<sup>10</sup> 11A(a)(1)(D)<sup>11</sup> and 11A(a)(3)(B)<sup>12</sup> of the Act.

### B. Governing or Constituent Documents

The proposed amendments would replace the Consolidated Vendor Form with a new Network A Consolidated Vendor Form and a new Consolidated Network B Vendor Form.

### C. Development and Implementation of Amendments

Under the proposal, the Amex would assume Network B contract-administration functions within 90 days from the Commission's approval of these proposed amendments. The network administrators would commence to use the Network A Consolidated Vendor Form and the Network B Consolidated Vendor Form at that time. The Participants state that they intend to notify vendors and other interested parties, both in writing and through verbal contact, of the two new forms.

### D. 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) of the Act.<sup>13</sup>

### E. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants do not anticipate that they will enter into any new written understandings or agreements relating to the interpretation of the Plans or to conditions for becoming a sponsor or participant in the Plans.

<sup>9</sup> See Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996).

<sup>10</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>11</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>12</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>13</sup> 15 U.S.C. 78k-1(c)(1)(D).

*F. Approval by Sponsors in Accordance With Plan*

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each of the Participants has approved the amendments.

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

Not applicable.

*H. Terms and Conditions of Access*

Because the two new forms make no changes in substance to the Consolidated Vendor Form, the amendments do not change the terms and conditions of access, other than that the Amex, rather than the NYSE, would now service those wishing to receive access to the Network B data feed.

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

Not applicable.

*J. Method and Frequency of Processor Evaluation*

Not applicable.

*K. Dispute Resolution*

Not applicable.

**II. Rule 11Aa3-1<sup>14</sup>***A. Reporting Requirements*

Not applicable.

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

Not applicable.

*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*

Because the two new forms make no changes in substance to the Consolidated Vendor Form, the proposed amendments do not change the terms of access to transaction reports, other than that the Amex, rather than NYSE, would now service those wishing to receive access to the Network B data feed.

*G. Identification of Marketplace of Execution*

Not Applicable.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-CTA/CQ-2003-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2003-02 and be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-32182 Filed 12-30-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48964; File No. SR-Amex-2003-107]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Six-Month Extension of the Exchange's Pilot Program for Automatic Execution of Orders for Exchange Traded Funds**

December 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 5, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") 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 Amex. 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 Substance of the Proposed Rule Change**

Amex seeks a six-month extension of Amex Rule 128A to continue its pilot program for the automatic order execution feature ("Auto-Ex") for Exchange Traded Funds ("ETFs").

The text of the proposed rule change is available at Amex and at the Commission.

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

In its filing with the Commission, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

On June 19, 2001, the Commission approved the Exchange's proposal, adopted as Amex Rule 128A, to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> 17 CFR 240.11Aa3-1.

<sup>15</sup> 17 CFR 200.30-3(a)(27).