

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59230; File No. SR-CTA/CQ-2008-05)

January 12, 2009

Consolidated Tape Association; Notice of Filing of the Thirteenth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and Ninth Substantive Amendment to the Restated Consolidated Quotation Plan

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on December 15, 2008, the Consolidated Tape Association (“CTA”) Plan and Consolidated Quotation (“CQ”) Plan participants (“Participants”)<sup>3</sup> filed with the Securities and Exchange Commission (“Commission”) a proposal to amend the CTA and CQ Plans (collectively, the “Plans”).<sup>4</sup> The proposals represent the thirteenth substantive amendment made to the Second Restatement of the CTA Plan (“Thirteenth Amendment to the CTA Plan”) and the ninth substantive amendment to the Restated CQ Plan

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1 15 U.S.C. 78k-1.

2 17 CFR 242.608.

3 Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC (n/k/a NYSE Alternext US LLC); Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.); Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC (“NYSE”); NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.).

4 See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (order permanently approving CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a “transaction reporting plan” under Rule 601 under the Act, 17 CFR 242.601, and a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608.

(“Ninth Amendment to the CQ Plan”), and reflect changes unanimously adopted by the participants. The Thirteenth Amendment to the CTA Plan and the Ninth Amendment to the CQ Plan (“Amendments”) would amend the Plans to provide that the Participants will pay the Network A Administrator a fixed annual fee in exchange for its performance of Network A administrator functions under the Plans. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Description and Purpose of the Amendment

Network Administrator Fees under the Plans. Section XII (“Financial Matters”) of the CTA Plan and Section IX (“Financial Matters”) of the CQ Plan each provides that a network’s Operating Expenses are to be deducted from the network’s Gross Income in determining the amounts that the network’s administrator distributes to the Participants. Both Section XII(c)(i) (“Determination of Operating Expenses”) of the CTA Plan and Section IX(c)(i) (“Determination of Operating Expenses”) of the CQ Plan currently provide that a network’s Operating Expenses include all costs and expenses that the network’s administrator incurs in “collecting, processing and making available Network A market data.”

Proposed Revision. The Network A Administrator has informed the Participants that accounting for operating costs is administratively burdensome, especially the allocation of organization overhead costs to the Network A Administrator function. As a result, the Network A Participants have determined that paying the Network A Administrator a fixed fee in exchange for its Network A administrative services would be more efficient.

Therefore, the Participants propose to replace their payment to the Network A Administrator of Operating Costs with payment to the Network A Administrator of a fixed fee.

(The Participants understand that Nasdaq similarly receives a fixed fee for its performance of administrative functions under the “Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on Unlisted Trading Privileges Basis.”)

For calendar year 2008, the Network A Participants propose to set the fixed fee at \$6,000,000. This amount will compensate the Network A Administrator for its Network A administrative services during 2008 under both the CTA and CQ Plans.

Determination of Operating Expenses. In the case of NYSE as the CTA and CQ Network A Administrator, the Participants deem “Operating Expenses” for any calendar year to equal: (1) the “Annual Fixed Payment” for that year; plus (2) “Extraordinary Expenses.”

Annual Increases. For each subsequent calendar year the Annual Fixed Payment shall increase (but not decrease) by the percentage increase (if any) in the annual cost-of-living adjustment (“COLA”) that the U.S. Social Security Administration applies to the Supplemental Security Income for the calendar year preceding that subsequent year, subject to a maximum annual increase of five percent. For example, if the Social Security Administration’s COLA is three percent for calendar year 2008, then the Annual Fixed Payment for calendar year 2009 would increase by three percent to \$6,180,000.

Biannual Review. Every two years the Network A Administrator will provide a report highlighting any significant changes to the CTA Network A and CQ Network A administrative expenses during the preceding two years, and the Participants will review the Annual Fixed Payment and determine by majority vote whether to continue it at its then current level.

Payment of the Fee. On a quarterly basis, NYSE shall deduct one-quarter of each calendar year’s Annual Fixed Payment from the aggregate of CTA Network A Gross Income and

CQ Network A Gross Income under the CQ Plan, before determining that quarter's distributable Net Income under the Plans. If a Participant's share of Net Income for CTA Network A and CQ Network A for any calendar year is less than its pro rata share of the Annual Fixed Payment for that calendar year, the Participant shall be responsible for the difference.

Extraordinary Expenses. Extraordinary Expenses include that portion of legal and audit expenses and marketing and consulting fees that are outside of the ordinary and customary functions that a network administrator performs. For instance, Extraordinary Expenses would include such things as legal fees related to prosecution of a legal proceeding against a vendor that fails to pay applicable charges and fees relating to a marketing campaign that Participants determine to undertake to popularize stock trading.<sup>5</sup>

The text of the proposed Amendments is available on the CTA's Web site (<http://www.nysedata.com/cta>), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendment

Upon Commission approval of the Amendment, the Participants intend to implement the fixed fee immediately in order to make it applicable for the 2008 calendar year. That is, for all of 2008, the Network A Participants would pay the Network A Administrator the fixed fee rather

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<sup>5</sup> The Commission notes that the Transmittal Letter accompanying the proposed Amendments included language not voted on by the Participants and thus not included in the proposed Amendments: "Network A Administrator will not incur any extraordinary expense on behalf of the Network A Participants unless the Network A Participants determine by majority vote to approve the incurrence of that extraordinary expense." This language is not part of the proposed Amendments.

than operating costs.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The Amendments will impose no burden on competition.

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

The Participants have no written understandings or agreements relating to interpretation of the Plans as a result of the Amendments.

6. Approval by Sponsors in Accordance with Plan

Under Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The Amendments are so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. Terms and Conditions of Access

Not applicable.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall be Required by the Plan.

Not applicable.

B. Reporting Requirements

Not applicable.

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

Not applicable.

D. Manner of Consolidation

Not applicable.

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

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace 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 Thirteenth Substantive Amendment to the CTA Plan and the Ninth Amendment to the CQ Plan are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CTA-2008-05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CTA-2008-05. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Plan amendment that are filed with the Commission, and all written communications relating to the Plan amendment change 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 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-CTA-2008-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(27).