

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59552; File No. SR-CTA/CQ-2008-05)

March 10, 2009

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

I. Introduction

On December 15, 2008, the Consolidated Tape Association (“CTA”) Plan and Consolidated Quotation (“CQ”) Plan participants (“Participants”)¹ filed with the Securities and Exchange Commission (“Commission”) pursuant to Rule 608² under the Securities Exchange Act of 1934 (“Act”)³ a proposal to amend the CTA and CQ Plans (collectively, the “Plans”)⁴ to provide that the Participants will pay the Network A Administrator a fixed annual fee (“Annual Fixed Payment”) in exchange for its performance of Network A administrator functions under the Plans. The proposed

¹ 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 (“Nasdaq”); 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.).

² 17 CFR 240.608.

³ 15 U.S.C. 78k-1.

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 a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608.

Amendments were published for comment in the Federal Register on January 21, 2008.⁵ No comment letters were received in response to the Notice. This order approves the Amendments.

II. Description of the Proposal

Section XII (“Financial Matters”) of the CTA Plan and Section IX (“Financial Matters”) of the CQ Plan each provide that a network’s Operating Expenses are to be deducted from the network’s Gross Income before determining the amounts that the network’s administrator will distribute 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.” The Network A Administrator stated that accounting for operating costs, especially the allocation of organization overhead costs to the Network A Administrator function, is administratively burdensome. And as a result, the Network A Participants have proposed to replace their payment to the Network A Administrator of Operating Expenses with an Annual Fixed Payment. In the case of NYSE as the CTA and CQ Network A Administrator, the Participants proposed that “Operating Expenses” for any calendar year equal: (1) the Annual Fixed Payment for that year; plus (2) “Extraordinary Expenses.” Extraordinary Expenses would 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.⁶

⁵ See Securities Exchange Act Release No. 59230 (January 12, 2008), 74 FR 3659 (“Notice”).

⁶ 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.”

For calendar year 2008, the Network A Participants voted to set the Annual Fixed Payment at \$6,000,000 to compensate the Network A Administrator for its Network A administrative services during 2008 under both the CTA and CQ Plans. 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.⁷

Discussion

After careful review, the Commission finds that the 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) of the Act⁹ and Rule 608 thereunder¹⁰ in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. The Commission believes that permitting the Network A Administrator to assess a flat fee should increase the efficiency of the administration of the Plans.¹¹ Additionally, the

This language is not part of the proposed Amendments that the Commission is approving today.

⁷ See Notice, supra note 5 at 3660 for a more detailed description of how the fee will be assessed

⁸ 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 240.608.

¹¹ The Commission notes 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.”

Commission notes that every two years the Network A Administrator is required to provide a report detailing any significant changes to the administrative expenses during the preceding two years to enable the Participants to review and determine by majority vote whether to continue the Annual Fixed Payment at its then current level.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,¹² and Rule 608 thereunder,¹³ that the proposed amendments to the CTA and CQ Plans (SR-CTA/CQ-2008-05) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

12 15 U.S.C. 78k-1.

13 17 CFR 240.608.

14 17 CFR 200.30-3(a)(27).