

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62289; File No. SR-CTA/CQ-2009-03)

June 14, 2010

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

I. Introduction

On November 2, 2009, the Consolidated Tape Association (“CTA”) Plan and Consolidated Quotation (“CQ”) Plan participants (“Participants”)¹ filed with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),² and Rule 608 thereunder,³ a proposal⁴ to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the “Plans”).⁵ The proposal represents the fifteenth

¹ Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex, Inc.; and NYSE Arca, Inc.

² 15 U.S.C. 78k-1.

³ 17 CFR 242.608.

⁴ On January 13, 2010, the CTA filed a revised transmittal letter indicating, among other technical changes, that the Participants also proposed to make changes in the names and addresses of certain Participants (“Transmittal Letter”).

⁵ See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the 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

substantive amendment to the CTA Plan (“Fifteenth Amendment to the CTA Plan”) and the eleventh substantive amendment to the CQ Plan (“Eleventh Amendment to the CQ Plan”), and reflects changes unanimously adopted by the Participants. The Fifteenth Amendment to the CTA Plan and the Eleventh Amendment to the CQ Plan (“Amendments”) would amend the Plans to provide that the Participants pay the Network B Administrator a fixed annual fee in exchange for its performance of Network B administrator functions under the Plans. In addition, the Amendments seek to accommodate recent changes in names and addresses of certain Participants. The proposed Amendments were published for comment in the Federal Register on February 8, 2010.⁶ No comment letters were received in response to the Notice. This order approves the proposed amendments to the Plans.

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 to determine the amounts that the network’s administrator distributes to the Participants. Section XII(c)(i) (“Determination of Operating Expenses”) of the CTA Plan currently provides that a CTA network’s Operating Expenses include all costs and expenses “associated with, relating to, or resulting from, the generation, consolidation or dissemination of the CTA’s network’s last sale price information.” Likewise, Section IX(c)(i) (“Determination of Operating Expenses”) of the CQ Plan currently provides that a network’s Operating Expenses include all costs and expenses that the network’s administrator incurs in “collecting, processing and making available that CQ network’s quotation information.” The Network B Administrator

CFR 242.608.

⁶ See Securities Exchange Act Release No. 61457 (February 1, 2010), 75 FR 6229 (“Notice”).

stated that accounting for operating costs is administratively burdensome, especially the allocation of organization overhead costs to the Network B Administrator function. As a result, the Network B Participants proposed to pay the Network B Administrator a fixed fee in exchange for the services the Network B administrator performs on behalf of the Plans. Therefore, the Participants proposed to replace their payment to the Network B Administrator of Operating Costs with their payment to the Network B Administrator of a fixed fee.⁷

For calendar year 2009, the Network B Participants proposed to set the fixed fee at \$3,000,000. The Participants concluded that this amount would compensate the Network B Administrator for its Network B Administrative services during 2009 under both the CTA Plan and the CQ Plan. For each subsequent calendar year, the Network B Participants proposed to increase (but not decrease) the amount of the payment by the percentage increase (if any) in the annual cost-of-living adjustment that the U.S. Social Security Administration applies to Supplemental Security Income for the preceding calendar year, subject to a maximum annual increase of five percent.⁸ The Participants' payment of the fixed fee will compensate the Network B Administrator for all ordinary and customary operating expenses that it incurs in performing the network administrator functions under the CTA and CQ Plans. However, it does not compensate the Network B Administrator for extraordinary expenses that the Network B Administrator may incur on behalf of the Network B Participants. Extraordinary expenses

⁷ The Participants noted that the Network A Administrator similarly receives a fixed fee for its performance of administrative functions under the CTA and CQ Plans and the Participants understand that Nasdaq 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 an Unlisted Trading Privileges Basis" ("Nasdaq UTP Plan").

⁸ See Notice, supra note 6 at 6230 for a more detailed description of how the fee will be assessed.

include such things as that portion of legal and audit expenses and marketing and consulting fees that are outside of the ordinary functions that the Network B Administrator performs.⁹

In addition, the Participants proposed to amend the Plans to reflect changes in the corporate names and street addresses of NASDAQ OMX BX, Inc. (formerly Boston Stock Exchange, Inc.), NASDAQ OMX PHLX, Inc. (formerly Philadelphia Stock Exchange, Inc.) and NYSE Amex, Inc. (formerly American Stock Exchange LLC). They also proposed to conform the language signifying the status of BATS Exchange, Inc. as a national securities exchange to the language used for the other Plan Participants.

III. 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,¹⁰ and, in particular, Section 11A(a)(1) of the Act¹¹ and Rule 608 thereunder¹² 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 paying a flat fee to the Network B Administrator should eliminate the need for the Network B Administrator to account for operating costs and thus make

⁹ The Commission notes that the Transmittal Letter accompanying the proposed Amendments included language not voted on by the Participants and thus of no legal consequence: “Network B Administrator will not incur any extraordinary expense on behalf of the Network B Participants unless the Network B Participants determine by majority vote to approve the incurrence of that extraordinary expense.”

¹⁰ The Commission has considered the proposed amendments’ impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78k-1(a)(1).

¹² 17 CFR 240.608.

the administration of the Plans more efficient.¹³ Additionally, the Commission notes that every two years the Network B 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,¹⁴ and the rules thereunder, that the proposed amendments to the CTA and CQ Plans are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹³ The Commission notes that the Network A Administrator under the CTA Plan and CQ Plan and Nasdaq under the Nasdaq UTP Plan similarly receive a fixed fee for the performance of administrative functions.

¹⁴ 15 U.S.C. 78k-1.

¹⁵ 17 CFR 200.30-3(a)(27).