

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80300; File No. SR-CTA/CQ-2017-02)

March 23, 2017

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Twenty-Second Charges Amendment to the Second Restatement of the CTA Plan and the Thirteenth Charges Amendment to the Restated CQ Plan

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 608 thereunder,² notice is hereby given that on March 2, 2017, the Consolidated Tape Association (“CTA”) Plan participants (“Participants”)³ filed with the Securities and Exchange Commission (“Commission”) a proposal to amend the Second Restatement of the CTA Plan and the Restated Consolidated Quotation (“CQ”) Plan (“Plans”).⁴ These amendments represent the twenty-second Charges Amendment to the CTA Plan and the thirteenth Charges Amendment to the CQ Plan (“Amendments”). The Amendments seek to amend the Plans’ fee schedule as well as the non-

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ The Participants are: BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors’ Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

⁴ See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (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 CFR 242.608.

display use policy to clarify the applicability on the non-display fee, the device fee, and the access fee.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Purpose of the Amendments

1. Background

In October 2014, the Participants amended the Plans' fee schedules to establish fees for non-display uses of data and to reduce the device fees assessed on professional subscribers.⁵ In so doing, the Participants determined that such a change provided an equitable allocation of fees to the industry that would reflect the value of non-display data usage (subject to the non-display fees) versus display data usage (subject to the lower device fees). At that time, non-display use was defined as consisting of accessing, processing, or consuming real-time Network A or Network B quotation information or last sale price information, whether delivered via direct and/or redistributor data feeds, for a purpose other than in support of a data recipient's display or further internal or external distribution. The Participants established three categories of non-display uses of market data:

- Category 1 applies when a data recipient makes non-display uses of real-time market data on its own behalf.
- Category 2 applies when a data recipient makes non-display uses of real-time market data on behalf of its clients.

⁵ See Securities Exchange Act Release No. 73278 (October 1, 2014), 79 FR 60536 (October 7, 2014) ("October 2014 Non-Display Filing").

- Category 3 applies when a data recipient makes non-display uses of real-time market data for the purpose of internally matching buy and sell orders within an organization.

Data recipients can be charged for each of the three categories of non-display uses. Category 3 is the only non-display fee that can be charged multiple times; a data recipient would be charged for each ATS, exchange, or ECN operated by the data recipient. In the October 2014 Non-Display Filing, the Participants also provided the following non-exhaustive list of examples of non-display use:

- Any trading in any asset class;
- Automated order or quote generation and/or order pegging;
- Price referencing for algorithmic trading;
- Price referencing for smart order routing;
- Operations control programs;
- Investment analysis;
- Order verification;
- Surveillance programs;
- Risk management;
- Compliance; and
- Portfolio valuation.

The Participants propose to clarify that any use of data that does not make the data visibly available to the data recipient on a device should be considered non-display use. When a data recipient is using data solely for display purposes, the data recipient will only be charged the

device fee⁶ As a result, the Participants believe it would be beneficial to provide additional clarification regarding the definition of non-display use to resolve any ambiguity.

The Participants further propose to clarify that a data recipient is subject to the access fee when the data it is receiving is used for non-display, or can be manipulated and disseminated to other devices even if the data is also displayed on a device. As described below, the Participants are amending the Plans' fee schedules to clarify the applicability of the access fee.

2. Amended Definition of Non-Display Use

The Participants are proposing to amend the definition of "Non-Display Use" in footnote eight of the Plans' fee schedules to explicitly state that any use of data that does not make data visibly available to a data recipient on a device is a Non-Display Use. The Participants are proposing to make a parallel amendment to footnote two of the Plans' fee schedules to state that the device fee will only be applicable where the data is visibly available to the data recipient; any other data use on a device will be considered Non-Display Use⁷

In the October 2014 Non-Display Filing, the Participants recognized the relative values of non-display versus display data usage. With the proliferation of automated and algorithmic trading, non-display devices consume large amounts of data and are critical to a firm's businesses. The black boxes and application programming interfaces utilized by these firms process data far more quickly, and as a result, the relative value between non-display and display data usage is pronounced. The disparity in value between non-display and display data usage led

⁶ A data recipient can be charged both the non-display fee and the device fee. For instance, a data recipient may be displaying data on a device and also using data to operate an ATS. In such instances, the data recipient would be charged both a device fee and a non-display fee (the data recipient would also be charged an access fee due to its non-display use, as described below).

⁷ In addition to the amendments outlined in this transmittal letter, the Participants are making non-substantive edits to correct capitalization in the Plans' fee schedules.

the Participants to decrease the professional subscriber device charges in the October 2014 Non-Display Filing while establishing the non-display fees. However, if data is used for non-display purposes, but is subject to the device fee and not the non-display fee, such interpretation would disrupt the balance struck by the Participants in setting the fees.

The Participants believe that amending the language of the fee schedule will create a clear understanding of when the non-display fee is applicable and therefore effectuate the change originally contemplated by the October 2014 Non-Display Filing. To notify data recipients of the amended definition, the Participants will be updating the CTA Market Data Non-Display Use Policy. The CTA Market Data Non-Display Use Policy describes the applicability of the non-display fee to specific uses of real-time Network A and Network B last sale information and quotation information. The CTA Market Data Non-Display Use Policy currently reflects the applicability of the non-display fee as established by the October 2014 Non-Display Filing. The Participants are amending this policy to include the updated definition of Non-Display Use as reflected in the Plans' amended fee schedules. The CTA Market Data Non-Display Use Policy is also being updated to specify that Redistributors that provide market data to their customers and/or data recipients who use the data for Non-Display Use must submit a data feed request to the administrator, and must require that the customers and data recipients of such market data complete the necessary documentation for the data feed request.

The Participants are also amending footnote two and footnote eight of the Plans' fee schedules to make clear that the Participants reserve the right to make the sole determination as to whether a data recipient's use is subject to the non-display fee or the device fee and, if subject to the non-display fee, the category of such Non-Display Use.

3. Access Fee Applicability

The Participants are amending footnote ten of the Plans' fee schedules to clarify when the access fee is applicable. Access fees are charged to those who obtain Network A and Network B data feeds. The Participants are not proposing to modify the current access fees. Instead, the Participants are proposing to clarify in the Plans' fee schedules that the access fee is applicable if: (1) the data recipient uses the data for non-display; or (2) the data recipient receives the data in such a manner that the data can be manipulated and disseminated to one or more devices, display or otherwise, regardless of encryption or instructions from the redistribution vendor regarding who has authorized access to the data.

As discussed above, the device fee is applicable when data is displayed only. However, if the data is also used for non-display or can be manipulated and disseminated, the data recipient is subject to the access fee. For example, a data recipient may be receiving data to display on a device. In addition to being displayed on the device, if the data recipient is also able to manipulate the data via a calculation to create additional data and distribute the end result data to other users in a display format or for non-display use, that data recipient should also be subject to the access fee. In such case, even if the data recipient is reporting use for display purposes and is subject to the device fee, if the data is being manipulated and disseminated, that data recipient should also be subject to an access fee and any applicable additional device fees or non-display use fee, as may be applicable for that data recipient's use of the data. As with the proposed amendments to the fee schedule described above, this proposed clarification to the access fee is designed to address that the manner by which a data recipient uses the data drives which fees apply.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendments

Pursuant to Rule 608(b)(3)(i) under Regulation NMS, the Participants have designated the proposed clarification as establishing or changing fees and are submitting the amendment for immediate effectiveness.

D. Development and Implementation Phases

See Item C above.

E. Analysis of Impact on Competition

The Amendments proposed herein do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Additionally, the Participants do not believe that the proposed amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act. The Participants have submitted this amendment to simply clarify the applicability of the non-display fees established in the October 2014 Non-Display Filing. The Amendments proposed herein will allow data recipients to understand whether a given use will be subject to the non-display fee, the device fee, or the access fee, or a combination of these fees.

As explained in the October 2014 Non-Display Filing, the non-display fees were established to comport with the proliferation of the use of data for dark pools and other non-display trading applications. In conjunction with the establishment of non-display fees, the Participants reduced the rates for professional subscriber devices in hopes of fostering the widespread availability of real-time market data. At the same time, the non-display fees allowed those who make non-display uses of data to make appropriate contributions to the costs of collecting, processing, and redistributing the data. The clarification proposed herein maintains

the balance struck by the Participants in reducing the device fee while establishing the non-display fees.

Additionally, the Participants believe that the Amendments will have a positive effect on competition because the Amendments will ensure that different vendors are classifying their customer's usage in the same manner. A vendor would gain a competitive advantage if they were willing to incorrectly classify a customer's use as subject to the lower device fee rather than the non-display fee. By eliminating the ambiguity in the Plans' fee schedules, the Participants believe that all vendors will be subjected to and subject their customers to the similar fees for similar uses of data.

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

As previously stated, the Participants have amended the CTA Market Data Non-Display Use Policy to implement the proposed Amendments. A copy of the changes to the Non-Display Use Policy is attached to the Amendment.

G. Approval by Sponsors in Accordance with Plan

Section XII (b)(iii) of the CTA Plan provides that "[a]ny addition of any charge to . . . the charges set forth in Exhibit E . . . shall be effected by an amendment to this CTA Plan . . . that is approved by affirmative vote of not less than two-thirds of all of the then voting members of CTA. Any such amendment shall be executed on behalf of each Participant that appointed a voting member of CTA who approves such amendment and shall be filed with the SEC."

Further, Section IX(b)(iii) of the CQ Plan provides that "additions, deletions, or modifications to any charges under this CQ Plan shall be effected by an amendment . . . that is approved by affirmative vote of two-thirds of all the members of the Operating Committee."

The Participants have executed this Amendment and represent not less than two-thirds of all of the parties to the Plan. That satisfies the Plans' Participant-approval requirements

H. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

I. Terms and Conditions of Access

Not applicable.

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

The Participants believe that the proposed fee is fair and reasonable and provides for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons. As previously stated, the Amendments proposed herein simply clarify the amendments to fees set forth in the October 2014 Non-Display Filing and ensure that the relative value of non-display versus display data usage is reflected in the fees charged for such uses.

The Participants have consulted with members of the industry regarding the proposed fee amendments contained herein.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. 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 of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks general comments on the Amendments. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments 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. Please include File Number SR-CTA/CQ-2017-02 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CTA/CQ-2017-02. 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, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 website viewing and printing 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/CQ-2017-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Eduardo A. Aleman
Assistant Secretary