SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51012; File No. SR-CTA/CQ-2004-01)

January 10, 2005

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

Pursuant to Rule 11Aa3-2[1] under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 3, 2004, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan Participants ("Participants")[2] 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 7th substantive amendment made to the Second Restatement of the CTA Plan and the 5th substantive amendment to the Restated CQ Plan, and reflects changes unanimously adopted by the Participants. The proposed amendments would modify the procedures for joining the Plans as a new Participant. In addition, the proposed amendments would perform the "housekeeping" function of incorporating into the text of the Plans changes to the corporate names and addresses of some Participants. The Commission is publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans.

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1 17 CFR 240.11Aa3-2.

2 Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC ("Amex"); Boston Stock Exchange, Inc. ("BSE"); Chicago Board Options Exchange, Inc. ("CBOE"); Chicago Stock Exchange ("CHX"), Inc.; National Association of Securities Dealers, Inc. ("NASD"); National Stock Exchange ("NSX"); New York Stock Exchange, Inc. ("NYSE"); Pacific Exchange, Inc. ("PCX"); and Philadelphia Stock Exchange, Inc. ("Phlx").

I. Description and Purpose of the Amendments

A. Rule 11Aa3-2[3]

The proposed amendments would modify the procedures pursuant to which a new national securities exchange or new national securities association may join the Plans as a new Participant. More specifically, the proposed amendments would modify the process for determining the fees that a new national securities exchange or a new national securities association must pay in order to join the Plans.

Currently, both Plans require a new entrant to pay the Participants an amount that "attributes an appropriate value to the assets, both tangible and intangible, that CTA has created and will make available to such new Participant."[4] The Plans allow for the Participants to consider one or more of six factors in assessing the appropriate value.[5] The Commission approved the addition of these entry-fee criteria to both Plans in 1993.[6] However, since the criteria were adopted, no entity has joined the Plans. CBOE was the last Participant to join the Plans, having done so in 1991.

In 1999, the Options Price Reporting Authority ("OPRA") Plan Participants sought to adopt the same criteria adopted by the CTA to determine the appropriate participation fee to join the OPRA Plan.[7] The Commission received negative comments regarding the previously approved factors OPRA proposed to consider in determining the

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3 17 CFR 240.11Aa3-2.

4 Section III(c) of the Plans.

5 Id.

6 See Securities Exchange Act Release No. 33319 (December 10, 1993), 58 FR 66040 (December 17, 1993) (File No. S7-27-93).

7 See Securities Exchange Act Release No. 42002 (October 13, 1999), 64 FR 56543 (October 20, 1999) (notice of File No. SR-OPRA-99-01).

amount of its participation fee. The commenters asserted that the proposed OPRA Plan criteria could create a barrier to entry into the options industry that could harm competition. In response, OPRA modified and adopted new, more objective factors to be considered in determining the appropriate new entrant participation fee.[8] Consequently, in light of the comments received on the current CTA/CQ Plan criteria that OPRA was proposing to adopt, at the October 2001 CTA meeting, a Division of Market Regulation ("Division") staff member suggested that the CTA consider amending its Plan criteria for determining new entrant fees to conform to the criteria that was more recently adopted by OPRA.

In 2002, The Nasdaq Stock Market, Inc. ("Nasdaq") and Island ECN expressed interest in joining the Plans and inquired as to the amount of the entry fee. In response, the Participants engaged Deloitte & Touche, asking it to assign a value to each of the six current Plan criteria for determining a new entrant's fee. The Division expressed concerns to the Participants regarding the methodology contemplated by the CTA and Deloitte & Touche because it believed that the methodology contained factors that should not be considered in determining a proper entrance fee for new entrants.[9] The Division

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8 See Securities Exchange Act Release No. 43697 (December 8, 2000), 65 FR 78518 (December 15, 2000) (order approving File No. SR-OPRA-00-08); see also Securities Exchange Act Release Nos. 43347 (September 26, 2000), 65 FR 59035 (October 3, 2000) (notice of File No. SR-OPRA-00-08); and 42817 (May 24, 2000), 65 FR 35147 (June 1, 2000) (notice of filing and order granting accelerated effectiveness to File No. SR-OPRA-99-01).

9 See letters to William J. Brodsky, Chairman and Chief Executive Officer, CBOE; David Colker, President and Chief Executive Officer, NSX; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; Richard Grasso, Chairman and Chief Executive Officer, NYSE; David A. Herron, Chief Executive Officer, CHX; Richard Ketchum, President and Deputy Chairman, Nasdaq; Kenneth L. Leibler, Chairman and Chief Executive Officer, BSE; and Salvatore F. Sadano, Chairman

further noted that the entrance fee amount the Committee was considering at the time might have an anti-competitive effect on potential new entrants.[10]

In light of the Division's concerns that the current Plan standards do not provide an objective basis for determining entrance fees for new Participants and that the fees should be based solely on objective criteria and costs that could be easily calculated and that could be readily discernable (similar to the methodology currently used for determining such fees in the OPRA Plan),[11] the Participants are proposing new standards for determining a new Participant's entry fee based on the OPRA Plan criteria. The proposed amendments would allow the Participants to consider one or both of the following in determining a new entrant's fee: (1) the portion of costs previously paid by the CTA for the development, expansion and maintenance of CTA's facilities which, under generally accepted accounting principles ("GAAP"), could have been treated as capital expenditures and, if so treated, would have been amortized over the five years preceding the admission of the new Participant (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life)[12]; and (2) previous amounts paid by other new Participants to joined the Plans.[13] In addition, the proposed

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and Chief Executive Officer, Amex, from Annette L. Nazareth, Director, dated March 13, 2003.

10 Id.

11 See letters to Thomas E. Haley, Chairman, CTA, from Annette L. Nazareth, Director, Division, Commission, dated August 3, and November 3, 2004.

12 The Commission notes that the Participants should only consider tangible assets that are capital expenditures under GAAP in the fee calculation. In addition, the Commission notes that the Participants should not to consider any historical costs of operating the systems prior to the time the new Participant joins the Plans.

13 The Commission notes that in considering the amounts that have been paid by other Participants to join the Plans, the Participants should only consider such fees on a "going forward" basis, which are determined by the proposed methodology.

amendments would require the new Participant to reimburse the Plan Processor for the costs that the Processor incurs in modifying CTS and CQS systems to accommodate the new Participant and for an additional capacity costs.[14] Any disagreement among the Participants regarding the fee calculation would be subject to Commission review pursuant to Section 11A(b)(5) of the Act.[15]

Finally, the proposed amendments would perform the "housekeeping" function of updating the names and addresses of the Plans' Participants. In the last few years, the "Pacific Stock Exchange, Inc." has become the "Pacific Exchange, Inc.," the "American Stock Exchange, Inc." has become the "American Stock Exchange, LLC," and the Cincinnati Stock Exchange, Inc." has become the "National Stock Exchange."

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the Plans by means of their execution of the proposed amendments. The proposed amendments would become effective upon Commission approval of the amendments.

D. Development and Implementation Phases

Not applicable.

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The Commission further notes that the fee that CBOE paid to join the Plans in 1991 should not be considered because it was not based on the proposed factors and therefore does not constitute a relevant fee for comparison purposes.

14 The Commission notes that in utilizing this criteria, the Participants should not consider any criteria that would result in a "double counting" of costs because the new entrant and other Plan participants are required to individually pay their own costs (e.g., capacity needs).

15 15 U.S.C. 78k-1(b)(5).

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)[16] of the Act.

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

Not applicable.

G. Approval by Sponsors in Accordance with Plan

Upon the Commission's receipt of executed versions of the proposed amendments by each of the Plans' Participants, each of the Participants shall have approved the proposed amendments in accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan.

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

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

16 15 U.S.C. 78k-1(c)(1)(D).

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

See Item I(A) above.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3-1[17]

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

Not applicable.

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[17] 17 CFR 240.11Aa3-1.

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 Plan amendment is 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-2004-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-CTA/CQ-2004-01. 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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. Copies of such filing 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-2004-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Petersen
Assistant Secretary

[18] 17 CFR 200.30-3(a)(27).