

Management Analyst, Budget and Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41572; File No. SR-CTA/CA-99-01]

Consolidated Tape Association; Notice of Filing of Fourth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Third Charges Amendment to the Restated Consolidated Quotation Plan

June 28, 1999.

Pursuant to Rule 11Aa3-2¹ of the Securities Exchange Act of 1934 ("Act"),² notice is hereby given that on June 14, 1999, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants")³ filed with the Securities and Exchange Commission ("Commission") or "SEC") amendments to the Restated CTA Plan and CQ Plan. The amendments propose (1) to modify the fees payable by vendors of the Network A market information in respect of nonprofessional subscriber services, (2) to introduce pay-for-use rates into the Network A rate schedules following a pilot test that commenced in November 1997, (3) to grant each vendor of a pay-for-use service the ability to limit its monthly pay-for-use obligation for each of its customers that qualifies as a nonprofessional subscriber, and (4) to establish an enterprise arrangement pursuant to which broker-dealers would enjoy a maximum monthly obligation of \$500,000 for aggregate monthly Network A market data fees incurred for interrogation services (both display-device and pay-per-use) that it provides to its officers, partners and employees and to its nonprofessional, brokerage-account customers.

Pursuant to Rule 11Aa3-2(c)(1), the CTA and CQ Participants submitted this notice of proposed amendments to two effective national market system plans.⁴ The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

A. Rule 11Aa3-2

1. Nonprofessional Subscriber Service Rates

The participants under the Plans that make Network A last sale information and Network A quotation information available (the "Network A Participants") impose on vendors a monthly fee of \$5.25 for each nonprofessional subscriber to whom the vendor provides a Network A market data display service. These amendments proposed to reduce that monthly fee from \$5.25 for each nonprofessional subscriber to (i) \$1.00 for each of the first 250,000 nonprofessional subscribers to whom a vendor provides a Network A display service during the month and (ii) \$.50 for each additional nonprofessional subscriber.

The objective of the proposed plan amendments is to encourage the proliferation of those services and the widespread dissemination of Network A market data. The Network A Participants also believe that reductions in the nonprofessional subscriber rates respond to the growing number of broker-dealers and vendors that wish to provide on-line services to their customers, which services may, for example, enable their customers to price portfolios with real-time information and to receive "dynamically updated" services, such as real-time ticker displays.

For the nonprofessional subscriber rates (rather than the much higher professional subscriber rates) to apply to any of its subscribers, a vendor must make certain that the subscriber qualifies as a nonprofessional subscriber,⁵ subject to the same criteria that have applied since 1983, when the Network A Participants first established

a reduced rate for nonprofessional subscribers.

Only those nonprofessional subscribers that actually gain access to at least one real-time Network A quote or price during the month will be charged the proposed fees by the Network A Participants.

2. Pay-for-Use Rates

Since November 1997, the Network A Participants have conducted a pilot program⁶ pursuant to which vendors provide services that account for the use of market data on the basis of one cent per quote packet.⁷ Vendors that have contracted to provide a usage-based service are required to pay one-cent for every quote packet that they make available, whether to professional or nonprofessional subscribers. The fee is an alternative to the other fee that the Network A Participants have historically charged professional and nonprofessional subscribers.

Based on their experience with the one-cent-per-quote fee and their extensive consultation with vendors and member organizations, the Network A Participants are proposing to modify the one-cent fee and to make the modified fee part of the Network A rate schedule.

Under the modified rates, each vendor would pay:

- i. Three-quarters of one cent (\$0.0075) for the first 20 million quote packets that it distributes during a month;
- ii. One-half of one cent (\$0.005) for the next 20 million quote packets that it distributes during that month (i.e., quote packets 20,000,001 through 40,000,000 million); and
- iii. One-quarter of one cent (\$0.0025) for every quote packet in excess of 40 million that it distributes during that month.

The Network A Participants believe that the proposed pay-for-use fees may motivate additional market data vendors and broker-dealers to provide pay-for-use services, thereby making real-time market data even more readily available to investors through those channels.

3. Interplay of Nonprofessional-Subscriber and Pay-for-Use Rates

The Network A Participants further propose to reduce the cost exposure of vendors and broker-dealers by permitting them to limit the amount due from each nonprofessional subscriber

¹ 17 CFR 240.11Aa3-2.

² 15 U.S.C. 78s(b)(1).

³ The amendments were executed by each Participant in each of the Plans. The Participants include American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

⁴ The CTA and CQ Plans have been designated as effective transaction reporting plans pursuant to Exchange Act Rule 11Aa3-1(b).

⁵ A "nonprofessional subscriber" shall receive the information solely for his personal, non-business use. The subscriber shall not furnish the information to any other person. See NYSE and ASE Application and Agreement for the Privilege of Receiving Last Sale Information & Bond Last Sale Information as a Nonprofessional Subscriber, for the qualifications necessary to be classified as a nonprofessional subscriber.

⁶ See Securities Exchange Act Rel. No. 39370 (November 26, 1997), 62 FR 64414 (December 5, 1997).

⁷ A "quote packet" refers to any data element, or all data elements, relating to a single issue. Last sale price, opening price, high price, low price, volume, net change, bid, offer, size, best bid and best offer all exemplify data elements. "IBM" exemplifies a single issue. An index value constitutes a single issue data element.

each month. The vendors and broker-dealers would be eligible to pay the lower of either the aggregate pay-per-use fees that would apply to the subscriber's usage during the month or the monthly \$1.00 first-tier nonprofessional subscriber fee. The Network A Participants propose to offer this flexibility to each subscriber that qualifies as a nonprofessional subscriber and that has agreed to the terms and conditions that apply to the receipt of market information as a nonprofessional subscriber.

For ease of administration, the Network A Participants propose to allow each vendor and broker-dealer to apply the \$1.00 fee for any month in which each nonprofessional subscriber retrieves 134 or more quote packets during the month, without regard to the marginal per-quote rate that the vendor or broker-dealer pays that month (*i.e.*, three-quarters, one-half or one-quarter cent per quote packet). In addition, each vendor may reassess each month to determine which fee is more economical, the per-quote fee or the nonprofessional subscriber fee.

4. Enterprise Arrangement

In response to input from the brokerage community, the Network A Participants propose to introduce an enterprise arrangement and to make it available to United States-registered broker-dealers. The concept would apply to the devices that those broker-dealers use internally and to those broker-dealers' distribution of market data to their securities-trading customers. It would not apply to broker-dealers that make market data available to non-brokerage customers.

The enterprise arrangement would limit the aggregate amount that United States-registered broker-dealers would be required to pay in any month to (i) the receipt and use of market data by its officers, partners and employees and those of its affiliates, and to (ii) the pay-for-use and monthly display-device interrogation services that it or its United States-registered broker-dealer affiliates provide to their nonprofessional, brokerage-account customers (*i.e.*, customers that qualify as nonprofessional subscribers and that have opened a trading account pursuant to an applicable brokerage account agreement). Fees not eligible for inclusion in the enterprise arrangement's monthly payment limitation are (i) pay-for-use and display device fees payable by (A) professional subscribers and (B) nonprofessional subscribers that do not have brokerage accounts with the broker-dealer or its United States-registered broker-dealer

affiliates, (ii) access fees, and (iii) program classification charges.

The enterprise arrangement's maximum monthly payment through the end of calendar year 2000 shall be \$500,000. Thereafter, the Network A Participants propose to increase that maximum on an annual basis in an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent.

The proposal responds to broker-dealer input suggesting that CTA develop an enterprise-wide approach to pricing. CTA anticipates that like other proposals, this one will encourage new and additional uses of real time data by making the cost less expensive and more predictable.

In addition, the Network A Participants propose to make some minor, non-substantive changes to the form of Schedules A-1 and A-2 of Exhibit E to both the CTA Plan and the CQ Plan.

* * * * *

This amendment furthers the objectives of the national market system regarding the dissemination of last sale information delineated in Sections 11A(a)(1)(C), 11A(a)(1)(D) and 11A(a)(3)(B) of the Act.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the CTA and CQ Network A rate schedules by means of their execution of the amendments. The rate changes would become effective on the first day of the month that follows the month in which the Commission approves the proposed plan amendments.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

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 Network A Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) 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 Plans

In accordance with Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants has approved the fee reductions.

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

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

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

See Item I(A) and the text of the amendments.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3-1 (Solely in its Application to the Amendments to the CTA Plan)

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

See Item I(A).

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Section 11A of the Act requires that the Commission assure fair competition among brokers and dealers and assure

the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.⁸ Another provision in this section authorizes the Commission to prescribe rules to assure that all persons may obtain this market data on terms that are "not unreasonably discriminatory."

Based on these standards, the Commission requests comment on whether the tiered fee structure applicable to users is unreasonably discriminatory.

1. The usage-based fee is structured as a fee per user with decreases for larger numbers of users. Will this tiered fee structure have an effect on competition among broker-dealers?

2. Will these volume discounts inure to the benefit of retail investors equally regardless of the broker-dealer they choose?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by July 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41558; File No. SR-CBOE-99-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Changes to the Firm Quote Rule

June 24, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 27, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 8.51, Trading Crowd Firm Disseminated Market Quotes, to expand the categories of orders entitled to firm quote treatment and to specify to what extent multiple orders entered by the same beneficial owner at the same time will be entitled to firm quote treatment. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 8.51 to expand the categories of orders entitled to firm quote protection and to specify to what extent multiple orders entered by the same beneficial owner and represented at a trading station at approximately the same time will be entitled to firm quote protection.

Currently, Rule 8.51(a) states that "non-broker-dealer customer" orders up to the specified size (currently 10 contracts) are entitled to be executed at the offer (bid) which is displayed when a buy (sell) customer reaches the trading station where the particular option class is located for trading.³ The Exchange is proposing to expand the category of orders entitled to this protection such that, with one exception, all orders would be entitled to the firm quote treatment under Rule 8.51(a). The firm quote requirement would not apply to orders of individuals who trade in the account of a market-maker or specialist on the Exchange or on another exchange, which account is exempt from the provisions of Regulation T of the Board of Governors of the Federal Reserve System pursuant to Section 7(c)(2) of the Act.⁴ This exception would exclude not only market-maker accounts but also customer accounts of market-makers or specialists. In other words, the proposal would apply to orders of broker-dealers (other than those acting as market-makers) regardless of whether they are agency or proprietary orders. The appropriate Floor Procedure Committee would have the authority to determine not to extend firm quote treatment to broker-dealer orders in a particular class of options under its jurisdiction.

In proposing this change, the Exchange believes that extending the firm quote treatment to broker-dealer orders will provide an incentive to broker-dealers to send their orders to the Exchange because they will be assured that their order will be executed at the

³But see Securities Exchange Act Release No. 40957 (January 20, 1999), 64 FR 4485 (January 28, 1999) (File No. SR-CBOE-98-53, proposing to raise the number of contracts guaranteed under the firm quote rule to the RAES contract limit).

⁴Section 7(c)(2) of the Act specifies those categories of persons that are exempt from the requirements of Regulation T with respect to the arrangement, extension or maintenance of credit to finance securities transactions. Among those persons exempted are members of national securities exchanges or registered broker-dealers who arrange or maintain credit to finance their activities as market makers.

⁸ 15 U.S.C. 78k-1(a)(1)(C)(i) and (ii).

⁹ 17 CFR 200.30-3(a)(27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.