

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41767; File No. SR-CTA/CQ-99-02]

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

August 19, 1999.

Pursuant to Rule 11Aa3-2<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> notice is hereby given that on August 2, 1999, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants")<sup>3</sup> filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan.<sup>4</sup> The amendments propose (1) to modify the fees payable by vendors of the Network B market information in respect of nonprofessional subscriber services, (2) to introduce pay-for-use rates into the Network B rate schedules following a pilot test that commenced in February 1997, and (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.

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.<sup>5</sup> 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 B last sale information and Network B quotation information available (the "Network B Participants") impose on vendors a monthly fee of \$3.25 for each nonprofessional subscriber to whom the vendor provides a Network B market data display service. These amendments propose to reduce that monthly fee from \$3.25 to \$1.00 for each nonprofessional subscriber to whom a vendor provides a Network B display service during the month.

The objective of the proposed plan amendments is to encourage the proliferation of those services and the widespread dissemination of Network B market data. The Network B 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,<sup>6</sup> subject to the same criteria that have applied since 1985, when the Network B Participants first established a reduced rate for nonprofessional subscribers.

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

#### 2. Pay-for-Use Rates

Since February 1997, the Network B Participants have conducted a pilot program pursuant to which vendors, providing Network B market data display services to nonprofessional

subscribers, have been afforded the following tiered usage schedule as an alternative to the flat \$3.25 monthly rate the Network B Participants have historically imposed on nonprofessional subscribers.

1-50 quotes = \$0.50 per month, per quote  
51-250 quotes = \$3.25 per month, per user  
251 + quotes = \$35.00 per month, per user

Based on its experience with the tiered usage schedule and their extensive consultation with vendors and member organizations, the Network B Participants are proposing to alter the tiered usage schedule and to make the altered fee structure part of the Network B rate schedule.

Under the altered rates, each vendor would pay:

- i. three-quarters of one cent (\$0.0075) per quote packet<sup>7</sup> for each of the first 20 million quote packets that it distributes during a month;
- ii. one-half of one cent (\$0.005) per quote packet for each of 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 B 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 B 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 each month. The vendor and broker-dealers would be eligible to pay the lower of either (i) the aggregate pay-per-use fees that would apply to the subscriber's usage during the month or (ii) the flat monthly \$1.00 nonprofessional subscriber fee. The Network B Participants propose to offer this flexibility to each subscriber that qualifies as a nonprofessional subscriber and that has agreed to the terms and

<sup>1</sup> 17 CFR 240.11Aa3-2.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 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.

<sup>4</sup> The Communications Facilities charge was incorrectly stated on the Schedule of Fees submitted with the proposal. The charge remains \$250 for each unit as approved on October 14, 1997 in Securities Exchange Act Rel. No. 39235, 62 FR 54886 (October 22, 1997). Telephone conversation between Kerry G. Baker, Director, Market Data Services, Nasdaq/AMEX, and Mignon McLemore, Attorney, Division of Market Regulation, Commission, August 19, 1999.

<sup>5</sup> The CTA and CQ Plans have been designated as effective transaction reporting plans pursuant to Exchange Act Rule 11Aa3-1(b).

<sup>6</sup> 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.

<sup>7</sup> 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.

conditions that apply to the receipt of market information as a nonprofessional subscriber.

For ease of administration, the Network B 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.

\* \* \* \* \*

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 B 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 B 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*

### **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.<sup>8</sup> 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 September 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Meeting Notice**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 30, 1999.

A closed meeting will be held on Thursday, September 2, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain

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

<sup>9</sup> 17 CFR 200.30-3(a)(27).