

information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-087 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61226; File No. SR-CTA/CQ-2009-02]

Consolidated Tape Association; Order Approving the Thirteenth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and Seventh Charges Amendment to the Restated Consolidated Quotation Plan

December 22, 2009.

I. Introduction

On October 19, 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 proposals⁴ to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the “Plans”).⁵ The proposals would: (1)

²⁴ 17 CFR 200.30-3(a)(12).

¹ Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Inc.; 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 LLC; and NYSE Arca, Inc.

² 15 U.S.C. 78k-1.

³ 17 CFR 242.608.

⁴ On November 6, 2009, the Consolidated Tape Association sent a revised transmittal letter correcting the number of the proposed amendment (“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

delete all program classification charges from the schedules of Network A and Network B computer input charges; and (2) replace the current combined Network A/Network B high speed line access charges with separate high speed line access charges for Network A and Network B. The proposed amendments to the Plans were published for comment in the **Federal Register** on November 19, 2009.⁶ No comment letters were received in response to the Notice. This order approves the proposed amendments to the Plans.

II. Description of the Proposal

The Plans currently divide the different means of using market data into eight “program classifications.” The program classification fees payable by vendors and end-users depend on the category of use the vendor or end-user makes of the data and whether the vendor or end-user is using Network A market data or Network B market data, or both. Through the amendments to the Plans, the Participants proposed to eliminate program classification charges and set separate fees for the receipt of Network A market data and Network B market data.

The Participants stated that over time, new technologies and new and innovative ways to use market data have made it increasingly difficult to fit the data uses into the existing program classifications in a manner that is consistent and equitable for all. Therefore, the Participants concluded that it is more equitable to charge vendors and end-users for the method of access to the data and the quantity of usage, rather than for the specific purposes (*i.e.*, by program classification) to which vendors and end-users put market data. The elimination of program classification charges means that vendors will no longer need to provide detailed explanations of how they use the data or to update Exhibit A to their agreements with the Participants each time they use data in a new way.

Additionally, the Participants proposed to revise the access fees by setting separate fees for the receipt of Network A market data and Network B market data. Therefore, if a vendor or end-user wishes to receive Network A last sale prices (or quotation information), but not Network B last sale prices (or quotation information), the vendor or end-user would be

242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608.

⁶ See Securities Exchange Act Release No. 60985 (November 10, 2009), 74 FR 59999 (“Notice”).

allowed to pay only for Network A last sale prices, without also having to pay for Network B last sale prices and vice versa.

In addition to establishing separate access fees for Network A and Network B, the Participants stated that they intend to set the new access fees at levels that will offset the revenues that the Participants anticipate losing as a result of eliminating the program classification fees.

III. Discussion

After careful review, the Commission finds that the proposed amendments to the Plans are consistent with the Act and the rules and regulations thereunder.⁷ Specifically, the Commission finds that the amendments are consistent with Rule 608(b)(2)⁸ of the Act in that they are necessary for the protection of investors, the maintenance of fair and orderly markets, and to remove impediments to a national market system. The Commission believes that eliminating program classification charges and replacing them with separate fees for the receipt of Network A and Network B market data are fair and reasonable and provide for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons using CTA Network A and Network B facilities. The Commission agrees that charging users of data based on their method of access to the data and the amount of data they use rather than basing charges on the way vendors or end users use the data should simplify the rate schedule, remove subjectivity from the billing process, simplify and reduce the costs of data administration, and give choice to data vendors and end-users who prefer to receive data from one network only. Further, according to the Participants’ estimates, the vast majority of vendors and end-users would realize net monthly increases or decreases of less than \$1,000.⁹ Thus, the proposed amendment is consistent with, and would further, one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii)¹⁰ of the Act—increasing the availability of market information to broker-dealers and investors.

⁷ In approving this amendment, the Commission has considered the proposed amendment’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 17 CFR 242.608(b)(2).

⁹ See the Transmittal Letter.

¹⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,¹¹ and the rules thereunder, that the proposed amendments to the CTA and CQ Plans (SR-CTA/CQ-2009-02) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61218; File No. SR-NYSEAmex-2009-90]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

December 22, 2009.

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 December 16, 2009, NYSE Amex LLC (“NYSE Amex” or “Exchange”) filed with the Securities and Exchange Commission (“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

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nyse.com>, on the Commission’s Web site at <http://www.sec.gov>, at NYSE Amex, and at the Commission’s Public Reference Room.

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 recently introduced automated complex order trading for all market participants on NYSE Amex. In conjunction with that functionality, the Exchange introduced new transaction fees specific to Complex Order executions. Pursuant to this filing, the Exchange proposes to clarify the Schedule by deleting language that states, “Complex Orders in Penny Pilot Issues, executed against individual orders in the Consolidated Book will be subject to “Take Liquidity” rate per contract for that issue.” This language was inadvertently included as part of a prior fee filing and is not applicable to the current NYSE Amex fee structure. NYSE Amex does not offer a post/take pricing structure, so reference to a “Take Liquidity” rate is inapplicable and misleading. Consistent with the current practice, complex orders in Penny Pilot issues, like all other issues, will be subject to the standard execution rate per contract pricing.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. Under this proposal, all similarly situated Exchange participants will be charged the same reasonable dues, fees and other charges.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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-NYSEAmex-2009-90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-90. 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

¹¹ 15 U.S.C. 78k-1.

¹² 17 CFR 200.30-3(a)(27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).