

application; (d) the Company declares and pays a dividend to the shareholders of Capital Appreciation Fund which distributes all of the Fund's taxable income for the taxable years ending at or prior to the closing; and (e) a registration statement on Form N-14 shall have been filed with the SEC and declared effective. The Reorganization Plan may be terminated by either Fund if its Board determines that circumstances have changed to make the Reorganization inadvisable.

Applicants agree not to make any material changes to the Reorganization Agreement without prior SEC approval.

6. A registration statement on Form N-14 was filed with the SEC on June 28, 1999, and became effective on August 11, 1999. Proxy solicitation materials were mailed to Capital Appreciation Fund shareholders on August 12, 1999, and definitive proxy materials have been filed with the SEC. A special meeting of Capital Appreciation Fund shareholders was held on August 27, 1999, at which the shareholders approved the Reorganization Plan.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that they may not rely on rule 17a-8 in connection with the Reorganization because the Funds may be deemed to be affiliated by reasons other than those set forth in the rule. Applicants state that

Chubb, which owns the Adviser, owns more than 25% of the outstanding voting securities of each of the Funds.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants believe that the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the Reorganization will be based on the Funds' relative net asset values. In addition, applicants state that the Board, including all of the Independent Directors, determined that the participation of each Fund in the Reorganization is in the best interests of each Fund and that such participation will not dilute the interests of shareholders of each Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-26671 Filed 10-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41977; File No. SR-CTA/CQ-99-01]

Consolidated Tape Association; Order Granting Approval 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

October 5, 1999.

I. Introduction

On June 14, 1999, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants")¹ filed with

¹ 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

the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")² and Rule 11Aa3-2 thereunder.³ Notice of the proposed plan amendments appeared in the **Federal Register** on June 28, 1999.⁴ The Commission received two comment letters in response to the proposal.⁵ This order approves the proposed plan amendments.

II. Description of the Proposal

A. Nonprofessional Subscriber Service Rates

The participants under the Plans that make available Network A (NYSE-listed) last sale information and Network A quotation information 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. The proposed amendments will 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.

For the nonprofessional subscriber rates to apply to any of its subscribers (rather than the much higher professional subscriber rates), a vendor must make certain that the subscriber qualifies as a nonprofessional subscriber,⁶ subject to the same criteria that have applied since 1983, when the Participants first established a reduced rate for nonprofessional subscribers. Only those nonprofessional subscribers

Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc. ("NYSE"), Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

² 15 U.S.C. 78k-1(a)(3).

³ 17 CFR 240.11Aa3-2.

⁴ Securities Exchange Act Rel. No. 41572 (June 28, 1999), 64 FR 36412 (July 6, 1999). A typographical error was corrected on July 27, 1999. Securities Exchange Act Rel. No. 41572 (correction), 64 FR 40651.

⁵ See letters from Kenneth S. Spier, First Vice President & Assistant General Counsel, Merrill Lynch, Pierce, Fenner & Smith Incorporated, dated July 27, 1999 ("Merrill Letter") and Sam Scott Miller, Orrick, Herrington & Sutcliffe LLP, to Jonathan G. Katz, Secretary, Commission, dated July 26, 1999 ("Schwab Letter").

⁶ A nonprofessional subscriber must receive the information solely for his or her personal, non-business use and must 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.

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

B. Pay-for-Use Rates

Since November 1997, the Participants have conducted a pilot program⁷ whose terms require vendors to provide services that account for the use of market data on the basis of one cent per quote packet.⁸ Vendors that have contracted to provide a usage-based service are required to pay one cent for every quote packet that they provide to their professional or nonprofessional subscribers. The fee is an alternative to the monthly subscriber fee that the Participants have historically charged professional and nonprofessional subscribers.

Based their experience with the one-cent-per-quote fee and after consultation with vendors and professional subscribers, the Participants have determined to modify the one-cent fee and 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); and
- iii. One-quarter of one cent (\$0.0025) for every quote packet in excess of 40 million that it distributes during that month.

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

The Participants also have determined to reduce the cost exposure of vendors by permitting them to limit the amount due from each nonprofessional subscriber each month. The vendors 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 Participants will offer this flexibility to each subscriber that qualifies as a nonprofessional subscriber and that agrees to the terms and conditions that apply to the receipt of

market information as a nonprofessional subscriber.

For ease of administration, the Participants will allow each vendor 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 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.

D. Enterprise Arrangement

In response to input from the brokerage community, the Participants will introduce an enterprise arrangement and make it available to registered broker-dealers. The concept would apply to the devices that such broker-dealers use internally and to their distributions 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 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 (ii) the pay-for-use and monthly display-device interrogation services that it or its 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 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 Participants propose to increase this 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.

In addition, the Participants will 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.

III. Summary of Comments

The Commission received two comment letters concerning the proposed amendments to the CTA and CQ Plans.⁹ Although both letters supported a reduction in fees for market information, they urged the Commission to re-examine the process for establishing fees to ensure that they are set at fair, reasonable, and nondiscriminatory levels. The Merrill Letter supported the proposed enterprise arrangement because it "imposes a limit on the aggregate amount payable for market data."¹⁰ The Merrill Letter also suggested that enterprise arrangements should be implemented by the other national market system plans that disseminate market information and that these arrangements should be made uniform. The letter also supports the reduction in nonprofessional subscriber rates because it "reflects the growing demand for real-time quotes."¹¹

The Merrill Letter noted that the various national market system plans with their attendant terms and conditions have created unnecessary administrative burdens on, and caused unnecessary expenses for, broker-dealer users of market information. The letter suggested that the plans should try to standardize, where possible, the terms, conditions, policies, and procedures to lessen the administrative burdens associated with the current fee structures.

The Schwab Letter supported approval of the proposed fee reductions, but also asserted that other aspects of the proposal were not consistent with the statutory standards applicable to market information fees and should be abrogated. Schwab stated that, although the fee reductions benefit retail investors, the CTA's overall fee structure is not fair and reasonable because the fees charged are unrelated to the actual costs of providing the market information. Moreover, Schwab notes that the reduced costs of collecting and disseminating market information have resulted from an increase in dissemination of market information through electronic means. According to Schwab, because the new fee structure does not reflect these reduced costs, the fee structure does not

⁷ See Securities Exchange Act Rel. No. 39370 (November 26, 1997), 62 FR 64414 (December 5, 1997).

⁸ 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.

⁹ See note 5 above.

¹⁰ Merrill Letter at 1.

¹¹ *Id.* at 2.

comply with the standards of Section 11A of the Act.

The Schwab Letter further contended that CTA should demonstrate that the proposed fees do not unfairly discriminate among users of market information. Schwab supported a "cost-based, non-discriminatory" enterprise fee and stated that the proposed enterprise fee of \$500,000 was discriminatory because it was not connected to the actual costs of CTA.¹² Schwab also asserted that the proposed annual increase to the enterprise fee "further exemplifies the disregard for setting fees reasonably related to costs."¹³

The Schwab Letter believed that the tiered fee structure improperly discriminated among broker-dealers and vendors based on the number of subscribers they have and their subscribers' use of market data. Finally, although it supported giving vendors the choice of paying the lower of the monthly nonprofessional fee or the per-quote fee, the Schwab Letter contended that to "ensure the benefit of the election, the \$0.50 per-subscriber fee should be used for those subscribers of a broker-dealer or vendor beyond the first 250,000."¹⁴

IV. Discussion

The Commission finds that the proposed plan amendments are consistent with the Act and the rules and regulations thereunder.¹⁵ Specifically, the Commission finds that approval of the amendments is consistent with Rule 11Aa3-2(c)(2)¹⁶ of the Act.

The Commission currently is conducting a broad review of the fee structures for obtaining market information and of the role of market information revenues in funding the self-regulatory organizations. As part of its review, the Commission intends to issue a release describing existing market information fees and revenues and inviting public comment on the subject. The proposed rule change implicates many of the issues that the

Commission is reviewing. These include identifying the appropriate standards for determining (1) whether the fees charged by an exclusive processor of market information are fair and reasonable, and (2) whether a fee structure is unreasonably discriminatory or an inappropriate burden on competition.

The Commission has decided to approve the proposed plan amendments pending its review because they represent, in part, a very substantial reduction in the market information fees applicable to retail investors. In particular, the monthly fee for non-professional subscribers would be reduced from \$5.25 per month to no greater than \$1.00 per month. Under this monthly fee structure, there would be no limit on the amount of market information that retail investors would be entitled to receive. Such a fee structure may enable vendors to provide retail investors with more useful services than previously has been the case. In this regard, the proposed plan amendments are consistent with, and significantly further, one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii) increasing the availability of market information to broker-dealers and investors. The Commission wishes to emphasize, however, that its review of market information fees and revenues is ongoing and may require a reevaluation of the fee structures contained in the proposed plan amendments at some point in the future.

The Commission recognizes that the commenters supported approval of the proposed fee reductions primarily because they represent an improvement over the CTA's current fee structure. Other issues raised by the commenters (e.g., discriminatory impact of the CTA fee structure on on-line investors, the appropriate standard to be applied in assessing the fairness and reasonableness of market information fees) have broader implications on the functioning and regulation of the national market system. As such these issues will be addressed in the Commission's forthcoming concept release on market information fees and revenues.

The Commission also finds that the minor, non-substantive changes made to the form of Schedules A-1 and A-2 of Exhibit E to both the CTA and CQ Plans reflect the proposed amendments, thereby clarifying the fee schedules to make them more understandable.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,¹⁷ and the rules thereunder, that the proposed amendments to the Plans (SR-CTA/CQ-99-01) are approved.

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

[FR Doc. 99-26620 Filed 10-12-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41981; File No. SR-Amex-99-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending the Exchange's Audit Committee Requirements

October 6, 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 September 20, 1999, the American Stock Exchange LLC ("Amex" 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

The Exchange proposes to amend its listing standards pertaining to audit committee requirements. The text of the proposed rule change is as follows. Proposed new language is italicized; deletions are in brackets.

Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Directors:

The Exchange requires that domestic listed companies have [at least two] a *sufficient number of independent directors to satisfy the audit committee requirement set forth below*. [, that is,] *Independent directors [who] are not officers of the company [; who are neither related to its officers nor represent concentrated or family holdings of its shares;] and are [who], in*

¹² Schwab Letter at 5.

¹³ *Id.*

¹⁴ *Id.* at 6.

¹⁵ The Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission realizes that the modified fee structure, as applied, may create competitive disparities. The new fee structure will, however, reduce the cost of access to market information, which should result in a reduction of costs for investors. The competitive concerns and solutions suggested by the commenters will be addressed in the Commission's forthcoming concept release on market information fees and revenues.

¹⁶ 17 CFR 240.11Aa3-2(c)(2).

¹⁷ 15 U.S.C. 78k-1.

¹⁸ 17 CFR 200.30-3(a)(27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.