

subadviser or depositor to a Fund, or principal underwriter for any open-end Fund or UIT and that the conduct occurred prior to Citigroup's acquisition of the parent company of ATDS when the Fund Servicing Applicants were not affiliated persons of ATDS. Applicants also state that none of the current or former directors, officers, or employees of the Fund Servicing Applicants had any involvement in the conduct alleged in the Complaint. Applicants further state that the personnel at ATDS who allegedly participated in the conduct giving rise to the Injunction have had no and will not have any future involvement in providing advisory, subadvisory or depository services to Funds, or principal underwriting services to open-end Funds or UITs and are no longer employed by ATDS.

5. Applicants state that the inability of the Fund Servicing Applicants to continue to serve as investment adviser, depositor or principal underwriter to the Funds would result in potentially severe financial hardships for the Funds and their shareholders. Applicants have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the board of directors of each Fund, including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Judgment, any impact on the Funds, and the application. Applicants state they will provide the Funds with all information concerning the Judgment and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also state that, if the Fund Servicing Applicants were barred from serving as investment adviser, depositor or principal underwriter to the Funds, the effect on their businesses and employees would be severe. Applicants state that the Fund Servicing Applicants have committed substantial resources to establish an expertise in providing services covered by section 9(a) of the Act to Funds. Applicants further state that prohibiting the Fund Servicing Applicants from providing advisory and distribution services would not only adversely affect their businesses, but would also adversely affect approximately 50 employees that are involved in those activities. Applicants also state that disqualifying the ESC Advisers from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of

investors. Because the ESCs have been formed for the benefit of certain eligible employees, officers, directors and persons on retainer of Citigroup and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act or the ESC Order to require another entity not affiliated with the ESC Advisers to manage the ESCs. In addition, the employees of Citigroup and its affiliates subscribed for interests in the ESCs with the expectation that the ESCs would be managed by an affiliate of Citigroup.

7. Applicants previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

it is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from March 11, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-5790 Filed 3-17-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28645; 812-13639]

E*TRADE Capital Markets LLC, et al.; Notice of Application and Temporary Order

March 12, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against E*TRADE Capital Markets LLC ("ETCM") on March 11, 2009, by the United States District Court for the Southern District of New York ("Injunction") until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: ETCM, E*TRADE Financial Corporation ("ETFC"), E*TRADE Asset Management, Inc. ("E*TRADE Asset Management"), E*TRADE Securities LLC ("E*TRADE Securities") and Kobren Insight Management, Inc. ("Kobren") (collectively, other than ETCM and ETFC, the "Fund Servicing Applicants," and together, the "Applicants").¹

FILING DATES: The application was filed on March 4, 2009 and amended on March 12, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 6, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

¹ Applicants request that any relief granted pursuant to the application also apply to any other company of which ETCM is or hereafter becomes an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the "Covered Persons").

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: ETCM, 440 S. LaSalle Street, Suite 3030, Chicago, IL 60605; ETFC and E*TRADE Securities, 135 E. 57th Street, New York, NY 10022; E*TRADE Asset Management, 4500 Bohannon Drive, Menlo Park, CA 94025; and Kobren, 20 William Street, Suite 200, Wellesley Hills, MA 02481.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at 202–551–6878 or Julia Kim Gilmer, Branch Chief, at 202–551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. ETFC is a global financial services company organized under the laws of Delaware. Through its subsidiaries and affiliates, ETFC provides a wide range of financial services including an assortment of trading, investing, banking and lending products. ETCM is a wholly owned subsidiary of ETFC and is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"). ETCM is primarily engaged in the business of over-the-counter market making activities. E*TRADE Asset Management and Kobren (together, the "Adviser Applicants") are each a wholly owned subsidiary of ETFC and registered as an investment adviser under the Investment Advisers Act of 1940. Each Adviser Applicant currently provides investment management and advisory services to registered investment companies ("Funds"). E*TRADE Securities is registered as a broker-dealer under the Exchange Act and acts as principal underwriter to various open-end Funds.

2. On March 11, 2009, the United States District Court for the Southern District of New York entered a judgment, which included the Injunction, against ETCM ("Judgment") in a matter brought by the Commission.² The Commission alleged in the complaint ("Complaint") that ETCM violated certain rules of the Chicago Stock Exchange by engaging in

improper trades for its own proprietary accounts by trading ahead of, instead of matching customer orders, interpositioning and trading ahead of unexecuted open or cancelled orders. The Complaint also alleged that ETCM violated section 17(a) of the Exchange Act and rule 17a-3 thereunder by failing to make or keep a current blotter containing an itemized daily record of all purchases and sales of securities effected by ETCM for its proprietary accounts. Without admitting or denying any of the allegations in the Complaint, ETCM consented to the entry of the Injunction.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that ETCM is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in

section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, subadviser or depositor or principal underwriter for any Fund. Applicants also state that none of the current or former directors, officers, or employees of ETFC and the Fund Servicing Applicants had any knowledge or involvement in the conduct alleged in the Complaint. Applicants further state that the personnel at ETCM who were involved in the violations alleged in the complaint have had no and will not have any future involvement in providing advisory, subadvisory, depository or underwriting services to Funds.

5. Applicants state that the inability of the Adviser Applicants to provide investment advisory services and E*TRADE Securities to provide principal underwriter services to Funds would result in potentially severe financial hardships for the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of trustees of the Funds (the "Boards"), including the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, of the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if the Fund Servicing Applicants were barred from providing investment advisory services to the Funds, and underwriting services to open-end Funds and UITs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establishing advisory and underwriting expertise. Applicants further state that prohibiting them from providing advisory and underwriting services would not only adversely affect their businesses, but

² *Securities and Exchange Commission v. E*TRADE Capital Markets LLC*. Final Consent Judgment as to E*TRADE Capital Markets LLC., 09 Civ. 1976 (S.D.N.Y., filed March 11, 2009).

would also adversely affect over 1,500 employees that are involved in such services.

7. None of the Applicants have previously received an order under section 9(c) of the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from March 11, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-5785 Filed 3-17-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 19, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has

certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 19, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

March 12, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-5791 Filed 3-17-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, April 8, 2009 at 10 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to propose short sale price test rules.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: March 13, 2009.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-5932 Filed 3-16-09; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59552; File No. SR-CTA/CQ-2008-05]

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

March 10, 2009.

I. Introduction

On December 15, 2008, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan participants ("Participants")¹ filed with the Securities and Exchange Commission ("Commission") pursuant to Rule 608² under the Securities Exchange Act of 1934 ("Act")³ a proposal to amend the CTA and CQ Plans (collectively, the "Plans")⁴ to provide that the Participants will pay the Network A Administrator a fixed annual fee ("Annual Fixed Payment") in exchange for its performance of Network A administrator functions under the Plans. The proposed Amendments were published for comment in the **Federal Register** on January 21, 2008.⁵ No comment letters were received in response to the Notice. This order approves the Amendments.

¹ Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC (n/k/a NYSE Alternext U.S. LLC); Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.); Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; The NASDAQ Stock Market LLC ("Nasdaq"); National Stock Exchange, Inc.; New York Stock Exchange LLC ("NYSE"); NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHILX, Inc.).

² 17 CFR 240.608.

³ 15 U.S.C. 78k-1.

⁴ See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (order permanently approving 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 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

⁵ See Securities Exchange Act Release No. 59230 (January 12, 2008), 74 FR 3659 ("Notice").