

amount certificate companies, to comply with the periodic filing and disclosure requirements imposed by Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Investment Company Act"), and of rules 30a-1 and 30b1-1 thereunder (17 CFR 270.30a-1 and 17 CFR 270.30b1-1). The information required to be filed with the Commission assures the public availability of the information and permits verification of compliance with Investment Company Act requirements. Registered unit investment trusts are required to provide this information on an annual report filed with the Commission on Form N-SAR pursuant to rule 30a-1 under the Investment Company Act, and registered management investment companies must submit the required information on a semi-annual report on Form N-SAR pursuant to rule 30b1-1 under the Investment Company Act.

The Commission estimates that the total number of respondents is 3,270 and the total annual number of responses is 5,770 ((2,500 management investment company respondents × 2 responses per year) + (770 unit investment trust respondents × 1 response per year)). The Commission estimates that each registrant filing a report on Form N-SAR would spend, on average, approximately 14.25 hours in preparing and filing reports on Form N-SAR and that the total hour burden for all filings on Form N-SAR would be 82,223 hours.

The collection of information under Form N-SAR is mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: July 19, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-70010; File No. SR-CTA/CQ-2013-04]**

### **Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Nineteenth Charges Amendment to the Second Restatement of the CTA Plan and Eleventh Charges Amendment to the Restated CQ Plan**

July 19, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on July 10, 2013, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan participants ("Participants")<sup>3</sup> filed with the Securities and Exchange Commission ("Commission") a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the "Plans").<sup>4</sup> The amendments ("June Fee Simplification Amendments") respond to requests from industry representatives that sit on the Plans' Advisory Committees that the Participants simplify the Plans' existing market data fee schedules and reduce associated administrative burdens. The

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), International Securities Exchange, LLC, NASDAQ OMX BX, Inc. ("NASDAQ BX"), NASDAQ OMX PHLX, Inc. ("NASDAQ PSX"), Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC (formerly NYSE Amex, Inc.), and NYSE Arca, Inc. ("NYSE Arca").

<sup>4</sup> See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (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 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.

Advisory Committee consists of individuals representing the key market data customer segments, including retail brokers, broker-dealers, alternative trading systems and vendors. Acting on the recommendations of the Advisory Committee, the Participants seek to compress the current 14-tier Network A device rate schedule into just four tiers, consolidate the Plans' eight fee schedules into one, update that fee schedule, and realign the Plans' charges more closely with the services the Plans provide (collectively, the "Fee Changes"), without materially changing the revenues the current fee schedules generate.

The Participants first introduced the Fee Changes in the Sixteenth Charges Amendment to the CTA Plan<sup>5</sup>, as modified by the Seventeenth Charges Amendment to the CTA Plan<sup>6</sup> and in the Eighth Charges Amendment to the CQ Plan<sup>7</sup>, as modified by the Ninth Charges Amendment to the CQ Plan<sup>8</sup> (collectively, the "March Fee Simplification Amendments"). On May 10, 2013, the Participants filed Amendments to reverse the Fee Changes introduced in the March Fee Simplification Amendments in the Eighteenth Charges Amendment to the CTA Plan<sup>9</sup> and the Tenth Charges Amendment to the CQ Plan ("Reversal Amendments")<sup>10</sup>. The June Fee Simplification Amendments propose to re-introduce them.

The Commission received two comment letters regarding the Sixteenth Charges Amendment to the CTA Plan and the Eighth Charges Amendment to the CQ Plan<sup>11</sup> and received one comment letter regarding the Seventeenth Charges Amendment to the CQ Plan and the Ninth Charges Amendment to the CQ Plan.<sup>12</sup>

Pursuant to Rule 608(b)(3)(i) under Regulation NMS,<sup>13</sup> the Participants

<sup>5</sup> See Securities Exchange Act Release No. 69157 (March 18, 2013), 78 FR 17946 (March 25, 2013) (File No. SR-CTA/CQ-2013-01).

<sup>6</sup> See Securities Exchange Act Release No. 69318 (April 5, 2013), 78 FR 21648 (April 11, 2013) (File No. SR-CTA/CQ-2013-02).

<sup>7</sup> See *supra* note 5.

<sup>8</sup> See *supra* note 6.

<sup>9</sup> See Securities Exchange Act Release No. 69593 (May 16, 2013), 78 FR 30365 (May 22, 2013) (File No. SR-CTA/CQ-2013-03).

<sup>10</sup> See *id.*

<sup>11</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Henry Schwartz, President and Founder, Trade Alert LLC ("Trade Alerts"), dated March 20, 2013 ("Trade Alerts Letter") and from Kimberly Unger, Esq., CEO and Executive Director, The Security Traders Association of New York, Inc. ("STANY"), dated April 10, 2013 ("STANY Letter").

<sup>12</sup> See Letter to the Commission from James Smith, Director, Hoffman Estates, IL, dated April 8, 2013.

<sup>13</sup> 17 CFR 242.608(b)(3)(i).

designated the June Fee Simplification Amendments as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the Plans. As a result, the June Fee Simplification Amendments became effective upon filing with the Commission. At any time within 60 days of the filing of the June Simplification Amendments, the Commission may summarily abrogate the June Fee Simplification Amendments and require that the June Fee Simplification Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission is publishing this notice to solicit comments from interested persons on the proposed June Fee Simplification Amendments.

## I. Rule 608(a)

### A. Purpose of the Amendments

#### 1. In General

Prior to the March Fee Simplification Amendments, the Participants last filed a fee structure change in 1986. Since then, however, significant change has characterized the industry, stemming in large measure from technological advances, the advent of trading algorithms and automated trading, new investment patterns, new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research.

Industry representatives who sit on the Plans' Advisory Committee have noted these changes and have urged adoption of a modernized, simpler, easier to read fee schedule. Despite the STANY Letter's assertions to the contrary, the Participants have discussed the proposed fee changes with those industry representatives on multiple occasions. The Participants recommend that STANY speak with the Advisory Committee and incorporate their views into any future comment letter. The industry representatives have requested a reduction in the rate spread inherent in the 14-tier Network A device rate structure, reduced administrative burdens and a simplified pricing structure that is consistent with current

technology and that promotes the use of real-time market data. Those are the goals of the Fee Changes.

The Fee Changes also move in the direction of harmonizing fees between Network A and Network B and of harmonizing fees under the Plans with fees under two other national market system plans: The Joint Self-Regulatory Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (the "Nasdaq/UTP Plan") and the OPRA Plan. This would reduce administrative burdens for broker-dealers and other market data users and simplify fee calculations.

The June Fee Simplification Amendments also propose to consolidate, simplify and update the market data fee schedules under both Plans to arrive at a single, consolidated CTA/CQ Fee Schedule. This would make it easier for market data users to understand and apply the fee schedule.

The proposed Fee Changes rebalance the fee schedule but are approximately revenue neutral to the overall market data revenues generated under the Plans.

#### 2. The Proposed Fee Schedule Changes

##### a. Professional Subscriber Charges

###### i. Network A

A principal purpose of the proposed Fee Changes is to address the 14-tier fee structure that the Participants have in place for Network A professional subscribers. That structure has been in place for more than 25 years. Under the tiered structure, a firm reports how many display devices the professional subscribers it employs use and that number then is used to determine the tier within which the firm falls.

For reporting purposes, a display device is any device capable of displaying market data. Where a professional subscriber receives market data services from multiple vendors, separate device fees apply for each vendor's service. Where a vendor provides market data to a professional subscriber by means of multiple applications, separate device fees apply for each application.

At one extreme, the current Network A fee tiered structure imposes a monthly charge of \$18.75 per device for firms employing professional subscribers who use more than 10,000 devices. At the other extreme, it imposes a monthly charge of \$127.25 per device for a single professional subscriber. (For Network A, the rates entitle the professional subscriber to

receive both Network A last sale information under the CTA Plan and Network A quotation information under the CQ Plan.)

Market data users have told the Participants that they find the 14-tier structure challenging to administer and the \$18.75-to-\$127.25 spread between the highest and lowest tiers too wide. The proposed changes seek to address both concerns. The Participants propose a new four-tier monthly Network A fee structure for the display units of professional subscribers, as follows:

1. 1–2 devices .....	\$50.00
2. 3–999 devices .....	30.00
3. 1,000–9,999 devices .....	25.00
4. 10,000 devices or more ...	20.00

The proposed narrowing of the gap between the highest rates and the lowest rates would result in a more equitable rate distribution and benefit both individuals who have not qualified as nonprofessional subscribers and smaller firms. In particular, individuals and firms having one device would see their monthly Network A rate drop from \$127.25 to \$50, and firms having two devices would see their monthly Network A rate drop from \$79.50 per device to \$50 per device. Firms whose professional subscriber employees use between 3 and 29 devices would also have lower rates.

On the other hand, larger firms would see higher rates in respect of their internal distribution of market data to their employees. For example, the rates for firms whose employees use between 750 devices and 9,999 devices would rise from \$19.75 or \$20.75 per device to \$25 per device, and the rates for firms whose employees use more than 10,000 devices would rise from \$18.75 to \$20.00.

Many firms distribute market data to "Customers" and pay CTA/CQ fees on behalf of those Customers. Those firms should pay less for their external distribution to each Customer because the rates that they would pay on behalf of each Customer would drop (assuming that the firm does not provide service to more than 29 devices of the Customer). The amount of the decrease would depend on the tier into which the Customer falls.

"Customer" refers to a consultant to the firm, an individual client of the firm, an independent contractor who may be associated with the firm but is not an employee of the firm, a trading company that receives market data from the firm for use by its traders (who may or may not be employees of that trading company), and any other corporate, broker-dealer or other entity to which the firm provides data.

A firm may only include its own employees in determining the tier applicable to it. It may not include in that determination any Customer to which it provides market data or the employees of any Customer. The rate applicable to each Customer is separately determined based on the tier into which the Customer falls.

In monitoring compliance by market data recipients, the Network A Administrator has discovered improper use of the employee-independent contractor distinction. Some firms with non-employment ties to traders and others have inappropriately characterized those traders and others as "employees," thereby causing those persons to be included in the firm's tier and allowing a lower per-device rate to apply to those persons.

For that reason, the amendments propose to add a footnote (proposed footnote 2) to clarify that a firm may only include employees and not independent contractors in the firm's tier for purposes of determining the device fee rate applicable to data recipients.

The footnote does not propose to change the Participant's long-standing policy regarding the employee-independent contractor distinction. CTA deems a person to be an "employee" of a data recipient if the data recipient deems the person to be an employee in its dealings with the Internal Revenue Service; that is, if the data recipient issues a Form W-2 in respect of the person, rather than a Form 1099 or another Internal Revenue Service form. Persons that are not W-2 employees maintain independent contractor status or some other status. For any person located in a country other than the United States, the person would qualify as an "employee" for market data purposes if the firm characterizes the person as an "employee" for tax purposes under that country's income tax laws and rules. If a country does not have tax laws and rules that differentiate an employee from an independent contractor, the firm should apply the standard that the United States Internal Revenue Service uses to determine whether a person qualifies as an employee.<sup>14</sup> In addition, if a firm holds an active Form U-4 for an individual, and that individual is engaged in the securities business of the firm, the individual shall be deemed to be an "employee" of the firm for

Network A professional subscriber device fee purposes.

CTA maintains a written statement of its employee-independent contractor policy on its Web site at <http://www.nyxdata.com/Docs/Market-Data/Policies>. It also describes the "employee" definition in its "Multiple Installations, Single User" ("MISU") policy, which can be found at the same Web site.

Also for purposes of discouraging abuse, the amendments propose to eliminate the reference to a firm's officers and partners as authorized internal distributees of a firm, entitled to be included in the firm's tier for per-device rate purposes.

Together with the other proposed amendments to the fee schedule, it is anticipated that the changes to the Network A professional subscriber tiered fee structure would not result in a material change in overall revenues under the Plans.

#### ii. Network B

Professional subscribers currently pay one amount for Network B last sale information and a separate amount for Network B quotation information. Firms that are members of a Participant currently pay slightly less than non-members. A member pays \$27.25 per month per device to receive both last sale and quotation Network B information and a non-member pays \$30.20. Network B is the only network that still distinguishes between members and non-members.

To simplify Network B professional subscriber rates and to remove the differential, the Participants propose a single monthly rate of \$24.00 per device, applicable to both members and non-members.

The \$24.00 Network B rate would amount to a savings for most professional subscribers, the majority of which currently receive both last sale and quotation information. Network B has a small number of data recipients who receive last sale information or quotation information, but not both. The change would amount to a fee increase for them. The Network B Participants note that Network A and the Participants in the Nasdaq/UTP Plan and the OPRA Plan have not charged separately for last sale information and quotation information for many years.

The Participants believe that a single fee for Network B devices would prove administratively efficient for data users and the network administrators. They note that the Nasdaq/UTP Plan imposes a single fee of \$20 for each device and that the OPRA Plan imposes a single fee (currently \$25) for each device.

#### iii. Broker-Dealer Enterprise Maximums

Currently, the monthly broker-dealer enterprise maximums are set at \$660,000 per month for Network A and \$500,000 per month for Network B. For that amount, the enterprise maximums allow a broker-dealer to provide last sale and quotation information to an unlimited number of its own employees and its nonprofessional subscriber brokerage account customers. The Plans provide that the amounts of the broker-dealer enterprise maximums increase each calendar year by 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 Participants propose to modify the means for determining the increase in the broker-dealer enterprise maximums. Under the proposal, the Participants may increase the broker-dealer enterprise maximums for Network A and Network B by the affirmative vote of not less than two-thirds of the Participants, provided, however, that they may not increase either network's enterprise maximum by more than four percent for any calendar year. The Participants may elect not to increase the fee for any calendar year.

This proposed means for determining the increase in the broker-dealer enterprise maximums would reduce the amount of any one year's permissible increase from five percent to four percent and would better reflect inflation than does the current means. The maximum four percent increase is consistent with the average annual cost of living adjustment ("COLA") as published by the Social Security Administration for Supplemental Security Income for the past 38 years.<sup>15</sup>

The Participants have not increased the Network A broker-dealer enterprise maximum for more than five years. They have not increased the Network B broker-dealer enterprise maximum since they first adopted it in 1999. They propose to increase the amount of both networks' enterprise maximums for 2013. As a result, the monthly Network A broker-dealer enterprise maximum would increase to \$686,400 and the monthly Network B broker-dealer enterprise maximum would increase to \$520,000. These changes would not take effect until the implementation date for the other changes set forth in the amendments. Currently, only one firm reaches the enterprise caps and, in the

<sup>14</sup> The Internal Revenue Service describes more fully who qualifies as an employee and who qualifies as an independent contractor in a publication that can be found at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

<sup>15</sup> The Participants use COLA as the measure for the annual increase in the fixed fee that they pay to the network administrators for the administrators' services.

aggregate, the Fee Changes would reduce the fees payable by that firm by 13 percent, based on its April 2013 level of activity.

The STANY Letter expresses concern “that the change gives the Participants the opportunity to increase monthly Network A and B fees without correlation to volume increases.” First, we note that after many years of experience with the enterprise cap, the Participants have come to realize that year-to-year changes in volume do not reflect changes in data message traffic or inflation as well as the 38-year record of four percent increases in COLA. In recent years, message traffic has continued to grow, while volume remains lower than it was five years ago.

Additionally, it is possible that firms may reach the enterprise caps by means of merger, which could materially impact overall market data revenue without natural growth in the market. The reduction of the maximum annual increase from five percent to four percent, as well as the discretion given to the Participants to agree annually to a lower increase, or to no increase at all, should make the proposed change more palatable to the very small number of entities that take advantage of the enterprise cap.<sup>16</sup>

#### b. Nonprofessional Subscriber Charges

Currently, a firm pays \$1.00 per month in respect of its first 250,000 Network A nonprofessional subscribers and \$0.50 for Network A nonprofessional subscribers in excess of 250,000. A firm pays \$1.00 per month for each of its Network B nonprofessional subscribers, regardless of how many such subscribers a firm has.

The Participants propose to harmonize the treatment of large and small firms by applying the \$1.00 per month rate in respect of all Network A nonprofessional subscribers, regardless of the number of nonprofessional subscribers. This would also harmonize the Network A nonprofessional subscriber fee with the Network B nonprofessional subscriber fee, as well as the \$1.00 nonprofessional subscriber fee payable under the Nasdaq/UTP Plan. (The fee applicable to nonprofessional subscribers under the OPRA Plan is \$1.25.) The Participants note that the number of firms that have more than 250,000 Network A nonprofessional subscribers is very small.

#### c. Per-Query Charges

Currently, Network A and Network B impose identical three-tiered per-query rates as follows:

1 to 20 million quotes .....	\$ .0075 each.
20 to 40 million quotes .....	\$ .005 each.
Over 40 million quotes .....	\$ .0025 each.

The Participants propose to modify their per-query rate structure by replacing the three-tier structure with the same one-tier rate as the Nasdaq/UTP Plan and the OPRA Plan imposes: \$.005 for each inquiry for both Network A and Network B.

As before, a vendor's per-query fee exposure for any nonprofessional subscriber is limited to \$1.00 per month (i.e., the nonprofessional subscriber rate.)

The single-tiered rate would simplify per-query calculations. It would also harmonize the Network A and Network B per-query fees with the Nasdaq/UTP Plan and the OPRA Plan per-query fees.

#### d. Access Fees

Current and proposed access fees for direct access to last sale prices are as follows:

##### Current Fees:

Network A .....	\$1,000.00
Network B .....	350.00

##### Proposed Fees:

Network A .....	\$1,250.00
Network B .....	750.00

Current and proposed access fees for indirect access to last sale prices are as follows:

##### Current Fees:

Network A .....	\$500.00
Network B .....	200.00

##### Proposed Fees:

Network A .....	\$750.00
Network B .....	400.00

Current and proposed access fees for direct access to quotation information are as follows:

##### Current Fees:

Network A .....	\$1,100.00
Network B .....	400.00

##### Proposed Fees:

Network A .....	\$1,750.00
Network B .....	1,250.00

Current and proposed access fees for indirect access to quotation information are as follows:

#### Current Fees:

Network A .....	\$700.00
Network B .....	250.00

#### Proposed Fees:

Network A .....	\$1,250.00
Network B .....	600.00

Access fees are charged to those who obtain Network A and Network B data feeds. Consistent with current practice, within each of a firm's billable accounts, the Participants only charge one access fee for last sale information and one access fee for quotation information, regardless of the number of data feeds that the firm receives for that account. The Participants believe that increases in these fees are fair and reasonable because today's data feeds provide significant incremental value in comparison to the data feeds that the Participants provided when they first set the access fees.

For example, the data feeds contain a vastly larger number of last sale prices and bids and offers. Since April 2006, the growth of quotes and trades per second has increased over 12,200 percent and 2500 percent, respectively. Additionally, the growth in Exchange Traded Products (“ETPs”) has contributed to a significant increase in Network B activity. For example, in April 2013, Network B listed 1,362 ETPs, which accounted for 93 percent of volume. The data feeds also contain far more information beyond prices and quotes, such as the national best bid and offer (“NBBO”), short sale restriction indications, circuit breaker tabs, retail price improvement indications, and, since April 2013, limit up/limit down information. In addition to the vast increase in content, there has been significant improvement in the latency of the data feeds.

Further, data feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.

The Participants estimate the revenues resulting from the revised access fees would increase total Network A and Network B revenues by six percent, but this increase would be largely offset by an estimated five

<sup>16</sup> Currently, only one firm takes advantage of the Network A enterprise cap and only one firm takes advantage of the Network B enterprise cap.

percent decrease in total revenues resulting from the revised professional subscriber device fees and an estimated two percent decrease resulting from the revised quote usage fees. The majority of customers taking data feeds would also benefit from lower professional subscriber fees and/or lower quote-usage fees.

CTA and CQ data feeds include a full consolidated data set of last sale and quotation information across all Participants, including FINRA's Trade Reporting Facilities ("TRFs"). In contrast, the data feeds found in the proprietary data products of individual exchanges contain a far more limited set of data. Of the firms that are charged an access fee for consolidated data, 86 percent take the cheaper data feed through indirect access. The following chart compares access fees for the receipt of last sale information and quotation information:

Proposed CTA Network A:

Direct Access: \$3,000

Indirect Access: \$2,000

Proposed CQ Network B:

Direct Access: \$2,000

Indirect Access: \$1,000

NYSE: \$5,000

Nasdaq: \$2,000

Nasdaq BX: \$1,000

Nasdaq PSX: \$1,000

NYSE Arca: \$750

EDGA: \$500

EDGX: \$500

e. Data Redistribution Charges

The Participants propose to establish a new monthly charge of \$1,000 for the redistribution of Network A last sale price information and/or Network A quotation information and a similar \$1,000 monthly charge for the redistribution of Network B last sale price information and/or Network B quotation information. This will not necessitate any additional reporting obligations.

The redistribution charges would apply to any entity that makes last sale information or quotation information available to any other entity or to any person other than its own employees, irrespective of the means of transmission or access. That is, all firms that redistribute market data outside of their organization would be required to pay the redistribution fee. The fee would not apply to a firm whose receipt, use and distribution of market data is limited to its own employees in a controlled environment.

The proposed redistribution charge harmonizes CTA/CQ fees with OPRA Plan fees, which impose a redistribution charge on every vendor that redistributes OPRA data to any person.

OPRA's redistribution fee is \$1,500 per month (or \$650 for an internet-only service). Redistribution fees are also common for exchange proprietary data products.

Revenues from the redistribution charge along with the access fees would help to offset anticipated decreases in revenues resulting from the proposed changes to the professional subscriber device fees.

In its comment letter, Trade Alerts wrote that it is a small financial technology company that vends proprietary trading systems that allow individuals to trade securities, that its clients include the largest Wall Street broker-dealers and active retail investors, and that the new redistribution fee would substantially increase its monthly market data costs. It also notes that the redistribution fee favors large vendors because the fee is the same amount for all redistributors.

Market data redistributors like Trade Alerts, however, base their business models on procuring data from exchanges and turning around and redistributing that data to their customers and subscribers. The costs that redistributors incur for acquiring their inventory (*i.e.*, CTA/CQ market data) are very low, sometimes amounting only to their payment of access fees. Some vendors convert this low-cost inventory into large profits, charging fees for the Participants' market data that are not subject to regulation. The proposed redistribution charges would require them to contribute somewhat more, relative to the end-user community. Regarding Trade Alerts suggestion that the redistribution fee should provide a discount for smaller redistributors, we are not aware of any market or NMS Plan that provides a discount based on the size of the redistributor. We believe that the redistribution fee is consistent with a fair and equitable allocation of charges among industry participants.

f. Television Broadcast Charges

The Participants do not propose to make any changes to current television broadcast charges. In the case of Network A, the Participants do not propose to change the maximum amount payable for television broadcasts. However, the Plans provide for an annual increase to that maximum amount. The Network A Participants in some years have elected not to apply the annual increase. The Network A Participants propose to codify the practice of voting to waive a calendar year's maximum increase by adding footnote language to that effect.

g. Multiple Data Feed Charges

The Participants propose to establish a new monthly fee for firms that take more than one primary data feed and one backup data feed. (This will not necessitate any additional reporting obligations.) The fee would be as follows:

\$50 for Network A last sale information data feeds

\$50 for Network A quotation information data feeds

\$50 for Network B last sale information data feeds

\$50 for Network B quotation information data feeds

For both last sale and bid-ask data feeds, this charge would apply to each data feed that a data recipient receives in excess of the data recipient's receipt of one primary data feed and one backup data feed.

To date, the Participants have not required data recipients that receive multiple data feeds to pay any more than data recipients that receive one primary and one back up data feed. The Participants believe that it is appropriate to have them do so. The fee would encourage firms to better manage their requests for additional data feeds and to monitor their usage of data feeds. Participants note that the OPRA Plan imposes a charge of \$100 per connection for circuit connections in addition to the primary and backup connections.

h. Late/Clearly Erroneous Reporting Charges

The Participants propose to establish a new monthly fee for firms that fail to comply with their reporting obligations in a timely manner. The charge is \$2500 for each network. The charge would not be assessed until a firm fails to report its data usage and entitlements for more than three months. A report is not considered to have been provided if the report is clearly incomplete or inaccurate, such as a report that fails to report all data products or a report for which the reporting party did not make a good faith effort to assure the accuracy of data usage and entitlements.

The late reporting charges would be assessed for each month in which there is a failure to provide a network's required data-usage report, commencing with reporting failures lasting more than three months from the date on which the report is first due. By way of example, if a network's data-usage report is due on May 31, the charge would commence to apply as of September 1 and would appear on the market data invoice for September. The network administrator would assess the charge as of September 1, and would

continue to assess the charge each month until the network administrator receives the firm's complete and accurate data-usage report.

In the Participants' experience, some data recipients fail to report data-usage activity in a timely or compliant manner. This leads to administrative burdens and late payments. The purpose of the charges is to provide incentives to delinquent firms to report properly and to place them on a level playing field with compliant firms.

#### i. Network B Ticker Charge

As part of the process of simplifying the fee structure, the Participants have determined to eliminate the Network B ticker charge. This would harmonize Network B rates with those of Network A (which phased out its ticker charge many years ago), and with the Nasdaq/UTP Plan and the OPRA Plan, neither of which imposes a ticker charge.

#### 3. Changes to the Form of the CTA/CQ Fee Schedule

The amendments propose to simplify, consolidate, and update the market data fee schedules under both Plans to arrive at a single, consolidated CTA/CQ Fee Schedule that sets forth the applicable charges from time to time in effect under both Plans. The Participants propose to set forth the CTA/CQ Fee Schedule in Exhibit E to the CTA Plan. It would replace the eight CTA/CQ fee schedules currently in effect: Schedules A-1 through A-4 of Exhibit E to the CTA Plan and Schedules A-1 through A-4 of Exhibit E to the CQ Plan. As a result, Exhibit E to the CTA Plan would contain the entire CTA/CQ Fee Schedule and Exhibit E to the CQ Plan would be eliminated.

The simplifications and updates that the consolidated CTA/CQ Fee Schedule proposes include the following:

- Adopting changes that make fee-disclosure more transparent, such as the addition of descriptions of what constitutes internal and external distribution;
- removing the Network B communications facilities and line splitter charges, which no longer apply;
- removing outdated footnotes that no longer apply;
- posting the amounts of the broker/dealer enterprise charge and the maximum television broadcast charge on the CTA Web site (although the amounts would also remain on the CTA/CQ Fee Schedule);

• granting the Participants the authority to waive the annual increase for any calendar year for the Network A and Network B broker-dealer enterprise

charges and the Network A maximum television broadcast charge; and

- changing references to the "high speed line" to read "output feed."

#### 4. Impact of the Proposed Fee Changes

As with any reorganization of a fee schedule, these changes may result in some data recipients paying higher total market data fees and in others paying lower total market data fees. On balance, the Participants estimate that the fee changes could increase the market data revenue pool for Network A and Network B by no more than 1.7 percent (or roughly \$390,000 per month),<sup>17</sup> assuming no diminution of customer usage. Several customer usage trends, however, have declined year-over-year since 2008, particularly declines in professional subscribers. (More information on these declines can be found in the Participants' *Consolidated Data Quarterly Operating Metrics Reports*. Those reports can be found at <http://www.nyxdta.com/CTA>). The declines in professional subscribers has resulted from a challenging financial environment, corporate downsizing and competition from lower-cost proprietary data product offerings.

As a result, revenues generated under the Plans have declined significantly. Furthermore, the rise in off-exchange trading has meant that a smaller portion of those revenues are allocated to exchanges. Since 2008, CTA/UTP market data revenue has declined 21 percent from approximately \$483 million in 2008 to \$382 million annualized through March of 2013, of which about \$321 million was allocated to exchanges and \$61 million to FINRA. The significant portion of consolidated revenue allocated to FINRA (\$61 million) reflects the growing share of off-exchange trading by brokers, which is largely rebated back to broker-dealers and significantly reduces the consolidated market data revenue allocated to exchanges. For these reasons, and despite a contrary assertion in the STANY Letter, the Participants believe that the Fee Changes would not result in a material increase in overall revenues under the Plans.

#### B. Governing or Constituent Documents

Not applicable.

#### C. Implementation of the Amendments

Pursuant to Rule 608(b)(3)(i) under Regulation NMS, the Participants have designated the June Fee Simplification

Amendments as establishing or changing fees and submitted the June Fee Simplification Amendments for immediate effectiveness. The Participants anticipate implementing the proposed fee changes on September 1, 2013, after giving notice to data recipients and end users of the Fee Changes.

The STANY Letter comments that the March Fee Simplification Amendments "contemplate significant structural changes in the method of calculation of fees which we believe necessitates a notice and comment period longer than the 21 days provided."<sup>18</sup> It also states that the Fee Changes "require that the Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608."

First, Commission practice does not preclude the submission of comment letters after the 21 day period. The **Federal Register** notice in the March Fee Simplification Amendments provides that comments "should be provided on or before" the date 21 days following publication in the **Federal Register**. [*emphasis added*.] Regulation NMS Rule 608(b)(i) provides that "The Commission . . . shall provide interested persons an opportunity to submit written comments." Nowhere does it specify that the comment period must be 21 days from the date of publication.

In practice, the Commission accepts comments received after the 21 day deadline. In this case, The Participants notified the industry of the Fee Changes on February 22, 2013 and first filed the Fee Changes on March 11. It appeared in the **Federal Register** on March 25. The Participants submitted the filing that reversed the Fee Changes on May 10, 2013 and that filing appeared in the **Federal Register** on May 22, 2013. As a result, as a practical matter, commenters had two months to submit comments.

Second, Rule 608(b)(3)(i) of Regulation NMS permits the Participants to designate a proposed plan amendment as establishing or changing fees and other charges, and to place such an amendment into effect upon filing with the Commission. As mentioned above, the Participants have made that designation. The rule does not put any limitations on which particular fee changes qualify for immediate effectiveness. Rather, if the Commission believes that a longer comment period is appropriate for a particular filing, it may extend the comment period or abrogate the filing.

<sup>17</sup> The estimate of 1.7 percent is based on March 2013 data reports. This is a downward revision to the estimate set forth in the March Fee Simplification Amendments, which was based on February 2012 data.

<sup>18</sup> See STANY Letter at 2.

Third, ample precedents exist for the filing of multiple or even complex fee changes to the CTA and CQ Plans on an immediately effective basis over the past thirty years.<sup>19</sup>

Finally, the Fee Changes respond to appeals for the changes from industry representatives on the Advisory Committee. The sooner those changes become effective, the sooner the industry may enjoy the benefits they offer. As a result, the Participants believe that immediate effectiveness is warranted.

The STANY Letter also comments that firms need more notice of the Fee Changes than the Participants provided under the March Fee Simplification Amendments in order to make the systems changes necessary to implement the changes. Aside from the fact that each STANY member agreed in its market data contract with the Participants that 30 days' notice of fee changes would be sufficient, this objection has become irrelevant because the industry first learned of the Fee Changes on February 22, 2013, and the changes will not become effective until September 1. Additionally, because CTA uses a direct bill model, the CTA network administrators, rather than CTA's customers, do the majority of work needed to implement any fee changes. Therefore, it is unlikely that vendors and end users will need more time to change their data administration systems to accommodate the Fee Changes.

#### *D. Development and Implementation Phases*

See Item I(C) above.

#### *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 Exchange Act. The proposed fee changes directly respond to the suggestions and requests of industry representatives and reflect the

Participants' own views that it is appropriate to establish a simplified pricing structure that is consistent with current technology, that reduces administrative burdens and that promotes the use of real-time market data.

The Participants have not significantly revised the CTA and CQ market data fee schedules in many years. They adopted the 14-tier Network A professional subscriber rate structure in 1986 and that structure has changed very little ever since. Numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research warrant this revision.

In general, the proposed fee changes would cause Network A fees to sync more closely with Network B fees and would cause Network A and Network B fees to sync more closely with fees payable under the Nasdaq/UTP Plan and the OPRA Plan. The proposed fees would compare favorably with the fees payable under those other Plans and with the fees charged for their market data by the largest stock exchanges around the world.

As a result, the Fee Changes promote consistency in price structures among the national market system plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer. It would enable data recipients to compare their charges under the respective national market system plans more easily. It also would make for a more straightforward and streamlined administrative process for market data users, as the reporting rules and fee arrangements under the national market system plans become more homogenous.

In the Participants' view, the proposed fee schedule would allow each category of data recipient and data user to contribute an appropriate amount for their receipt and use of market data under the Plans. The proposed fee schedule would provide for an equitable allocation of dues, fees, and other charges among broker-dealers, vendors, end users and others receiving and using market data made available under the Plans by recalibrating the fees to more closely correspond to the different benefits different categories of users derive from their different uses of the market data made available under the Plans.

The STANY Letter comments that the continuing decline in trading volume

makes increases in data fees inappropriate and that the increases are part of a growing trend of increasing market data costs without any corresponding business benefit or correlation to the rising operational cost of delivering services. STANY ignores that the vast majority of its members will pay lower market data fees, that its members have repeatedly received business benefits as the Participants have added more and more types of information to the data feeds and as the quantity of quotes and prices has grown, and that "the rising operational cost of delivering services" applies to the Participants as well as to STANY members.

The STANY Letter also characterizes the Fee Changes as amounting to significant increases in amounts payable by larger firms. However, STANY's comment ignores the context in which the Fee Changes are being introduced. Under the current 14-tier Network A rate structure, the biggest firms pay \$18.75 per device per month while the one-device investor pays 127.25. The Fee Changes reduce that differential by charging the big firms \$20 and charging the one-device investor \$50. The Participants predict that the Fee Changes would allow more than 16,000 firms to pay less for Network A data than they do now, with most firms paying saving up to \$500 per month. The Participants predict that fewer than 1,400 firms would pay more for Network A data, with most firms' cost increases amounting to less than \$500 per month. The Participants also predict that the Fee Changes would cause more than 12,500 firms to pay less for Network B data, with most firms saving up to \$500 per month. The Participants predict that approximately 1,000 firms would pay more for Network B data, with most firms' cost increases amounting to less than \$500 per month.

The STANY Letter also asserts that the Fee Changes may drive some small firms out of business. As an initial matter, that professed concern is speculative: STANY provides no data to suggest that any changes effected by the Fee Changes would have such a significant effect on any particular firm that they would drive that firm out of business. Nor is there any realistic basis to engage in such speculation, because of the undisputed fact that there would be a significant reduction in rates for professional device fees for firms with 29 or fewer devices.

The Participants propose to apply the revised fee schedule uniformly to all constituents (including members of the Participant markets and non-members). The Participants do not believe that the

<sup>19</sup> See, e.g., Fifth Charges Amendment to the First Restatement of the CTA Plan, File No. S7-433, Release No. 34-19342, 47 Fed Reg 57369-03 (December, 23, 1982); Fourteenth Charges Amendment to the First Restatement of the CTA Plan and Fifth Charges Amendment to the original CQ Plan, File No. S7-30-91, Release No. 34-29863, 56 Fed Reg 56429-01 (November 4, 1991); Second Charges Amendment to the CTA Plan and First Charges Amendment to the CQ Plan, SR-CTA/CQ-97-2, Release No. 34-39235, 62 Fed Reg 54886-01 (October 14, 1997); OPRA Plan amendment SR-OPRA-2004-01, Release No. 34-49382, 69 Fed Reg 12377-01 (March 16, 2004); OPRA Plan amendment SR-OPRA-2007-04, Release No. 34-56950, 72 Fed Reg 71722-01 (December 18, 2007); OPRA Plan amendment SR-OPRA-2012-02, Release No. 34-66564, 77 Fed Reg 15833-01 (March 16, 2012).



proposed fee changes introduce terms that are unreasonably discriminatory.

*F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan*

Not applicable.

*G. Approval by Sponsors in Accordance With Plan*

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 Changes.

*H. Description of Operation of Facility Contemplated by the Proposed Amendments*

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*

1. In General

The Participants took a number of factors into account in deciding to propose the amendments.

To begin, the Participants' market data staffs communicate on an on-going basis with all sectors of their constituencies and assess and analyze the different broker/dealer and investor business models. They have expertise in the information needs of the Participants' constituents and used their experience and judgment to form recommendations regarding the Fee Changes, vetted those recommendations with constituents and revised those recommendations based on the vetting process.

Most significantly, the Participants listened to the recommendations of their Advisory Committee. The CTA and CQ Plans require the Advisory Committee to include, at a minimum, a broker-dealer with a substantial retail investor customer base, a broker-dealer with a substantial institutional investor customer base, an alternative trading system, a data vendor, and an investor.

Advisory Committee members attend and participate in meetings of the Participants and receive meeting materials. Members of the Advisory Committee gave valuable input that the Participants used in crafting the proposed fee changes. At several meetings of CTA and the CQ Plan's Operating Committee, Advisory Committee members voiced strong support for the Fee Changes.

In reassessing and rebalancing market data fees as proposed in the amendments, the Participants took a number of factors into account in

addition to the views of its constituents, including:

(A) crafting fee changes that will not have a significant impact on total revenues generated under the Plans;

(B) setting fees that compare favorably with fees that the biggest exchanges around the globe and the Nasdaq/UTP Plan and the OPRA Plan charge for similar services;

(C) setting fees that allow each category of market data recipient and user to contribute market data revenues that the Participants believe is appropriate for that category;

(D) crafting fee changes that appropriately differentiate between constituents in today's environment (e.g., large firms vs. small firms; redistributors vs. end users);

(E) crafting fees that reduce the administrative burdens of data recipients; and

(F) crafting a fee schedule that is easy to read and use and minimizes administrative burdens.

2. An Overview of the Fairness and Reasonableness of Market Data Fees and Revenues Under the Plans

a. The Fee Changes Will Have No Impact on Most Individual Investors

The vast majority of nonprofessional subscribers (*i.e.*, individual investors) receive market data from their brokers and vendors. Network A and Network B impose their nonprofessional subscriber fees on the brokers and vendors (rather than the investors) and set those fees so low that most brokers and vendors absorb the fees, meaning that the vast majority of individual investors do not pay for market data. The Fee Changes will thus have no impact on most individual investors.

b. The Fee Changes Respond to Customer Wishes

The Fee Changes are fair and reasonable because they offer a resolution to the call by industry participants for a simplified, updated fee schedule that reduces administrative burdens, a resolution that industry representatives on the Plans' Advisory Committee have warmly embraced. And, the Fee Changes do so in a manner that is approximately revenue neutral. Failure of the Fee Changes to take effect would be to the detriment of many data product customers.

c. Long-Term Trend of Rate Reduction

The existing constraints on fees for core market data under the Plans have generally succeeded in reducing market data rates over time. For example, when the effects of inflation are taken into account, the average monthly rate

payable for a Network A professional subscriber device has consistently and dramatically fallen in real terms over the past 25 years. When inflation is taken into account, the average monthly cost of a Network A professional device was:

- \$25.00 in 1987.
- \$21.73 in 1990.
- \$18.63 in 1995.
- \$16.89 in 2000.
- \$14.54 in 2005.
- \$13.02 in 2010.
- \$12.37 in 2013.

Also of interest is that NYSE charged approximately \$25 per month for the NYSE ticker service in the 1880's.

d. Explosion of Data

Although the device fees have fallen after taking inflation into account, the amount of data message traffic that data users receive by subscribing has skyrocketed, as has the speed at which the data is transmitted.

i. New Data Added to Consolidated Feeds

The Participants have continually enhanced the consolidated feeds. The enhancements provide significant value. They are critical to the industry in that they permit data users to do such things as view new markets and implement new regulation. Below is a list of the more significant recent enhancements, including the addition of new Participants, new indicators, new sales conditions, new reason codes and dedicated test symbols.

CTS/CQS New/Reactivated Participants:

- NASDAQ OMX—Reactivation February 2007
- BATS—Activation April 2008
- NASDAQ OMX BX (formerly the Boston Stock Exchange)—Reactivation January 2009
- BATS Y—Activation October 2010
- Direct Edge A—Activation July 2010
- Direct Edge X—Activation July 2010
- NASDAQ OMX PSX (formerly the Philadelphia Stock Exchange)—Reactivation October 2010

CTS/CQS New Indicators:

- New CTS/CQS indicator to identify Primary Listing Market—January 2007
- New CTS Trade-Through Exempt indicator—January 2007
- New CTS/CQS Trade Reporting Facility indicator—February 2007
- New CTS Negative Index Value indicator—September 2007
- New CTS Consolidated High/Low/Last Price indicator 'H'—High/Low—July 2007
- New CTS Participant Open/High/Low/Last Price Indicator codes—July 2007



- 'L'—Open/Last
- 'M'—Open/High/Low
- 'N'—Open/High/Last
- 'O'—Open/Low/Last
- 'P'—High/Low
- 'Q'—High/Low/Last
- New CTS/CQS Short Sale restriction indicator—February 2011
- New CQS SIP-generated message identifier indicator—February 2013 (denote that CQS was the originator of the Quote message, *e.g.*, republished quotes, closing quote, price bands)
- New CTS/CQS Limit Up/Limit Down indicator fields and codes—February 2013 (Dedicated Test Symbols), April 2013 (Phase I production symbol rollout commencement). The processor calculates and distributes the Limit Up/Limit Down price bands.
- New CQS "Retail Interest Indicator" field—March 2012
- New CTS/CQS "Market-Wide Circuit Breaker" messages—April 2013
- CTS Sale Conditions:
- New CTS Sale Condition 'V'—Stock-Option Trade indicator—January 2008
- New CTS Sale Condition '4'—Derivatively Priced Trade indicator—April 2008
- New CTS Sale Condition 'O'—Market Center Opening Trade—September 2007
- New CTS Sale Condition 'Q'—Market Center Official Open Trade—September 2007
- New CTS Sale Condition 'M'—Market Center Official Close Trade—September 2007
- Redefined CTS Sale Condition 'H' from Intraday Trade Detail to Price Variation Trade—September 2007
- New CTS Sale Condition 'X'—Cross Trade—September 2007
- Redefined CTS Sale Condition 'I'—Odd Lot Trade—scheduled for implementation in August 2013
- New CTS Sale Condition '9'—Official Consolidated Last as per Listing Market—scheduled for implementation in August 2013
- Regulatory/Non-Regulatory Halts Reasons:
- "Non-Regulatory" Trading Halt Reasons
- CTS/CQS indicator 'Y' to denote 'Sub-Penny Trading'—August 2007
- "Regulatory" Trading Halt Reasons
- CTS/CQS indicator 'M' to denote 'Volatility Trading Pause'—June 2010
- Other:
- CTS/CQS Dedicated "Test" symbols—October 2010

## ii. Significant Improvements in Latency

The Participants have made numerous investments to improve system speed and capacity, investments that are often

overlooked by the industry. The Participants regularly monitor and review the performance of their securities information processor ("SIP") and make performance statistics available publicly on a quarterly basis. They make investments to upgrade technology, upgrades that enable the SIP to collect and disseminate the data ever more quickly, even as the number of quotes and trades continues to rise. The Participants will make future investments to handle the expected continued rise in message traffic, and at even faster data dissemination speeds.

The information below shows that customers are getting the quote and trade data feeds faster, as the latency of consolidated tape quote and trade feeds has improved significantly in recent years. Average quote feed latency declined from 800 milliseconds at the end of 2006 to 0.6 milliseconds in April 2013 and average trade feed latency declined from about one second at the end of 2006 to 0.4 milliseconds in April 2013, as shown below. Latency is measured from the time a message received from a Participant is time-stamped by the system, to the time that processing the message is completed.

Average Quote Latency for Network A/B:

- About 800 milliseconds at the end of 2006.
  - About 20 milliseconds at the end of 2008.
  - About 2.5 milliseconds at the end of 2010.
  - Under 1 millisecond at the end of 2011.
  - Under 1 millisecond at the end of 2012.
  - About 0.6 millisecond in April 2013.
- Average Trade Latency for Network A/B:
- About 1 second at the end of 2006.
  - About 50 milliseconds at the end of 2008.
  - About 2.7 milliseconds at the end of 2010.
  - Under 1 millisecond at the end of 2011.
  - Under 1 millisecond at the end of 2012.
  - About 0.4 millisecond in April 2013.

## iii. Significant Improvements in System Throughput, Measured by Messages Per Second

Investments in hardware and software have increased processing power and enabled the systems to handle increasing throughput levels. This is measured by peak capacity messages per second and is monitored by looking at actual peak messages per second. SIP

throughput continues to increase in order to push out the increasing amounts of real-time quote and trade data.

Given the constant rise in peak messages, the SIP significantly increased system capacity. As shown below, the system could handle peak quotes per second of 11,250 in 2006 and 2.5 million in 2012, an increase of more than 20,000 percent. The Participants have a target of handling 3 million peak quotes per second by October 2013.

The capacity for trades per second increased from 2,500 in 2006 to 500,000 in 2012, an increase of more than 20,000 percent. The Participants have a target of handling 600,000 trades per second by October 2013.<sup>20</sup>

Supported Quotes per Second Capacity for Network A/B:

- 11,250 in 2006.
- 120,000 in 2008.
- 500,000 in 2010.
- 1,500,000 in 2011.
- 2,500,000 in 2012.
- 2013 Capacity Targets: 2,750,000 in July, 3,000,000 in October.

Actual Peak Quotes per Second for Network A/B:

- 8,673 in 2006.
- 88,249 in 2008.
- 308,705 in 2010.
- 580,870 in 2011.
- 567,321 in 2012.
- 574,891 year-to-date through April 2013.

Supported Trades per Second Capacity:

- 2,500 in 2006.
- 20,000 in 2008.
- 100,000 in 2010.
- 300,000 in 2011.
- 500,000 in 2012.
- 2013 Capacity Targets: 550,000 in July, 600,000 in October.

Actual Peak Trades per Second for Network A/B:

- 2,240 in 2006.
- 15,058 in 2008.
- 49,570 in 2010.
- 77,841 in 2011.
- 80,747 in 2012.
- 67,660 year-to-date through April 2013.

## e. Vendor Fees

Fees imposed by data vendors, whom the Commission does not regulate, account for a vast majority of the global market data fees incurred by the financial industry, according to Burton Taylor Associates and a research study by Atradia. In addition to charging

<sup>20</sup>To better manage the rise in message traffic, the Participants anticipate that capacity planning will move from measuring messages per second to measuring messages per millisecond.

monthly subscription fees for terminal use, market data vendors may apply significant administration mark-up fees on top of exchange market data fees. These mark-ups are not regulated and there is limited transparency into how the rates are applied. These mark-ups do not result in any additional revenues for the Participants; the vendors alone profit from them.

#### f. Declining Unit Purchase Costs for Customers

Despite consolidated tape investments in new data items, additional capacity demands and latency improvements, data users' unit purchase costs for trade and quote data has declined significantly, increasing the value of the data they receive from their subscriptions. The amount of quote and trade data messages has increased significantly while fees have remained unchanged, as shown below for the 2006 to 2012 timeframe.

#### i. Average Purchase Cost of Network A Quotes

The average number of quotes per day increased over 580 percent during this timeframe, rising from 44.2 million in 2006 to 301.8 million in 2012. As a result, the average unit purchase cost of a quote for a customer incurring a monthly Network A indirect access fee of \$700 declined approximately 85 percent during this period, falling from \$0.000000754 in 2006 to \$0.000000110 in 2012.

#### ii. Average Purchase Cost of Network B Quotes

The average number of quotes per day increased over 2100 percent, rising from 7.0 million in 2006 to 155.8 million in 2012. As a result, the average unit purchase cost of a trade for a customer incurring a monthly Network A indirect access fee of \$250 declined an estimated 96 percent during this period, falling from \$0.000001700 in 2006 to \$0.000000076 in 2012.

#### iii. Average Purchase Cost of Network A Trades

The average number of trades per day increased over 80 percent, rising from 8.1 million in 2006 to 14.7 million in 2012. As a result, the average unit purchase cost of a quote for a customer incurring a monthly Network B indirect access fee of \$500 declined an estimated 45 percent during this period, falling from \$0.000002939 in 2006 to \$0.000001619 in 2012.

#### iv. Average Purchase Cost of Network B Trades

The average number of trades per day increased 290 percent, rising from 659,337 in 2006 to 2.57 million in 2012. As a result, the average unit purchase cost of a trade for a customer incurring a monthly Network B indirect access fee of \$200 declined an estimated 74 percent during this period, falling from \$0.000014444 in 2006 to \$0.000003705 in 2012.

#### 3. Increase in Costs

The direct costs that the Plans incur for the services of the securities information processor and network administrators to process the data and administer the networks, as well as the cumulative total of the indirect costs that each Participant incurs in producing and collecting its data, have increased substantially since the Participants last restructured their fees in 1986.

Since 1987, the first full year for which the current 14-tier fee structure was in effect, the direct costs of the securities information processor and the network administrators have increased 89 percent, or 2.48 percent per year when compounded on an annual basis. When taken over 25 years, this annual increase in direct costs easily exceeds the 1.7 percent increase in revenues that the Participants estimate the Fee Changes will produce (exclusive of decreased customer usage as a result of the Fee Changes), both as a percentage and as a dollar amount.

With respect to indirect costs, the Commission has previously noted that "any attempt to calculate the precise cost of market information presents severe practical difficulties."<sup>21</sup> In commenting on the 1999 Concept Release, NYSE summarized many of the "severe practical difficulties" attendant to each Participant's calculation of its data production and collection costs and we incorporate that discussion here.<sup>22</sup> In 1987, the indirect costs of the Participants would have included the data production and collection costs of seven national securities exchanges<sup>23</sup> and one national securities

association.<sup>24</sup> In 2013, that calculation would have to include the data production and collection costs of the 15 Participants, including 14 national securities exchanges and the Alternative Display Facility and two Trade Reporting Facilities that FINRA, the lone national securities association, maintains.

#### 4. Adequate Constraints on Fees

Constituent boards, customer control and regulatory mechanisms constrain fees for core market data now just as they have since Congress established the fair-and-reasonable standard in 1975.

With respect to Network A and Network B, NYSE typically takes the lead on pricing proposals, vetting new proposals with the other Participants, various users, and trade and industry groups, and making modifications which improve or reevaluate the original concept. Proposals are then taken to each Participant for approval. But there are significant market data user and regulatory constraints on NYSE's ability to simply impose price changes.

The governing body of each Participant consists of representatives of constituent firms and a large quotient of independent directors. The Participants' constituent board members have the ultimate say on whether CTA and the CQ Plan Operating Committee should submit fee proposals to the Commission and whether the costs of operating the markets and the costs of the market data function are fairly allocated among market data users. That is, the users of market data and non-industry representatives who sit on Participant boards get to determine whether to support market data fee proposals. They also get to determine how the various types of data users should pay their fair share and they make decisions about funding technical infrastructure investments needed to receive, process and safe-store the orders, quotations and trade reports that give rise to the data. This cost allocation by consensus is buttressed by Commission review and is superior to cost-based rate-making.

Constituent Board members are the Participants' market data customers. When a critical mass of them voices a point of view, they can direct the Participants how to act. This is exactly what motivated the Participants to propose the Fee Changes.

The Commission's process, including public comment as appropriate and when permitted by the statutory language, then acts as an additional constraint on pricing. This, in turn, is

<sup>21</sup> See SEC 1999 Concept Release on "Regulation of Market Information Fees and Revenues" (the "1999 Concept Release") located at <http://www.sec.gov/rules/concept/34-42208.htm>.

<sup>22</sup> See footnote 11 of letter from James E. Buck, Senior Vice President and Secretary, NYSE, April 10, 2000, located at <http://www.sec.gov/rules/concept/s72899/buck1.htm>.

<sup>23</sup> American Stock Exchange, Inc., Boston Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., Midwest Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.

<sup>24</sup> National Association of Securities Dealers, Inc.

buttressed by the Commission rules that provide procedures for data recipients to seek redress of their grievances if he or she believes his or her access to data has been limited.

Also, developments in technology make possible another important constraint on market data prices for core data: There is nothing to prevent one or more vendors, broker-dealers or other entities from gathering prices and quotes across all Participants and creating a consolidated data stream that would compete with the Plans' data streams. The technology to consolidate multiple, disparate data streams is readily available, and other markets have already begun introducing products that compete with core data (such as Nasdaq Basic).<sup>25</sup>

#### *K. Method and Frequency of Processor Evaluation*

Not applicable.

#### *L. Dispute Resolution*

Not applicable.

### **II. Rule 601(a) (Solely in Its Application to the Amendments to the CTA Plan)**

#### *A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan*

Not applicable.

#### *B. Reporting Requirements*

Not applicable.

#### *C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

#### *D. Manner of Consolidation*

Not applicable.

#### *E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

#### *F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

#### *G. Terms of Access to Transaction Reports*

See Item I(A).

<sup>25</sup> In a context in which a trading or order-routing decision can be implemented, Regulation NMS Rule 603(c)(1) prevents a broker, dealer or securities information processor from providing a display of market data unless it also provides a consolidated display, such as the consolidated displays made available under the Plans. Yet, despite this rule, the Participants have seen reductions of customer activity at the same time that competing non-consolidated products have seen increases.

#### *H. Identification of Marketplace of Execution*

Not applicable.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CTA/CQ-2013-04 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-CTA/CQ-2013-04. This file number should be included on the subject line if email 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CTA/CQ-2013-04 and should be submitted on or before August 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70011; File No. SR-CBOE-2013-074]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to CBSX Rule 53.2**

July 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 19, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend CBOE Stock Exchange, LLC ("CBSX") Rule 53.2, which relates to the prohibition against trading ahead of customer orders. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

\* \* \* \* \*

#### **Chicago Board Options Exchange, Incorporated**

##### **Rules**

\* \* \* \* \*

#### **Rule 53.2. Prohibition Against Trading Ahead of Customer Orders**

No change.

\* \* \* Interpretations and Policies:

.01—No change.

.02 No-Knowledge Exception. With respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS, if a Trading Permit Holder implements and utilizes an effective

<sup>26</sup> 17 CFR 200.30-3(a)(27).

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

<sup>2</sup> 17 CFR 240.19b-4.