Securities and Exchange Commission (''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans''), pursuant to Rule 11Aa3–2[2] under the Securities Exchange Act of 1934 (''Act''). On December 23, 2003, the Participants submitted Amendment No. 1 to the proposed amendments.[3] The proposal represents the 5th substantive amendment made to the Second Restatement of the CTA Plan (''5th Amendment'') and the 3rd substantive amendment to the Restated CQ Plan (''3rd Amendment''), and reflects several changes unanimously adopted by the Participants. The proposed amendments would delete the provisions of the Plans that exempt any Participant in the Plans from paying market data fees for the receipt of data on its trading floor for regulation or surveillance or for other specifically approved purposes (''Participant Fee Exemptions''). Notice of the proposed amendments was published in the **Federal Register** on December 31, 2003.[4]

The Commission received no comments on the proposed amendments. This order approves the 5th Amendment to the CTA Plan and the 3rd Amendment to the CQ Plan.

II. Description of the Proposed Amendments

Currently, the Plans specify that each Participant is exempt from certain market data charges (other than access fees) if it is in compliance with the requisite market data contract. According to the Participant Fee Exemptions, the market data contract must require the Participant (1) to receive market data solely at premises that it occupies or on its ''trading floor or trading floors'' (as that term is generally understood), and (2) to use the data solely for regulatory, surveillance and other approved purposes.

The Participants propose to amend the Plans to require each Participant to pay the same fees for its receipt and use of market data as other market participants pay, regardless of whether the Participant receives the data on its trading floor or elsewhere or uses the data for surveillance or other purposes.

The Participants believe that eliminating the Participant Fee Exemptions will eliminate disputes that have arisen among the Participants regarding what constitutes a ''trading floor'' and will eliminate a perceived competitive advantage that the Participant Fee Exemptions give Participant markets over non-exchange markets (such as electronic communications networks and other alternative trading systems), over NASD market makers and, in the case of Participants that trade options, over non-Participant options markets.

The Participants have represented that once the proposed amendments are approved by the Commission, they will commence payment of the fees that were subject to the Participant Fee Exemptions in the billing cycle that follows the Commission's approval of the proposed amendments.

III. Discussion

The Commission finds that the proposed amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[5] and, in particular, section 11A(a)(1)[6] of the Act and Rule 11Aa3–2 thereunder.[7]

The Commission notes that, under the proposed amendments, all Participants will be required to pay for market data like other market participants, regardless of how they receive or use it. The Commission believes that deleting the Participant Fee Exemptions from the Plans will eliminate any potential disputes over the applicability of the Participant Fee Exemptions and should help to eliminate any perceived competitive inequities between the Participants who currently benefit from the Participant Fee Exemptions and other market participants who pay for market data. The Commission notes that payment of fees subject to the Participant Fee Exemption will commence in the billing cycle that follows Commission approval of the proposed amendments. The Commission finds that the proposed amendments to delete the Participant Fee Exemptions from the Plans are consistent with section 11A of the Act[8] and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act[9] and paragraph (c)(2) of Rule 11Aa3–2[10] thereunder, that the proposed 5th Amendment to the CTA Plan and the proposed 3rd Amendment to the CQ Plan are approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–2906 Filed 2–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49187; File No. SR–CTA/CQ–2003–02]

Consolidated Tape Association; Order Approving the Sixth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Fourth Substantive Amendment to the Restated Consolidated Quotation Plan and Amendment No. 1 Thereto

February 4, 2004.

I. Introduction

On November 28, 2003, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan Participants (''Participants'')[1] submitted to the Securities and Exchange Commission (''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans''), pursuant to Rule 11Aa3–2[2] under the Securities Exchange Act of 1934 (''Act''). On December 23, 2003, the Participants submitted Amendment No. 1 to the proposed amendments.[3] The proposal represents the 6th substantive amendment made to the Second Restatement of the CTA Plan (''6th Amendment'') and the 4th

Inc. (now known as the National Securities Exchange, Inc.); National Association of Securities Dealers, Inc. (''NASD''); New York Stock Exchange, Inc.; Pacific Exchange, Inc.; and Philadelphia Stock Exchange, Inc.

[2] 17 CFR 240.11Aa3–2.

[3] *See* letter to Jonathan G. Katz, Secretary, Commission, from Thomas E. Haley, Chairman, CTA, dated December 22, 2003 (''Amendment No. 1''). Amendment No. 1 makes a technical correction to the proposed amendments.

[4] *See* Securities Exchange Act Release No. 48987 (December 23, 2003), 68 FR 75661 (December 31, 2003).

[5] In approving the proposed plan amendments, the Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78k–1(a)(1).

[7] 17 CFR 240.11Aa3–2.

[8] 15 U.S.C. 78k–1.

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 240.11Aa3–2(c)(2).

[11] 17 CFR 200.30–3(a)(27).

[1] Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC (''Amex''); Boston Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc. (now known as the National Stock Exchange, Inc.); National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc. (''NYSE''); Pacific Exchange, Inc.; and Philadelphia Stock Exchange, Inc.

[2] 17 CFR 240.11Aa3–2.

[3] *See* letter to Jonathan G. Katz, Secretary, Commission, from Thomas E. Haley, Chairman, CTA, dated December 22, 2003 (''Amendment No. 1''). Amendment No. 1 makes a technical correction to the proposed amendments.

substantive amendment to the Restated CQ Plan (''4th Amendment''), and reflects several changes unanimously adopted by the Participants. The proposed amendments would separate the functions of administering the contracts into which vendors and others enter for the purpose of receiving and using market data. Notice of the proposed amendments was published in the **Federal Register** on December 31, 2003.[4]

The Commission received no comments on the proposed amendments. This order approves the 6th Amendment to the CTA Plan and the 4th Amendment to the CQ Plan.

II. Description of the Proposed Amendments

Since 1989, NYSE has performed certain administrative functions on behalf of the Amex, which is the Network B Administrator.[5] These functions include procuring and maintaining the contracts by which vendors and others receive and use the market data that both Network A and Network B make available.[6] NYSE executes the Consolidated Vendor Form on behalf of itself, the Network B administrator and the other Plan Participants.

The Participants propose to once again divide the contract-administration function between the Network A administrator (NYSE) (for the receipt and use of Network A market data) and the Network B administrator (Amex) (for the receipt and use of Network B market data). To make the separation of contract functions possible, the amendments propose to replace the Consolidated Vendor Form with two new forms, a ''Network A Consolidated Vendor Form'' and a ''Network B Consolidated Vendor Form.''

Under the proposal, the Amex would assume all contract-administration functions for the Network B Consolidated Vendor Form and would execute those forms on behalf of itself and the other Network B Participants. The NYSE would continue to perform the contract-administration functions for Network A and would execute the Network A Consolidated Vendor Form on behalf of itself and the other Network A Participants.

In terms of substance, the Network A Consolidated Vendor Form and the Network B Consolidated Vendor Form would offer the same terms and conditions as does the Consolidated Vendor Form. The only difference would be that the Consolidated Vendor Form governs the receipt and use of both Network A and Network B market data, whereas the Network A Consolidated Vendor Form governs the receipt and use of Network A market data and the Network B Consolidated Vendor Form will govern the receipt and use of Network B market data.

The Participants originally submitted the Consolidated Vendor Form to the Commission on October 16, 1989.[7] They made certain revisions to the form in response to changes recommended by commenters and re-filed the Consolidated Vendor Form for immediate effectiveness in August 1990.[8] In conjunction with its submission of amended and restated CTA and CQ Plans in December 1995, the Participants submitted a revised version of the Consolidated Vendor Form to the Commission. That revised version made non-substantive changes to conform the form's language to the language in the Plans and to provide greater clarity and standardization in the definitions. The Commission approved the restated Plans, including the revised version of the Consolidated Vendor Form, in May 1996.[9] The amendments propose the first changes to the Consolidated Vendor Form since then.

Under the proposal, the Amex would assume Network B contract-administration functions within 90 days from the Commission's approval of these proposed amendments. The network administrators would commence to use the Network A consolidated Vendor Form and the Network B Consolidated Vendor Form at that time. The Participants state that they intend to notify vendors and other interested parties, both in writing and through verbal contact, of the two new forms.

III. Discussion

The Commission finds that the proposed amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[10] and, in particular, section 11A(a)(1)[11] of the Act and Rule 11Aa3–2 thereunder.[12]

The Commission believes that separating the Network A and Network B functions of administering the contracts into which vendors and others enter for the purpose of receiving and using market data should help to facilitate the proper administration of the Plans. More specifically, the Commission believes that the proposed amendments should ease the administrative burden on the NYSE, which currently administers the Consolidated Vendor Form on behalf of both Network A and Network B Participants, by transferring the Network B Contract functions to the Amex, the Network B administrator. The Commission notes that the new Network A Consolidated Vendor Form and the new Network B Consolidated Vendor Form are substantially similar to, and offer the same terms and conditions as, the current Consolidated Vendor Form. The Commission further notes that the separation of the Network A and Network B contract-administration functions and the use of the new forms will be implemented 90 days from the date of this approval order, and that the Participants will notify vendors and other interested parties of the new forms. The Commission therefore finds that the proposed amendments to divide the contract-administration function between the Network A administrator and the Network B administrator are

[4] *See* Securities Exchange Act Release No. 48984 (December 23, 2003), 68 FR 75662 (December 31, 2003).

[5] In 1989, the Participants introduced the ''Consolidated Vendor Form'' and that form of vendor agreement is still in use. *See* Securities Exchange Act Release No. 27498 (December 4, 1989), 54 FR 50828 (December 11, 1989). The Consolidated Vendor Form applies to the receipt and use of Network B market data, as well as Network A market data. Pursuant to delegated authority, NYSE has administered that Consolidated Vendor Form on behalf of the Network B Participants as well as on behalf of the Network A Participants. Before the introduction of that form of vendor agreement, NYSE administered the Network A vendor agreements on behalf of the Network A Participants and the Amex administered the Network B vendor agreements on behalf of the Network B Participants.

[6] The form of contract that is the subject of the proposal is the form of contract (the Consolidated Vendor Form) that the Participants require ''Customers'' to enter into for their receipt and use of the market data that the Participants make available under the Plans. ''Customers'' include (1) vendors, (2) internal and other data redistributors, and (3) those that internally use market data for the purposes that are subject to the Plans' program classification charges. The Consolidated Vendor Form constitutes Exhibit C to each Plan.

End users that do not redistribute data and do not use it for the purposes that are the subject of the program classification charges receive the data pursuant to ''subscriber'' forms of the agreement. NYSE, as the Network A administrator, currently administers the Network A form of that agreement. The Amex, as the Network B administrator, currently administers a Network B form of that agreement. The proposed amendments do not propose any change to those subscriber forms.

[7] *See* Securities Exchange Act Release No. 27498 (December 4, 1989), 54 FR 50828 (December 11, 1989).

[8] *See* Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990).

[9] *See* Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996).

[10] In approving the proposed plan amendments, the Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 17 CFR 240.11Aa3–2.

consistent with section 11A of the Act [13] and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act [14] and paragraph (c)(2) of Rule 11Aa3–2 [15] thereunder, that the proposed 6th Amendment to the CTA Plan and the proposed 4th Amendment to the CQ Plan are approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–2907 Filed 2–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48991A; File No. SR–NASD–2003–44]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto by the National Association of Securities Dealers, Inc. To Modify an Existing Pilot Program Relating to the Bid Price Test of the Nasdaq Maintenance Listing Standards

February 5, 2004.

Correction

On March 18, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify an existing pilot program relating to the bid price test of Nasdaq's maintenance listing standards. On December 23, 2003, the Commission approved the proposed rule change, as amended. This order corrects and supercedes the order that appeared in the **Federal Register** on December 31, 2003 (FR Doc. 03–32171).[1]

These corrections reflect the fact that, prior to the Commission's approval of SR–NASD–2003–44, NASD Rule 4450(e)(2) offered Nasdaq National Market issuers only one 180-calendar-day grace period for bid price non-compliance, not two as stated in the original approval order. In SR–NASD–2003–44, Nasdaq proposed an amendment to NASD Rule 4450(e)(2) that would offer National Market issuers a second 180-calendar-day grace period for bid price non-compliance, if certain conditions are met. The Commission approved this proposal on a pilot basis. Therefore, the theoretical maximum period for bid price non-compliance for an issuer listed on the Nasdaq National Market is now approximately 1.0 years, not 1.5 years as stated in the original approval order. The corrected order is as follows:

* * * * *

I. Introduction

On March 18, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify an existing pilot program relating to the bid price test of Nasdaq's maintenance listing standards. Nasdaq submitted amendments to the proposed rule change on March 24, 2003,[2] and September 26, 2003.[3] On October 10, 2003, the Commission published notice of the proposal in the **Federal Register**.[4] No comments were received on the proposed rule change. On November 26, 2003, Nasdaq submitted Amendment No. 3 to the proposed rule change.[5] This notice and order solicits comment on Amendment No. 3 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

To obtain a listing on the Nasdaq Stock Market, an issuer must meet the initial listing standards; to keep a listing on Nasdaq, an issuer must meet the maintenance listing standards on an ongoing basis.[6] One of these standards relates to the bid price of the issuer's security. On either the Nasdaq National Market or the SmallCap Market, the security must maintain a bid price of at least $1.00 or face delisting.[7] Nasdaq's listing rules provide that a failure to meet the bid price standard exists if the bid price remains less than $1.00 for 30 consecutive business days.[8] After 30 consecutive business days of the security failing the bid price test, Nasdaq would notify the issuer of the deficiency.[9] Nasdaq's listing rules would then provide for certain ''grace periods'' during which the issuer is expected to regain compliance with the bid price standard or be subject to delisting.

On the Nasdaq SmallCap Market, an issuer that fails the bid price test automatically receives a 180-calendar-day grace period.[10] An issuer need not meet any special requirements to qualify for this grace period. If the issuer still fails the bid price test at the end of the 180 days,[11] it could be granted an additional 180-day grace period if it meets one of the quantitative initial listing standards (rather than the lesser maintenance standards) of the SmallCap Market.[12] If the issuer were still deficient at the end of the second 180-day grace period, it could be granted an additional 90-calendar-day grace period if the issuer again meets one of the quantitative initial listing standards of the SmallCap Market. At the end of the 90 days (or of any other grace period where the issuer does not qualify for an additional grace period), Nasdaq would delist the security, subject to the procedural requirements of the NASD Rule 4800 Series. Thus, Nasdaq's maintenance listing standards currently allow a SmallCap issuer a theoretical maximum of approximately 1.25 years of non-compliance with the bid price standard before facing delisting.

On the Nasdaq National Market, like on the SmallCap Market, an issuer that fails the bid price test would automatically receive a 180-calendar-

---

[13] 15 U.S.C. 78k–1.

[14] 15 U.S.C. 78k–1.

[15] 17 CFR 240.11Aa3–2(c)(2).

[16] 17 CFR 200.30–3(a)(27).

[1] Securities Exchange Act Release No. 48991 (December 23, 2003), 68 FR 75677 (December 31, 2003).

[2] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated March 21, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq made minor revisions to the original proposal.

[3] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated September 25, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq revised the length of the grace periods available to issuers not in compliance with the bid price test and added to the criteria that issuers would have to meet to avail themselves of such periods.

[4] *See* Securities Exchange Act Release No. 48592 (October 3, 2003), 68 FR 58732.

[5] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated November 25, 2003. In Amendment No. 3, Nasdaq made minor revisions to the proposal.

[6] *See* NASD Rules 4300 *et seq.* and 4400 *et seq.*

[7] *See* NASD Rule 4310(c)(4) (for SmallCap); NASD Rules 4450(a)(5) and (b)(4) (for National Market).

[8] *See* NASD Rule 4310(c)(8)(D) (for SmallCap); NASD Rule 4450(e)(2) (for National Market).

[9] *See id.*

[10] *See* NASD Rule 4310(c)(8)(D).

[11] An issuer is deemed to be back in compliance with the bid price standard if it maintains a bid price of over $1 for ten consecutive business days, *see id.*, although Nasdaq in its discretion may extend the ten-day requirement to as long as 20 consecutive business days, *see id.*

[12] *See id.* (requiring issuer to meet any of the three criteria for initial listing set forth in NASD Rule 4310(c)(2)(A)).