Premium Payment Package. The PBGC issues these forms on paper and also makes them available on its Web site so that filers can print them out. In addition, a number of private-sector software developers have created software that prints out filers' premium information on PBGC-approved forms; filers can use this private-sector computer software to prepare their premium declarations and can then file the paper forms generated by that software.

In addition, the PBGC provides for premium filing through an electronic facility, ''My Plan Administration Account'' (''My PAA''), on its Web site at *http://www.pbgc.gov.* The forms that filers prepare using My PAA are not in the same format as the paper premium forms, but they solicit the same premium information.

Premium forms are used to report the computation, determine the amount, and record the payment of PBGC premiums. The submission of premium information and retention and submission of premium records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more premium forms each year. The PBGC uses the information on the premium forms to identify the plans paying premiums; to verify whether plans are paying the correct amounts; and to help the PBGC determine the magnitude of its exposure in the event of plan termination. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the PBGC's guarantee of plan benefits. In general, the Participant Notice requirement applies (subject to certain exemptions) to plans that must pay a variable-rate premium. In order for the PBGC to monitor compliance with part 4011, single-employer plan administrators must indicate in their premium filings whether the Participant Notice requirements have been complied with.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1–EZ, Form 1, and Schedule A to Form 1, corresponding My PAA electronic forms, and related instructions has been approved by the Office of Management and Budget (''OMB'') under control number 1212–0009. The collection of information also includes the certification of compliance with the Participant Notice requirements (but not the Participant Notices themselves).

The PBGC is developing a new electronic filing method, in addition to the existing My PAA application, that will be tied to the private-sector software that many filers currently use to print out pre-filled PBGC-approved forms that they then file. Under this new e-filing method, the PBGC will establish standards for the structure and submission of electronic files containing premium filing information and procedures for PBGC approval of files created with such software as meeting the established standards. Developers of private-sector premium filing preparation software will be invited to incorporate in their software packages the capacity to create electronic premium information files that meet these standards. Users of such software will then be able to submit their premium filings to the PBGC electronically as an alternative to both paper submissions and the use of My PAA. This alternative e-filing method is being developed in connection with a PBGC proposal to require electronic premium filing in the near future.

In connection with and as part of the new filing standards, the PBGC is providing for a new method for certifying premium filings made using private-sector software. Currently, a plan's premium filing must be certified by the plan administrator and, in many cases, also by an enrolled actuary. My PAA, which uses interactive software on the PBGC's Web site, permits both a plan administrator and an enrolled actuary to certify the same filing, but the PBGC anticipates that private-sector software developers will find it difficult or impossible to implement such a feature, which requires both the plan administrator and the enrolled actuary to access the same filing electronically.

Accordingly, the PBGC is introducing a new premium filing certification methodology for premium e-filings made with private-sector software. The new methodology requires one responsible person (who may but need not be either the plan administrator or the enrolled actuary) to certify a private-sector software premium e-filing. If the responsible person is not the plan administrator, the certification will also state that the responsible person is authorized to act by the plan administrator and has a written representation from the plan administrator that the filing is proper. If the responsible person is not the enrolled actuary, the certification for a filing that includes actuarial items (variable-rate premium computations or certain variable-rate premium exemptions) will also state that the responsible person has a written representation from the enrolled actuary that the actuarial items in the filing are proper. The responsible person may be either the plan administrator or the enrolled actuary, and if not, must be at an appropriate level of authority.

The PBGC is requesting that OMB approve this revision of the collection of information. 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 OMB control number.

The PBGC estimates that it will receive premium filings annually from about 28,900 plan administrators and that the total annual burden of the collection of information will be about 3,478 hours and $18,172,550. (These estimates include paper and electronic filings.)

Issued in Washington, DC, this 18th day of March, 2005.

Richard W. Hartt,

Assistant Executive Director and Chief Technology Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 05–5828 Filed 3–23–05; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51391; File No. SR–CTA/CQ–2004–01]

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

March 17, 2005.

I. Introduction

On December 3, 2004, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'') [1] submitted to the Securities and Exchange Commission

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

(''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans''),[2] pursuant to Rule 11Aa3–2 under the Act.[3] The proposal represents the 7th substantive amendment made to the Second Restatement of the CTA Plan (''7th Amendment'') and the 5th substantive amendment to the Restated CQ Plan (''5th Amendment''), and reflects changes unanimously adopted by the Participants. The proposed amendments would modify the procedures for joining the Plans as a new Participant. In addition, the proposed amendments would perform a ''housekeeping'' function of incorporating into the text of the Plans changes to the corporate names and addresses of some Participants. Notice of the proposed amendments was published in the **Federal Register** on January 19, 2005.[4]

The Commission received no comments on the proposed amendments. This order approves the 7th Amendment to the CTA Plan and the 5th Amendment to the CQ Plan.

II. Description of the Proposed Amendments

The proposed amendments would modify the procedures pursuant to which a national securities exchange or a national securities association may join the Plans as a new Participant. More specifically, the proposed amendments would modify the process for determining the fee that a national securities exchange or a national securities association must pay in order to join the Plans.

Currently, both Plans require a new entrant to pay the current Participants an amount that ''attributes an appropriate value to the assets, both tangible and intangible, that CTA has created and will make available to such new Participant.'' [5] The Plans allow for the Participants to consider one or more of six factors in assessing the appropriate value.[6] The Commission approved the addition of these entry-fee criteria to both Plans in 1993.[7] However, since the criteria were adopted, no entity has joined the Plans. CBOE was the last Participant to join the Plans, having done so in 1991.

In 1999, the Options Price Reporting Authority (''OPRA'') Plan participants sought to adopt the same criteria adopted by the CTA to determine the appropriate entrance fee to join the OPRA Plan.[8] The Commission received negative comments regarding the previously approved factors OPRA proposed to consider in determining the amount of its participation fee. The commenters asserted that the proposed OPRA Plan criteria could create a barrier to entry into the options industry that could harm competition. In response, OPRA modified and adopted new, more objective factors to be considered in determining the appropriate new entrant participation fee.[9] Consequently, in light of the comments received on the current CTA Plan and CQ Plan criteria that OPRA was proposing to adopt, at the October 2001 CTA meeting, a representative of the Division of Market Regulation (''Division'') suggested that the CTA consider amending its Plan criteria for determining new entrant fees to conform to the criteria that had been adopted by OPRA.

In 2002, The Nasdaq Stock Market, Inc. (''Nasdaq'') and Island ECN expressed interest in joining the Plans and inquired as to the amount of the entry fee. In response, the Participants engaged Deloitte & Touche, asking it to assign a value to each of the six current Plan criteria for determining a new entrant's fee. The Division expressed concerns to the Participants regarding the methodology contemplated by the CTA because it believed that the methodology contained factors that should not be considered in determining a proper entrance fee for new entrants.[10] The Division further noted that the entrance fee amount the Participants were considering at the time might have an anti-competitive effect on potential new entrants.[11]

In light of the Division's concerns that the current Plan standards do not provide an objective basis for determining entrance fees for new Participants and that the fees should be based solely on objective criteria and costs that could be easily calculated and readily discernable (similar to the methodology currently used for determining such fees in the OPRA Plan),[12] the Participants proposed new standards for determining a new Participant's entry fee based on the OPRA Plan criteria. The proposed amendments would allow the Participants to consider one or both of the following in determining a new entrant's fee: (1) The portion of costs previously paid by the CTA for the development, expansion and maintenance of CTA's facilities which, under generally accepted accounting principles (''GAAP''), could have been treated as capital expenditures and, if so treated, would have been amortized over the five years preceding the admission of the new Participant (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life); and (2) previous amounts paid by other Participants when they joined the Plans. In addition, the proposed amendments would require the new Participant to reimburse the Plan Processor for the costs that the Processor incurs in modifying CTS and CQS systems to accommodate the new Participant and for any additional capacity costs. Any disagreement regarding the fee calculation would be subject to Commission review pursuant to Section 11A(b)(5) of the Act.[13]

Finally, the proposed amendments would perform the ''housekeeping'' function of updating the names and addresses of the Plans' Participants. In the last few years, the ''Pacific Stock Exchange, Inc.'' has become the ''Pacific Exchange, Inc.,'' the ''American Stock

---

[2] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (order permanently approving CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for listed securities, is a ''transaction reporting plan'' under Rule 11Aa3–1 of the Securities Exchange Act of 1934 (''Act''), 17 CFR 240.11Aa3–1 and a ''national market system plan'' under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2.

[3] 17 CFR 240.11Aa3–2.

[4] *See* Securities Exchange Act Release No. 51012 (January 10, 2005), 70 FR 3075 (''Notice'').

[5] Section III(c) of the Plans.

[6] *See id.*

[7] *See* Securities Exchange Act Release No. 33319 (December 10, 1993), 58 FR 66040 (December 17, 1993) (File No. S7–27–93).

[8] *See* Securities Exchange Act Release No. 42002 (October 13, 1999), 64 FR 56543 (October 20, 1999) (notice of File No. SR–OPRA–99–01).

[9] *See* Securities Exchange Act Release No. 43697 (December 8, 2000), 65 FR 78518 (December 15, 2000) (order approving File No. SR–OPRA–00–08); *see also* Securities Exchange Act Release Nos. 43347 (September 26, 2000), 65 FR 59035 (October 3, 2000) (notice of File No. SR–OPRA–00–08); and 42817 (May 24, 2000), 65 FR 35147 (June 1, 2000) (notice of filing and order granting accelerated effectiveness to File No. SR–OPRA–99–01).

[10] *See* letters to William J. Brodsky, Chairman and Chief Executive Officer, CBOE; David Colker, President and Chief Executive Officer, NSX; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; Richard Grasso, Chairman and Chief Executive Officer, NYSE; David A. Herron, Chief Executive Officer, CHX; Richard Ketchum, President and Deputy Chairman, Nasdaq; Kenneth L. Leibler, Chairman and Chief Executive Officer, BSE; and Salvatore F. Sadano, Chairman and Chief Executive Officer, Amex, from Annette L. Nazareth, Director, dated March 13, 2003.

[11] *See id.*

[12] *See* letters to Thomas E. Haley, Chairman, CTA, from Annette L. Nazareth, Director, Division, Commission, dated August 3, and November 3, 2004.

[13] 15 U.S.C. 78k–1(b)(5).

Exchange, Inc.'' has become the ''American Stock Exchange LLC,'' and the Cincinnati Stock Exchange, Inc.'' has become the ''National Stock Exchange.''

III. Discussion

After careful review, the Commission finds that the proposed amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[14] and, in particular, Section 11A(a)(1) of the Act[15] and Rule 11Aa3–2 thereunder.[16]

The Commission notes that the Plans currently provide procedures pursuant to which a national securities exchange or a national securities association may join the Plans as a new Participant, including payment of a participation/new entrant fee. The Commission further notes that the current six criteria in the Plans that may be considered by Participants in determining a new Participant's entrance fee were questioned when OPRA participants sought to incorporate them into the OPRA Plan in 1999.[17] The Commission believes that some of these current criteria are inappropriate, overly broad, and subjective, and believes that they could potentially have an anti-competitive impact on and/or pose a barrier to entry for an entity that wants to join the Plans.[18] In fact, over the last few years, the Commission has repeatedly urged the Participants to amend the Plans to adopt more objective standards for ascertaining a new party's entrant fee, similar to the more recently approved standards in the OPRA Plan.[19] The Commission believes that a more transparent process for determining a proper new entrant fee should help to ensure fairness to new parties and address any potential anti-competitive concerns.

The Commission believes that the main purpose of a participation fee is to require each new party to the Plans to pay a fair share of the costs previously paid by the CTA for the development, expansion, and maintenance of CTA's facilities. Consistent with this purpose, the standards now proposed to be embodied in the Plans for the determination of the participation fee are concerned with these categories of costs. In particular, the Commission notes that the Participants should only consider the costs of tangible assets that could have been treated as capital expenditures under GAAP in the fee calculation,[20] and if so treated, would have been amortized for a five-year period preceding the new party's admission to the Plans.[21] In addition, the Commission notes that the Participants must not consider any historical costs of operating the systems prior to the time a new party joins the Plans, or any subjective or intangible costs such as ''good will'' or any future benefits to the new party.

Another factor proposed to be considered in determining a new Participant's entrance fee is any previous fees paid by other Participants when they joined the Plans. The Commission notes that in considering the amounts that have been paid by other Participants who joined the Plans, the Participants should only consider such fees on a ''going forward'' basis, *i.e.,* only fees that have been determined by the proposed methodology.[22] The Commission believes that, in the interest of fairness and consistency, the closer in time that any such prior fees were paid in relation to when the new party wants to join the Plans, the greater should be the weight given to this factor.

Finally, the Commission notes that the Participants propose that a new Participant would be required to reimburse the Plan Processor for the costs that the Processor incurs in connection with any modifications to the CTS and CQS systems necessary to accommodate the new Participant, unless these costs have otherwise been paid or reimbursed by the new Participant. The Commission stresses that when utilizing the proposed new standards, the Participants should not consider any costs that would result in a ''double counting'' of costs because the new entrant and other Participants are required to individually pay the Processor for their own costs (*e.g.,* capacity needs).

In sum, the Commission believes that it is reasonable for the Plans to provide for an initial participation fee to be paid by new parties to the Plans. The Commission further believes that the proposed amendments to the Plans would establish specific, objective factors for determining the amount of the fee payable by new Participants based on costs that could easily be calculated and that are readily discernable. The Commission also believes that the proposed new standards, if appropriately employed by the Participants, should foster a fair and reasonable method for determining the amount of a new Participant's entrance fee to be paid to the Plans.[23] Accordingly, the Commission finds the proposed standards for determining the amount of the participation fee to be appropriate and consistent with the Act.

Furthermore, the Commission believes that updating the names and addresses of the Plans' Participants is important with respect to the accuracy of the Plans, and therefore finds such changes to be consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[24] and paragraph (c)(2) of Rule 11Aa3–2 thereunder,[25] that the proposed 7th Amendment to the CTA Plan and the proposed 5th Amendment to the CQ Plan are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1292 Filed 3–23–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 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).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 17 CFR 240.11Aa3–2.

[17] *See supra* notes 8–11 and accompanying text.

[18] The Commission notes that while the current standards in the Plans were approved in 1993, they were never employed by the Participants. The last Participant to join the Plans was CBOE in 1991.

[19] *See supra* notes 8–12 and accompanying text.

[20] The Commission understands from the Participants and the Plan Processor that, based on how the Processor bills the CTA and because the Processor does its accounting based on leases rather than ownership of CTA facilities, unless such costs were deemed to be capitalized costs under GAAP, they could not otherwise be considered in calculating the participation fee. Footnote 12 of the Notice provided, in part, that the Participants should only consider tangible assets that ''are capital expenditures under GAAP'' in the participation fee calculation. The footnote should have instead provided that the costs to be included in the calculation should be those that ''could have been treated as capital expenses under GAAP.''

[21] For this purpose, all such capital expenditures would be deemed to have a five-year amortizable life.

[22] The Commission further notes that the fee that CBOE paid to join the Plans in 1991 should not be considered because it was not based on the proposed new factors and therefore does not constitute a relevant fee for comparison purposes.

[23] The Commission notes that amount of the new entrant fee would be determined in discussions between the Participants and each new party in light of the standards embodied in the Plans, and under the general oversight of the Commission. Discussions between the Participants and any new party should not take place without Commission staff present. The Commission further notes that any disagreement among the Participants and a new party regarding the fee calculation would be subject to Commission review pursuant to Section 11A(b)(5) of the Act. *See* 15 U.S.C. 78k–1(b)(5).

[24] 15 U.S.C. 78k–1.

[25] 17 CFR 240.11Aa3–2(c)(2).

[26] 17 CFR 200.30–3(a)(27).