

comments should be sent by one method only.

Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-07-03. Comments submitted by e-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001: Alden S. Adkins at (202) 942-0180; Katherine A. England at (202) 942-0154; Sapna C. Patel at (202) 942-0166; or Ian K. Patel at (202) 942-0089.

SUPPLEMENTARY INFORMATION:

I. Background

Section XII(b)(iv) of the CTA² Plan and section IX(b)(iv) of the CQ Plan provide, in relevant part, that no Participant may be charged for receiving or using any portion of the CTA and CQ Networks' last sale price and quotation information, provided that such information is: (1) Furnished to the Participant "only at premises occupied solely by such Participant or on the trading floor or trading floors (as the term is generally understood) of such Participant"; (2) used by the Participant "solely for regulatory and surveillance purposes, or for any other approved purposes"; and (3) not "made available [by the Participant] to any person not located within or on, such premises or trading floor."³

¹ Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submission. Submit only information that you wish to make publicly available.

² CTA is an association consisting of representatives from the American Stock Exchange LLC ("AMEX"); The Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Exchange, Inc.; the Philadelphia Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; and the Chicago Board Options Exchange, Inc. CTA's function is to oversee the dissemination, on a current and continuous basis, of last sale prices of transactions in securities listed on a national securities exchange.

³ The CTA Plan, pursuant to which markets collect and disseminate last sale price information

On February 16, 2001, the NYSE filed the NYSE Petition with the Commission requesting that the Commission, pursuant to Section 11A of the Act⁴ and Rule 11Aa3-2(b)(2) thereunder,⁵ amend the CTA and CQ Plans to remove the Participant Fee Exemptions.⁶ The NYSE Petition is described in more detail in Part II below. We note that this is not the first time the Commission has been asked to take action related to these paragraphs of the Plans.⁷

II. Summary of the NYSE Petition

The NYSE is requesting that the Commission, pursuant to Rule 11Aa3-2(b)(2) of the Act, amend the CTA and CQ Plans to delete the Participant Fee Exemptions. The Participant Fee Exemptions are found in the section of each Plan that regulates Plan expenses and revenues, including the imposition of market data charges on data recipients. They specify that each of the Participants is exempt from market data charges (other than access fees) if it is in compliance with the requisite market data contract. According to the Participant Fee Exemptions, no Participant may be charged for receiving or using any portion of the CTA and CQ Networks' last sale price information, provided that such information is: (1) Furnished to the Participant "only at premises occupied solely by such Participant or on the trading floor or trading floors (as the term is generally understood) of such Participant"; (2) used by the Participant "solely for regulatory and surveillance purposes, or for any other approved purposes"; and (3) not "made available [by the Participant] to any person not located within or on, such premises or trading floor."

The NYSE states that the Participant Fee Exemptions, adopted in 1979,

for securities listed on national securities exchanges, 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 securities listed on national securities exchanges, is also a "national market system plan" under Rule 11Aa3-2 of the Act, 17 CFR 240.11Aa3-2.

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 240.11Aa3-2(b)(2).

⁶ See letter to Jonathan G. Katz, Secretary, Commission, from Robert G. Britz, Group Executive Vice President, NYSE, dated February 14, 2001.

⁷ See *In the Matter of the Application of the Chicago Board Options Exchange*, Administrative Proceeding File No. 3-10561 (March 13, 2002) and *In the Matter of the Application of the Chicago Board Options Exchange*, Administrative Proceeding File No. 3-10561 (March 5, 2003). See also *In the Matter of the Application of the Cincinnati Stock Exchange, Inc.*, Administrative Proceeding File No. 3-9967.

applied to practices used by the NYSE and AMEX at that time. However, as the technological and structural environment of the markets have changed, the NYSE represents that many Participants believe that the Participant Fee Exemptions are no longer desirable. The NYSE believes that the Participant Fee Exemptions create perceived inequities and interpretative disputes over their plain meaning. To address this problem, the NYSE requests that the Commission amend the Plans to delete Section XII(b)(iv) of the CTA Plan, and Section IX(b)(iv) of the CQ Plan, which would effectively eliminate the Participant Fee Exemptions in their entirety.

The NYSE believes that the elimination of the Participant Fee Exemptions will satisfy the standards of fairness mandated by the Act and the avoidance of unreasonable discrimination.⁸ The NYSE, however, asserts that an alternative to eliminating the Participant Fee Exemptions would be to expand them in an attempt to level the playing field among market makers. However, the NYSE believes that this would simply redraw the boundaries of fee exemptions for devices, which would only complicate the surveillance of market data, as new trading structures and technologies change the nature of such boundaries. Further, the NYSE asserts that such an alternative would simply result in future disputes over the boundaries of fee exemptions for devices. The NYSE also believes that expanding fee exemptions would only complicate market data administration and increase the policing burden.

The NYSE believes that favorable action on the NYSE Petition by the Commission would be beneficial in several ways. First, the NYSE believes that the elimination of the Participant Fee Exemptions would eliminate future grievances relating to the application of the Participant Fee Exemptions by eliminating the perception of inequity that the Participant Fee Exemptions have caused, or may cause in the future. Second, the NYSE believes that the elimination of the Participant Fee Exemptions would eliminate the deviation of revenue sharing among the Participants away from the revenue sharing formulae. Finally, the NYSE believes that the elimination of the

⁸ The NYSE believes that repealing the Participant Fee Exemptions would place the Plans on equal footing with the national market system plan governing market data relating to over-the-counter securities, which does not provide for similar fee exemptions for participants, and which requires the participating markets and their remotely located market makers to pay the plan's fees.