

Restatement of the CTA Plan and the 4th substantive amendment to the Restated CQ Plan, 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. On December 23, 2003, the Participants submitted Amendment No. 1 to the proposed amendments.³ The Commission is publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans.

I. Description and Purpose of the Amendments

A. Rule 11Aa3-2⁴

Since 1989, NYSE has performed certain administrative functions on behalf of 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.

The Participants believe that the filing of the proposed amendments is in fulfillment of the national market system objectives regarding the dissemination of market information as anticipated by sections 11A(a)(1)(C),¹⁰ 11A(a)(1)(D)¹¹ and 11A(a)(3)(B)¹² of the Act.

B. Governing or Constituent Documents

The proposed amendments would replace the Consolidated Vendor Form with a new Network A Consolidated Vendor Form and a new Consolidated Network B Vendor Form.

C. Development and Implementation of Amendments

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.

D. Analysis of Impact on Competition

The Participants believe that the proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of section 11A(c)(1)(D) of the Act.¹³

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

The Participants do not anticipate that they will enter into any new written understandings or agreements relating to the interpretation of the Plans or to conditions for becoming a sponsor or participant in the Plans.

³ See letter to Jonathan G. Katz, Secretary, Commission, from Thomas E. Haley, Vice President of Market Data, NYSE dated December 22, 2003 ("Amendment No. 1"). Amendment No. 1 makes a technical correction to the proposed amendments.

⁴ 17 CFR 240.11Aa3-2.

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. Prior to 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 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 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 15 U.S.C. 78k-1(a)(1)(C).

¹¹ 15 U.S.C. 78k-1(a)(1)(D).

¹² 15 U.S.C. 78k-1(a)(3)(B).

¹³ 15 U.S.C. 78k-1(c)(1)(D).