

- a. the initial aggregate capacity projections for all Participants;
- b. the percentage of capacity requirements attributable to that Participant; and
- c. the amount of any projected excess capacity or any projected deficit capacity.

(SIAC determines the excess or deficit by comparing the capacity that the then existing systems under the Plans can provide and the aggregate projected capacity needs of the Participants.)

3. Each Participant will then notify the Processor of its final projected capacity needs.

4. Based on the information that SIAC provides, CTA and the CQ Operating Committee will determine and advise SIAC of any increase or decrease that they propose to make to the capacity of their respective systems. However, in directing SIAC to make any proposed change, the Participants must cause the system to have no less capacity than the capacity necessary to meet the aggregate projected capacity requirements for the system for all Participants.

5. SIAC will then submit to each Participant a proposal for increasing or decreasing total system capacity and each Participant's proportionate share of the estimated costs for implementing any change. Each Participant's proportionate share of the costs will reflect that Participant's percentage of the final projected capacity requirements for all Participants.

6. SIAC will bill each Participant directly and each Participant will pay SIAC for the services that SIAC renders to it. The cost of the services for each Participant will be its proportionate share of the total cost to all of the Participants.

7. Each Participant will be entitled to use its proportionate share of the final capacity requirements of all Participants and, at no extra cost, of any excess capacity. If the Processor determines that a Participant is using more than its proportionate share of the aggregate capacity and the excess capacity, that Participant may be subject to a fine. The proceeds from any such fine will be distributed to each of the other Participants in accordance with their proportionate shares.

Intra-Cycle Capacity Transfers:

1. In between the semi-annual capacity planning cycles, a Participant may seek to increase or decrease the amount of capacity available to it by notifying SIAC of its desire for more or less capacity. Under those circumstances, a Participant may purchase additional capacity only if another Participant has submitted to

SIAC an unfilled request to sell a portion of its capacity or if excess capacity exists in the system at that time. A Participant may sell some of its capacity only if another Participant has submitted to SIAC an unfilled request to purchase additional capacity.

2. If SIAC is able to match Participants' requests to buy and sell capacity within a planning cycle, SIAC will effect the sale for the Participants without revealing either Participant's identity.

3. If a Participant determines to acquire available excess capacity, SIAC shall adjust each Participant's proportionate share of system costs based on the new amount of capacity available to the Participant acquiring the available excess capacity.

4. On a periodic basis, SIAC will determine and inform each Participant of the total amount of the system capacity currently available, whether it is available from available excess capacity or from a Participant that seeks to sell capacity.

Under this plan, SIAC will not disclose to any Participant:

- 1. The initial or final projected capacity requirements of any other Participant;
- 2. The percentage of the aggregate amount of capacity attributable to any other Participant; or
- 3. Any other Participant's between-planning-cycles request to increase or decrease capacity.

The Participants requested that the proposed amendments to the Plans become effective summarily upon publication of notice of the proposed amendments, on a temporary basis not to exceed 120 days, so that the proposed new capacity planning process could be implemented on January 1, 2003, the date of the next capacity planning cycle.⁶ The Commission put the proposed amendments to the Plans into effect summarily upon publication of the Notice on December 26, 2002.⁷

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,⁸ and, in particular, Section 11A(a)(1)⁹ of the Act and Rule 11Aa3-2 thereunder.¹⁰

The Commission notes that, pursuant to Rule 11Aa3-2(c)(4) under the Act¹¹, it put the proposed 4th Amendment to the CTA Plan and the proposed 2nd Amendment to the CQ Plan into effect summarily upon publication of the proposed amendments. Rule 11Aa3-2(c)(4) under the Act provides that a proposed amendment may be put into effect summarily upon publication of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors and 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 Act. The Commission believes that summary effectiveness of the proposed amendments was necessary and appropriate for the new capacity planning process to take effect on January 1, 2003, the date of the next capacity planning cycle.

The Commission believes that an efficient capacity planning process is essential to the proper operation of CTA and administration of the CTA and CQ Plans. The Commission further believes that the proposed amendments to the Plans incorporating a new capacity planning process should address this need. The Commission notes that, under the new capacity planning process, each Participant will be required to submit its projected capacity needs directly to SIAC, and will not have to share its individual capacity needs with other Participants. Furthermore, SIAC will be responsible for providing each Participant with aggregates of both initial and final capacity projections for all Participants, and for directly billing each Participant for its proportionate share of the costs based on its percentage of the final projected capacity requirements for all Participants. The Commission finds that the proposed amendments incorporating this new capacity planning process into the Plans are consistent with Section 11A of the Act¹² and the rules and regulations thereunder.

⁸ 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).

⁹ 15 U.S.C. 78k-1(a)(1).

¹⁰ 17 CFR 240.11Aa3-2.

¹¹ 17 CFR 240.11Aa3-2(c)(4).

¹² 15 U.S.C. 78k-1.

⁶ Telephone conversation between Thomas E. Haley, Chairman, CTA, and Kathy A. England, Assistant Director, Sapna C. Patel, Attorney, Ian K. Patel, Attorney, Division of Market Regulation, Commission, on December 17, 2002. *See also* letter from Thomas E. Haley, Chairman, CTA, to Kathy A. England, Assistant Director, Division, Commission, dated December 16, 2002. The Commission notes that the original filing of the proposed amendments to the Plans incorrectly stated that the proposed amendments would take effect upon filing with the Commission because they are concerned solely with the administration of the Plans.

⁷ *See* Notice, *supra* note 3.