

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR-NASD-2002-53 and should be submitted by May 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45760; File No. SR-NASD-00-82]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the National Association of Securities Dealers, Inc. Relating to the Assessment of Fees for Unit Investment Trusts Included in Nasdaq's Mutual Fund Quotation Service

April 16, 2002.

On December 26, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 7090, "Mutual Fund Quotation Service" ("MFQS") to assess fees for Unit Investment Trusts ("UITs") included in Nasdaq's MFQS.

The proposed rule change was published for comment in the **Federal Register** on February 20, 2001.³ The Commission received one comment letter regarding the proposed rule change.⁴ Nasdaq filed Amendment Nos. 1, 2, 3, and 4 to the proposal on June

18, 2001,⁵ June 26, 2001,⁶ July 2, 2001,⁷ and February 11, 2002,⁸ respectively. Amendment Nos. 1, 2, 3, and 4 to the proposed rule change were published for comment in the **Federal Register** on March 11, 2002.⁹ The Commission received no comments regarding the amended proposal. This order approves the proposed rule change, as amended.

I. Description of the Proposal

Nasdaq's MFQS collects and disseminates data pertaining to the value of open-end and closed-end mutual funds and UITs. Specifically, the MFQS permits funds included in the MFQS (or pricing agents designated by the funds) to transmit directly to Nasdaq pricing information, including information about a fund's net asset value, offer price, and closing market price. The MFQS currently disseminates valuation data for over 11,000 funds.

NASD Rule 7090 currently sets forth the fees assessed for the inclusion of mutual funds in the MFQS. Specifically, NASD Rule 7090(a) provides for the assessment of an annual fee of \$400 per fund authorized for the News Media Lists, \$275 per fund authorized for the Supplemental List, and a one-time application processing fee of \$250 for each new fund authorized for either list.

Nasdaq proposes to amend NASD Rule 7090(a) to provide that UITs included in the MFQS will be assessed an annual fee of \$400 per trust authorized for the News Media Lists,

⁵ See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 15, 2001 ("Amendment No. 1"). Amendment No. 1 revises the proposal to: (1) Establish a \$150 fee for replacement Unit Investment Trusts ("UITs"); and (2) respond to the ICI's comments by adopting the ICI's suggested requirements for a replacement UIT.

⁶ See letter from Edward S. Knight, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 25, 2001 ("Amendment No. 2"). Amendment No. 2 replaces the text of NASD Rule 7090 proposed in Amendment No. 1 with text designed to indicate the way that Amendment No. 1 revises Nasdaq's original proposal rather than the existing text of NASD Rule 7090.

⁷ See letter from Mary M. Dunbar, Vice President, Office of the General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 29, 2001 ("Amendment No. 3"). Amendment No. 3 replaces the proposed rule text provided in Amendment No. 2 with rule text that is designed to indicate more clearly the way that Amendment No. 1 revises the text of NASD Rule 7090 as amended by the original proposal.

⁸ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 11, 2002 ("Amendment No. 4"). Amendment No. 4 provides a more detailed explanation of the need for the proposed fees.

⁹ See Securities Exchange Act Release No. 45500 (March 11, 2002), 67 FR 10946.

\$275 per trust authorized for the Supplemental List, and a one-time application processing fee of \$250 for each new trust authorized. In addition, new NASD Rule 7090(b) provides that if a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust shall be charged a one-time application fee of \$150. NASD Rule 7090(b) also provides that the replacing trust shall not be charged an annual fee if the expiring trust has already paid an annual fee for that annual billing period.¹⁰

Nasdaq states that the application fee supports the Fund Operations personnel who are required to review, record, and enter each fund into the MFQS for subsequent dissemination to electronic or print subscribers. Nasdaq notes that the annual fee for the News Media Lists and the Supplemental List support the NASD's continuous monitoring of funds' compliance with the standards for inclusion in the MFQS, for upgrading the technology used to collect and disseminate the MFQS, and for responding to requests of users and subscribers for service enhancements.¹¹ In addition, Nasdaq states that the NASD maintains a staff and dedicated technology to produce the service.¹²

II. Summary of Comments

The Commission received one comment letter regarding the proposal.¹³ The commenter generally supported Nasdaq's proposal but recommended a technical change to the proposed rule to ensure that the fee assessment procedures for UITs operate correctly. Specifically, the commenter recommended that Nasdaq eliminate the requirement in proposed NASD Rule 7090(b) that the replacement UIT be similar in "share class" to the replacing UIT because UITs do not issue shares,

¹⁰ As originally proposed, NASD Rule 7090(b) eliminated the one-time application fee for a replacing trust if a UIT expired during an annual billing period and was replaced within three months by a trust that was materially similar in share class and trust objective. As discussed more fully below, Nasdaq revised its definition of a replacing trust in response to comments from the ICI. See Amendment No. 1, *supra* note 5. In addition, Nasdaq concluded that it could not offer a full waiver of the \$250 application processing fee for a replacing trust, as it had originally proposed, because the number of UITs that potentially would qualify for the application fee waiver was substantially greater than Nasdaq had first anticipated. Accordingly, Nasdaq revised its proposal to impose a \$150 application processing fee for replacements trusts. The \$150 fee is a partial waiver of the standard \$250 application processing fee. See Amendment No. 1, *supra* note 5.

¹¹ See Amendment No. 4, *supra* note 8.

¹² See Amendment No. 4, *supra* note 8.

¹³ See ICI Letter, *supra* note 4.

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43915 (February 1, 2001), 66 FR 10926.

⁴ See letter from Barry E. Simmons, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, Commission, dated March 13, 2001 ("ICI Letter").

nor do they have different classes of shares. The commenter also recommended that Nasdaq revise proposed NASD Rule 7090(b) to state that "[i]f a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that has a materially similar investment objective, the replacing trust shall not be charged a one-time application fee."¹⁴

In response to the commenter's concerns, Nasdaq revised its proposal to adopt the commenter's suggested requirements for the definition of a "materially similar" replacement trust.¹⁵

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with the provisions of section 15A(b)(5)¹⁷ of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission notes that the proposed annual fees for UITs, equal to \$400 per trust authorized for the News Media Lists and \$275 per trust authorized for the Supplemental List, are identical to the annual fees currently assessed for mutual funds included in the MFQS.¹⁸ Nasdaq states that the annual fees support the NASD's continuous monitoring of funds' compliance with the standards for inclusion in the MFQS, for upgrading the technology used to collect and disseminate the MFQS, and for responding to requests of users and subscribers for service enhancements.¹⁹

In addition, as described more fully above, if a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust will be charged a one-time application fee of \$150 rather than the standard \$250

application processing fee.²⁰ Although Nasdaq had hoped to waive the application processing fee for replacement UITs, Nasdaq concluded that it could offer only a \$100 fee waiver because a significant number of UITs will qualify as replacement UITs and because replacement UITs will require significant processing before entry in the MFQS.²¹ Nasdaq notes that the application fee supports the Fund Operations personnel who are required to review, record, and enter each fund into the MFQS for subsequent dissemination to electronic or print subscribers.²²

The Commission believes that the proposed fees will support the operations of the MFQS and the inclusion of UITs in the MFQS. In addition, the Commission believes that the proposed fees provide for the equitable allocation of fees among persons using the MFQS because the fees will be assessed to UITs in proportion to their usage of the MFQS. Accordingly, the Commission finds that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among persons using a system that the NASD operates and controls, consistent with Section 15A(b)(5).

Finally, as discussed more fully above, the Commission notes that Nasdaq revised its proposal to adopt the commenter's suggested requirements for the definition of a "materially similar" replacement trust.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²³ that the proposed rule change (SR-NASD-00-82), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

Bureau of Diplomatic Security, Office Foreign Missions, Diplomatic Motor Vehicles

[Public Notice 3995]

Notice of Information Collection Under Emergency Review: Department of State, Office of Foreign Missions, Diplomatic Motor Vehicle Office Applications for Registration (Mission Vehicle), Registration (Personal Vehicle), Title, and Replacement Plates; Forms DS-100, DS-101, DS-102 and DS-104; OMB Collection Number 1405-0072

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: DS/OFM/VTC/V.

Title of Information Collection:

Application for Registration (Mission Vehicle),

Application for Registration (Personal Vehicle),

Application for Title, and

Application for Replacement Plates.

Frequency: As often as is necessary to register vehicles, issue titles and issue license plates.

Form Numbers: DS-100, DS-101, DS-102 & DS-104.

Respondents: Foreign mission personnel assigned to the United States: diplomatic agents, consular officers, administrative and technical staff, specified official representatives of foreign governments to international organizations, and their dependents.

Estimated Number of Respondents: 18,488.

Average Hours Per Response: .5 hours (30 minutes).

Total Estimated Burden: 9,244.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 15, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202-395-3897.

During the first 60 days of this same period a regular review of this information collection is also being

¹⁴ See ICI Letter, *supra* note 4.

¹⁵ See Amendment No. 1, *supra* note 5.

¹⁶ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78o-3(b)(5).

¹⁸ The Commission approved these annual fees for mutual funds included in the MFQS in 2000. See Securities Exchange Act Release No. 42537 (March 16, 2000), 65 FR 15678 (March 23, 2000) (order approving File No. SR-NASD-99-77).

¹⁹ See Amendment No. 4, *supra* note 8.

²⁰ See Amendment No. 1, *supra* note 5.

²¹ See Amendment No. 4, *supra* note 8.

²² See Amendment No. 4, *supra* note 8.

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).