

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42831; File No. SR-NASD-00-16]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Minimum Listing Requirements for the Inclusion and Maintenance of Open and Closed-End Funds in Nasdaq's Mutual Fund Quotation Service

May 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 4, 2000, the National Association of Securities Dealers, Inc. ("NASD") through its wholly owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") file with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by Nasdaq.³ On May 16, 2000, the Nasdaq submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 6800 regarding the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in Nasdaq's Mutual Fund Quotation Service ("MFQS") Proposed new language is in italics; proposed deletions are in brackets.

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6800. MUTUAL FUND QUOTATION SERVICE

- (a)-(b) No Change
(c) News Media Lists

(1) (A) An eligible open end fund shall be authorized for inclusion in the News Media List released by the

Association if it has at least 1,000 shareholders or \$25 million in net assets.

(B) An eligible closed-end funds shall be authorized for inclusion in the News Media List released by the Association if it has at least \$60 [100] million in net assets.

(C) Compliance with subparagraphs (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List.

(2) (A) An authorized open-end fund shall remain included in the New Media List if it has either 750 shareholders or \$15 million in net assets.

(B) An authorized closed-end fund shall remain included in the News Media List if it has \$30 [60] million in net assets.

(C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.

(d) Supplemental List

An eligible open-end or closed-end fund shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level I Service if *it meets one of the criteria set out in subparagraph (1), subparagraph (2), or subparagraph (3) below:*

(1) the fund has net assets of \$10 million or more; or

(2) *the fund has had two full years of operation; or*

(3) *the investment management firm managing the fund has:*

(A) *at least one other fund listed on the Mutual Fund Quotation Service that has net assets of \$10 million or more; and*

(B) *at least \$15 million in total assets of open-end, closed-end, and/or money-market funds under management.*

(e) No Change

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 6800 regarding the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in the Service. The MFQS was created to collect daily price and related data for mutual funds and money market funds and to disseminate that information to the news media and market data vendors.⁵ Currently, the MFQS disseminates the valuation data for over 11,000 funds. This information dissemination process is facilitated by the use of web browser-based technology, which enables funds included in the Service, or the pricing agents designated by such funds, to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.⁶ The MFQS has two "lists" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own initial inclusion requirements.⁷ The News Media List also has maintenance/combined inclusion requirements. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed by market data vendors.⁸ If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List thus provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.⁹

Nasdaq maintains that the Service provides valuable pricing information for a large portion of funds for which there is significant investor interest. According to Investment Company Institute ("ICI") data, however, the MFQS is currently only capturing

⁵ See Securities Exchange Act Release No. 22264 (July 23, 1985), 50 FR 30899 (July 29, 1985).

⁶ See NASD Rule 6800.

⁷ See *id.*

⁸ See NASD Rule 7010.

⁹ See NASD Rule 7090.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The NASD filed its proposed rule change on March 31, 2000. On April 4, 2000, the NASD filed Amendment No. 1 that entirely replaced the original rule filing.

⁴ See Letter from Robert E. Abner, General Counsel and Senior Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (May 16, 2000). Amendment No. 2 corrected a typographical error that appeared in the proposed rule language and clarified that the Mutual Fund Quotation Service includes only 73.8% of the total open-end and closed-end fund population.

pricing information for approximately 73.8% of the total fund population.¹⁰

In light of the foregoing, Nasdaq proposes to amend the MFQS inclusion criteria for both the Supplemental and News Media List by expanding the universe of funds that are eligible for inclusion in the Service. Nasdaq proposes to lower both the initial and maintenance requirements for closed-end funds to participate in the News Media List. Currently, in order to qualify initially for inclusion in the News Media List, a closed-end fund must have at least \$100 million in net assets. To remain in the News Media List, a closed-end fund must maintain at least \$60 million in net assets. The proposed rule change would lower the net asset requirement for a closed-end fund to qualify initially for inclusion in the News Media List to at least \$60 million in net assets. The net asset requirement for a closed-end fund to remain included in the New Media List would be lowered to at least \$30 million.

Nasdaq also proposes to amend the inclusion criteria for the Supplemental List. At the present time, an open-end or closed-end fund qualifies for inclusion in the Supplemental List if the fund either has at least \$10 million in net assets or has had two full years of operation. Nasdaq proposes to provide a third alternative means for a fund to be included in the Service. Under this alternative, a fund would qualify for the MFQS if the investment firm that manages the fund has at least one other fund listed on MFQS that has \$10 million in assets. In addition, the firm must have at least \$15 million from open-end, closed-end, and/or money market funds under management. Nasdaq notes that managed assets from other sources—such as pension funds—would not be included for purposes of determining whether the investment firm meets the requirement that it manage at least \$15 million in fund-related assets.

Nasdaq represents that the proposed rule change would provide daily pricing information to the investing public for funds that have a significant investor interest. In addition, Nasdaq estimates that 2,500 of the 2,800 funds that are not currently eligible for inclusion in the MFQS would qualify under the proposed new standards.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)¹¹ and

Section 11A¹² of the Act. Section 15A(b)(6)¹³ of the Act requires the rules of a registered national securities association to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In Section 11A(a)(1)(C),¹⁴ the Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6)¹⁵ and 11A(a)(1)(C)¹⁶ of the Act because it protects investors and the public interest by promoting better processing of fund pricing information. Nasdaq represents that the proposed new listing criteria will provide greater transparency to the markets by providing pricing information for a broader base of funds for which there is significant investor interest. Nasdaq believes that by providing listed status only to *bona fide* investment companies with a sufficient investor base and trading interest, the proposed new listing standards will serve as a means for the marketplace to screen issuers and maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-00-16 and should be submitted by June 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-13957 Filed 6-2-00; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice No. 3331]

Office of Mexican Affairs; Notice of Receipt of Application for a Presidential Permit for a Conveyor Belt To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

Notice is hereby given that the Department of State has received an application from Aggregate Products, Incorporated of Salton Sea Beach, California, for a Presidential Permit,

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁰ See Amendment No. 2, *supra* note 4.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78k-1.

¹³ 15 U.S.C. 78o-3(b)(6).

¹⁴ 15 U.S.C. 78k-1(a)(1)(C).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78k-1(a)(1)(C).