On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on April 15, 2002. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until September 30, 2002. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)[12] and has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through September 30, 2002, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimal environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 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–2002–54 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.

[FR Doc. 02–9855 Filed 4–22–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45761; File No. SR–NASD–2002–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

April 16, 2002.

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 10, 2002, 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'') the proposed rule

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2 '' Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10

[9] 15 U.S.C. 78o-3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)6).

[12] *Id.*

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. 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 proposes to extend through September 30, 2002, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 (''IM–3350''). Without such an extension this standard would terminate on April 15, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through September 30, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[6] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on April 14, 2002.[7] Nasdaq now proposes to extend, through September 30, 2002, that pilot program. Extension until September 30th, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[8] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)[12] and has requested that the Commission accelerate the operative date. The Commission finds good cause to waive both the 5-day notice and 30-day pre-operative requirements because the extension of the pilot is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through September 30, 2002, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission finds good cause to waive both the 5-day notice and 30-day pre-operative requirements.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[7] Securities Exchange Act Release No. 45504 (March 5, 2002), 67 FR 10948 (March 11, 2002).

[8] *See* SR–NASD 2002–09.

[9] 15 U.S.C. 78o–3(b))6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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.

[FR Doc. 02–9856 Filed 4–22–02; 8:45 am]

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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, $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,

[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'').

[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.

[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.