

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51559; File No. SR-NASD-2005-024)

April 15, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Make Clear that the Underlying Index Value for Portfolio Depository Receipts and Index Fund Shares Must Be Disseminated Widely by an Appropriate Service

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 February 9, 2005, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 4, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to make clear in the generic listing standards for Portfolio Depository Receipts and Index Fund Shares that the underlying index value must be disseminated widely by an appropriate service. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; proposed deletions are in brackets.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 revises the proposal to indicate that, among other things, the current index value must be disseminated by one or more major market data vendors during the time Portfolio Depository Receipts and Index Fund Shares trade on Nasdaq.

4420. Quantitative Designation Criteria

(a) through (h) No change.

(i) Portfolio Depository Receipts

(1) and (2) No change.

(3) Nasdaq may approve a series of Portfolio Depository Receipts for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided each of the following criteria is satisfied:

(A) No change.

(B) Index Methodology and Calculation.

(i) and (ii) No change.

(iii) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Portfolio Depository Receipts trade on Nasdaq [over the Nasdaq Trade Dissemination System].

(C) through (E) No change.

(4) through (7) No change.

(j) Index Fund Shares

(1) and (2) No change.

(3) Nasdaq may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(A) No change.

(B) Index Methodology and Calculation

(i) and (ii) No change.

(iii) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Index Fund Shares trade on Nasdaq [over the Nasdaq Trade Dissemination System].

(C) through (E) No change.

(4) through (7) No change.

(k) and (l) 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. 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

Nasdaq believes that the proposed rule change to the generic listing standards for Portfolio Depository Receipts and Index Fund Shares makes clear that the value of the underlying index must be disseminated widely by Nasdaq itself, by the Consolidated Tape Association (which generally disseminates trade data for exchange-listed securities), or by another reputable organization, such as Reuters or Bloomberg. However, a key requirement is

that the index value be updated at least every 15 seconds. Of course, if the official index value does not change during some or all of the period when trading is occurring (for example, this is typically the case with pre-market-open and after-hours trading, and also with foreign indexes because of time zone differences or holidays in the countries where such indexes' components trade), then the last official calculated index value must remain available throughout the Nasdaq trading hours.

Nasdaq believes that the specific identity of the index dissemination service is not relevant, so long as such service is reputable, accepted in the investment community, and achieves appropriately wide dissemination of the particular index. As such, Nasdaq seeks to remove the reference to a specific Nasdaq service as the preferred means of index dissemination and replace it with the requirement of wide dissemination.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ in general, and with Section 15A(b)(6) of the Act,⁵ in particular, in that it is designed to remove the impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that clarifying the rules helps all market participants.

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

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

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

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

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 NASD 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-024 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NASD-2005-024 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).

