

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51836; File No. SR-NASD-2005-059)

June 13, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto to Amend NASD Rule 7090 to Modify the Annual Listing and Administrative Fees

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 May 10, 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 June 8, 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 change the annual listing fees for mutual funds, money market funds, and unit investment trusts on the News Media List and Supplemental List of the Mutual Fund Quotation Service (“MFQS”).

Should the Commission approve the proposed rule change, Nasdaq plans to implement the increased annual fees on July 1, 2005 on a prorated basis for new fund listings (including funds moving from the Supplemental List to the News Media List). Should the Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq clarified that the proposed fee change for the News Media List also applies to unit investment trusts and made several non-substantive clarifications to the proposal.

approve this proposed rule change after July 1, 2005, Nasdaq will implement the new annual listing fees for the MFQS system on a prorated basis as soon as practicable following Commission approval. For existing listings, the new annual fee shall become effective on January 1, 2006 during the 2006 annual maintenance process (or as soon as practicable thereafter, on a prorated basis, should the Commission approve the proposed rule change after January 1, 2006). For new and existing listings, the proposed new administrative fee shall become effective on July 1, 2005, or as soon as practicable if approved by the Commission thereafter.

The proposed rule change also corrects typographical errors and modifies the administrative fee for requests to change the name and/or symbol of a fund or trust.

The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in [brackets].

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7090. Mutual Fund Quotation Service

(a) Funds and Unit Investment Trusts included in the Mutual Fund Quotation Service ("MFQS") shall be assessed an annual fee of \$[400]475 per fund or trust authorized for the News Media Lists and \$[275]350 per fund or trust authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proration of these fees but no credit or refund shall accrue to funds or trust terminated during an annual billing period. In addition, there shall be a one-time application processing fee of \$325 for each new fund or trust authorized.

(b) If a Unit Investment Trust 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. In addition, 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.

(c) Funds included in [the]MFQS and pricing agents designated by such funds ("Subscriber"), shall be assessed a monthly fee of \$100 for each logon identification obtained by the Subscriber. A Subscriber may use a logon identification to transmit to Nasdaq pricing and other information that the Subscriber agrees to provide to Nasdaq.

(d) Funds included in [the]MFQS shall be assessed a \$2[0]5 administrative fee to process a request to amend the name and/or the symbol of a fund or trust.

(e) Distributors receiving MFQS shall pay a monthly fee of \$1,000. For the purposes of this subsection only, the term "distributor" shall refer to any firm that receives the MFQS data feed and distributes it to third parties. All such firms must execute a Nasdaq Distributor Agreement.

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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 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 proposes to amend NASD Rule 7090 to change the annual listing fees and the

administrative fee for MFQS. MFQS was created to collect and disseminate data pertaining to the value of open-end and closed-end mutual funds, money market funds, and unit investment trusts. Currently, MFQS disseminates valuation data for over 20,000 funds. Funds and trusts must meet minimum eligibility criteria in order to be included in the MFQS service. MFQS has two “lists” in which a fund or trust may be included: (1) the News Media List, and (2) the Supplemental List. The listing requirements for the News Media List are different than the listing requirements for the Supplemental List. If a fund or trust is listed on the News Media List, pricing information about the fund or trust is eligible for inclusion in the fund/trust tables of newspapers and is also eligible for dissemination over Nasdaq’s Mutual Fund Dissemination Service (“MFDS”) data feed, which is distributed to market data vendors. If the fund or trust is listed on the Supplemental List, the pricing information about the fund or trust generally is not included in newspaper fund/trust tables, but is disseminated over Nasdaq’s MFDS data feed. The Supplemental List, therefore, provides significant visibility for funds or trusts that do not otherwise qualify for inclusion on the News Media List.

The current annual listing fee is \$400 for the News Media List and \$275 for the Supplemental List. These annual listing fees were last increased in 2000, more than five years ago.⁴ In order to provide the investment community with reliable and accurate information related to MFQS listings, Nasdaq has dedicated significant resources to the data processing, data display and administrative tasks performed for MFQS listings. In addition to the resources needed to operate and maintain the MFQS system, Nasdaq has also invested additional resources and funds for two significant improvements to the MFQS system that will be implemented in 2005 and 2006.

⁴ See Securities Exchange Act Release No. 42537 (March 16, 2000), 65 FR 15678 (March 23, 2000) (SR-NASD-99-77).

First, Nasdaq plans to add new functionality to the MFQS Web site that will allow MFQS participants to download fund and trust pricing information directly from the MFQS Web site. Currently, the MFQS Web site only displays fund and trust pricing information. With the new download functionality, MFQS participants will be able to track their daily updates to funds and trusts electronically on their personal computers, and thus become more efficient in their distribution of accurate pricing for their respective funds. Nasdaq plans to implement the new download functionality in August 2005. Second, Nasdaq plans to offer new functionality for MFQS participants that will significantly reduce the time and resources needed for fund families or their designated agents to validate the assets and shareholder accounts for funds and trusts during the annual maintenance process for continued listing on MFQS. The current validation process for the assets and shareholder accounts for each fund and trust is performed manually. The new functionality will allow Nasdaq to collect this data and the funds will only have to affirm it on an as needed basis. Nasdaq is currently working to offer this new functionality and plans to implement it in January 2006.

To reflect the increased costs associated with the development, implementation, and testing of the new functionalities, Nasdaq proposes to increase the annual listing fee for mutual funds, money market funds, and unit investment trusts on the News Media List from \$400 per fund or trust per year to \$475 per fund or trust per year. Nasdaq proposes to increase the annual listing fee for mutual funds, money market funds, and unit investment trusts on the Supplemental List of the MFQS system from \$275 per fund per year to \$350 per fund or trust per year.

Nasdaq also proposes to increase the administrative fee for processing requests to change the name and/or symbol of a fund or trust that is currently listed on MFQS from \$20 to \$25. The current \$20 fee was introduced in October 2002 to compensate Nasdaq for the personnel and

system costs associated with making over 2,000 name and symbol changes for listed funds and trusts.⁵ Since 2002, the personnel and system costs associated with making these changes have increased because of overall increases in labor costs. Accordingly, Nasdaq believes that an increase of \$5 is reasonable to compensate Nasdaq for the increased costs. The proposed rule change also corrects minor typographical errors in the rule text and clarifies that the administrative fee applies to both funds and trusts.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(5) of the Act,⁷ in particular, which requires that the rules of the NASD 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 NASD operates or controls. Nasdaq believes that the proposed increase in the annual listing fees and the administrative fee is a fair means of recovering the costs associated with the maintenance and operation of MFQS and the development costs associated with the planned enhancements to the MFQS system. Nasdaq also believes that the proposal is consistent with Section 15A(b)(5) because the fee changes will be imposed only on those funds that benefit from the operation of the MFQS system.

⁵ See Securities Exchange Act Release No. 46549 (September 25, 2002), 67 FR 61705 (October 1, 2002) (SR-NASD-2002-101).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

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.

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 the self-regulatory organization 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-2005-059 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-059. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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 available publicly. All submissions

should refer to File Number SR-NASD-2005-059 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.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).