

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52277; File No. SR-NASD-2005-096)

August 17, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Nasdaq Listing Fees for Closed-End Funds

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 July 29, 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 and II below, which Items have been prepared by Nasdaq. On August 15, 2005, the Exchange amended the proposed rule change ("Amendment No. 1").³ Nasdaq has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange deleted the proposed rule changes to NASD Rule 4520 that were included in the Exchange's original filing with the Commission on July 29, 2005.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Nasdaq asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

Nasdaq proposes changes to NASD Rule 4510. The text of the proposed rule change, as amended, is below. Proposed new language is italicized; proposed deletions are in [brackets].

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4510. The Nasdaq National Market

(a) Entry Fee

(1) – (2) No change.

(3) A closed-end management investment company registered under the Investment Company Act of 1940, as amended (a “Closed-End Fund”), that submits an application for a class of securities in The Nasdaq National Market shall pay to the Nasdaq Stock Market, Inc. an entry fee of \$5,000 (of which \$1,000 represents a non-refundable, application fee).

~~(3)4~~ An issuer that submits an application for inclusion of any class of rights in The Nasdaq National Market, shall pay, at the time of its application, a non-refundable application fee of \$1,000 to The Nasdaq Stock Market, Inc.

~~(4)5~~ The Board of Directors of The Nasdaq Stock [National] Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

~~(5)6~~ If the application is withdrawn or is not approved, the entry fee (less the non-refundable application fee) shall be refunded.

~~(6)7~~ The fees described in this Rule 4510(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed

on Nasdaq, or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq National Market.

([7]8) The fees described in this Rule 4510(a) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(b) No change

(c) Annual Fee – Domestic and Foreign Issues

(1) The issuer of each class of securities (not otherwise identified in this Rule 4500 series) [other than an ADR,] that is a domestic or foreign issue listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares...	\$24,500
10+ to 25 million shares...	\$30,500
25+ to 50 million shares...	\$34,500
50+ to 75 million shares...	\$44,500
75+ to 100 million shares...	\$61,750
Over 100 million shares...	\$75,000

(2) – (5) No change.

(d) Annual Fee – American Depositary Receipts (ADRs) and Closed-End Funds

(1) – (2) No change.

(3) A Closed-End Fund listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated based on total shares outstanding according to the following schedule:

<u>Up to 5 million shares</u>	<u>\$15,000</u>
<u>5+ to 10 million shares</u>	<u>\$17,500</u>
<u>10+ to 25 million shares</u>	<u>\$20,000</u>
<u>25+ to 50 million shares</u>	<u>\$22,500</u>
<u>50+ to 100 million shares</u>	<u>\$30,000</u>
<u>100+ to 250 million shares</u>	<u>\$50,000</u>
<u>Over 250 million shares</u>	<u>\$75,000</u>

(4) For the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed in The Nasdaq National Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

([3]5) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

([4]6) If a class of securities is removed from the Nasdaq National Market, that portion of the annual fees for such class of securities attributable to the months following

the date of removal shall not be refunded, except such portion shall be applied to The Nasdaq SmallCap Market fees for that calendar year.

(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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, 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

Currently, Closed-End Funds listing on The Nasdaq National Market are required to pay entry and annual fees according to the applicable fee schedules set forth in NASD Rule 4510.⁷ These entry fees range from \$100,000 to \$150,000 and the annual fees from \$15,000 to \$75,000.

Pursuant to the proposed rule change, as amended, the entry fee for listing a Closed-End Fund on the National Market will decrease to \$5,000 (of which \$1,000 is a non-refundable application fee) per fund. Annual fees will be based on the total number of shares outstanding, with a minimum fee of \$15,000 and a maximum fee of \$75,000. For the purposes of determining the annual fee, fund sponsors will be permitted to

⁷ Closed-End Funds are evaluated for listing on the Nasdaq National Market under the general initial listing criteria contained in NASD Rules 4420(a), (b) or (c).

aggregate the shares outstanding of all Closed-End Funds listed on the Nasdaq National Market that are part of the fund family. As a result, the annual fee may not exceed \$75,000 per fund family. For the purposes of this rule, a “fund family” is defined as two or more Closed-End Funds that share a common investment adviser or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

Nasdaq believes there are several reasons to adopt new fees applicable to Closed-End Funds. First, the new annual fee schedule will accommodate the needs of fund sponsors more effectively than the current fee schedule because sponsors often choose to issue and list multiple funds in the same family. Currently, each fund that is listed on Nasdaq is assessed a separate annual fee. Capping annual fees at \$75,000 per fund family will benefit fund sponsors and investors by reducing the costs associated with issuing fund shares.

Second, in cases where multiple funds are listed, the new fee schedule will substantially lower fees payable by Closed-End Funds, permitting Nasdaq to compete more effectively for listings with other markets. In this regard, Nasdaq notes that the new entry fees are similar to entry fees charged by the American Stock Exchange for listing Closed-End Funds.⁸

Nasdaq represents that the new fees proposed herein reflect a lowering of existing fees applicable to issuers of closed-end funds, listed on the Nasdaq National Market.⁹

2. Statutory Basis

⁸ See Amex Company Guide Section 140.

⁹ Telephone call between Yolanda Goetsch, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Commission, on August 12, 2005.

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,¹⁰ in general, and with Section 15A(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed change to the entry and annual fees will apply equally to all Closed-End Funds listing on The Nasdaq National Market. Furthermore, Nasdaq believes that the proposed fees are reasonable and fall within the range of fees charged by other markets.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in 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

Written comments were neither solicited nor received.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder¹³ because the proposal: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq satisfied the five-day pre-filing requirement.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(b)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has asked the Commission to waive the 30-day operative delay.¹⁵ The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change would lower listing fees for closed-end funds which may benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. For this reason, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.¹⁶

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 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).

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.¹⁷

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-2005-096 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-2005-096. 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

¹⁷ The effective date of the original proposed rule change is July 29, 2005 and the effective date of the amendment is August 15, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 15, 2005, the date on which the NASD submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 the 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-2005-096 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.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).