

Coinvestor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its parent; (b) to immediate family members of such Coinvestor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the 1934 Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2-1 under the 1934 Act.

5. The Company will send to each Member who had an interest in the Company at any time during the fiscal year then ended, Company financial statements audited by independent accountants. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all of the assets of the Company as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Company. In addition, within 90 days after the end of each fiscal year of the Company or as soon as practicable thereafter, the Manager will send a report to each person who was a Member at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Member of his or its federal and state income tax returns and a report of the investment activities of the Company during such year.

6. The Company will maintain and preserve, for the life of the Company and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of the Company to be provided to the Members, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-4115 Filed 2-16-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43915; File No. SR-NASD-00-82]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change 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

February 1, 2001.

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 December 26, 2000, the National Association Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.

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

Nasdaq is proposing to amend NASD Rule 7090 pertaining to the fees assessed for Unit Investments Trusts ("UITs") included in the Mutual Fund Quotation Service ("MFQS"). Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

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 per fund *or trust* authorized for the News Media Lists and \$275 per fund *or trust* authorized for the Supplemental List. Funds *or trusts* 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 trusts* terminated during an annual billing period. In addition, there shall be a one-time application processing fee of \$250 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 share class and trust objective, the replacing trust shall not be charged a one-time application fee. 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) [(b)] Funds included in the MFQS and pricing *agents* designated by such funds ("Subscriber"), shall be assessed a monthly fee of \$75 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.

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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. 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's MFQS collects and disseminates data pertaining to the value of open-end and closed-end mutual funds and UITs. Currently, the MFQS disseminates the valuation data for over 11,000 funds. The MFQS facilitates this process by permitting funds included in the MFQS (or pricing agents designated by such funds) to use the browser-based technology 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.

NASD Rule 7090 sets forth the fees assessed for the inclusion of mutual funds in the MFQS. NASD Rule 7090 currently 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. Funds authorized during the course of an annual billing period are assessed prorated fees, but no credit or refund accrues to funds terminated during an annual billing period. The application fee partially offsets the costs Nasdaq

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

incurs for the Fund Operations personnel, who are required to review, record, and input each fund into the MFQS system to be available for update and subsequent dissemination to the electronic or newspaper subscribers.

Nasdaq proposes to amend NASD Rule 7090 to assess application and annual fees for the inclusion of UITs in the same manner as it currently assesses those fees for funds, in all but one respect. Nasdaq proposes to eliminate the MFQS application fee in the limited circumstances where a UIT currently listed in MFQS expires and is replaced within a three-month period of time by a trust that is materially the same. This fee-waiver recognizes the fact that UITs, unlike open or closed-end funds, often exist in the market for finite periods of time, ranging from 12 months to 30 years.

A replacement UIT will be deemed to be materially similar to an expiring UIT if it is of the same share class and objective of the trust it is replacing. Nasdaq's Fund Operations staff will be responsible for reviewing, validating and approving trusts to determine whether they meet these criteria. If the expiring trust is not replaced by a trust of the same material nature within three months after expiration, or if Nasdaq staff determines that the trust is not materially similar, the listing firm will be required to pay the application fee upon listing the new UIT. The fee-waiver will operate as follows:

- January 2001: Trust A originally lists with MFQS. Termination date for this trust is February 2002. This fund pays its application fee of \$250.00 and annual listing fee of \$275.00 for 2001.
- January 2002: Trust A pays its annual fee for 2002.
- February 2002: Trust A expires.
- March 2002: Trust A is replaced by Trust B, which is determined to be materially like Trust A. Trust B will not incur any application fee and will assume the annual listing fee paid by Trust A.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6)³ and Section 11A⁴ of the Act. Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transactions in 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In section 11A(a)(1)(C), Congress found that is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6) and 11A(a)(1)(C) of the Act because the proposal protects investors and the public interest by promoting better processing of price information in UITs. Nasdaq believes that the proposed listing fees will encourage the listing of UITs, thereby providing greater pricing information for a broader base of investments for which there is significant investor interest. Nasdaq also believes that the proposed listing fees will enable Nasdaq to identify, screen and list *bona fide* UITs with a meaningful investor base and trading interest.

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.

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

Nasdaq has neither solicited nor received 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 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 is consistent with the Act. Person 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 the NASD.

All submissions should refer to File No. SR-NASD-00-82 and should be submitted by March 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-3239 Filed 2-16-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43953; File No. SR-NASD-01-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Program Making Available Certain Nasdaq Services and Facilities Until 6:30 p.m. Eastern Time

February 12, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

⁵ 17 CFR 200.30-2(a)(12).

³ 15 U.S.C. 78o-3(b)(6).

⁴ 15 U.S.C. 78k-1.