

a public offering or engage in business of any kind.

Filing Date: The application was filed on August 7, 1998.

Applicant's Address: 500 East Broward Boulevard, Ft. Lauderdale, Florida 33394.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40380; File No. SR-NASD-98-53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Include Closed-End Funds in Nasdaq's Mutual Fund Quotation System

August 27, 1998.

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 24, 1998,³ the National Association of Securities Dealers, Inc. ("NASD") through its wholly-owned 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. 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

The NASD and Nasdaq are proposing to amend NASD Rule 6800 to include closed-end funds in Nasdaq's Mutual Fund Quotation Service ("MFQS" or "Service"). Below is the text of the propose rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule 6800. Mutual Fund Quotation Service

(a) No change

(b) Eligibility Requirements

To be eligible for participation in the Mutual Fund Quotation Service, a fund shall:

(1) be registered with the Commission as an open-end ("*open-end fund*") or a closed-end ("*closed-end fund*") [management] investment company pursuant to the Investment Company Act of 1940.

(2)-(4) No change.

(c) News Media List[s]

(1) (A) An eligible *open-end* fund shall be authorized for inclusion in the News Media List[s] released by the Association if it has at least 1,000 shareholders or \$25 million in net assets.

(B) An eligible *closed-end* fund shall be authorized for inclusion in the News Media List released by the Association if it has at least \$100 million in net assets.

[B](C) Compliance with subparagraphs (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List[s].

(2) (A) An authorized *open-end* fund shall remain included in the News Media List[s] if it has either 750 shareholders or \$15 million in net assets.

(B) An authorized *closed-end* fund shall remain included in the News Media List if it has \$60 million in net assets.

[B](C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.

(d) Supplement List

An eligible *open-end* or *closed-end* fund shall be authorized for inclusion in the Supplement List released to vendors of Nasdaq Level 1 Service if:

(1) The fund has net assets of \$10 million or more; or

(2) Has had two full years of operation.

(e) No change

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

The NASD and Nasdaq are proposing to amend NASD Rule 6800 to establish minimum requirements for the inclusion of closed-end funds in Nasdaq's MFQS.

Currently, MFQS collects daily price and related data for open-end funds and money market funds, and publicly disseminates the information to the news media and market data vendors. To assist the news media and market data vendors in determining which funds have the broadest appeal to the investing public, Nasdaq divides the participating funds into two separate lists: the "News Media List" and the "Supplemental List." Open-end funds on the News Media List are eligible for inclusion in the fund tables of newspapers nationwide, as well as for dissemination over Nasdaq's Level 1 data feed service distributed by market data vendors. Open-end funds on the Supplemental List are disseminated over Nasdaq's Level 1 date feet service, thus providing significant visibility for funds that do not qualify for the News Media List. NASD Rule 6800 contains initial inclusion (minimum eligibility) requirements for both the News Media List and the Supplement List, and contains maintenance (continued inclusion) requirements for the News Media List. Closed-end funds, however, are not currently eligible for inclusion in the MFQS under NASD Rule 6800.

In the past, closed-end funds have expressed an interest in being able to enter their daily prices into the Service for dissemination to the newspapers, market data vendors, and news wires. Previously, the MFQS application did not support closed-end funds because it did not accommodate some of the data attributes needed for closed-end funds. Nasdaq, however, has recently re-designed and upgraded the MFQS. The improved Service, which should be implemented in the third quarter of 1998, will include the data attributes necessary to support closed-end funds. Accordingly, Nasdaq is proposing to add to Rule 6800 new standards for the inclusion of closed-end funds in the MFQS.⁴

⁴ Under the improved MFQS, Nasdaq plans to disseminate on a daily basis a closed-end fund's net asset value and closing share price (as applicable).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq filed an amendment to the proposed rule change on August 27, 1998, the substance of which is incorporated into this notice. See Letter from Robert E. Aber, Senior Vice President and General Counsel, Office of the General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 26, 1998 ("Amendment No. 1").

The proposed standards contain initial inclusion requirements for the News Media List and the Supplemental List, and also contain maintenance requirements for the News Media List. Specifically, the criteria for the News Media List will be \$100 million in assets for initial inclusion and \$60 million in assets for maintenance. The criteria for initial inclusion in the Supplemental List will be \$10 million or two full years of operation; there will be no maintenance requirement for the Supplemental List.⁵

The NASD and Nasdaq note that the proposed initial inclusion and maintenance requirements for the News Media List for closed-end funds are higher than the current requirements for open-end funds.⁶ The NASD and Nasdaq believe that this differential is warranted because the nature of closed-end funds differs from open-end funds.⁷ This is, the asset base of a closed-end fund is fixed upon initiation whereas open-end funds' asset base often starts small and grows over time; thus, closed-end tend to have higher initial asset bases than open-end funds. Furthermore, the proposed requirements for the News Media List for closed-end funds take into consideration the reality of a growing shortage of newspaper print space. Specifically, over the past several years, the number of funds has grown significantly, causing a shortage of newspaper print space. Accordingly, there are times when a fund qualifies for the News Media List but the fund's net asset value and closing price are not printed in the newspaper due to a shortage of print space. Thus, by proposing meaningful standards for closed-end funds, the NASD and Nasdaq hope to provide a manageable and selective list of closed-end funds and to avoid having closed-end funds pay the higher annual fee for the News Media List (the fee for the Supplemental List is lower)⁸ when there is no

guarantee that a qualifying fund will be printed by a newspaper at a given time.

The NASD and Nasdaq note that these requirements have received a positive response throughout the investment company community, and have also received support from the Investment Company Institute ("ICI"). The NASD and Nasdaq also note that the proposed standards would make approximately 75% of closed-end funds eligible to be printed in the newspaper.⁹ Finally, the NASD and Nasdaq are making a technical change to NASD Rule 6800 to clarify that there is a single News Media List, not multiple lists as the current rule language suggests.

The NASD and Nasdaq believe that the proposed rule change is consistent with Section 15A(b)(6) of the Act.¹⁰ Section 15A(b)(6) of the Act requires the rules of a national securities association to foster coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The NASD and Nasdaq believe that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act because it protects investors and the public interest by promoting better processing of price information in closed-end funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do 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 Comment 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

List and \$200 per fund authorized for the Supplemental List. See NASD Rule 7090.

⁹ According to the ICI, as of December 31, 1997, there were approximately 502 closed-end funds of record, of which 379 had at least \$100 million in assets. Thus, under the proposed standards, 379 funds would qualify for the News Media List and the remaining 123 would qualify for the Supplemental List. (All closed-end funds tracked by the ICI have at least \$10 million in assets.)

¹⁰ U.S.C. 78o-3(b)(6).

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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-98-53 and should be submitted by September 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40382; File No. SR-NASD-98-59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Trade Reporting

August 28, 1998.

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

¹¹ 17 CFR 200.30-3(a)(12).

Additionally, Nasdaq will disseminate information relating to a fund's unallocated distributions. Each fund will provide the aforementioned information to Nasdaq on a daily basis through an interface of the MFQS. See Amendment No. 1, *supra* note 3.

⁵ This is consistent with the current standards for the Supplemental List for open-end funds. See generally NASD Rule 6800.

⁶ Under the News Media List criteria for open-end funds, a fund must have \$25 million in assets or 1,000 shareholders for initial inclusion, and \$15 million or 750 shareholders for maintenance. See NASD Rule 6800(c)(1)(A) and (c)(2)(A).

⁷ The NASD and Nasdaq note that by contract a closed-end fund that wishes to be included in the MFQS agrees to calculate and disseminate the fund's net asset value to Nasdaq on a daily basis. This information will be disseminated over the Nasdaq Level 1 data feed service on a daily basis. See Amendment No. 1, *supra* note 3.

⁸ Funds in the MFQS are assessed an annual fee of \$275 per fund authorized for the News Media