

increase the number of directors on its board from thirteen to fifteen.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend Article 3, Section 3.1 of MBSCC's by-laws to increase the number of directors from thirteen to fifteen.<sup>3</sup> Currently MBSCC has thirteen directors divided into three classes. Classes I and II each consist of four directors, and Class III consists of five directors. Under the proposed rule change, each class will consist of five directors.

MBSCC's shareholders agreement provides that one director represents management, one director represents National Securities Clearing Corporation, and the remaining directors represent MBSCC's participants. Under the proposed rule change, the two additional directors will represent MBSCC's participants. Accordingly, MBSCC believes that the proposed rule change will increase the opportunity for participants to be represented on MBSCC's board of directors.

MBSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, MBSCC believes the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,<sup>4</sup> which requires that the rules of a clearing agency be designed to assure the fair representation of shareholders (or members) and participants in the selection of its directors and administration of its affairs.

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

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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

Within thirty-five 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 ninety 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 MBSCC comments, 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, NW, Washington, DC 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 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 MBSCC. All submissions should refer to File No. SR-MBSCC-98-03 and should be submitted by December 21, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40694; File NO. SR-NASD-98-70]

### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Logon Identification Fee for Nasdaq's Mutual Fund Quotation System

November 19, 1998.

#### I. Introduction

On September 18, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> In its proposal, Nasdaq sought to establish a logon identification fee for its Mutual Fund Quotation Service ("MFQS"). Notice of the proposal was published in the **Federal Register** on October 19, 1998. ("Notice").<sup>3</sup> No comments were received on the filing. This order approves the proposal.

#### II. Description of the Proposal

Nasdaq proposed to amend NASD Rule 7090 to charge a \$75 logon identification fee for subscribers of Nasdaq's MFQS. Currently, subscribers of the MFQS transmit pricing information and other data to Nasdaq through the service. Nasdaq then distributes the information to the news media and market data vendors. Until recently, Nasdaq could not use the MFQS to collect price information on closed-end funds because of technological limitations. However, using web based technology, Nasdaq re-designed and upgraded the MFQS. The upgraded system can now handle the pricing of closed-end funds. Further, the enhancements allow MFQS subscribers

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 40543 (Oct. 9, 1998), 63 FR 55907 (File No. SR-NASD-98-70).

<sup>2</sup> The Commission has modified the text of the summaries prepared by MBSCC.

<sup>3</sup> Article 3, Section 3.1 governs the number, election, and term of office of directors.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(C).

to transmit price information and other data to Nasdaq over the Internet.

As part of the upgrade, Nasdaq created software to protect the information transmitted over the Internet. Each MFQS subscriber will be given a unique logon identification which will allow the subscribers to securely transmit price information and other data to Nasdaq. A logon identification can only be used by one person at a time; if a subscriber wants two people to simultaneously submit its pricing information, the subscriber must order two logon identifications.

According to Nasdaq, the Internet security software was also developed to protect sensitive information transmitted to the NasdaqTrader.com system. In the future, Nasdaq indicates that it may also use the Internet security system with other NASD web-based services.

Nasdaq estimates that the MFQS's share of the on-going costs to administer and maintain the Internet security system will be \$239,000. To pay for the administrative and maintenance costs of the MFQS, Nasdaq proposed to charge \$75 a month for each logon identification a subscriber orders. According to Nasdaq, the fee will only be used to cover the administrative and maintenance costs of the Internet security software; Nasdaq maintains that the fee will not be used to pay for the development costs of the software.

### III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal creating a \$75 logon identification fee for subscribers of Nasdaq's MFQS. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act<sup>4</sup> and the rules and regulations thereunder that govern the NASD.<sup>5</sup> In evaluating a given proposal, the Commission examines the record before it. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.<sup>6</sup>

Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act in that it provides 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 Association operates or controls. In its proposal, the Association sought to charge MFQS subscribers \$75 a month for each logon identification fee the subscriber orders.

The Commission believes that this charge provides for the reasonable allocation of fees among those who use the system. MFQS subscribers, who benefit from the Internet security system, are the only ones who are charged with the fee. Moreover, Nasdaq represented to the Commission that the fee will only be used to cover the maintenance and administrative costs of operating the Internet security system and not to cover the development costs of the security system. Nasdaq also represented to the Commission that the fee will be allocated between the MFQS and the NasdaqTrader.com service based on each service's proportionate usage of the security system.<sup>7</sup> Because the fee is only assessed against those who benefit from the Internet security system and the fee will only be used to cover the MFQS's portion of the on-going operational costs of the security system, the Commission believes that the NASD has provided for the equitable allocation of fees among persons using a system which the Association operates and controls.

### IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.<sup>8</sup> In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NASD-98-70) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40698; File No. SR-NYSE-98-40]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program to Amend Paragraph 902.02 of the Exchange's Listed Company Manual and Requesting Permanent Approval of the Pilot Program

November 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 20, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposed rule change instituting a three-month pilot program pending the Commission's review of the proposed rule change.

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

The Exchange proposes to implement a three-month pilot program (the "Pilot") to amend Paragraph 902.02 of the Exchange's Listed Company Manual (the "Manual"). In addition, the Exchange seeks permanent approval of the proposed amendments to Paragraph 902.02 of the Manual. Paragraph 902.02 of the Manual contains the schedule of current listing fees for companies listing securities on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

#### 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 NYSE 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

<sup>4</sup> 15 U.S.C. 78o-3.

<sup>5</sup> 15 U.S.C. 78s(b).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> Along with SR-NASD-98-70, the NASD also filed SR-NASD-98-71. The NASD has withdrawn SR-NASD-98-71. See Securities Exchange Act Release No. 40658 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (notice of withdrawal of SR-NASD-98-71).

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78(c)f.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.