

10601, beginning at 9:30 a.m. and extending until 6 p.m. To the extent necessary, the hearing will continue at the same location from 9:30 a.m. to 12 noon on Wednesday, March 14, 2001. Issues to be considered at the hearing are:

1. (Issue 2)—Whether the transfer Applicants' plan for handling decommissioning funds for the FitzPatrick and Indian Point nuclear plants—whereby control of the decommissioning funds will remain with PASNY but responsibility for decommissioning the plants will reside with the Entergy companies—provides reasonable assurance of adequate decommissioning funding, within the meaning of 10 CFR 50.75(b) and 50.75(e)(1)(vi). [See CLI-00-22, 52 NRC at 319.]

2. (Issue 3)—Whether the license transfer applications provide adequate financial assurance for the safe operation of FitzPatrick and Indian Point 3 because the applications do not demonstrate an appropriate margin between anticipated operating costs and revenue projections, and the Entergy applicants do not provide evidence of access to sufficient reserve funding, specifically with respect to the subparts or bases approved in LBP-00-04 (corrected version dated February 5, 2001), [See LBP-00-04 (corrected version), 53 NRC \_\_\_, \_\_\_ (2001) (slip op. at 20).]

Issue 2 (essentially a legal issue) will be the first issue considered, on Tuesday morning, March 13, 2001. CAN will present its position initially, followed by the Licensees and the NRC Staff and rebuttal by CAN. Issue 3 will follow, with the Licensees presenting their witnesses first, followed by CAN and the NRC Staff and rebuttal by the Licensees.

The names and addresses of participants are as follows:

1. *Entergy Companies and PASNY*: Jay E. Silberg, Esq., Shaw Pittman, 2300 N Street, NW., Washington, DC 20037-1128

Gerald C. Goldstein, Esq., Assistant General Counsel, New York Power Authority, 123 Main Street, White Plains, NY 10601

Douglas E. Levanway, Esq., Wise Carter Child & Caraway, 401 E. Capitol St., Suite 600, P.O. Box 651, Jackson, MS 39205

John M. Fulton, Esq., Entergy, 600 Rocky Hill Road, Plymouth, MA 02360

2. *CAN*:

Timothy L. Judson, Organizer, CNY—Citizens Awareness Network, 140 Bassett St., Syracuse, NY 13210

Deborah Katz, Executive Director, Citizens Awareness Network, PO Box 83, Shelburne Falls, MA 01370

3. *Westchester County*:

Stewart M. Glass, Esq., Senior Assistant County Attorney, County of

Westchester, Department of Law, Room 600, 148 Martine Ave., White Plains, NY 10601

4. *NRC Staff* (not a party, but presenting the Safety Evaluation Report (SER) and responding to questions posed by the Presiding Officer)

Steven R. Hom, Esq., Office of the General Counsel, 0-15D21, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Presiding at the oral hearing will be Administrative Judge Charles Bechhoefer, whose jurisdiction commenced with his designation as Presiding Officer on November 28, 2000, see 65 Fed. Reg. 75,976 (December 5, 2000), and will terminate with his certification of the record to the Commission, following his receipt of the parties' final statements of position. The designated Presiding Officer has no authority to render a final or recommended decision with respect either to the license transfer itself or the issues admitted for hearing. See 10 CFR 2.1309(b)(3).

The following filing schedules have been adopted with respect to each issue:

1. *Initial Statements of Position and Written Direct Testimony (together with supporting affidavits)*

Issue 2: January 12, 2001 (11:59 p.m.)—papers already filed.

Issue 3: February 26, 2001 (11:59 p.m.)

2. *Written responses to direct testimony, and rebuttal testimony (with supporting affidavits); Proposed questions on written direct testimony*

Issue 2: February 1, 2001 (11:59 p.m.)—papers already filed.

Issue 3: March 5, 2001 (11:59 p.m.)

3. *Proposed questions directed to written rebuttal testimony*

Issue 2: February 12, 2001 (11:59 p.m.)—papers already filed.

Issue 3: March 8, 2001 (11:59 p.m.)

The oral hearing will be open to members of the public, except that, where necessary to consider proprietary data (Issue 3), the hearing will be open only to those authorized access to such data.

Dated: February 13, 2001, Rockville, Maryland.

**Charles Bechhoefer,**

*Administrative Judge.*

[FR Doc. 01-4103 Filed 2-16-01; 8:45 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24857; 813-258]

### GFInet inc. and Magnetic Holdings International (DE) LLC; Notice of Application

February 13, 2001.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") exempting the applicants from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to exempt an employees' securities company formed for the benefit of key employees of GFInet inc. (together with any entity that results from a reorganization of GFInet inc. into a different type of entity or into an entity organized under the laws of another jurisdiction ("GFInet")) from certain provisions of the Act.

**FILING DATE:** The application was filed on April 3, 2000, and amended on November 20, 2000 and February 7, 2001.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 12, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 100 Wall Street, New York, NY 10005.

**FOR FURTHER INFORMATION CONTACT:** Sara P. Crovitz, Senior Counsel, at (202) 942-0667, or Nadya Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0101, (202) 942-8090.

### Applicants' Representations

1. GFInet is a business-to-business neutral electronic marketplace providing a fully interactive, Internet accessible, screen-based platform for trading corporate assets. GFInet is a wholly owned subsidiary of GFI Group, a New York corporation. GFI Group operates as a wholesale broker, through its wholly owned broker-dealer subsidiaries, providing brokerage services for securities, commodities, currency and derivative contracts to broker-dealers and other financial institutions.

2. Magnetic Holdings International (DE) LLC ("Company") is a Delaware limited liability company formed pursuant to a limited liability company agreement ("Investment Company Agreement"). Magnetic Holdings Management, LLC, a wholly owned subsidiary of GFI Group will be the manager of the Company ("Manager"). Applicants state that the Manager is not currently registered under the Investment Advisers Act of 1940 ("Investment Advisers Act") but will so register if required to do so by the Investment Advisers Act or the rules thereunder.

3. Applicants intend to establish the Company for the benefit of certain key employees to enable them to invest in a private offering of GFInet securities. The Company will be an "employees' security company" within the meaning of section 2(a)(13) of the Act and will operate as a closed-end management investment company. Participation in the Company will be voluntary.

4. Applicants state that the Company will subscribe for a specified number of shares ("Subscription") in a private offering of GFInet shares. The Company will invest solely in securities issued by GFInet, except that, pending complete investment of all capital contributions in GFInet securities, the Company may make certain investments in order to maintain the value of the received capital ("Temporary Investments"). Temporary Investments may include: (a) United States Government obligations with maturities of not longer than one year and one day, (b) commercial paper with maturities no longer than six months and one day and having a rating, assigned to such commercial paper by a nationally recognized statistical rating organization, equal to

one of the two highest ratings categories assigned by such organization; or (c) shares of a money market mutual fund.<sup>1</sup>

5. Units of interest in the Company ("Units")<sup>2</sup> will be offered only to eligible investors ("Eligible Investors"), which will consist of: (a) "Eligible Employees" (as defined below), (b) a trust of which all of the trustees, grantors, and/or beneficiaries are Eligible Employees or of which the beneficiaries are spouses or children and/or step-children residing in the same household as the Eligible Employees, including self-directed retirement plan trusts ("Eligible Trusts"), (c) partnership, corporations or other entities, all of the voting power of which is controlled by Eligible Employees ("Eligible Entities"), (d) the spouse and children and step-children over the age of 21 of an Eligible Employee if they reside in the same household as the Eligible Employee ("Immediate Family Members"), and (e) GFInet or an entity that directly or indirectly controls, is controlled by, or is under common control with GFInet ("Affiliated Companies"). Each Eligible Investor must be an "accredited investor" as defined in rule 501(a) of Regulation D under the 1933 Act, and, in the case of an Eligible Employee or Immediate Family Member, must meet the income requirements set forth in rule 501(a)(6) of Regulation D ("Accredited Investor"). The terms of the Company will be fully disclosed to each Eligible Investor and a copy of the Investment Company Agreement and any other organization documents will be provided to each Eligible Investor at the time the Eligible Investor is invited to participate in the Company.

6. Eligible Employees include only such persons who at the time the Company offers Units are (a) current or former employees, officers, or directors of GFInet or an Affiliated Company; (b) principals or other professionals employed by GFInet or an Affiliated Company who provide certain consulting or other services to clients of

GFInet or of such Affiliated Company, (c) key administrative employees of GFInet, or (d) a small number of other employees of GFInet who are involved in managing the day-to-day affairs of the Company. Applicants state that Eligible Employees have sufficient knowledge, education, training, sophistication and experience in the financial services businesses, or in administrative, financial, accounting or operational activities related thereto, to be capable of evaluating the risk of an investment in the Company.

7. A separate account will be established and maintained for each Eligible Investor who invests in the Company ("Member"). A Member's capital account is equal initially to the initial capital contribution made by the Member. Net income or net loss of the Company will be determined and credited at least annually to the respective capital accounts and sub-accounts of the Members in proportion to their respective contributed capital in the Company. Members will not be entitled to redeem their Units in the Company. Under the terms of the Investment Company Agreement, a Member will have only limited rights to transfer Units to Immediate Family Members or other Eligible Investors, with the consent of the Manager. In no event will any person become a Member unless that person is an Eligible Investor.

8. The Investment Company Agreement provides that the Manager may require a member to withdraw from the Company: (a) If the Member fails to make all or any portion of one of the contributions required under the Investment Company Agreement; (b) if a Member ceases to be an Accredited Investor; (c) if the Company were to be subject to possible adverse tax consequences were a particular Member to remain a Member; (d) if the continued membership of the Member would violate applicable law or regulations or require the Company to register as an investment company under the federal securities laws; (e) a Member is convicted or pleads nolo contendere to a crime, or commits a fraud or defalcation, against the Company, GFInet or any Affiliated Company; (f) a Member competes with, solicits the employees, customers or accounts of, or misappropriates the trade secrets of GFInet or any Affiliated Company; (g) the Member's employment is terminated for cause or the Member terminates employment prior to the end of the term of any employment agreement with GFInet or any Affiliated Company; (h) a Member becomes disabled for specific periods of time; (i) a Member becomes

<sup>1</sup> The Company will not acquire any security issued by a registered investment company, if, immediately after such acquisition, (a) the Company (and any investment company or investment companies controlled by it) would own more than 3% of the outstanding voting stock of such company, or (b) securities issued by the registered investment company and all other registered investment companies have an aggregate value in excess of 10% of the value of the total assets of the Company.

<sup>2</sup> Units will be offered and sold by the Company in reliance upon the exemption from registration under the Securities Act of 1933 ("1933 Act") contained in section 4(2) or pursuant to Regulation D under the 1933 Act. No fee of any kind will be charged in connection with the sale of Units of the Company.

subject to certain insolvency events as described in the Investment Company Agreement; (j) a Member dies or a Member's Units are held by an entity that liquidates, dissolves, or otherwise ceases operations without transferring the Units to Eligible Investors.

9. If a Member is required to withdraw, the Company may, in its sole discretion, require such Member to sell his Units to any person or entity designated by the Company who is eligible to participate in the Company. The value of the withdrawing Member's Units will be at least the lesser of (a) the amount actually paid by the Member to acquire the Units (plus interest, as determined by the Manager); or (b) the fair market value of the Units as determined at the time of repurchase by the Manager.

10. The terms of the withdrawals will be fully disclosed to each Eligible Investor at the time the Eligible Investor is invited to participate in the Company. The Company will send its Members an annual report regarding its operations, containing financial statements audited by independent accountants. The Company will maintain a file containing any financial statements and other information received from GFInet or issuers of Temporary Investments, if any, held by the Company, and will make such file available for inspection by Members. In addition, within 90 days after the end of each fiscal year, or as soon as practicable thereafter, the Company will transmit to each Member a report indicating his share of the income or losses of the Company for federal income tax purposes.

11. The Company expects to liquidate upon the initial public offering of GFInet securities or upon the end of any lock-up period that may be imposed upon the Company in connection with any public, firm commitment, underwritten, initial public offering pursuant to an effective registration statement under the 1933 Act. The Company may be dissolved upon such other circumstances as shall be fully disclosed in the Investment Company Agreement.

12. No sales load will be charged in connection with investment in the Company, no fees will inure to the benefit of GFInet or the Manager, and the Company will not be promoted by persons seeking to profit from investment in the Company. No compensation will be paid by the Company to the directors or officers of GFInet or the Manager for their services to the Company other than reimbursement for reasonable and necessary out-of-pocket expenses incurred during the course of

conducting the business of the Company.

#### Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act *except* section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit the Company (a) to purchase from GFInet securities to be issued by GFInet; (b) to sell to GFInet, or any affiliated person thereof (or any affiliated person of such an affiliated person) GFInet securities or Temporary Investments previously acquired by the

Company; and (c) to participate as a selling security-holder in a public offering of GFInet securities or in which GFInet or any affiliated person thereof (or any affiliated person or an affiliated person) acts as or represents a member of the selling group.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that Company will ultimately be entirely invested in securities of GFInet. Applicants state that Members will be informed of the risks inherent in investing in the Company, the extent of the Company's dealings with GFInet, and the details of such investment. Applicants also state that, as financially sophisticated professionals, the Eligible Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Members and GFInet will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d-1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request approval to permit the Company to make investments in which GFInet, or any affiliated person of the Company or GFInet, or an affiliated person of such person, is a participant or plans concurrently or otherwise directly or indirectly to become a participant.

6. Applicants submit that any joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. Applicants state that the Company will participate in the purchase of GFInet shares on the same terms as those offered to any affiliated person or unrelated party. Applicants note that the Company will primarily be organized for the benefit of the Eligible Investors, as an incentive for them to remain with GFInet and for the generation and maintenance of goodwill.

7. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f-1 imposes certain requirements when the custodian is a member of a national securities exchange. Rule 17f-2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments. Applicants request an exemption from section 17(f) and rule 17f-2 to permit the following exceptions from the

requirements of rule 17f-2: (a) compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of the Manager or GFInet; (b) for purposes of paragraph (d) of the rule: (i) employees, the Manager or GFInet will be deemed employees of the Company, (ii) officers of the Company or the Manager or GFInet will be deemed to be officers of such Company; and (iii) the Manager or the directors of the Manager or GFInet will be deemed to be the board of directors of the Company; and (c) instead of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of GFInet or the Manager. Applicants expect that the Company's investments in GFInet securities will be evidenced only by non-negotiable share certificates and the Company's Temporary Investments, if any, will be evidenced only by book-entry, rather than negotiable certificates. Applicants assert that these instruments are most suitably kept in the Company's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g-1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request relief to permit the Manager's officers and directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because it is likely that all of the officers and directors of the Manager will be affiliated persons, the Company could not comply with rule 17g-1 without the requested relief. Applicants also state that the Company will comply with all other requirements of rule 17g-1.

9. Section 17(j) and rule 17j-1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j-1 also requires that every registered investment company adopt a written code of ethics requiring that every person of the investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j-1, except for the anti-fraud provisions of rule 17j-1(b), because they are unnecessarily burdensome as applied to the Company.

10. Applicants request an exemption from the requirements in sections 30(a),

30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Company and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit the Company to report annually to its Members in the manner prescribed for the Company in the Investment Company Agreement. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the officers and directors of the Manager or others who may be deemed members of an advisory board of the Company from filing Forms 3, 4 and 5 under section 16(a) of the Securities Exchange Act of 1934 ("1934 Act") with respect to their ownership of Units in the Company. Applicants assert that, because there will be no trading market and the transfer of Units is severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 to which the Company is a party (the "Section 17 Transactions") will be effected only if the Manager determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Members of the Company and do not involve overreaching of the Company or its Members on the part of any person concerned; and (b) the transaction is consistent with the interests of the Members of the Company, the Company's organizational documents and the Company's reports to its Members.

In addition, the Manager of the Company will record and preserve a description of Section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis for the findings. All such records will be maintained for the life of the Company and at least two years thereafter, and 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.

2. If purchases or sales are made from or to an entity affiliated with the Company by reason of a 5% or more investment in such entity by the officers, directors or employees of the Manager, such officers, directors, or employees will not participate in the determination of whether or not to make such investment available to the Members of the Company.

3. In connection with the Section 17 Transactions, the Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Company, or any affiliated person of such a person, promoter or principal underwriter.

4. The Manager of the Company will not make available to Members of the Company any investment in which a "Coinvestor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Company and the Coinvestor are participants, unless any such Coinvestor, prior to disposing of all or part of its investment (a) gives the Members of the Company holding such investment sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Members of the Company holding such investment have the opportunity to dispose of their investment prior to or concurrently with, and on the same terms as, and pro rata with, the Coinvestor. The term "Coinvestor" means any person who is: (a) an "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of the Company; (b) the Manager and any entities controlled by the Manager; (c) a current or former officer, director or employee of the Manager; (d) an investment vehicle offered, sponsored, or managed by the Manager or an affiliated person of the Manager; or (e) a company in which the Manager or an officer or director of the Manager acts as an officer, director, or general partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Coinvestor: (a) to its direct or indirect wholly owned subsidiary, to any company (a "parent") of which such

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]

BILLING CODE 8010-01-M

## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.

\* \* \* \* \*

#### 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

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

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