

**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. Persons 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-2002-28 and should be submitted by April 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-5683 Filed 3-8-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45500; File No. SR-NASD-00-82]

### Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1, 2, 3, and 4 to a 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

March 4, 2002.

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 the National Association of 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") Amendment Nos. 1, 2, 3, and 4 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The proposed rule change was published for comment in the **Federal Register** on February 20, 2001.<sup>3</sup> The Commission received one comment letter regarding the proposed rule change.<sup>4</sup> On June 18, 2001, Nasdaq filed Amendment No. 1 to the proposal.<sup>5</sup> On June 26, 2001, Nasdaq filed Amendment No. 2 to the proposal.<sup>6</sup> On July 2, 2001, Nasdaq filed Amendment No. 3 to the

<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. 43915 (February 1, 2001), 66 FR 10926 ("February 2001 Release").

<sup>4</sup> See letter from Barry E. Simmons, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, Commission, dated March 13, 2001 ("ICI Letter").

<sup>5</sup> See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 15, 2001 ("Amendment No. 1"). Amendment No. 1 revises the proposal to: (1) Establish a \$150 fee for replacement Unit Investment Trusts ("UITs"); and (2) respond to the ICI's comments by adopting the ICI's suggested requirements for a replacement UIT.

<sup>6</sup> See letter from Edward S. Knight, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 25, 2001 ("Amendment No. 2"). The rule test provided in Amendment No. 1 indicated the way that Amendment No. 1 revised the text of current NASD Rule 7090 rather than the way that Amendment No. 1 revised the text of NASD Rule 7090 as amended by the original proposal. Amendment No. 2 replaces the text of NASD Rule 7090 proposed in Amendment No. 1 with text designed to indicate the way that Amendment No. 1 revises Nasdaq's original proposal rather than the existing text of NASD Rule 7090.

proposal.<sup>7</sup> On February 11, 2002, Nasdaq filed Amendment No. 4 to the proposal.<sup>8</sup> 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

In the original proposal, which was published for comment in the February 2001 Release, Nasdaq proposed to amend NASD Rule 7090, "Mutual Fund Quotation Service," to: (1) Revise NASD Rule 7090(a) to apply to UITs certain annual and application fees that currently apply to mutual funds; and (2) adopt NASD Rule 7090(b), which eliminated a one-time application fee if a UIT 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 proposed changes to the original proposal, as published in the February 2001 Release, are below.

Proposed additions are italicized and proposed deletions are placed in [brackets].

\* \* \* \* \*

#### 7090. Mutual Fund Quotation Service

(a) No change.

(a) 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] *investment* objective, the replacing trust shall [not] be charged a one-time application fee of *\$150*. [In addition, t]The replacing trust shall not be

<sup>7</sup> See letter from Mary M. Dunbar, Vice President, Office of the General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 29, 2001 ("Amendment No. 3"). Amendment No. 3 replaces the text of NASD Rule 7090 provided in Amendment No. 2 with rule text that is designed to indicate more clearly the way that Amendment No. 1 revises the text of NASD Rule 7090 was amended by the original proposal.

<sup>8</sup> See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 11, 2002 ("Amendment No. 4"). Amendment No. 4 provides a more detailed explanation of the need for the proposed fees. Specifically, among other things, Amendment No. 4 states that the application fee supports the personnel who are required to review, record, and enter each fund into the Mutual Fund Quotation Service ("MFQS"). In addition, Amendment No. 4 states that the annual fee for the News Media Lists and the Supplemental List support the NASD's continuous monitoring of funds' compliance with the standards for inclusion in the MFQS, for upgrading the technology used to collect and disseminate the MFQS, and for responding to the requests of users and subscribers for service enhancements. Amendment No. 4 also provides additional information concerning the \$150 application fee for replacement UITs.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

charged an annual fee if the expiring trust has already paid an annual fee for that annual billing period.

(c) 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, Nasdaq 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

NASD Rule 7090 sets forth the fees assessed for the inclusion of mutual funds in the MFQS. In its original proposal, Nasdaq proposed to: (1) Revise NASD Rule 7090(a) to apply to UITs certain annual and application fees that currently apply to mutual funds;<sup>9</sup> and (2) adopt NASD Rule 7090(b), which eliminated a one-time application fee for a replacing trust if a UIT 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 original proposal was published for comment in the **Federal Register** on February 20, 2001.<sup>10</sup> The Commission received one comment letter regarding the proposal.<sup>11</sup>

The commenter supported Nasdaq's proposal to accommodate the manner in which UITs are offered, but recommended a technical change to the proposed rule to ensure that the fee assessment procedures for UITs operate appropriately. Specifically, the ICI recommended that Nasdaq eliminate the requirement in proposed NASD Rule 7090(b) that the replacement UIT be similar in "share class" to the replacing UIT because UITs do not issue shares,

nor do they have different classes of shares. The ICI recommended that Nasdaq revise proposed NASD Rule 7090(b) to state that "[i]f a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that has a materially similar investment objective, the replacing trust shall not be charged a one-time application fee."<sup>12</sup>

In Amendment No. 1, Nasdaq revised its proposal to: (1) adopt the commenter's suggested requirements for the definition of a "materially similar" replacement trust; and (2) provide that, instead of eliminating the one-time application fee for a replacing trust, the replacing UIT would be charged a one-time application fee of \$150. Thus, NASD Rule 7090(b), as amended, provides that if a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust shall be charged a one-time application fee of \$150.

With regard to the \$150 one-time application fee, Nasdaq states in Amendment No. 1 that after submitting its original proposal, Nasdaq received new information indicating that the number of UITs that would potentially qualify for the application fee waiver was substantially greater than first anticipated. Nasdaq states that, recognizing the finite character of UITs, Nasdaq had initially proposed to offer a full fee waiver although the full fee itself only partially offsets the costs Nasdaq incurs for processing each application. In light of the increased numbers of funds potentially eligible for the fee waiver, Nasdaq states in Amendment No. 1 that it is compelled to offer only a partial fee waiver, reducing the waiver by \$100. Thus, Nasdaq proposes to impose a one-time application fee of \$150 for replacement UITs, rather than Nasdaq's standard \$250 fee.

In Amendment No. 4, Nasdaq provides additional reasons for assessing the proposed fees on UITs and discusses the need for the \$150 application fee for replacement trusts. With regard to the \$150 application fee, Nasdaq states after filing its original proposal, it discovered two pertinent facts: (1) That a significant number of UITs would qualify as replacement UITs; and (2) that, despite their similarity to the funds they replace, replacement UITs will require significant processing before entry into the MFQS. Nasdaq states that although it had hoped to waive the application

for replacement funds entirely, it is economically constrained to offer only a \$100 waiver. Nasdaq believes that the replacement fee constitutes an equitable allocation of fees among users of the service.

With regard to the need to assess fees for including UITs in the MFQS, Nasdaq states that the application fee supports the Fund Operations personnel who are required to review, record, and enter each fund into the MFQS system for subsequent dissemination to electronic or print subscribers. Nasdaq states that the annual fee for the News Media Lists and the Supplemental List support the NASD's continuous monitoring of funds' compliance with the standards for inclusion in the MFQS, and for responding to the requests of users and subscribers for service enhancements. Nasdaq notes that the NASD maintains a staff and dedicated technology to produce the MFQS, which provides transparency to investors and a valuable service to subscribers. Nasdaq believes that the application and annual fees have for many years been part of an equitable allocation of fees among users of the service because they are assessed to subscribers in direct proportion to their usage of the service.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6)<sup>13</sup> and Section 11A<sup>14</sup> 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

<sup>9</sup> Specifically, the original proposal revised NASD Rule 7090(a) to provide that UITs included in the MFQS shall be assessed an annual fee of \$400 per trust authorized for the News Media Lists and \$275 per trust authorized for the Supplemental List. In addition, NASD Rule 7090(a) imposes a one-time application processing fee of \$250 for each new trust authorized.

<sup>10</sup> See February 2001 Release, *supra* not 3.

<sup>11</sup> See ICI Letter, *supra* note 4.

<sup>12</sup> See ICI Letter, *supra* note 4.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78k-1.

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 Amendment Nos. 1, 2, 3, and 4, including whether the amendments are 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 20549-0609. 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 April 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-5684 Filed 3-8-02; 8:45 am]

**BILLING CODE 8010-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-45504 ; File No. SR-NASD-2002-30]**

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment**

March 5, 2002.

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 March 1, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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**

Nasdaq proposes to extend through April 15, 2002, the penny (\$0.01) legal short sale standard contained in NASD Interpretative Material 3350 ("IM-3350"). Without such an extension this standard would terminate on March 1, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii)<sup>5</sup> of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

#### **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 its proposal and discussed any comments it received regarding the proposal. 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**

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,<sup>6</sup> Nasdaq's proposal to establish a \$0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. Nasdaq now proposes to extend, through April 15, 2002, that pilot program. Extension until April 15th, will allow the termination date of the short sale pilot to coincide with the termination date of Nasdaq's decimal-related Manning customer limit order protection pilot and the termination date set by the Commission for all decimal-related pilot programs.<sup>7</sup> If

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

<sup>7</sup> Nasdaq recently filed with the Commission to obtain permanent approval of the penny short sale rule. (See SR-NASD 2002-09). Please note that Nasdaq incorrectly stated in that filing that it had

<sup>15</sup> 17 CFR 200.30-2(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).