

Company issuing the Managed Fund Shares has failed to file any required filings with the Commission, or if the Exchange becomes aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or (4) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

The Commission believes that the requirements of proposed Nasdaq Rule 4420(o) should help to prevent trading when a reasonable degree of transparency cannot be assured and to maintain a fair and orderly market for Managed Fund Shares. The Commission also believes that the proposed listing and trading rules for Managed Fund Shares, many of which track existing Exchange rules relating to exchange-traded funds, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares. Specifically, proposed Nasdaq Rule 4420(o)(7) requires that: (1) If the investment adviser of the Investment Company is affiliated with a broker-dealer, such investment adviser must erect a "firewall" between such investment adviser and broker-dealer with respect to access to information regarding the composition and/or changes to the Investment Company's portfolio; and (2) personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company's portfolio.¹⁸ In addition, proposed Nasdaq Rule 4420(o)(4)(B)(ii)(b) requires that the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio. The proposed rules also require surveillance procedures,¹⁹ establish trading

guidelines,²⁰ and impose other requirements.²¹

Conforming Changes and Listing Fees

Trading in Managed Fund Shares will be halted as provided in Nasdaq Rule 4120(a)(9), as proposed to be amended. In addition, Managed Fund Shares will be included under the term "Derivative Securities Product," as defined in Nasdaq Rule 4120(b)(4)(A), in connection with trading halts for trading pursuant to UTP on the Exchange. The Commission also notes that Managed Fund Shares will be included in Nasdaq Rules 4540(a) and (b), and, as a result, the Exchange's listing fees will be applicable to a series of Managed Fund Shares. The Commission finds that the conforming changes made to the Exchange's rules, including those governing trading halts and listing fees, are reasonable and promote transparency of the rules to be imposed with respect to a series of Managed Fund Shares listed and traded on the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NASDAQ-2008-039), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,
Acting Secretary.

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²⁰ See proposed Nasdaq Rule 4420(o)(2)(B) and (C) (providing that transactions in Managed Fund Shares will occur throughout Nasdaq's trading hours and that the minimum price variation for quoting and entry of orders in Managed Fund Shares must be \$0.01). See also *supra* note 5.

²¹ See e.g., proposed Nasdaq Rule 4420(o)(2)(E) (requiring certain statutory prospectuses for an issue of Managed Fund Shares based on an international or global portfolio to make certain specific statements regarding creations and redemptions); proposed Nasdaq Rule 4420(o)(4)(B)(v) (requiring, upon termination of an Investment Company, the Managed Fund Shares issued in connection with such Investment Company to be removed from listing on the Exchange); proposed Nasdaq Rule 4420(o)(4)(B)(vi) (providing that the voting rights will be as set forth in the applicable Investment Company prospectus); and proposed Nasdaq Rule 4420(o)(6) (requiring certain disclosures to be made in the case of a series of Managed Fund Shares that are subject of an order by the Commission exempting such securities from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933).

²² 15 U.S.C. 78s(b)(2).

²³ See 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57965; File No. SR-NASDAQ-2006-060]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Establish Nasdaq Last Sale Data Feeds

June 16, 2008.

I. Introduction

On December 19, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to create, and impose fees for, the "Nasdaq Last Sale for Nasdaq" and "Nasdaq Last Sale for NYSE/Amex" data feeds ("Nasdaq Last Sale Data Feeds"). The Nasdaq Last Sale Data Feeds would provide real-time last sale information for executions occurring within the Nasdaq Market Center, as well as those reported to the jointly operated FINRA/Nasdaq Trade Reporting Facility ("Nasdaq TRF"). On January 26, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 14, 2007.³ The Commission received three comment letters on the proposal.⁴ On December 13, 2007, Nasdaq responded to the comment letters.⁵ On June 10, 2008, Nasdaq filed Amendment No. 2 to the proposed rule change. In Amendment No. 2, Nasdaq proposed to impose fees for the Nasdaq Last Sale Data Feeds only for a four-month pilot period beginning July 1, 2008.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55255 (February 8, 2007), 72 FR 7100.

⁴ Letters to Nancy M. Morris, Secretary, Commission, from Christopher Gilkerson and Gregory Babyak, Co-Chairs of the Market Data Subcommittee of the Technology and Regulation Committee, Securities Industry and Financial Markets Association ("SIFMA"), dated March 7, 2007 ("SIFMA Letter"); Chuck Thompson, President, eSignal, Interactive Data Corporation, dated March 8, 2007 ("eSignal Letter"); and letter to Chairman Cox, Commission, from Alan Davidson, Senior Policy Counsel, Google Inc. ("Google"), dated June 12, 2007 ("Google Letter").

⁵ Letters to Nancy M. Morris, Secretary, Commission, from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, dated December 13, 2007.

⁶ On June 2, 2008, Nasdaq filed a proposed rule change, designated as eligible for immediate

¹⁸ See *supra* note 6.

¹⁹ See proposed Nasdaq Rule 4420(o)(2)(D) (providing that the Exchange will implement written surveillance procedures for Managed Fund Shares).

The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment Nos. 1 and 2 and is simultaneously approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposal

Nasdaq proposes to create two separate data products containing real-time last sale information for trades executed on Nasdaq or reported to the Nasdaq TRF.⁷ First, the Nasdaq Last Sale for Nasdaq data product would be a real-time data feed providing last sale information, including execution price, volume, and time, for Nasdaq securities executions on the Nasdaq system or reported to the Nasdaq TRF. Second, the Nasdaq Last Sale for NYSE/Amex data product would be a real-time data feed providing last sale information, including execution price, volume, and time, for NYSE and Amex securities executions on the Nasdaq system or reported to the Nasdaq TRF.

Nasdaq proposes two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems or quote counting mechanisms would be eligible for a specified fee schedule for the Nasdaq Last Sale for Nasdaq product and a separate fee schedule for the Nasdaq Last Sale for NYSE/Amex product. This pricing would be “stair-stepped,” such that the tiered fees would be effective for incremental users in the new tier. For example, a distributor of the Nasdaq Last Sale for Nasdaq product with 20,000 users would pay \$0.60 for each of the first 10,000 users and \$0.48 for each of the next 10,000 users. Distributors may elect to pay per query for their users if, for example, a substantial portion of their users request a relatively small number of queries each month. Firms would also be permitted to “cap” their payments for individual queries at the corresponding monthly user rate.

effectiveness pursuant to Section 19(b)(3)(A) of the Act, to offer the Nasdaq Last Sale Data Feeds immediately without charge for one month, and thereafter impose fees for an additional five-month pilot period. See SR-NASDAQ-2008-050. On June 16, 2008, Nasdaq withdrew SR-NASDAQ-2008-050, except for the provisions permitting Nasdaq to offer the Nasdaq Last Sale Data Feeds at no charge for one month.

⁷ In Amendment No. 2, Nasdaq removed from the proposal Nasdaq Market Velocity and Nasdaq Market Forces services that Nasdaq included in its initial proposal and Amendment No. 1.

Firms that are unable to maintain username/password entitlement systems or quote counting mechanisms would also have options for purchasing the Nasdaq Last Sale Data Feeds. These firms could choose between a “Unique Visitor” model for Internet delivery or a “Household” model for Television delivery. Unique Visitor and Household populations would have to be reported monthly and validated by a third party vendor or ratings agency approved by Nasdaq at Nasdaq’s sole discretion. This proposed pricing would also be stair-stepped such that the tiered fees would be effective for the incremental users in the new tier. For example, a distributor of Nasdaq Last Sale for Nasdaq product that reports 600,000 Unique Visitors would pay \$0.036 for the first 100,000 visitors and \$0.03 for the next 500,000 visitors. A Distributor that reports 3,000,000 households reached would pay \$0.0096 for each of the first 1,000,000 households and \$0.0084 for each of the next 2,000,000 households.

In addition, Nasdaq proposes to offer reduced fees for a single distributor of Nasdaq Last Sale Data Feeds via multiple distribution mechanisms. Specifically, Nasdaq would discount the applicable fees for distribution of Nasdaq Last Sale Data Feeds via Television for Distributors that also distribute those products via the Internet and achieve a new pricing tier for Unique Visitors, Users, or Queries. Nasdaq proposes the following tiered discounts for a firm’s Television fees based on its number of Unique Visitors, Users, or Queries—10% discount for the second tier, 15% discount for the third tier, and a 20% discount for the fourth tier. In addition, Nasdaq proposes to establish a cap of \$100,000 per month for Nasdaq Last Sale for Nasdaq data product and \$50,000 per month for Nasdaq Last Sale for NYSE/Amex data product.

As with other Nasdaq proprietary products, all distributors of the Nasdaq Last Sale for Nasdaq and/or Nasdaq Last Sale for NYSE/Amex products would pay a single \$1500/month Nasdaq Last Sale Distributor Fee in addition to any applicable usage fees. The \$1,500 monthly fee would apply to all distributors and would not vary based on whether the data is distributed internally or externally or via both the Internet and Television.

III. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, to be implemented on a four-month pilot basis, is consistent with the

requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, it is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,¹¹ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹² adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.¹³

The Commission received two comment letters expressing concerns with the proposed rule change, and one comment letter supporting the proposed rule change. Generally, SIFMA and eSignal suggested that Nasdaq did not adequately demonstrate that the proposed rule change was consistent with the Act.¹⁴ SIFMA asserted that Nasdaq had failed to demonstrate that its proposal met the relevant requirements of the Act, including that its market data fees be fair and reasonable and not unreasonably

⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(8).

¹² 17 CFR 242.603(a).

¹³ Nasdaq is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

¹⁴ See SIFMA Letter and eSignal Letter.

discriminatory.¹⁵ eSignal asserted that Nasdaq's proposal unreasonably discriminated against smaller market data distributors.¹⁶ Google, however, expressed strong support for the proposal and noted its enthusiasm regarding the opportunity to give more of its users access to real-time financial information online.¹⁷

The Commission notes that Nasdaq amended the proposed rule change so that its fees would be imposed only for a four-month pilot period. On June 4, 2008, the Commission published for public comment a draft approval order that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for "non-core" market data products that would encompass the Nasdaq Last Sale Data Feeds.¹⁸ The Commission believes that Nasdaq's proposal is consistent with the Act for the reasons noted preliminarily in the Draft Approval Order. Pending review by the Commission of comments received on the Draft Approval Order, and final Commission action thereon, the Commission believes that approving Nasdaq's proposal on a pilot basis would be beneficial to investors and in the public interest, in that it should result in broad public dissemination of real-time pricing information. Therefore, the Commission is approving Nasdaq's proposed fees for a four-month pilot beginning July 1, 2008. The broader approach ultimately taken by the Commission with respect to non-core market data fees will necessarily guide Commission action regarding fees for the Nasdaq Last Sale Data Feeds beyond the four-month pilot period.

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, accelerating approval of this proposal should benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the Nasdaq Last Sale Data Feeds. In addition, the Commission notes that the proposal is approved only on a four-month pilot period while the Commission analyzes comments on the Draft Approval Order. Therefore, the Commission finds good

cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NASDAQ-2006-060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-060 and should be submitted on or before July 11, 2008.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NASDAQ-2006-060), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis until October 31, 2008.

By the Commission.

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57964; File No. SR-NASD-2006-005]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Expand the Scope of NASD Rule 2440 and Interpretive Material 2440-1 Relating to Fair Prices and Commissions To Apply to All Securities Transactions

June 13, 2008.

I. Introduction

On January 19, 2006, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to expand the coverage of NASD Rule 2440 and Interpretive Material ("IM") 2440 relating to fair prices and commissions, to all securities transactions that involve members and their customers.³ The proposed rule change was published for comment in the **Federal Register** on April 4, 2006.⁴ The Commission received two comment letters regarding the proposal.⁵ NASD

¹⁹ 15 U.S.C. 78s(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ IM-2440-1, which was designated as IM-2440 at the time of this filing, was proposed to be re-numbered in SR-NASD-2003-141, which was filed before this proposal was filed and approved while this proposal was pending. See Securities Exchange Act Release No. 55638 (April 16, 2007), 72 FR 20150 (April 23, 2007) (SR-NASD-2003-141).

⁴ See Securities Exchange Act Release No. 53562 (March 29, 2006), 71 FR 16849.

⁵ See submission via SEC WebForm from Dan Mayfield, President, Sanderlin Securities, dated April 6, 2006 ("First Commenter"); letter from Mary C.M. Kuan, Vice President and Assistant General Counsel, The Bond Market Association, to Nancy

¹⁵ See SIFMA Letter.

¹⁶ See eSignal Letter.

¹⁷ See Google Letter.

¹⁸ See Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) (Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. to Establish Fees for Certain Market Data and Request for Comment) ("Draft Approval Order").