

Although the submission requirement under current Rule G-36(c)(i) may influence an issuer to give completion of the official statement in final form a higher priority, this requirement also may serve as a disincentive to prepare the official statement in final form, since an underwriter currently can avoid a Rule G-36(c)(i) violation by prevailing upon the issuer not to prepare an official statement in final form at all (e.g., an underwriter that has purchased an issue based on a preliminary official statement could advise an issuer that it need not finalize the official statement). Changing the time frame of the Rule G-36(c)(i) submission requirement would eliminate this disincentive while providing relief for underwriters that may face a potential rule violation for reasons beyond their control. The official statement delivery requirement under Rule G-32 would continue to provide a powerful incentive to underwriters to urge issuers to complete the official statement in final form in sufficient time to permit the underwriters and the other dealers to which they sell such new issue municipal securities to deliver the official statement to customers by settlement.

Although TBMA supports the draft amendment to Rule G-36(c)(i), it suggests that the Board further amend Rule G-36(c)(i) to extend the one-business day time frame to two-business days. TBMA argues that "it is often logistically difficult to meet the one-day requirement" and that the MSIL[®] systems serves "archival rather than real-time disclosure purposes."¹⁷ In adopting Rule G-36(c)(i) and creating the MSIL[®] system, the Board undertook to make available to the industry a comprehensive repository of official statements for use in both the primary and secondary markets. In addition to serving the vital archival purpose of ensuring that information regarding municipal securities is available throughout the life of the securities, the MSIL[®] system serves an important function in the primary market as an alternate source (through its subscribers) of official statements for dealers seeking to fulfill their Rule G-32 customer delivery obligation. Delaying the submission of official statements to the Board could impair the MSIL[®] system's usefulness in the primary market.¹⁸

¹⁷ TBMA states "that it is difficult to ensure the desirable level of coordination between the underwriter personnel who are best-positioned to authenticate the official statement as the final official statement and the personnel who are responsible for filing with the Board."

¹⁸ Schwab notes that it has "found that if the dealers [from which it purchases new issue

Without a more substantial showing of hardship to the dealer community, the Board believes that extension of the time frame for underwriters to turn the official statement around to the Board is not justified at this time. The ability to meet this requirement is entirely within the control of dealers, and they should review their procedures to ensure that this task is assigned to the appropriate personnel having a clear understanding of the procedural and substantive requirements of Rule G-36. To the extent that dealers experience difficulty in coordinating the actions of various personnel involved in the handling of official statements, they should consider whether they have instituted procedures that adequately provide for compliance with the rule.

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 *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 MSRB consents, the Commission will:

- a. by order approve the 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 submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

municipal securities] do not have copies of the final official statement, such copies are also generally unavailable from the managing underwriter financial printer, Bloomberg or another Nationally Recognized Municipal Securities Information Repository." Delays in receiving official statements by the MSIL[®] system would further reduce their availability from these other sources.

available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR-MSRB-99-11 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42376; File No. SR-NASD-99-77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Mutual Fund Quotation Service

February 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 17, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is proposing to amend NASD Rule 7090 to change the annual listing fees for the Mutual Fund Quotation Service ("MFQS" or "Service"). Proposed new language is in italics; proposed deletions are in brackets.

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7090. Mutual Fund Quotation Service

(a) Funds included in the Mutual Fund Quotation Service ("MFQS") shall be assessed an annual fee of [\$275] *\$400* per fund authorized for the News Media

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Lists and [\$200] \$275 per fund authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proportion of these fees but no credit or refund shall accrue to funds terminated during an annual billing period. In addition, there shall be a one-time application processing fee of \$250 for each new fund authorized.

(b) 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

Nasdaq proposes to change the annual listing fees for the MFQS. The MFQS was created to collect and to disseminate data pertaining to the value of open-end and closed-end funds. Currently, the MFQS disseminates the valuation data for over 11,000 funds. The Service facilitates this process by providing for the automated entry, through a browser-based application, of pricing data by a fund and a fund's pricing agent.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.³ The MFQS has two "lists" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements.⁴ If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in newspaper fund tables and is also eligible for dissemination over Nasdaq's Level 1 Service⁵, which is distributed by market

data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.⁶ Currently, funds included in the News Media List pay an annual fee of \$275, and funds included in the Supplemental List pay an annual fee of \$200.

The original MFQS was built as a DOS-based application. In recent years, technology has progressed and user needs for the MFQS have increased. Responding to requests made by users of the MFQS, the mutual fund industry, and the Investment Company Institute ("ICI"), Nasdaq performed market research to determine which enhancements MFQS users would prefer in a redesigned Service. Since the last fee increase in 1996,⁷ the MFQS software application has been rewritten, and notable technology enhancements have been implemented to support the Service's functionality.

Specifically, in 1998, Nasdaq took the list of enhancements requested by MFQS users and developed and implemented an entirely new MFQS application, using browser-based technology. The MFQS now permits funds included in the Service (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. Out of the approximately 27 enhancements suggested by the industry, Nasdaq has incorporated 20 into the new MFQS application, and two more are scheduled for implementation in early 2000.

The new browser-based MFQS upgrade became fully-operational in May 1999. Due to the significant costs for development, maintenance, and support of the new MFQS product, however, additional revenue is needed to (1) sustain the quality of the MFQS; and (2) make future product enhancements to the MFQS, to improve efficiency and accuracy of price reporting. In addition, the MFQS is

4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series." NASD Rule 7010(a).

⁶ See NASD Rule 7090.

⁷ See Securities Exchange Act Release No. 37014 (March 22, 1996), 61 FR 14182 (File No. SR-NASD-96-05).

operating at a yearly loss in light of the recent technology enhancements to the Service. Accordingly, Nasdaq proposes to increase its current fees for the Supplemental List from \$200 to \$275, and for the News Media List from \$275 to \$400.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)⁸ of the Act which requires that the rules of a national securities association provide 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. Nasdaq believes that the increased user fee is a fair means of recovering the cost related to the development and maintenance of the enhanced MFQS system requested by users of the Service and the ICI. The proposal is consistent with Section 15A(b)(5)⁹ because the fees will be imposed directly and only on those who benefit from the recently enhanced MFQS. The proposed fee is designed to cover the costs related to the development and maintenance of the enhanced MFQS system and development costs associated with future enhancements that will improve efficiency and accuracy in the collection of pricing information.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 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 the proposed rule change, or

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78o-3(b)(5).

³ See NASD Rule 6800.

⁴ *Id.*

⁵ Nasdaq Level 1 Service is a subscription-based data service that "includes the following data: (1) Inside bid/ask quotations calculated for securities listed in the Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630,

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 at 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-99-77 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42364; File No. SR-NYSE-99-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to the Listed Company Manual

January 28, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 12, 1999, 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, II, and III below, which Items have been prepared by the Exchange. On October 25, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.³ On December 16, 1999, the Exchange submitted Amendment No. 2.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the Listed Company Manual ("Manual") to: (1) Implement regulatory reviews of key personnel associated with listing applicants; (2) codify the Exchange's procedures regarding supplemental listing applications for companies identified as being below continued listing standards; and (3) amend its disclosure requirements for listed companies late in filing their form 10-K or annual report. The text of the proposed rule change follows. New text is italicized. Deleted text is bracketed.

NYSE Listed Company Manual

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Section 3

Corporate Responsibility

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315.00 Regulatory Review of Listing Candidates and their Significant Related Individuals and Entities
Each listing applicant must provide the Exchange with a letter from counsel representing that, to the company's knowledge, no officer, board member, no non-institutional shareholder with greater than 10% ownership of the*

³ In Amendment No. 1, the NYSE made several clarifications to the proposed rule change, incorporated appropriate provisions for Non-US issuers, and revised the procedures for the annual report requirement. See Letter to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated October 22, 1999 ("Amendment No. 1").

⁴ In Amendment No. 2, the NYSE made several technical changes to the text of the proposed rule change and clarified that the supplemental listing application ("SLAP") provision applies to Non-U.S. issuers. See Letter to Richard Strasser, Assistant Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated December 14, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange also requested accelerated approval of the proposed rule change. The Exchange withdrew this request as per telephone conversation between Amy Bilbija, Counsel, NYSE, and Terri Evans, Special Counsel, and Heather Traeger, Attorney, Division, SEC, on January 4, 2000.

* As such term is defined by the Securities and Exchange Commission in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

company has been convicted of a felony or misdemeanor relating to financial issues (e.g., embezzlement, fraud, theft) in the past ten years. In addition, the Exchange will review background materials available to its regarding the aforementioned individuals as part of the eligibility review process.

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Section 7

Listing Applications

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703.11 Supplemental Listing Process

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(C) No supplemental listing applications will be approved for companies that have been identified as being below the Exchange's continued listing standards (see Para. 802.01) for issuances to new shareholders unless such issuance is determined to be consistent with an Exchange-approved plan (or its goals) pursuant to Para. 802.02 or Para. 802.03 as applicable.

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Section 2

Disclosure and Reporting Material Information

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203.00 Annual and Interim Reporting Requirements

203.01 Annual Report Requirement

The Exchange requires that companies publish at least once a year and [submit] *distribute* to shareholders an annual report containing financial statements of the company and its consolidated subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than [three months] *120 days (225 days for non-US issuers)* after the close of each fiscal year. [, but] *Notwithstanding the foregoing, domestic issuers must make this distribution at least fifteen days in advance of the annual meeting. (Non-US issuers are encouraged to do so when possible.)* When the annual report is mailed to shareholders, two copies should be sent to the Exchange together with advice as to the date of mailing to shareholders.

Companies may satisfy the annual distribution requirement either by distributing an annual report to shareholders, or by distributing to shareholders to Form 10-K (or Form 20-F for Non-US issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10-K or Form 20-F) is mailed to shareholders, two copies should be sent to the

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.