

number SR-NASD-2002-87 and should be submitted by August 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46168; File No. SR-NASD-2002-65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. to Amend Schedule A to the NASD By-Laws Relating to Transaction Fees

July 8, 2002.

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 May 21, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On June 26, 2002, the NASD amended the proposal.³ The NASD again amended the proposal on June 27, 2002.⁴ The Association filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁵ and Rule 19b-4(f)(2) thereunder⁶ as one establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing with the

Commission. 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

The NASD proposes to amend Section 8(b) of Schedule A to the NASD By-Laws to conform Schedule A to Section 31 of the Act,⁷ as amended by H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act"). The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

BY-LAWS OF NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Schedule A

* * * * *

Section 8—Transaction Fees

* * * * *

(b) SEC transaction fee. Each member shall be assessed an SEC transaction fee. *The amount of the transaction fee shall be determined by the SEC in accordance with Section 31 of the Act.* [of 1/300 of one percent of the aggregate dollar value of sales of covered securities transacted by or through such member. For purposes of this section, covered securities shall mean:

- (i) all securities traded otherwise than on a national securities exchange (other than bonds, debentures, other evidences on indebtedness, and any sale or any class of sales of securities which the Securities and Exchange Commission may exempt from the fee imposed by Section 31 of the Act, and securities described in subparagraph (ii)) that are subject to prompt last sale reporting and (ii) effective October 1, 1997, securities registered on a national securities exchange pursuant to Section 12(b) of the Act (other than bonds, debentures, other evidences of indebtedness, and any sale or any class of sales of securities which the Securities and Exchange Commission may exempt from the fee imposed by Section 31 of the Act) traded otherwise than on such exchange.]

* * * * *

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. The Association 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

Section 31 of the Act provides for the assessment of transaction fees ("Section 31 fees") to be paid to the Commission. Section 31 levies transaction fees for exchange and off-exchange traded securities. Schedule A, Section 8(b) of the NASD By-Laws provides that these fees are assessed at a rate equal to 1/300 of one percent of the aggregate amount of sales transacted by or through any member of a national securities association or transacted on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness and securities futures products). Under Schedule A, Section 8(b), the NASD collects the fee for off-exchange traded securities from members on behalf of the Commission.

On December 21, 2001, Congress passed the Fee Relief Act, which provides for the reduction of Section 31 fees. Specifically, the Fee Relief Act amends Section 31 to reduce the transaction fees collected from 1/300 of one percent to \$15 per \$1,000,000. This rate went into effect on December 28, 2001.

The Fee Relief Act also provides for an annual adjustment of the fee rate and, in some circumstances, a mid-year adjustment. The SEC will calculate the adjustments in accordance with the Fee Relief Act and publish the revised rates well in advance of any adjustment.

The proposed amendment to Schedule A to the NASD By-Laws conforms the NASD By-Laws to these Congressional changes and allows for future adjustments to be made to the rates as specified by the SEC and in Section 31 of the Act.

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(5) of the Act,⁸ which requires, among other things, that a national securities association's rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See June 26, 2002 letter from T. Grant Callery, NASD, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). In Amendment No. 1, the NASD amended the statutory basis for the proposed rule change to reflect its belief that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act. 15 U.S.C. 78o-3(b)(5).

⁴ See June 27, 2002 letter from T. Grant Callery, NASD, to Katherine England, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, the NASD provided new proposed rule language to correct a technical problem with the proposed rule language previously provided. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on June 27, 2002, the date that the NASD filed Amendment No. 2.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ 15 U.S.C. 78ee.

⁸ 15 U.S.C. 78o-3(b)(5).

which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD 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 Organization's 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁰ because the proposal establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Association. All submissions should refer to file number SR-NASD-2002-65 and should be submitted by August 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46163; File No. SR-NYSE-2001-45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Permanent Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing of and Order Granting Accelerated Approval to Amendment No. 3 Relating to Initial Listing Standards and Allocation Policy for Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940

July 3, 2002.

I. Introduction

On October 29, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to 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 relating to amendments to the initial listing standards and allocation policy for closed-end management investment companies registered under the Investment Company Act of 1940 (hereinafter referred to as "funds" or "closed-end funds"). On March 14, 2002, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.³ On April 1, 2002, the NYSE filed Amendment No. 2 to the proposed rule change with the Commission.⁴ On April 2, 2002, the Commission issued notice of, and granted partial accelerated approval to, the proposed rule change and Amendment Nos. 1 and 2 thereto, on a three-month pilot basis.⁵

¹¹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002 ("Amendment No. 1").

⁴ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 1, 2002 ("Amendment No. 2") (replacing Form 19b-4 in its entirety).

⁵ See Securities Exchange Act Release No. 45684 (April 2, 2002), 67 FR 17092 (April 9, 2002).

The Commission received one comment letter on the proposed rule change, as amended.⁶ On June 27, 2002, the NYSE file Amendment No. 3 to the proposed rule change with the Commission.⁷ This order approves the proposed rule change, as amended, on a permanent basis and grants accelerated approval to Amendment No. 3. The Commission is also soliciting comments on Amendment No. 3 from interested persons.

II. Description of Proposal

The NYSE proposes to permanently amend Section 102.04 of the Exchange's Manual regarding listing standards for closed-end funds. The Exchange is proposing to apply to all individual closed-end funds that desire to list on the Exchange the \$60 million public market value test currently used for funds applying in connection with their initial public offering. In addition, the Exchange is proposing a standard under which a group of funds meeting certain specified requirements can be listed concurrently by a single "fund family,"⁸ even if the group includes one or more funds with less than \$60 million in public market value. Specifically, the Exchange would generally authorize the listing of a fund family⁹ if: (1) The total group market value of publicly held shares (offering proceeds, in the case of newly formed funds) equals in the aggregate at least \$200 million; (2) each group averages at least \$45 million in market value of

⁶ See letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated April 30, 2002 ("ICI Letter").

⁷ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 25, 2002 ("Amendment No. 3"). In Amendment No. 3, the NYSE made a technical correction to the rule text and a conforming change to the purpose section to clarify the definition of affiliated persons in Section 102.04 of the NYSE Listed Company Manual ("Manual") and Section V of the NYSE's Allocation Policy and Procedures ("Allocation Policy").

⁸ A "fund family" (as the term is used herein) consists of funds with a common investment adviser or having investment advisers, which are "affiliated persons," as defined in Section 2(3) of the Investment Company Act of 1940, as amended. See Amendment No. 3, *supra* note 7. The Exchange represents that it will not have discretion to list a group of closed-end funds that desire to list concurrently by a fund family if the group does not satisfy the listing requirements for a fund family set forth in this proposal. However, the Exchange will retain the discretion to exclude a fund family that otherwise satisfies the requirements. Telephone conversation between Janet Kissane, Office of the General Counsel, NYSE, and Terri Evans, Assistant Director, and Frank N. Genco, Attorney, Division, Commission, on July 3, 2002.

⁹ The Exchange has represented that the composition of the group will be determined in each case by the investment adviser bringing the group listing to the Exchange.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(3).