

SuperMontage will continue to only display quotes and orders in round-lot increments, the system will aggregate all shares (orders and quotes) entered by a Nasdaq Quoting Market Participant or UTP Exchange, at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination. While the actual size of a Nasdaq Quoting Market Participant's trading interest may not be fully displayed, adding odd-lot amounts to the disseminated size of Nasdaq Quoting Market Participants should portray a more accurate representation of trading interest. Thus, the proposal should enhance transparency.

The Commission believes that small retail investors who may find it difficult to participate in the market in full round-lot increments, will be able to have their smaller-sized orders interact with the orders of institutional investors and highly-capitalized individuals. As noted by a commenter, odd-lot orders are employed typically by small investors who cannot afford to transact in full round-lot quantities.<sup>44</sup> Further, the Commission believes that the proposed rule change should give market participants greater flexibility in handling small retail customer orders as market participants will be able to enter odd-lots and mixed-lots in SuperMontage with system protections similar to round-lots.

As previously noted, Nasdaq will continue to only display quotes and orders in round-lot increments.<sup>45</sup> One commenter did express a concern about the presence of undisplayed odd-lot orders that have a better price than the displayed BBO.<sup>46</sup> The commenter explained that order delivery ECNs would have three options when their quote locked or crossed an undisplayed odd-lot order: (1) Override the lock/cross warning message and receive an automatic execution, (2) accept the lock/cross warning message, have the system reject and return the quotation, and not display the order in SuperMontage, or (3) convert the quotation to an order and re-submit it to SuperMontage. The commenter believed that these three options were respectively problematic because: (1) ECNs would be exposed to dual liability, (2) compliance with the Quote Rule<sup>47</sup> would be frustrated, and (3) delays in the entry of trading interest

in the system would result. While the Commission appreciates the commenter's concerns, the Commission believes that Nasdaq and traditional exchanges must have the flexibility to rethink their structures to permit appropriate responses to the rapidly changing marketplace. Congress instructed the Commission to seek to "enhance competition and to allow economic forces, interacting with a fair regulatory field, to arrive at appropriate variation in practices and services."<sup>48</sup> The Commission finds that the proposal to fully integrate the entry, execution, and processing of odd and mixed-lot orders in SuperMontage is consistent with these goals in that it is reasonably designed to promote price discovery, best execution, liquidity, and market innovation, while continuing to preserve competition among market centers. The Commission emphasizes that participation in SuperMontage as originally designed, and as subsequently amended, is voluntary.

As the commenter noted, ECNs that do not wish to be exposed to dual liability could accept the lock/cross warning message and then re-route the order to SuperMontage. While this solution may be less than optimal, the commenter indicated that it is a viable option. Further, the Commission notes that the original approval of the SuperMontage was conditioned on the NASD offering a quote and trade reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSS, ECNs, and market makers prior to or at the same time as the implementation of SuperMontage.<sup>49</sup> Thus, prior to the implementation of the SuperMontage, market participants will be able to fulfill their obligations under the Order Handling Rules if they choose not to participate in the SuperMontage for any reason.

Notwithstanding the flexibility warranted in a market center's determination of its market structure, the Commission expects that Nasdaq will carefully monitor quote and execution quality under the proposal. In addition, the Commission expects Nasdaq to monitor the impact and surveil the entry and execution of odd-lot orders in SuperMontage. If the

integration of odd-lot orders has a deleterious effect on quoting and execution in the Nasdaq market, the Commission expects that Nasdaq will submit an appropriate response, in the form of a proposed rule change, to restore and enhance quote and execution quality.

Finally, the Commission finds that with regard to trade reporting this proposal raises no new regulatory issues and that Nasdaq will continue to meet its trade reporting obligations under the Act.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>50</sup> that the proposed rule change (SR-NASD-2002-42), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>51</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-21378 Filed 8-21-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46373; File No. SR-NASD-2002-101]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Increase Fees for the Mutual Fund Quotation Service and To Adopt a New Fee To Process a Request To Amend the Name and/or Symbol of a Fund

August 16, 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 July 30, 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

<sup>44</sup> See S. Rep. No. 94-75, 94th Cong., 1st Sess. 7 (1975) at p. 8 ("Senate Report").

<sup>49</sup> On July 24, 2002, the Commission approved an NASD proposal to establish an alternate display facility on a pilot basis. See Securities Exchange Act Release No. 46249, 67 FR 49822 (July 31, 2002) (File No. SR-NASD-2002-97). However, the Order expressly notes that the Commission has not determined that the preconditions of SuperMontage have been met.

<sup>50</sup> 15 U.S.C. 78s(b)(2).

<sup>51</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>44</sup> See Levine Letter. See also CIBC Levine Letter.

<sup>45</sup> The Commission notes that the Customer Limit Order Display Rule exempts odd-lot orders from the display requirement. See Exchange Act Rule 11Ac1-4(c)(3), 17 CFR 240.11Ac1-4(c)(3).

<sup>46</sup> See Arca Letter.

<sup>47</sup> Exchange Act Rule 11Ac1-1, 17 CFR 240.11Ac1-1.

Amendment No. 1 to the proposal with the Commission on August 5, 2002.<sup>3</sup> Nasdaq filed Amendment No. 2 to the proposal with the Commission on August 15, 2002.<sup>4</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

Nasdaq proposes amend NASD Rule 7090 to increase fees associated with the Mutual Fund Quotation Service ("MFQS" or the "Service") and to adopt a new administrative fee to process a request to amend the name and/or symbol of a fund. If approved, Nasdaq proposes to implement the proposed rule change on the first day of the month immediately following approval by the Commission.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

#### Rule 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 proportion 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] \$325 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 investment objective, the replacing trust shall be charged a one-time application fee of \$150. 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.

<sup>3</sup> See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 5, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

<sup>4</sup> See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 14, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq amended the purpose section of the proposal to better reflect the basis for each proposed fee increase.

(c) Funds included in the MFQS and pricing agents designated by such funds ("Subscriber"), shall be assessed a monthly fee of [\$75] \$100 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.

*(d) Funds included in the MFQS shall be assessed a \$20 administrative fee to process a request to amend the name and/or the symbol of a fund.*

\* \* \* \* \*

### 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

The MFQS was created to collect and to disseminate data pertaining to the value of open- and closed-end mutual funds, money market funds, and unit investment trusts. Currently, the MFQS disseminates the valuation data for over 17,000 funds, an increase of over 45 percent since January 2000. Funds must meet minimum eligibility criteria in order to be included in the MFQS.<sup>5</sup> 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. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed to 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.

<sup>5</sup> See NASD Rule 6800.

MFQS permits funds included in the Service or a pricing agent designated by such funds ("Subscribers") to transmit specific fund-related information directly to Nasdaq via the Internet. This information includes, but is not limited to, net asset value, offer price, closing market price, capital gains distributions, and assets. Nasdaq assigns to each Subscriber one or more logon identifications that allow the Subscriber to interface with the MFQS and transmit data securely to Nasdaq. Each logon identification is unique and allows only one user at a Subscriber to access the MFQS at a time; however, a Subscriber may obtain multiple logon identifications, to allow multiple users to access the MFQS simultaneously.

On June 3, 2002, Nasdaq introduced several enhancements to the MFQS Web site in response to enhancement requests from Subscribers, including new data messages for the pricing of unit investment trusts, new query tools to evaluate statistics regarding fund pricing updates, and improvements in the efficiency of fund update processing.

In 1998, Nasdaq established a fee of \$75 per month per logon identification to cover the costs of maintaining the security of web-based access to the MFQS.<sup>6</sup> Since that time, Nasdaq has regularly upgraded its security software and hardware to keep pace with the evolving complexity of Internet security threats. As a result, Nasdaq proposes to increase this fee to \$100 per month per logon identification to reflect the costs of these upgrades and the costs of recent website enhancements.<sup>7</sup>

Currently, funds wishing to list with MFQS pay a one-time application processing fee of \$250, and thereafter pay an annual listing fee. The application processing fee has not been modified since it was introduced in 1996.<sup>8</sup> Since that time, the growth of MFQS has required the staff that process applications to shift from a desktop database using off-the-shelf software to a more sophisticated database and tracking system that requires full software lifecycle support (e.g., software

<sup>6</sup> See Securities Exchange Act Release No. 40694 (November 19, 1998); 63 FR 65832 (November 30, 1998).

<sup>7</sup> Nasdaq understands that while this fee was initially designed to only cover the cost of maintaining the Internet security of the system, Nasdaq now believes that the fee increase is necessary to cover the additional costs of developing and providing web-based access to MFQS. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Christopher Solgan, Law Clerk, Division, Commission, on August 6, 2002.

<sup>8</sup> See Securities Exchange Act Release No. 37014 (March 22, 1996); 61 FR 14182 (March 29, 1996).

engineers, quality control testing, and technical staff support in production). To reflect the costs associated with this upgrade, as well as general increases in the personnel costs associated with MFQS since 1996, Nasdaq proposes to increase the fee to \$325.

Finally, Nasdaq introduces a nominal \$20 fee for processing requests to change the name and/or symbol of a fund that is currently listed on MFQS. In 2001, MFQS operations personnel performed over 2,000 name and symbol changes for listed funds. Nasdaq believes that it should be compensated for the personnel and system costs associated with making these changes. The fee would be charged for each request to change a name and/or symbol. Thus, if a fund requested a simultaneous change to its name and its symbol, the fee would still be \$20.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>9</sup> in general, and with section 15A(b)(5) of the Act,<sup>10</sup> in particular, which requires that the rules of the NASD 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 NASD operates or controls. Nasdaq believes that the fee changes are necessary to ensure that the fees for MFQS continue to cover the costs of its operation. The fees will be imposed directly on funds that benefit from the operation of the System.

### *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 Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq neither solicited nor received written comments.

## 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 self-regulatory organization 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-101 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-21428 Filed 8-21-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46372; File No. SR-NYSE-2002-30]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Renewal of Supplemental Procedures Relating to Arbitration Rules**

August 16, 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 August 2, 2002 the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities Exchange Commission (“SEC” or “Commission”) the proposed Renewal of Supplemental Procedures to the Arbitration Rules as described in Items, I, II and III below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the Renewal of Supplemental Procedures from interested persons.

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

The purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of the Supplemental Procedures is fully described in Exhibit A of the Form 19b-4.

### **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 Exchange 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 placed specified in Item IV below. The Exchange 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

The purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of Supplemental Procedures is based, in part, on rules approved by the Securities Industry Conference on Arbitration (“SICA”) that established a list selection procedure for appointment of arbitrators. The Supplemental Procedures are voluntary and will not be used unless all parties agree to them.

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

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

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).