

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G-209 (full questionnaire)	400	8	53
Total	500	55

Additional information or comments:
To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99-2433 Filed 2-1-99; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23668; 812-11264]

Nasdaq-100 Trust, Series 1, Nasdaq-Amex Investment Product Services, Inc., and Alps Mutual Funds Services, Inc.; Notice of Application

January 27, 1999.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 4(2) 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c-1 under the Act; (ii) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a) (1) and (2) of the Act; and (iii) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

APPLICANTS: Nasdaq-100 Trust, Series 1 ("Trust"), Nasdaq-Amex Investment Product Services, Inc. (together with its successors in interest¹ and with any person, directly or indirectly, controlling, controlled by, or under common control with, Nasdaq-Amex Investment Product Services, Inc., "Sponsor"), and ALPS Mutual Funds Services, Inc. ("Distributor").

SUMMARY OF APPLICATION: Applicants request an order that would (i) permit the Trust, a unit investment trust whose

portfolio will consist of the component stocks of the Nasdaq-100 Index ("Index"), to issue non-redeemable securities ("Nasdaq-100 Shares"); (ii) permit secondary market transactions in Nasdaq-100 Shares at negotiated prices; (iii) permit dealers to sell Nasdaq-100 Shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (iv) permit certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust rather than the Sponsor; (v) exempt the Sponsor from the Act's requirement that it purchase, or place with others, \$100,000 worth of Nasdaq-100 Shares; (vi) permit affiliated persons of the trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of Nasdaq-100 Shares; and (vii) permit the Trust to reimburse the Sponsor for payment of an annual licensing fee the The Nasdaq Stock Market, Inc. ("Nasdaq").

FILING DATES: the application was filed on August 19, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 19, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Trust and Sponsor, c/o John L. Jacobs, Vice President, The Nasdaq Stock Market, Inc., 1735 K Street, N.W., Washington, D.C. 20006-1500; and Distributor, c/o James V. Hyatt, General Counsel, 370 17th Street, Suite 3100, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kane, Senior Counsel, at (202) 942-0651, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942-8090).

Applicants' Representations

1. The Trust is a unit investment trust ("UIT") that will be organized under the laws of the State of New York. The Sponsor is a wholly-owned subsidiary of Nasdaq. The Bank of New York will act as trustee to the Trust ("Trustee"). The Distributor, a registered broker-dealer, will serve as principal underwriter of the Trust on an agency basis.

2. The Trust will hold a portfolio of securities (the "Portfolio Securities") consisting of substantially all of the securities in substantially the same weighting as the component securities of the Nasdaq-100 Index (the "Index Securities"). The Index is a "modified capitalization-weighted" index of securities issued by the 100 largest and most actively traded non-financial companies listed on the Nasdaq National Market Tier. The Index was first published in 1985.

3. Nasdaq-100 Shares, units of beneficial interest in the Trust, are designed to provide investors with an instrument that closely tracks the Index, trades like a share of common stock, and pays periodic dividends proportionate to those paid by the Portfolio Securities.² Applicant believe that Nasdaq-100 Shares will afford significant benefits in the public interest. Applicants expect the Trust to be able to track the Index more closely than certain other index products and, unlike open-end index funds, trade at negotiated prices throughout the business day. Applicants also state that Nasdaq-100 Shares will compete with comparable products available on

¹ "Successors in interest" means any entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

² The Trust will make quarterly distribution of an amount representing the dividends accumulated on Portfolio Securities during each quarter, net of fees and expenses, if any.

foreign exchanges and attract capital to the U.S. equity markets.

4. The Trustees will make adjustments to the Portfolio Securities to reflect changes made by Nasdaq to the composition and weighting of the Index Securities.³ All adjustments to the Portfolio Securities made by the Trustee will be set forth in the trust agreement and will be non-discretionary.

5. The Trustee will be paid a "Trustee's Fee" ranging from 0.06% to 0.10% of the net asset value ("NAV") of the Trust on an annualized basis, with the minimum fee amount not to fall below \$180,000.⁴ The Sponsor has undertaken, up to and including the fiscal year of the Trust ending on September 30, 2000, to reimburse the Trust or assume payment on behalf of the Trust for ordinary operating expenses of the Trust that exceed 0.18% of the daily NAV of the Trust.⁵ The Sponsor retains the ability to be repaid by the Trust to the extent that subsequently during the fiscal year expenses fall below the 0.18% per year level on any given day. Trust fees and expenses will be paid first out of income received by the Trust in the form of dividends and other distributions on the Portfolio Securities.⁶ Nasdaq has granted the Sponsor a license to use the Index and certain trademarks of Nasdaq. The Sponsor will pay Nasdaq an annual licensing fee and will, after September 30, 1999, seek reimbursement from the Trust for this fee. The Sponsor will pay the Distributor a flat annual fee. The Sponsor will not seek from the Trust reimbursement for this annual fee without obtaining prior exemptive relief from the Commission.

6. Nasdaq-100 Shares will be issued in aggregations of 50,000 shares ("Creation Units"). The price of a Creation Unit would be approximately \$4,035,000 (based on the value of the Index on December 14, 1998). All orders to purchase Creation Units must be delivered through a party that has executed a Nasdaq-100 participant

agreement with the Distributor and Trustee and is either (i) a participant in the Continuous Net Settlement ("CNS") System of the National Securities Clearing Corporation ("NSCC") ("Nasdaq-100 Clearing Process") or (ii) a Depository Trust Company ("DTC") participant.

7. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trustee a "Portfolio Deposit" consisting of: (i) A portfolio of securities substantially similar in composition and weighting to the Index Securities ("Deposit Securities"); (ii) a cash payment equal to the dividends accrued on the Portfolio Securities since the last divided payment on the Portfolio Securities, net of expenses and liabilities ("Income Net of Expense Amount"); and (iii) a cash payment or credit to equalize any differences between the market value of the Deposit Securities and the NAV of the Trust on a per Creation Unit basis (the "Balancing Amount").⁷ (The Balancing Amount and the Income Net of Expense Amount together constitute the "Cash Component.") An investor making a Portfolio Deposit will be charged a service fee ("Transaction Fee"), paid to the Trustee, to defray the Trustee's costs in processing securities deposited into the Trust.⁸

⁷ At the close the market on each business day, the Trustee will calculate the NAV of the Trust and then divide the NAV by the number of outstanding Nasdaq-100 Shares in Creation Unit size aggregations, resulting in an NAV per Creation Unit. The Trustee will then calculate the required number of shares of the Index Securities, and the amount of cash, comprising a Portfolio Deposit for the following business day.

The Sponsor will make available each business day a list of the names and the required number of shares for each of the Deposit Securities in the current Portfolio Deposit, as well as the Income Net of Expense Amount effective through and including the previous business day, per outstanding Nasdaq-100 Share.

The cash equivalent of an Index Security may be included in the Cash Component of a Portfolio Deposit in lieu of the security if (i) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit (for example, when the security is subject to a trading halt or stop order, or the subject of a tender offer), or (ii) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves, or when the investor is a broker-dealer and the security is on its "restricted list").

⁸ The Transaction Fee will be \$1,000 per day, regardless of the number of Creation Units purchased on that day by the investor. The Transaction Fee may be subsequently changed by the Trustee with the Sponsor's consent, but it will not exceed 0.10% of the value of a Creation Unit. For purchases of Creation Units outside the Nasdaq-100 Clearing Process, the Transaction Fee will be one to four times greater. The amount of the Transaction Fee will be disclosed in the prospectus for the Trust.

8. Orders to purchase Creation Units will be placed with the Distributor, who will be responsible for transmitting the orders to the Trustee.⁹ The Distributor will issue confirmations of acceptance, issue delivery instructions to the Trustee to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units and may provide certain other administrative services, such as those related to state securities law compliance.

9. Persons purchasing Creation Units from the Trust may hold the Nasdaq-100 Shares or sell some or all of them in the secondary market. Nasdaq-100 Shares will be listed on the American Stock Exchange, LLC ("AMEX") and traded in the secondary market as individual units (i.e., in less than Creation Unit size aggregations) in the same manner as other equity securities. An AMEX specialist will be assigned to make a market in Nasdaq-100 Shares. The price of Nasdaq-100 Shares on the AMEX will be based on a current bid/offer market and would be approximately \$80.70 per Nasdaq-100 Share (based on the value of the Index as of December 14, 1998). Transactions involving the sale of Nasdaq-100 Shares will be subject to customary brokerage commissions and charges. Applicants expect that the price at which Nasdaq-100 Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that Nasdaq-100 Shares will not trade at a material discount or premium in relation to their NAV.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market for Nasdaq-100 Shares, also may purchase Nasdaq-100 Shares for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of Nasdaq-100 Shares will include both institutional and retail investors.¹⁰

11. Applicants will make available a standard Nasdaq-100 Shares product

⁹ The procedures for processing a purchase order will depend upon whether the transaction is settled through NSCC or DTC.

¹⁰ Nasdaq-100 Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Nasdaq-100 Shares. Records reflecting the beneficial owners of Nasdaq-100 Shares will be maintained by DTC or its participants.

³ Nasdaq determines, comprises, and calculates the Index without regard to the Trust.

⁴ To the extent that the amount of the Trustee's compensation is less than the minimum annual fee, the Sponsor will pay the amount of the shortfall.

⁵ For purposes of this undertaking, "ordinary operating expenses" will not include taxes, brokerage commissions, and extraordinary non-recurring expenses.

⁶ Applicants expect that the income of the Trust may be insufficient to pay the fees and expenses of the Trust. In such circumstances, the Trustee will sell Portfolio Securities to generate sufficient cash to pay the Trust fees and expenses in excess of Trust income. The Trustee is ordinarily required to sell Portfolio Securities whenever the Trustee determines that accrued fees and expenses exceed dividends and other Trust accrued income on a projected basis by more than 0.01% of the NAV of the Trust.

description ("Product Description") to AMEX members and member organizations for distribution to investors purchasing Nasdaq-100 Shares in accordance with AMEX Rule 1000. The purpose of the Product Description is to provide a brief and readily understandable description of the salient aspects of Nasdaq-100 Shares. The Product Description will advise investors that a prospectus for Nasdaq-100 Shares is available without charge upon request from the investor's account executive. Applicants expect that purchases of Nasdaq-100 Shares through a non-member broker-dealer in a transaction away from the AMEX would not constitute a significant portion of the market activity in Nasdaq-100 Shares.

12. Nasdaq-100 Shares will not be individually redeemable, except upon termination of the Trust. Nasdaq-100 Shares will only be redeemable in Creation Unit-size aggregations through the Trust. To redeem, an investor will have to accumulate enough Nasdaq-100 Shares to constitute a Creation Unit. An investor redeeming a Creation Unit will receive a portfolio of securities typically identical in composition and weighting to the securities portion of a Portfolio Deposit as of the date the redemption request was made. An investor may receive the cash equivalent of an Index Security (i) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for delivery by the Trust; (ii) upon the request of the redeeming investor; or (iii) upon notice of the termination of the Trust. A redeeming investor may receive or may pay an amount equal to the Income Net of Expense Amount, plus or minus the Balancing Amount. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.¹¹ The Trustee will transfer the securities and cash to the redeeming investor within three business days of receipt of the request for redemption.

13. Because the Trust will ordinarily redeem Creation Units in kind, the Trust will not have to maintain cash reserves for redemptions. This will allow the assets of the Trust to be committed as fully as possible to tracking the Index, enabling the Trust to track the Index more closely than other investment products that must allocate a greater portion of their assets for cash redemptions.

14. The Trust will terminate on the earlier of (i) 125 years from the date the

initial Portfolio Deposit is received by the Trustee for deposit into the corpus of the Trust, or (ii) the date 20 years after the death of the last survivor of fifteen persons named in the trust agreement. The Trust will also terminate if (i) Nasdaq-100 Shares are de-listed from the AMEX and are not subsequently re-listed on a national securities exchange registered under the Securities Exchange Act of 1934 or a quotation medium operated by a national securities association; or (ii) either the Sponsor or the Trustee resigns or is removed, and a successor is not appointed. The Trust may terminate if: (i) 66⅔% of the holders of the outstanding Nasdaq-100 Shares agree to terminate it; (ii) the DTC is unable or unwilling to continue to perform its functions and a comparable replacement is unavailable; (iii) NSCC no longer provides clearance services with respect to the Nasdaq-100 Shares, or if the Trustee is no longer a participant in NSCC; (iv) Nasdaq ceases to publish the Index; or (v) the license agreement is terminated. In addition, the Sponsor will have the discretionary right to direct the Trustee to terminate the Trust if at any time (i) after six months following and prior to three years following the initial receipt of Portfolio Deposits by the Trust, the NAV of the Trust falls below \$150,000,000; or (ii) after three years, the NAV is less than \$350,000,000, adjusted annually for inflation. The Sponsor may also direct the Trustee to terminate the Trust if within 90 days from the initial receipt of Portfolio Deposits the NAV of the Trust is less than \$100,000.

15. Within a reasonable time after the Trust's termination, the Trustee will use its best efforts to sell all Portfolio Securities not previously distributed to investors redeeming Creation Units. Nasdaq-100 Shares not redeemed prior to termination will be redeemed in cash at NAV based on the proceeds from the sale of the Portfolio Securities.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c-1 under the Act; under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act; and under rule 17d-1 under the Act to permit certain joint transactions.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 4(2) of the Act

3. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because Nasdaq-100 Shares will not be individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants state that investors may purchase Nasdaq-100 Shares in Creation Units from the Trust and redeem Creation Units. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Nasdaq-100 Shares in the secondary market at approximately their NAV.

Section 14(a) of the Act

4. Section 14(a) of the Act provides, in pertinent part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of at least \$100,000, or provision is made in connection with the registration of its securities that (i) firm agreements to purchase \$100,000 of its securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company's net worth is less than \$100,000 within 90 days after the effective date of the registration statement. Applicants state that section 14(a) was designed to address the formation of undercapitalized investment companies.

5. Rule 14a-3 under the Act exempts from section 14(a) UITs that invest only in "eligible trust securities," which do not include equity securities, subject to certain safeguards, including the refund of any sales load collected from investors. Applicants will comply in all respects with rule 14a-3, except that the Trust will not restrict its investments to eligible trust securities and the Trustee will not refund the Transaction Fee. Applicants contend that the Trust's investment in equity securities does not negate the effectiveness of the rule's safeguards nor subject investors to any greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants assert that it is not a sales load, and therefore is not covered by the rule's refund provision. Applicants note that the Transaction Fee will be paid not by retail investors, but by institutional and other

¹¹ See note 8, *supra*.

sophisticated, well-capitalized investors who can afford the approximately \$4,035,000 purchase price of a Creation Unit and who do not require the protections of section 14(a) of the Act.

Section 22(d) of the Act and Rule 22c-1 Under the Act

6. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV next computed after receipt of a tender of the security for redemption or of an order to purchase or sell the security. Applicants state that secondary market trading in Nasdaq-100 Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Nasdaq-100 Shares in the secondary market will not comply with section 22(d) and rule 22c-1. Applicants request an exemption from these provisions.

7. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Nasdaq-100 Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers; (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices; and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

8. Applicants believe that none of these purposes will be thwarted by permitting Nasdaq-100 Shares to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in Nasdaq-100 Shares does not involve the Trust as a party and cannot result in dilution of an investment in Nasdaq-100 Shares; and (ii) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as

supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Nasdaq-100 Shares will not lead to discrimination or preferential treatment among purchases. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Nasdaq-100 Shares and their NAV remains narrow.

Section 24(d) of the Act

9. Section 24(d) of the Act provides, in pertinent part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants request an exemption from section 24(d) to permit dealers in Nasdaq-100 Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.¹² Applicants state that the imposition of prospectus delivery requirements on dealers in the secondary market will materially impede the success of Nasdaq-100 Shares.

10. Applicants state that the secondary market for Nasdaq-100 Shares is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor. Nasdaq-100 Shares will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the

¹² Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Nasdaq-100 Shares, and sells Nasdaq-100 Shares directly to its customers; or if chooses to couple the creation of a supply of new Nasdaq-100 Shares with an active selling effort involving solicitation of secondary market demand for Nasdaq-100 Shares. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Nasdaq-100 Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

secondary market generally are not required to deliver a prospectus to the purchaser.

11. Applicants contend that Nasdaq-100 Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Nasdaq-100 Shares will be exchange-listed, prospective investors will have access to several types of market information about the product. Applicants state that quotations, last sale price, and volume information will be continually available on a real time basis through the consolidated tape and will be available throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information also will be published in the financial section of newspapers. The Sponsor also will publish daily, on a per Nasdaq-100 Shares basis, the amount of accumulated dividends, net of accrued expenses.

12. Investors also will receive the Product Description. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain pertinent information about Nasdaq-100 Shares. Applicants also note that Nasdaq-100 Shares will be readily understandable to retail investors as a product that tracks the Nasdaq-100 Index, which is well known to most investors and widely recognized.

Section 26(a)(2)(C) of the Act

13. Section 26(a)(2)(C) of the Act requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of the Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor for certain licensing, registration, and marketing expenses.

14. Applicants state that, ordinarily, a sponsor of a UIT has several sources of income in connection with the creation of the trust. Applicants assert, however, that under the proposed structure of the Trust, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Although AMEX, an affiliate of the Sponsor, will earn some income on the trading fees imposed on transactions on that exchange, applicants expect that the fees will generate substantially less

revenue than what would have been generated by a normal sales charge on secondary market trades of Nasdaq-100 Shares.¹³ Applicants contend that the abuse sought to be remedied by section 26(a)(2)(C) of the Act—"double dipping" by UIT sponsors collecting money from their captive trusts as well as the profits already generated by sales charges and other sources—will not be present if the requested exemption is granted.

15. Applicants contend that permitting the Trust to reimburse the Sponsor for the Trust's expenses (discussed above) would be no more disadvantageous to the holders of Nasdaq-100 Shares than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants state that the Trust will pay the Sponsor only its actual out-of-pocket expenses and no component of profit will be included. Finally, applicants state that the payment is capped at 20 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount absorbed by the Sponsor.

Section 17(a) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units will be "in kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Because the definition of "affiliated person" of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Trust so long as fewer than twenty Creation Units are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the Trust to purchase and redeem Creation Units.

17. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the

policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the Trust from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that "in kind" purchases and redemptions will afford no opportunity for an affiliated person of the Trust to effect a transaction detrimental to the other holders of Nasdaq-100 Shares. Applicants also believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

Section 17(d) of the Act and Rule 17d-1 Under the Act

18. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of the affiliated person or the principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d-1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

19. Section 2(a)(3)(F) of the Act defines an "affiliated person" of another person to include, in the case of an unincorporated investment company not having a board of directors, its depositor. Applicants state that the Sponsor may be deemed an affiliated person of the Trust because it has borne all aspects of the role of depositor in structuring and creating the Trust other than actually depositing the Index Securities into the Trust. Moreover, because the Sponsor is a wholly-owned subsidiary of Nasdaq, the Nasdaq may be deemed to be an affiliated person of an affiliated person of the Trust.

20. Applicants request an order under rule 17d-1 that would permit the Trust to reimburse the Sponsor for the payment to Nasdaq of an annual license fee under a license agreement. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor might be deemed a joint enterprise or other joint arrangement in which the Trust is a participant, in contravention of section 17(d) of the Act and rule 17d-1.

21. the license agreement allows applicants to use the Index as a basis for Nasdaq-100 Shares and to use certain of Nasdaq's trade name and trademark rights. Applicants believe that Nasdaq is a valuable name that is well-known to investors and that investors will desire to invest in an instrument that closely mirrors the Index. In view of this, applicants state that it is necessary to obtain from Nasdaq the above-mentioned license agreement so that appropriate reference to Nasdaq and Nasdaq-100 Shares may be made in materials describing Nasdaq-100 Shares and the Trust. Applicants assert that the terms and provisions of the license agreement are comparable to the terms and provisions of other similar license agreements and that the annual license fee is for fair value, is in an amount comparable to that which would be charged by Nasdaq for similar arrangements, and is in an amount comparable to that charged by licensors in connection with the formation of other UITs based on other indices. For these reasons, applicants state that the proposed license fee arrangement satisfies the standards of section 17(d) and rule 17d-1.

Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new series of the Trust, whether identical or similar to the Nasdaq-100 Trust, Series 1, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action position from the Division of Investment Management of the Commission.

2. The Trust prospectus and the Product Description will clearly disclose that, for purposes of the Act, Nasdaq-100 Shares are issued by the Trust and that the acquisition of Nasdaq-100 Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

¹³ Effective November 2, 1998, Nasdaq (the Sponsor's parent) and the AMEX became separate subsidiaries of the Nasdaq-Amex Market Group, Inc., a newly-created subsidiary of the National Association of Securities Dealers, Inc.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2410 Filed 2-1-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

USA Talks.com, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Talks.com, Inc. ("USA Talks") because of questions regarding the accuracy of assertions by USA Talks in statements made to the market makers of the stock of USA Talks, to other broker-dealers, and to investors concerning, among other things, the status and extent of USA Talks' business operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999, through 11:59 p.m. EST, February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2521 Filed 1-29-99; 2:25 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Citron, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Citron, Inc. ("Citron"), a Texas corporation that purports to be an internet marketing company. Questions have been raised about the adequacy and accuracy of publicly-disseminated information concerning, among other things, the business prospects and future earnings of Citron.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2522 Filed 1-29-99; 2:25 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Electronic Transfer Associates, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Electronic Transfer Associates, Inc. ("ETA"), a Colorado corporation that purports to be an internet-related sales company. Questions have been raised about the adequacy and accuracy of publicly-disseminated information concerning, among other things, the business prospects and future earnings of ETA.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2523 Filed 1-29-99; 2:25 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Invest Holdings Group, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Invest Holdings Group, Inc. ("IHG"), a Colorado corporation that purports to develop and sell health maintenance products. Questions have been raised about the adequacy and accuracy of publicly-disseminated information concerning, among other things, the efficacy of IHG's products and its business relationship with Citron, Inc.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2524 Filed 1-29-99; 2:25 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Polus, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Polus, Inc. ("Polus"), a Colorado corporation that has no apparent operations. Questions have been raised about (1) the lack of meaningful publicly-available financial information, and (2) the adequacy and accuracy of publicly-disseminated information concerning, among other things, a merger involving Smartek, Inc., of which it is the majority owner.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.