

three calendar months preceding the date of selection for listing. The Exchange proposes to amend Commentary .01 to provide that, for underlying securities that satisfy all of the initial listing requirements other than the \$7.50 per share price requirement, the Exchange would be permitted to list options on the securities so long as: (1) The underlying security meets the guidelines for continued approval contained in Amex Rule 916; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the ADTV for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The Exchange believes that this proposal is narrowly drafted to address the circumstances where an actively-traded options class is currently ineligible for listing on the Amex while at the same time, such option is trading on another options exchange. The Exchange notes that when an underlying security meets the maintenance listing standards and at least one other exchange trades options on the underlying security, the options already are available to the investing public. Therefore, the Exchange notes that the current proposal would not introduce any additional listed options classes.

The Exchange also believes the proposed alternative original listing criteria's limitation to options that are actively-traded (*i.e.*, options with an ADTV of at least 5,000 contracts over the last three calendar months) should serve to allay any concerns regarding the listing of options that may be inappropriate. Therefore, the Exchange maintains that the proposed alternative listing standard would be limited to those options with active trading, indicating that there is widespread investor interest. Because these options are actively-traded in other markets, the Exchange further believes that there would be no investor protection concerns with listing such options on the Exchange. In addition, the Exchange believes that listing these options on the Amex would enhance competition and benefit investors.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁴ in general and furthers the objectives of section 6(b)(5)⁵ in particular in that an

exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁶ and paragraph (f)(6) of Rule 19b-4⁷ thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such 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.

The Commission notes that under Rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date. The Exchange contends that acceleration of the operative date is consistent with the protection of investors and the public interest because the language of this proposed rule is substantially similar to rule language that was put out for notice and comment when ISE submitted its proposed rule change. For this reason,

consistent with section 19(b)(2) of the Act,⁸ the Commission finds good cause to waive the 30-day operative period.⁹

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 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 Amex. All submissions should refer to File No. SR-Amex-2002-13 and should be submitted by April 1, 2002.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-5815 Filed 3-8-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45501; File No. SR-NASD-2002-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees Applicable to the NASD Alternative Display Facility

March 4, 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 February

⁸ 15 U.S.C. 78s(b)(2).

⁹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

20, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. 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 NASD is proposing to amend the 7000 Series of the NASD Rules to designate transaction and quotation related fees applicable to activities in the NASD's Alternative Display Facility ("ADF"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in *brackets*.³

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)-(f)—deleted
 [(g) Automated Confirmation Transaction Service] *(a) Trade Comparison and Reporting Service*
 The following charges shall be paid by the participant for use of the [Automated Confirmation Transaction Service (ACT)] *Trade Comparison and Reporting Service (TRACS)*:

Transaction Related Charges:

| | |
|-------------------------------------|--|
| Comparison | [\$0.0144] <i>\$0.014</i> /side per 100 shares (minimum 400 shares; maximum 7,500 shares) |
| Automated Give-Up | <i>\$0.029</i> /side [\$0.01/side per 100 shares (minimum 400 shares; maximum 7,500 shares)] |
| Late Report—T+N | [\$0.288] <i>\$0.30</i> /side |
| Browse/query | \$0.28[8]/query * |
| [Terminal fee | \$57.00/month (ACT only terminals)] |
| [CTCI fee | \$575.00/month] |
| [Nasdaq ACT | \$300/month (full functionality) or \$150/month (up to an average of twenty transactions per day each month) ** |
| Trade Reporting | \$.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS [ACT])[***] ** |
| [Risk Management Charges | \$.035/side and \$17.25/month per correspondent firm (maximum \$10,000/month per correspondent firm)] |
| Corrective Transaction Charge | \$.025/ Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$.025/ Break, Decline transaction, paid by each party; |

* Each ACT query incurs the \$0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than \$0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the \$0.288 query charge.

[**] For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.]

[***]** The trade reporting service charge is applicable to those trades input into ACT for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.

(b) Quotation Updates

A member will be charged \$0.01 per quotation update in the ADF quotation montage on those quotation updates that exceed three times the number of transactions executed or reported by the ADF member. A "quotation update" includes any change to the price or size of a displayed quotation. This charge will be determined on a monthly basis.

(h)-(j)—deleted

(k)—renumbered as (c)

(l)-(p)—deleted

7020. Equipment Related Charges

[(a)] The charge for using [Nasdaq ADF terminal software [equipment]] shall be [120] \$275 per month for [the first] *each* terminal and *\$550 per month for each server*. \$105 per month for each additional terminal where all terminals are located on the same premises.]

[(b) The charge for using interrogation or display devices which are not supplied by Nasdaq, but which utilize a Nasdaq supplied modem, shall be \$75 per month for the first comparable device and \$55 per month for each

additional comparable device where all devices are located on the same premises.

(c) The charge for using interrogation or display devices and modems which are not supplied by Nasdaq shall be \$50 per month for each such device located on the same premises.

(d) Nasdaq subscribers utilizing UNISYS or Tandem personal computers (PCs) authorized for emulation of the Harris standard terminal may elect to receive maintenance through Nasdaq at the rate of \$55/PC/month.]

[7030. Special Options]

| | | |
|--|---|---------------|
| [Receive only Printer | | \$100/month. |
| Local Posting | Permits subscriber to use Nasdaq Level 3 terminals to enter quotations simultaneously into an internal computer system. | \$10/month. |
| Dual Keyboard | | \$15/month. |
| Nasdaq Market Indexes | Permits vendor to process Nasdaq Level 1 and Last Sale data feeds solely for the purpose of supplying subscribers with real-time calculations of Nasdaq market indexes. | \$500/month. |
| Non-Continuous Access to Nasdaq Level 1 and Last Sale Information. | Permits vendor to process and distribute Nasdaq Level 1 and Last Sale information to its subscribers on a non-continuous or query-response basis.. | \$.005/query. |

³ NASD requested that the Commission make a technical correction in proposed NASD Rule 7100, Minor Modifications in Charges, with regard to an improper reference to NASD "Directors" (rather

than "Governors"). Telephone conference between John S. Polise, Senior Special Counsel, Division of Market Regulation ("Division"), SEC, Christopher B. Stone, Attorney Advisor, Division, SEC, and

Stephanie M. Dumont, Associate General Counsel, Office of General Counsel, NASD Regulation (February 28, 2002).

For a pilot period commencing April 3, 2000 and lasting until March 30, 2001. The fee for non continuous access to Nasdaq level one and last sale information will be reduced to \$.005 per query.]

7040. Installation, Removal, [or] Relocation or Maintenance

ADF subscribers shall pay a minimum charge of \$5,000 for installation costs associated with connecting to the ADF. Upon installation, removal, relocation or maintenance of terminal and related equipment, or combination thereof, the subscriber shall pay charges incurred by the Association or its subsidiaries above the \$5,000 minimum, on behalf of the subscriber for the work being performed by the maintenance organization retained by Association or its subsidiaries. Upon payment of \$5,000 under this provision, members will receive a credit of up to \$5,000 to be used toward their trade reporting and comparison charges imposed under Rule 7010(a).

7050. Other Services

(a) Daily Reports to Newspapers

Reports for regular public release, such as a list of closing quotations or market summary information for newspaper publication, shall be produced in a format acceptable to most publishers without charge. Should such information be transmitted to another location at the request of any firm, a charge may be imposed for such services by the Association or a subsidiary.

(b) Other Requests for Data

The Association or a subsidiary may impose and collect compensatory charges for data [Nasdaq] supplied upon request, where there is no provision elsewhere in this Rule 7000 Series for charges for such service or sale.

(c) Correspondents

The charge for registration and display of a correspondent firm for a registered market maker shall be \$3.50 per month for each correspondent displayed per security.

(d) Testing Services

(1) Subscribers that conduct tests of their computer-to-computer (CTCI) or digital interface (DIS/CHIPS) with the central processing facilities of *Alternative Display Facility* [The Nasdaq Stock Market, Inc. (NSMI)] shall pay the following charges:

\$285/hour For CTCI/DIS/CHIPS testing between 9:00 a.m. and 5:00 p.m. Eastern Time on business days;

\$333/hour For testing at all other times on business days, or on weekends and holidays.

(2) The foregoing fees shall not apply to testing occasioned by:

(A) new or enhanced services and/or software provided by ADF [NSMI] or

(B) modifications to software and/or services initiated by ADF [NSMI] in response to a contingency.

7060. Partial Month Charges—No Change

7070. Reserved [Subscriber Deposits]

[New and existing subscribers to Level 2/3 or Nasdaq Workstation service shall be subject to the following deposit charges per unit:

(a) New subscriber:

(1) estimated telecommunications provider charges for network infrastructure, connection and testing;

(2) two (2) months circuit charges; and

(3) estimated telecommunications provider disconnect charges.

(b) Existing subscribers subject to subscriber deposits include those that have been placed on the termination list two or more times within a two year period; those that have paid for services with one or more NSF checks; and those that have had service disconnected for non-payment but have not had equipment removed:

(1) two (2) months circuit charges; and

(2) estimated telecommunications provider disconnect charges.]

7080. Late Fees

(a) All charges imposed by the NASD [The Nasdaq Stock Market, Inc.] that are past due 45 days or more will be subject to a late fee computed by taking the summation of one and one-half percent (1½%) of the amount past due for the first month plus one and one-half percent (1½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.

(b) No Change.

[7090. Mutual Fund Quotation Service]

[(a) Funds included in the Mutual Fund Quotation Service ("MFQS") shall be assessed an annual fee of \$400 per fund authorized for the News Media Lists and \$275 per fund authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proration 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) Funds included in the MFQS and pricing agents designated by such funds ("Subscriber"), shall be assessed a monthly fee of \$75 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.]

7100. Minor Modifications in Charges

(a) To compensate for minor variations in annual net income, the Board of Directors of The [Nasdaq Stock Market, Inc.] NASD may increase or decrease the total charges in this Schedule by 10% from the base charges as adopted on [August 28, 1979] *insert adoption date* upon filing such change with the Commission pursuant to Section 19(b)(3) of the Act.

(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, the NASD included statements concerning the purpose of and the 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 NASD 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

As described in detail in SR-NASD-2001-90,⁴ the NASD intends to operate a trade reporting and comparison service as part of the ADF. The trade reporting service would collect trade reports for NASD registered market participants, as well as any NASD member required to report transactions occurring otherwise than on an exchange. The service would transmit the reports automatically to the respective Securities Information Processors ("SIPs"), if required, for dissemination to the public and the industry. This mechanism would operate similarly to the trade reporting functions of Nasdaq's Automated

⁴ See Exchange Act Release No. 45156 (December 14, 2001), 67 FR 388 (January 3, 2002).

Confirmation Transactions Service ("ACT").⁵

The ADF also will provide for trade comparison through the Trade Comparison and Reporting Service ("TRACS"). TRACS will (1) compare trade information entered by TRACS participants and submit "locked-in" trades to the Depository Trust Clearing Corporation ("DTCC") for clearance and settlement; (2) transmit reports of the transactions automatically to the respective SIPs, if required, for dissemination to the public and the industry; and (3) provide participants with monitoring capabilities to facilitate participation in a "locked-in" trading environment.

In SR-NASD-2001-90, the NASD stated that the proposed fees or assessments related to the ADF would be provided in a separate rule filing. Accordingly, the NASD now is proposing amendments to the Rule 7000 Series to provide for the fees and/or assessments on quotation and transaction activities on the ADF. Specifically, the NASD is proposing fees similar to those currently imposed on transaction activities in ACT and therefore, many of the amendments to the rule text are the replacement of references to "ACT" with "TRACS." The following are fees that will be charged relating to transactions on the ADF and are similar to those currently imposed on activities in ACT: Comparison—\$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares); Automated Give-Up—\$0.029/side; Late Report—T+N—\$0.30/side; Browse/query—\$0.28/query⁶; Trade Reporting—\$.029/side (applicable only to reportable transactions not subject to trade comparison through TRACS); and Corrective Transaction Charge—\$0.25. The following transaction-related charges currently in Rule 7010(g) will be deleted: Terminal fee, CTCI fee, Nasdaq ACT and Risk Management Charges.

The NASD proposes to charge an ADF workstation fee of \$275 per month for each ADF terminal software license and \$550 per month for each ADF server license. The NASD proposes to charge members a minimum of \$5,000 for installation costs associated with connecting to the ADF, and will require

reimbursement from members for charges incurred by the NASD above \$5,000 due to the installation, removal, relocation or maintenance of terminal and related equipment. However, market participants will receive a credit of up to \$5,000 toward their trade reporting and comparison charges.

In addition, the NASD will charge for certain other services described in Rule 7050(b) (requests for data), Rule 7050(c) (registration and display of a correspondent firm for a registered market maker) and Rule 7050(d) (charges for subscribers that conduct tests of their computer-to-computer or digital interfaces). The NASD will not be offering modems, interrogation or display devices and therefore is proposing to delete Rule 7020(b) through (d).

The NASD is proposing to delete the following provisions that currently impose fees on members for access to different levels of data services or special options: Rule 7010(a) through (f), Rule 7010(h), Rule 7030 and Rule 7070. The NASD is proposing to delete Rule 7010(i) (fees relating to transaction execution services), Rule 7010(j) (position charge for members that quote on the OTC Bulletin Board), Rule 7010(o) (Nasdaq Application of OptiMark Service) and Rule 7090 (Mutual Fund Quotation Service). As noted in SR-NASD-2001-90, the ADF will not be providing any transaction execution services and will not provide quotation services related to OTC Bulletin Board securities or mutual funds.

The NASD will not be imposing Market Data Distributor or Vendor Annual Administrative Fees and, therefore, is proposing to delete Rule 7010(l). The NASD will not be providing compliance data packages, historical research and administrative reports and, therefore, is proposing to delete Rule 7010(n) and Rule 7010(p). Finally, NASD will not be providing an Automated Voice Response Service and therefore, is proposing to delete Rule 7010(m).

The proposed rule change also provides for several administrative provisions that are identical to current rules, including partial month charges (Rule 7060) and late charges for all fees that are past due 45 days or more (Rule 7080). The proposed rule change also permits the NASD to increase or decrease the total charges described in the Rule 7000 series by 10% upon filing such changes with the SEC (Rule 7100(a)). The proposed rule change retains current Rule 7100(b).

Finally, the NASD is proposing to charge a quotation update fee of \$.01 per

quotation update in the ADF quotation montage. This quotation update fee, however, will apply only to those quotation updates by the member in the ADF that exceed three times the number of transactions reported by the member through the ADF. This quotation update fee will be determined on a monthly basis. By imposing this fee only where the quotation updates significantly exceed the number of transactions reported, this fee structure will fairly impose costs on those members whose quotation activity creates system capacity demands, and therefore costs that are not covered by a trade reporting fee.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁷ of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will provide a cost effective and efficient mechanism to quote and report trades on the ADF. The proposed rule change is also consistent with Section 15A(b)(5) of the Act⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Association operates or controls. The NASD believes that this fee structure is a reasonable means for the NASD to recover the development costs of the ADF, as well as meet ongoing operating costs.

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

Within 35 days of the date of publication of this notice in the **Federal**

⁵ The NASD service would not perform risk management services that are provided by Nasdaq's ACT.

⁶ Each TRACS query incurs the \$0.28 fee; however, the first accept or decline processed for a transaction is free, such that no more than \$0.28 is charged per comparison. Subsequent queries for more data on the same security also will be processed free. Any subsequent query on a different security will incur the \$0.28 query charge.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78o-3(b)(5).

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 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 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 NASD. All submissions should refer to File No. SR-NASD-2002-28 and should be submitted by April 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45500; File No. SR-NASD-00-82]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1, 2, 3, and 4 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Assessment of Fees for Unit Investment Trusts Included in Nasdaq's Mutual Fund Quotation Service

March 4, 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 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 ("SEC" or "Commission") Amendment Nos. 1, 2, 3, and 4 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The proposed rule change was published for comment in the **Federal Register** on February 20, 2001.³ The Commission received one comment letter regarding the proposed rule change.⁴ On June 18, 2001, Nasdaq filed Amendment No. 1 to the proposal.⁵ On June 26, 2001, Nasdaq filed Amendment No. 2 to the proposal.⁶ On July 2, 2001, Nasdaq filed Amendment No. 3 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43915 (February 1, 2001), 66 FR 10926 ("February 2001 Release").

⁴ See letter from Barry E. Simmons, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, Commission, dated March 13, 2001 ("ICI Letter").

⁵ See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 15, 2001 ("Amendment No. 1"). Amendment No. 1 revises the proposal to: (1) Establish a \$150 fee for replacement Unit Investment Trusts ("UITs"); and (2) respond to the ICI's comments by adopting the ICI's suggested requirements for a replacement UIT.

⁶ See letter from Edward S. Knight, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 25, 2001 ("Amendment No. 2"). The rule test provided in Amendment No. 1 indicated the way that Amendment No. 1 revised the text of current NASD Rule 7090 rather than the way that Amendment No. 1 revised the text of NASD Rule 7090 as amended by the original proposal. Amendment No. 2 replaces the text of NASD Rule 7090 proposed in Amendment No. 1 with text designed to indicate the way that Amendment No. 1 revises Nasdaq's original proposal rather than the existing text of NASD Rule 7090.

proposal.⁷ On February 11, 2002, Nasdaq filed Amendment No. 4 to the proposal.⁸ 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

In the original proposal, which was published for comment in the February 2001 Release, Nasdaq proposed to amend NASD Rule 7090, "Mutual Fund Quotation Service," to: (1) Revise NASD Rule 7090(a) to apply to UITs certain annual and application fees that currently apply to mutual funds; and (2) adopt NASD Rule 7090(b), which eliminated a one-time application fee if a UIT expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in share class and trust objective. The proposed changes to the original proposal, as published in the February 2001 Release, are below.

Proposed additions are italicized and proposed deletions are placed in [brackets].

* * * * *

7090. Mutual Fund Quotation Service

(a) No change.

(a) 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 [share class and trust] *investment* objective, the replacing trust shall [not] be charged a one-time application fee of *\$150*. [In addition, t]The replacing trust shall not be

⁷ See letter from Mary M. Dunbar, Vice President, Office of the General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 29, 2001 ("Amendment No. 3"). Amendment No. 3 replaces the text of NASD Rule 7090 provided in Amendment No. 2 with rule text that is designed to indicate more clearly the way that Amendment No. 1 revises the text of NASD Rule 7090 was amended by the original proposal.

⁸ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 11, 2002 ("Amendment No. 4"). Amendment No. 4 provides a more detailed explanation of the need for the proposed fees. Specifically, among other things, Amendment No. 4 states that the application fee supports the personnel who are required to review, record, and enter each fund into the Mutual Fund Quotation Service ("MFQS"). In addition, Amendment No. 4 states that the annual fee for the News Media Lists and the Supplemental List support the NASD's continuous monitoring of funds' compliance with the standards for inclusion in the MFQS, for upgrading the technology used to collect and disseminate the MFQS, and for responding to the requests of users and subscribers for service enhancements. Amendment No. 4 also provides additional information concerning the \$150 application fee for replacement UITs.

⁹ 17 CFR 200.30-3(a)(12).