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INVESTMENT COMPANY INSTITUTE
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Comment Letter on Fee Proposal for Nasdaq Mutual Fund Quotation Service, March 2001

March 13, 2001

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Nasdaq Proposed Rule Change Relating to the Assessment of Fees for Certain UITs Included in Nasdaq's Mutual Fund Quotation Service (File No. SR-NASD-82)

Dear Mr. Katz:

The Investment Company Institute[1] appreciates the opportunity to comment on The Nasdaq Stock Market, Inc.'s proposed amendments to NASD Rule 7090 pertaining to the fees assessed for unit investment trusts ("UITs") included in Nasdaq's Mutual Fund Quotation Service ("MFQS").[2] Currently, Rule 7090 imposes application and annual listing fees for the inclusion of open-end funds, closed-end funds and UITs in the MFQS.[3] Nasdaq's proposed amendments would assess these fees for the inclusion of UITs in the same manner as it assesses them for funds in all but one respect. 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 the same in share class and trust objective, Nasdaq would eliminate the application fee for the replacing trust. Also, Nasdaq would permit the replacing trust to assume any annual listing fee that was paid by the expiring trust for that annual billing period.

The Institute supports the intent of Nasdaq's proposal to accommodate the unique manner in which trusts are offered. We recommend certain technical changes to assure that the fee assessment procedures for UITs will operate appropriately.

According to the Proposing Release, Nasdaq will waive the application fee and permit assumption of any previously paid annual listing fee if Nasdaq's Fund Operations staff determines that the replacement UIT is materially the same as the expiring UIT. The Release adds that for this purpose, a replacement trust will be deemed to be "materially similar" to an expiring trust if it is of the "same share class and objective" of the trust it is replacing.[4] While the similar objective requirement is entirely appropriate, it is unclear what the similar share class requirement refers to or why it is necessary.

As a technical matter, UITs do not issue shares, nor do they have different classes of shares. Rather, within a single UIT "shell", a sponsor may offer multiple trusts, distinguishable mainly by the duration and/or level of sales charges imposed. By design, each such trust follows the same objective. As noted in the Proposing Release, unlike open-end funds or closed-end funds, trusts often exist in the market for finite periods of time, ranging from 12 months to 30 years.[5] When one of the trusts expires, the sponsor often will replace it with a similar trust.[6]

The Institute believes that requiring the replacement trust to (1) have a materially similar investment objective to that of the expiring trust, and (2) replace the expiring trust within three months of its expiration, will be sufficient to ensure that UITs can take advantage of the special listing fee provisions in appropriate circumstances. We therefore recommend that the first sentence of proposed paragraph (b) of Rule 7090 be revised to read as follows: "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 has a materially similar investment objective, the replacing trust shall not be charged a one-time application fee." In addition, we recommend that the application form for listing on the MFQS inquire whether a trust applying for listing is a replacement trust and, if so, identify which expiring trust it is replacing. This should assist Nasdaq's Fund Operations staff in properly processing these applications.

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The Institute appreciates Nasdaq's consideration of our views on its proposed amendments to NASD Rule 7090. If you have any questions or would like additional information, please call me at (202) 326-5923.

Sincerely,

Barry E. Simmons
Associate Counsel

cc: Jeffrey S. Davis
Assistant General Counsel
Nasdaq

ENDNOTES

[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,391 open-end investment companies ("mutual funds"), 489 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about $7.2 trillion, accounting for approximately 95% of total industry assets, and over 83.5 million individual shareholders.

[2] SEC Release No. 34-43915 (Feb. 1, 2001); 66 Fed. Reg. 10926 (Feb. 20, 2001) (the "Proposing Release").

[3] Under the Rule, Nasdaq assesses a one-time application processing fee of $250 for each new fund or trust authorized, and assesses an annual listing fee of $400 per fund or trust authorized for the News Media List and $275 per fund or trust authorized for the Supplemental List.

[4] See Proposing Release at 10927.

[5] Id.

[6] The replacement trust will have the same investment objective as the expiring trust and usually will have a similar name (e.g., an expiring trust named "Dow 5 April 2000" may be replaced with a trust named "Dow 5 May 2001"). Other minor differences (e.g., due to developments in the marketplace or changes in tax law) should not disqualify trusts from taking advantage of the proposed fee provisions where it is otherwise clear that a new trust is designed to replace an expiring trust.
