retroactively to specialist assignments made in the period beginning March 1, 2006, a time when, the Exchange states, its management began talking with specialist firms about the reasons for, and possibility of, this type of fee reduction. The Commission believes such reduction is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2006–13) is approved.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–6162 Filed 7–11–06; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54103; File No. SR–NASD–2004–043]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change Relating to Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material

July 5, 2006.

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 December 12, 2005, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 4 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. This order notices, and solicits comments from interested persons on, Amendment No. 4 to the proposal and approves the proposal as amended.

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

NASD is proposing to amend NASD Rules 2210 and 2211 to require member communications with the public, other than institutional sales material and public appearances, that present mutual fund performance information (''performance sales material'') to disclose the fund's fees, expenses and standardized performance. The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

Purpose

On March 10, 2004, NASD filed with the Commission a proposal to amend NASD Rules 2210 and 2211 to require that mutual fund communications with the public that provide performance data disclosure the fund's fees, expenses and standardized performance. NASD believes these new requirements would improve investor awareness of the costs of buying and owning a mutual fund, facilitate comparison of funds and make the presentation of standardized performance more prominent. The Commission published the proposed rule change and Amendment No. 1 thereto for comment in the **Federal Register** on August 27, 2004.[3] The Initial Proposal would have required that:

- Performance sales material disclose:
  - The standardized performance information mandated by Rule 482 under the Securities Act of 1933[4] (''Rule 482'') and Rule 34b–1 under the Investment Company Act of 1940[5] (''Rule 34b–1'');
  - To the extent applicable, the maximum front-end and deferred sales charges stated in the fund's current prospectus; and
  - The fund's total annual operating expense ratio, as stated in the investment company's current prospectus.
- All required performance information and fee disclosure be set forth:
  - Clearly and prominently, and standardized performance information be in a type size at least as large as that used for any non-standardized performance information;
  - With respect to any radio, television or video advertisements, with equal prominence to that given to any non-standardized performance information; and
  - In any advertisement, other than radio, television or video advertisements, in a prominent text box that contains only the required information.

Comments Received on the Initial Proposal and NASD's Response

The Commission received five comment letters on the Initial Proposal.[6] Commenters' concerns fell into three principal categories. First, commenters either opposed the text box requirement in its entirety or believed that, to be workable, NASD needed to modify the proposal to allow greater flexibility for electronic media such as Web sites. Second, some commenters stated that ongoing fees should be calculated net of fee waivers and expense reimbursements. Finally, commenters urged NASD to provide members with ample time to comply with any new rule and to allow the use of templates when filing revised sales material. A summary of the comment letters and NASD's response is set forth below.

Text Box Requirement

Three commenters objected that the proposed text box requirement would be unduly restrictive and would make it difficult to advertise the performance of multiple funds.[7] These commenters also

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 50226 (Aug. 20, 2004), 69 FR 52738 (Aug. 27, 2004) (''Initial Proposal''). Amendment No. 2, which changed the proposal in response to industry comments, was filed on May 2, 2005. Amendment Nos. 3 and 4, which altered the proposed rule change to harmonize it with the requirements of Rule 482 and Rule 34b–1, were filed on July 27, 2005, and December 13, 2005, respectively. Amendment No. 4 replaced Amendment Nos. 2 and 3 in their entirety.

[4] 17 CFR 230.482.

[5] 17 CFR 270.34b–1.

[6] Letters to Jonathan G. Katz, Secretary, Commission, from Colon Brown, President, Brown & Brown Securities, Inc. (Sept. 10, 2004) (''Brown Letter''); Alexander G. Gavis, Vice President and Associate General Counsel, Fidelity Investments (Oct. 12, 2004) (''Fidelity Letter''); Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute (Sept. 17, 2004) (''ICI Letter''); Stuart R. Strachan, Chairman, Investment Company Committee of the Securities Industry Association (Sept. 17, 2004) (''SIA Letter''); Heidi Stam, Principal, Securities Regulation, Vanguard Group, Inc. (Sept. 17, 2004) (''Vanguard Letter''). In addition, NASD received a letter from Forrest R. Foss, Associate Counsel, T. Rowe Price Associates, Inc. (Dec. 6, 2004) (''T. Rowe Price Letter''). We have included NASD's responses to the concerns expressed in the T. Rowe Price Letter in the discussion below.

[7] Fidelity Letter, ICI Letter, T. Rowe Price Letter. Two of the commenters opined that an advertisement that compares a fund's performance against a benchmark index could not include the

Continued

stated that the prohibition against including non-required information in the text box could result in poorly designed and repetitive fund advertisements. Two of the commenters recommended as an alternative to the text box a requirement that a fund's expense ratio be disclosed in the same manner in which a fund's maximum sales charge is required to be disclosed under Rule 482, which includes prominence requirements for certain required disclosures (*e.g.,* for sales charges).[8]

Finally, three commenters objected to applying the text box requirement to Web sites, arguing that the requirement does not take into consideration how individuals typically read and navigate Web sites and retrieve information (such as through the use of hyperlinks).[9] These commenters also urged NASD to modify the proposal to allow the use of hyperlinks to link from non-standardized performance information to the required standardized information.

NASD's response to comments: In response to commenters' concerns, NASD amended the prominence requirements of proposed NASD Rule 2210(d)(3)(B) to: (1) Eliminate language that might be deemed inconsistent with the prominence requirements of Rule 482 and Rule 34b–1; (2) apply the text box rule only to print advertisements; and (3) permit the inclusion of other pertinent comparative data and disclosures required by Rule 482 and Rule 34b–1 in the text box.[10]

As a result of this amendment, Web sites and other electronic advertisements would not have to present the required performance and fee information within a text box. And in those print advertisements where the text box still would be required, members would be allowed to present comparative performance and fee data (*e.g.,* non-standardized fund performance, the performance of a relevant benchmark index, or a comparison of the fund's expense ratio to the average expense ratio for similar funds) and disclosures required by rule 482 and Rule 34b–1.

The information required by proposed NASD Rule 2210(d)(3)(A) (*i.e.,* the standardized performance information, maximum sales charge, and total annual fund operating expenses) would have to be set forth prominently. NASD members could meet this prominence requirement by presenting this information in accordance with the prominence and proximity requirements of Rule 482 and Rule 34b–1.[11] Additionally, members would be required to present a fund's total annual operating expenses in a manner that meets the prominence and proximity requirements under Rule 482 for disclosure of a fund's maximum sales charge. Thus, for example, the quotations of the standardized average annual total returns for one, five and ten-year periods would have to be set forth with equal prominence, and any quotations of non-standardized performance could not be set forth in greater prominence than the standardized performance.[12] Similarly, the disclosures of a fund's maximum sales load and total annual operating expenses generally would have to be presented in print advertisements ''in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement * * *.''[13]

NASD also has reconsidered the use of hyperlinks to show standardized performance information. Given that NASD no longer would require Web sites to present required disclosures in a text box, NASD stated that it also would be appropriate for members to present standardized performance and other required disclosures through the use of a hyperlink, provided that the required disclosures are prominent and consistent with the standards of Rule 482.[14]

Calculation of Expense Ratio

The Initial Proposal would have required performance sales material to show a fund's annual operating expenses as derived from the fund's most recent prospectus.[15] Two commenters stated that the proposal should be modified to allow member firms to disclose a fund's current expense ratio net of fee waivers and reimbursements, as long as the fact of the subsidization is disclosed.[16]

One commenter stated that expense ratios should be calculated in accordance with Item 3 of Form N–1A, without taking into account fee waivers and reimbursements because, in the commenter's opinion, prospective investors should base their decisions on the long-term costs of a fund rather than its current costs (which may include subsidization).[17]

NASD's response to comments: In response to commenters' concerns, NASD stated that since fund advertisements, like prospectuses, are directed to prospective investors, any required expense ratio disclosure should not reflect fee waivers or reimbursements.[18] According to NASD, the proposal would not preclude performance sales material from also presenting a fund's expense ratio net of fee waivers and reimbursements, as long as the sales material also presents the unsubsidized expense ratio, and the member presents the subsidized expense ratio in a fair and balanced manner in accordance with the standards of Rule 2210. NASD stated that it would expect that, if a subsidized expense ratio were presented, the sales material would disclose whether the fee waivers or expense ratios were voluntary or mandated by contract, and the time period during which the fee waiver or expense reimbursement obligation, if any, remains in effect.[19]

Compliance Lead Time and the Use of Templates

The Initial Proposal indicated that NASD would publish a Notice to Members announcing Commission approval of the proposed rule change within 60 days after such approval, and that the new requirements would become effective 30 days after publication of the Notice to Members. Three commenters requested that NASD provide additional time for members to comply with the proposal's new requirements.[20]

index performance in the text box, and thus might have to show the fund's performance again outside the text box in order to make an effective comparison.

[8] Fidelity Letter, ICI Letter.

[9] Fidelity Letter, ICI Letter, Vanguard Letter.

[10] Amendment No. 4.

[11] *See* Securities Act Rules 482(b) and 482(d).

[12] *See* Securities Act Rules 482(d)(3)(iii) and 482(d)(5)(iv).

[13] *See* Securities Act Rule 482(b)(5). Rule 482(b)(5) also provides that when performance data is presented in a print advertisement in a type size smaller than that of the major portion of the advertisement, the maximum sales load may appear in a type size no smaller than that of the performance data.

[14] Amendment No. 4.

[15] Proposed NASD Rule 2210(d)(3)(A)(ii)(b).

[16] Fidelity Letter, ICI Letter.

[17] Vanguard Letter.

[18] Amendment No. 4.

[19] In addition, one commenter opined that the Original Proposal was limited to disclosure of quantitative statistics rather than more qualitative information. Brown Letter. The commenter believed that the more important information involves the credentials and experience of mutual funds' advisors, the investment disciplines they follow and the ethical standards they employ regarding the distribution of their shares. The commenter recommended that such information be made available to investors in reasonably large print and understandable language. In response, NASD stated that the commenter's recommendation is beyond the scope of the proposal.

[20] Fidelity Letter, ICI Letter, Vanguard Letter. Two of the commenters also recommended that compliance with the proposal not be required until after the end of the second full calendar quarter following Commission approval of the proposed rule change. Fidelity Letter, ICI Letter. One of the commenters recommended that firms be given at least six months, and preferably nine to twelve

Two commenters requested that NASD allow member firms to file templates to show how substantially similar performance sales material would be revised to comply with the new standards.[21] These commenters believe that allowing templates to be filed would reduce compliance and filing costs for member firms while allowing NASD staff to identify and address any concerns with the format and content of performance sales material.

NASD's response to comments: In response to commenters' concerns, NASD amended the proposed effective date as follows: Should the Commission approve the proposal, NASD will publish a Notice to Members announcing Commission approval within 60 days thereafter. The proposal would become effective six months following the calendar quarter ended after publication of the Notice.

In Amendment No. 4, NASD also agreed to permit the filing of templates on a case-by-case basis to show compliance with the new rule requirements.[22]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether the amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2004–043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2004–043 and should be submitted on or before August 2, 2006.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to NASD.[23] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act[24] in that it is 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 Commission believes that the proposed rule change is designed to accomplish these ends by requiring additional disclosures in mutual fund performance sales materials that should enable investors to compare the performance of various mutual funds and to make informed comparisons regarding the actual cost of buying and owning various mutual funds.

NASD has requested that the Commission approve Amendment No. 4 to the proposed rules change on an accelerated basis.[25] The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**.[26] NASD amended the rule proposal in response to commenters and to harmonize the rule proposal with current regulatory disclosure requirements. Amendment No. 4 allows more flexibility in the way in which required disclosures are presented while retaining the content and prominence requirements for those disclosures, thereby easing compliance burdens without sacrificing the investor-protection goals of the proposal.

Specifically, in response to commenters, NASD amended the proposal to require text boxes for print advertisements only. Web sites and other electronic advertisements would not have to present the required performance and fee information within a text box. NASD also expanded the categories of information that would be allowed within the text box. Members would be allowed to include within the text box comparative performance and fee data (*e.g.,* non-standardized fund performance, the performance of a relevant benchmark index, or a comparison of the fund's expense ratio to the average expense ratio for similar funds) and the disclosures required by Rule 482 and Rule 34b–1.[27]

Amendment No. 4 also harmonizes the proposed disclosure standards with those that are already required under Rule 482 and Rule 34b–1 to ensure that member firms are able to comply simultaneously with both NASD and SEC rules. NASD also provided firms with guidance regarding the amount of time members will have to comply with the new requirements. NASD also agreed that the filing of templates may be appropriate to show how similar performance sales material will be revised to comply with the new standards. Use of templates should help firms obtain useful guidance from NASD staff to ensure that the required disclosures comport with the new provisions.

The Commission believes that NASD's proposed changes in Amendment No. 4 strengthen and

months, to comply with the rule change. Vanguard Letter.

[21] Fidelity Letter, ICI Letter.

[22] To the extent that NASD permits members to file templates of sales material to show compliance with the new requirements of proposed NASD Rule 2210(d)(3) or for any other purpose, all such sales material covered by the template would be deemed filed with NASD. Pursuant to Rule 24b–3 under the Investment Company Act of 1940 (''Investment Company Act''), sales material filed with NASD is deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act.

[23] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] Telephone conference between Joseph Savage, Associate Vice President, Investment Companies Regulation, NASD, and David W. Blass, Branch Chief, Division of Market Regulation, Commission, on July 5, 2006.

[26] The Commission further notes that both the rule filing SR–NASD–2004–043 and the amendments thereto have been available since their respective filing dates on NASD's Web site *http://www.nasd.com.*

[27] NASD Rule 2210(d)(3)(B).

clarify the proposed rule change in direct response to issues raised by commenters and raise no new regulatory issues. Accordingly, the Commission believes that the accelerated approval of Amendment No. 4 is appropriate.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change, as amended, (SR–NASD–2004–043) is approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an associated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–6137 Filed 7–11–06; 8:45 am]

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[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54101; File No. SR–NASD–2005–140]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendments No. 1 and 2 Regarding the Nasdaq Crossing Network

July 5, 2006.

I. Introduction

On December 2, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ('' Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Nasdaq Crossing Network. On February 28, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On April 24, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 5, 2006.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description

Nasdaq proposes to establish the Nasdaq Crossing Network for Nasdaq-listed and certain exchange-listed securities. The Nasdaq Crossing Network would provide a process for executing orders at a uniform reference price at a randomly selected point in time during a one-minute trading window, commencing at designated times during the regular hours session and the after-hours session. The trading windows would begin at 11 a.m., 1 p.m., and 3 p.m. (ET) during the regular hours session and at 4:30 p.m. (ET) during the after-hours session. For the series of Nasdaq Reference Price Crosses (''RPCs'') that occur during regular trading hours, market participants would place orders to be executed at the midpoint of the National Best Bid and Offer (''NBBO''). During the after-hours crossing session, eligible orders would be executed at the Nasdaq Official Closing Price (''NOCP'') for Nasdaq-listed securities or the official closing price of the primary market for securities listed on the NYSE, Amex or a regional exchange (''Primary Market Close'').

Orders

Orders entered into the Nasdaq Crossing Network would be either market or limit orders and would be designated by a time-in-force indicator.[6] These orders would not be displayed and would be executed only during an RPC. In addition, RPC orders would be entered in round lots only; no mixed or odd lot execution amount would be permitted. Orders may not be cancelled or replaced during the time of the cross, but they may be cancelled or replaced at any time before the cross occurs. Also, RPC orders would be required to be available for automatic execution. The RPC would have no order delivery capability, and no special orders could be accommodated.

Nasdaq Reference Price Cross Priority and Reporting

Upon initiation of the cross, available shares would be treated as if they were the same price and would be allocated on a pro-rata basis to eligible orders. Such shares would be allocated based on the original size of the order, not on the size of the remaining unexecuted portion of the order. If additional shares remain after the initial pro-rata allocation, those shares would continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. Any remaining shares would be allocated to the oldest eligible order.[7]

The executions would be reported to the market participants via Nasdaq Market Center execution reports as anonymous, single trades reflecting the aggregate shares executed. In addition, each execution would be reported to the Nasdaq Market Center trade reporting service for trade reporting, clearance and settlement.[8] Trades from the regular hours cross would be disseminated the regular way, and trades from the post close cross would be disseminated with a ''.PRP'' sale condition modifier.

Locked or Crossed Markets

In the event of a crossed NBBO at the time of a RPC during the regular hours session, the RPC would be delayed and would execute based on the midpoint NBBO when the quote becomes uncrossed. If the quote remains crossed, however, for five minutes beyond when the RPC normally would have occurred, the RPC would be cancelled and orders that are not designated for any future RPCs would be returned to the market participants. In the event of a locked NBBO at the time of a RPC during the regular hours session, the RPC would execute at the lock price.

Reference Price Cross Circuit Breaker

Nasdaq would establish a ''circuit breaker'' for RPCs that occur during the after-hours session to protect against unusual occurrences when the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] In Amendment No. 2, Nasdaq made certain representations related to the applicability of Rule 11a2–2(T) under the Exchange Act and NASD IM–2110–2 (the ''Manning Rule'') to the proposed rule change. In addition, Nasdaq indicated its plan to request exemptive relief from Rule 10a–1 under the Exchange Act and NASD Rule 3350 (''Short Sale Rule''), as well as from Rule 602 of Regulation NMS (''Quote Rule''). Nasdaq also made clarifying edits to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 53745 (May 1, 2006), 71 FR 26579 (SR–NASD–2005–140) (''Proposing Release'').

[6] RPC orders would be marked with one of the following: (1) ''NXT,'' which indicates that the order would participate in the next scheduled regular-hours cross, with unexecuted shares being immediately cancelled back to the market participant after that cross; (2) ''REG,'' which indicates that the order would participate in all remaining crosses during the trading day with unexecuted shares being immediately cancelled back to the market participant after the final regular hours cross; or (3) ''ALX,'' which indicates that the order would participate in all remaining crosses in the current day with unexecuted shares immediately cancelled back to the market participant after the after-hours cross.

[7] The Proposing Release provides an example that illustrates these priority principles. *See supra* note 5.

[8] Nasdaq would submit each underlying trade to the National Securities Clearing Corporation for clearing. When Nasdaq becomes operational as a national securities exchange, these trades will be reported as ''covered sales'' of the exchange for the purposes of Section 31 of the Exchange Act. If the Crossing Network is launched before Nasdaq is operational as an exchange, the NASD will report these trades to NSCC for the purposes of Section 31 of the Exchange Act.