

Introduction and Instructions

This introduction page is intended solely for informational purposes and should not be considered as an agreement or an amendment to any agreement with NASDAQ OMX.

This MFQS Access Agreement should be completed by any applicant ("Subscriber") seeking to submit daily price data for mutual funds, money market funds, unit investment trusts (UITs), structured products or annuities via the Mutual Fund Quotation Service (MFQS). Applicants may include:

- Investment company, fund family, trust or insurance company that wishes to submit price data directly into MFQS.
- Investment company, fund family, trust or insurance company that wishes to submit price data to MFQS via a pricing agent or a service bureau.
- Pricing agent or service bureau that wishes to submit price data to MFQS on behalf of registered investment companies, fund families, trusts, or insurance companies.

In order to use the MFQS system, the applicant must complete the following:

1) Mutual Fund Quotation Service (MFDSMFQS) Access Agreement:

Applicants interested in submitting price data services via MFQS must execute **two (2) copies** of the Mutual Fund Quotation Service (MFQS) Access Agreement. Execution entails having an authorized officer sign in the name of the applicant organization.

Once the applicant has signed the agreement, **it should be sent to Nasdaq OMX for counter-execution**. Please use the following address:

NASDAQ OMX
Mutual Fund Operations
Two Corporate Drive, Suite 300, Shelton, CT 06484 USA
Phone: +1 203 385 6340

Please allow a minimum of two (2) weeks for NASDAQ OMX to counter-execute the agreement.

In addition, applicants may also need to complete and submit the following MFQS forms:

2) MFQS User ID Subscription Form:

Applicants looking to submit price data directly to NASDAQ OMX via the MFQS website or MFQS FTP server interfaces must complete and submit the [MFQS User ID Subscription Form](#) located on the NASDAQ Trader website.

Applicants looking to submit MFQS price data via the NASDAQ Computer-to-Computer Interface (CTCI) should contact [NASDAQ OMX Subscriber Services](#) at +1 212 231 5180 for ordering information.

3) MFQS Listing Application Form:

Applicants must submit a [MFQS Listing Application Form \(with signature page\)](#) located on the NASDAQ Trader website for each instrument to be priced on the MFQS system. For the current MFQS eligibility requirements, please see Attachment A of the MFQS Access Agreement.

Terms and Conditions

THIS MUTUAL FUND QUOTATION SERVICE ACCESS AGREEMENT is made by and between NASDAQ OMX Information, LLC, a Delaware limited liability company whose principal offices are located at One Liberty Plaza, 165 Broadway, New York, NY 10006 and _____ (collectively, with its Affiliates, "**Subscriber**"), a _____ ~~corporation~~ whose principal offices are located at _____, and each of the affiliates of NASDAQ OMX Information, LLC that provides any portion of the Service to Subscriber hereunder. Such Affiliates may include, but are not limited to, The NASDAQ OMX Group, Inc., and OMX Nordic Exchange Group, Ltd.

Comment [m1]: Modified to reflect that some MFQS subscribers may be a different type of business entity than "corporation." Firms should now enter its firm type in this field.

The Agreement is binding when executed by Subscriber (the "**Effective Date**"). NASDAQ OMX Information, LLC, collectively with its Affiliates, is referred to herein as "**NASDAQ OMX**". NASDAQ OMX and Subscriber are each individually a "**Party**" and collectively the "**Parties**".

WHEREAS, NASDAQ OMX is offering access to the Mutual Fund Quotation Service ("**MFQS**") that allows Subscriber to enter Data for the purpose of disseminating such Data to the press and certain quotation vendors;

WHEREAS, Subscriber, representing that it is eligible to do so, is desirous of gaining access to Services for the purposes set forth above and in the NASDAQ OMX Requirements.

Section 1. Definitions.

The following terms, in addition to those set forth above, when used in this Agreement, shall have the meanings set out below:

"**Act**" shall mean the U.S. Securities Exchange Act of 1934.

"**Agreement**" shall mean this Mutual Fund Quotation Access Agreement, together with any Attachments hereto as may be added, deleted from or amended from time-to-time.

"**Affiliate**" shall mean any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Party.

"**Attachments**" shall mean any attachments, addenda, cover sheets, amendments and materials referenced herein, including, but not limited to, the NASDAQ OMX Requirements, as any of these items may be added to, deleted from or amended from time-to-time.

"**Claims and Losses**" means any and all liabilities, obligations, losses, damages, penalties, claims, suits, costs, judgments, settlements, and expenses of whatever nature, whether incurred by or issued against an indemnified Party or a third party, including, without limitation, (a) indirect, special, punitive, consequential or incidental loss or damage, (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of

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shutdown in operation or increased expenses of operation, or other indirect loss or damage) and (b) reasonable out-of-pocket administrative costs, investigatory costs, litigation costs, and auditors' and attorneys' fees and disbursements ~~(including in-house counsel)~~.

"Data" shall mean the certain Fund and related market data more fully set forth on Attachment B hereto relating to mutual funds, closed end mutual funds, money market funds, unit investment trusts, structured products and/or annuities. Data also includes any element of Data as used or processed in such a way that the Data can be identified, recalculated or re-engineered from the processed Data or that the processed Data can be used as a substitute for Data.

"Fund" shall mean any mutual fund, closed end mutual fund, money market fund, unit investment trust, structured product and/or annuity owned, operated, issued ~~or~~ sponsored or serviced by Subscriber.

"NASDAQ OMX Requirements" shall mean (i) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the SEC or an FSA, as may be applicable based upon the NASDAQ OMX Affiliate from which the Data is received ; (ii) the rules and regulations, disciplinary decision and rule interpretations applicable to any Funds (iii) NASDAQ OMX policies, interpretations, operating procedures, specifications, requirements and other documentation that is regulatory or technical in nature (including, but not limited to, user guides) published on the NASDAQ Trader website located at www.NASDAQTrader.com or another website accessible by and made known to Subscriber; and (iv) all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions and other requirements, whether promulgated by the United States, England, Sweden or any other applicable jurisdiction (including in the area of intellectual property); and (v) the successors, as they may exist at the time, of the components of the NASDAQ OMX Requirements.

"NASDAQ Trader" shall mean the website located at www.NASDAQTrader.com or its successor site(s).

"Person" shall mean ~~means~~ any natural person, proprietorship, corporation, partnership, or other entity whatsoever.

"Service" shall collectively mean the information, data, access, capabilities, dissemination services, functions, features, software, and equipment that related to MFQS; the Service shall also include as applicable, the performance of services by NASDAQ OMX and any deliverables or items delivered under this Agreement as described in this Agreement or in the NASDAQ OMX Requirements which Subscriber requests and for which Subscriber is eligible under the NASDAQ OMX Requirements.

"Security Device" means any passwords, User identification numbers, certificates, or other form(s) of authentication or security used to access the Service.

"User" means a Subscriber or any employees or associated persons of Subscriber under the United States Exchange Act of 1934 who is eligible to use any portion of the Service that requires a Security Device.

Section 2. Purpose.

Upon Subscriber's request and pursuant to the NASDAQ OMX Requirements, Subscriber shall have access to MFQS for the purpose of transmitting Data for dissemination by

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NASDAQ OMX to the press and certain quotation vendors. Such access and dissemination shall, for purposes of this Agreement, be included within the definition of "Service".

The current list of Subscriber's Funds is available from the MFQS Symbol Directory on the NASDAQ Trader website. Execution of this Agreement shall be on behalf of all named Funds individually and not as a joint venture. The Subscriber shall submit a listing application for each instrument on the MFQS service as outlined in Attachment A. Without the prior written consent of NASDAQ OMX, only Funds quoted on systems operated by NASDAQ OMX shall be subject to this Agreement.

Section 3. License to Use the Service.

NASDAQ OMX grants Subscriber a non-exclusive, non-transferable, non-assignable license during the term of this Agreement to receive and use the Service as made accessible by NASDAQ OMX and thereafter to use the information and data transmitted from the Service for any purpose not inconsistent with the terms of this Agreement or the NASDAQ OMX Requirements.

- (a) Subscriber acknowledges and agrees that NASDAQ OMX has certain proprietary rights in the Service. Subscriber further agrees that NASDAQ OMX's third party information providers and other Subscribers have proprietary rights in their respective information and data. In the event of any misappropriation or misuse, NASDAQ OMX or its third party information providers, including other Subscribers, shall have the right to obtain injunctive relief for its respective information or data. Subscriber will attribute source as appropriate under all circumstances.
- (b) The Service is licensed only for use by Subscriber and Subscriber's Users. Subscriber will promptly give written Notice to NASDAQ OMX of any change in the name or place of business at which the Service is accessed. Subscriber may not sell, lease, furnish or otherwise permit or provide access to the Service to any third parties. Subscriber will not engage in the operation of any illegal business; use or permit anyone else to use the Service, or any part thereof, for any illegal purpose; or violate any NASDAQ OMX Requirement.

Section 4. Changes to the Service.

- (a) Subscriber acknowledges and agrees that nothing in this Agreement constitutes an undertaking by NASDAQ OMX to continue providing the Service, or any aspect of the Service, in its present form or under the current NASDAQ OMX Requirements. NASDAQ OMX, in its sole discretion, may from time to time make additions to, deletions from, or modifications to the Service and/or the NASDAQ OMX Requirements. NASDAQ OMX shall undertake reasonable efforts to notify Subscriber in writing of any material change to the Service and the NASDAQ OMX Requirements, which means may include, but not be limited to ~~NASDAQ OMX shall undertake reasonable efforts to notify Subscriber of any material change to the Service and the NASDAQ OMX Requirements. The means of notifying Subscriber may include, but not be limited to,~~ emailing notice of such changes to Subscriber and/or posting such changes on NASDAQ Trader. Receipt or use of the Service after any change shall constitute acceptance of the Service and/or the NASDAQ OMX Requirements as changed.

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- (b) Subscriber further acknowledges and agrees that NASDAQ OMX, when required to do so in fulfillment of its statutory obligations, may -- temporarily or permanently -- unilaterally condition, modify or terminate the right of any or all individuals or entities to receive or use the Service. NASDAQ OMX shall undertake reasonable efforts to notify Subscriber of any such condition, modification or termination, and Subscriber shall ~~promptly~~ comply with any such notice within such period of time as may be determined in good faith by NASDAQ OMX to be necessary, consistent with its statutory obligations. Any individual or entity that receives such a notice shall have available to it such procedural protections as are provided to it by the Act and the applicable rules thereunder.

Section 5. Representations and Obligations of Subscriber.

- (a) Subscriber represents and agrees that it shall:
- (i) calculate and report Data to NASDAQ OMX consistently in accordance with the provisions of this Agreement and any applicable NASDAQ OMX Requirements. Subscriber shall only submit Data for Funds; (i) set forth on Attachment A hereto; and (ii) that have authorized Subscriber to submit Data;
 - (ii) submit to NASDAQ OMX, on behalf of each Fund, within thirty (30) days of request, a statement ~~issued in the form set forth in Attachment C hereto, certified by an officer that confirms that the of the Fund meets the continued MFQS listing standards for as of the end of the applicable calendar year. NASDAQ OMX reserves the right to amend Attachment C at any time during the Term of this Agreement, subject to the provisions of Section xx herein;~~
 - (iii) maintain records of the Data submitted to NASDAQ OMX pursuant to the NASDAQ OMX Requirements and make such records available to any authorized representative of NASDAQ OMX upon reasonable advance request during normal business hours;
 - (iv) promptly notify NASDAQ OMX of any change in the name of the Subscriber or a Fund, the address of either the Subscriber or a Fund or other relevant material listing information. Material inaccuracies in any Data, including daily reports, shall be subject to the same obligations to NASDAQ OMX and the public as NASDAQ OMX issuers are required with respect to the disclosure of material information;
 - (v) grant to NASDAQ OMX a non-exclusive, non-transferable, worldwide, irrevocable right and license to receive, and use the Data for the following purposes: (i) for commercial dissemination to the press and certain quotation vendors; (ii) for self-regulatory functions; (iii) for use within NASDAQ OMX commercial market data products. The delivery of the Data to NASDAQ OMX shall be conclusively deemed to effect this right and license. Nothing herein, however, shall diminish the ownership right of the Subscriber in its own Data or in the Data's use outside of this Agreement; and

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- (vi) use any back-up option provided by NASDAQ OMX only as a back-up in cases where the primary means of access to MFQS is unavailable. The means by which Subscriber shall access MFQS shall be determined by NASDAQ OMX, and NASDAQ OMX may, but shall not be obligated to, provide Subscriber with an opportunity to subscribe to a back-up system, in addition to Subscriber's primary means of access to MFQS.
- (b) Affiliates. If Subscriber intends to bind any Affiliate to the terms and conditions of this Agreement, Subscriber must submit a list of any such Affiliate(s) to NASDAQ OMX. By submitting the names of its Affiliate(s), Subscriber agrees that the contact information set forth herein shall be deemed to be the contact information for each Affiliate and that SUBSCRIBER SHALL ASSUME ALL RESPONSIBILITY FOR AND WILL HOLD HARMLESS AND INDEMNIFY NASDAQ OMX AGAINST ANY ACTION OR INACTION BY AN AFFILIATE AS IF SUCH ACTION OR INACTION WERE THAT OF SUBSCRIBER, AND, SUBSCRIBER AND ITS AFFILIATE(S) SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL ACTIONS AND/OR INACTIONS OF THE OTHER(S).

Section 6. Representations, Rights and Obligations of NASDAQ OMX.

- (a) NASDAQ OMX agrees to provide to Subscriber, on the terms and conditions set forth herein, the Service, which Subscriber requests and for which Subscriber is eligible under the NASDAQ OMX Requirements. For those Funds whose Data NASDAQ OMX chooses to disseminate, NASDAQ OMX shall use reasonable efforts to disseminate Data directly or through vendors so long as it appears in NASDAQ OMX's discretion to be in the public interest to do so, but NASDAQ OMX is under no obligation to continue such service and may terminate it at any time, with notice to Subscriber. NASDAQ OMX does not warrant that it will maintain the current method or format for dissemination of Data.
- (b) NASDAQ DOES NOT CONTROL THE USES OF THE DATA BY PERSONS RECEIVING SUCH DATA. NASDAQ DOES NOT WARRANT THAT IT WILL NOTIFY THE SUBSCRIBER OR OTHERWISE INVESTIGATE REPORTS THAT THE DATA IS IN ERROR. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE DISCLAIMERS OF WARRANTIES AND THE LIMITATIONS OF LIABILITIES SET FORTH IN THIS AGREEMENT ARE APPLICABLE TO ALL ASPECTS OF MFQS AND THE SERVICE, INCLUDING, BUT NOT LIMITED TO, CLAIMS AND LOSSES OF SUBSCRIBER RELATING TO OR ARISING FROM THE DISSEMINATION OF THE DATA TO THE PRESS, QUOTATION VENDORS AND OTHER PARTIES.
- (c) NASDAQ OMX reserves the right to withhold Data from dissemination if, in its discretion, there is a reasonable basis for believing that the Data is not calculated in accordance with the methods specified in the NASDAQ OMX Requirements or is otherwise in error, if sales and/or redemptions of the Subscriber's Funds or securities have been suspended, or if for any other reason it appears that continued dissemination of the Data would not be appropriate in the public interest and the protection of investors.
- (d) NASDAQ OMX may, upon notice to Subscriber, suspend or discontinue the collection or dissemination of Data and terminate this Agreement with regard

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to particular Fund(s) if: (i) the Subscriber or a particular Fund ceases to be eligible for participation in MFQS under the NASDAQ OMX Requirements, or (ii) the Subscriber or a particular Fund fails to comply with the terms of this Agreement, or (iii) it is determined by NASDAQ OMX that the Subscriber has misrepresented its qualifications for inclusion in MFQS.

Section 7. Fees; Taxes.

- (a) Subscriber agrees to pay to NASDAQ OMX the then effective charges as set forth in the NASDAQ OMX Requirements and as amended by NASDAQ OMX in its sole discretion from time to time, including all applicable deposits, interest, late fees and/ or penalties (including, but not limited to, charges incurred after termination, cancellation, or rescission of this Agreement), which payments shall be made without recoupment or setoff by Subscriber. Payment for the Service is due within thirty (30) days of the receipt of an invoice. Payment shall be made in immediately available United States funds by a check drawn against a chartered United States financial institution or any other institution acceptable to NASDAQ OMX or by electronic funds transfer to an institution of NASDAQ OMX's choosing.
- (b) Subscriber shall pay any service or similar taxes, charges or assessments (other than taxes imposed on the net income of NASDAQ OMX) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties of interest on such taxes, charges or assessments relating to the provision of the Service to Subscriber. Subscriber shall not be responsible for the penalty or interest that is imposed on NASDAQ OMX as a result of NASDAQ OMX's failure to pay any taxes, charges, or assessments in a timely manner, unless NASDAQ OMX's failure was a result of a good faith disagreement with the taxing authority as to any tax, charge, or assessment. In addition, if Subscriber is required by applicable law to deduct or withhold any such tax, charge, or assessment from the amounts due NASDAQ OMX, then such amounts due shall be increased so that the amount actually received by NASDAQ OMX after the deduction or withholding of any such tax, charge, or assessment, will equal one hundred percent (100%) of the charges that are owed.

Section 8. Term and Termination.

The original term of this Agreement shall commence on the Effective Date and, unless the Agreement is otherwise terminated, the term shall continue until this Agreement is terminated by at least thirty (30) days prior written Notice by a Party hereto given to the other. Notwithstanding the foregoing, this Agreement may be terminated by:

- (a) either Party, upon breach and not less than fifteen (15) days prior written Notice to the breaching Party, unless, if the breach is capable of being cured, the breach is cured within the Notice period;
- (b) NASDAQ OMX, immediately, in the event Subscriber becomes insolvent; or Subscriber makes an assignment for the benefit of creditors; or Subscriber does not pay its debts as they become due or admits, in a record, its inability to pay its debts to NASDAQ OMX when due; or Subscriber files or has filed against it any petition under any provision of the Bankruptcy Act or an

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application for a receiver, trustee, or custodian is made by anyone or Subscriber becomes the subject of any proceeding or bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;

- (c) NASDAQ OMX immediately, in the event that Subscriber is not permitted to receive or NASDAQ OMX is prevented from disseminating the Service, or any part thereof; or any consent, representation, warranty or certification made by Subscriber in the Agreement or in any other document furnished by Subscriber is, as of the time made or furnished, false or misleading; or that NASDAQ OMX, in its sole discretion, determines that any failure on the part of the Subscriber to comply with the Agreement has or is likely to have an adverse impact on the operation or performance of the Service or any of NASDAQ OMX;
- (d) NASDAQ OMX, upon not less than fifteen (15) days prior written Notice, in the event that any consent, representation, warranty or certification made by Subscriber in the agreement or in any other document furnished by Subscriber becomes untrue or inaccurate and is not made true or accurate within the Notice period;

Upon termination of this Agreement for any reason, Subscriber shall cease any and all use of the Service and provide certification to NASDAQ OMX that it has done so. Subscriber acknowledges and agrees that the exercise by NASDAQ OMX of the remedies set forth herein for failure of Subscriber to pay any or all charges, taxes, or assessments related to its receipt of the Service shall not be deemed or considered to be, and, to the extent permitted by applicable law, Subscriber waives any right to represent or assert that any such exercise constitutes, an act or omission or any improper denial or limitation of access to any service or facility operated by NASDAQ OMX as contemplated in Section 11A of the Act or any other provision of such Act, or any rule or regulation adopted thereunder. The right of termination set forth therein is in addition to any other remedy at law or in equity that is available to one Party with respect to a breach by the other Party.

Section 9. Integrity of Service. Subscriber agrees not to format, display, or alter the Agreement, the Service or the information received through and from the Service in violation of the NASDAQ OMX Requirements, as they may be modified from time to time; not to affect materially the integrity of the Service or information received through and from the Service; and not to render the Service or information received through and from the Service to be inaccurate, unfair, misleading or discriminatory.

Section 10. NASDAQ OMX Warranty and Exclusive Remedy; Disclaimers of All Other Warranties.

- (a) PROVISION OF SERVICES. NASDAQ OMX shall use commercially reasonable efforts to offer access to the Service during reasonable business hours. In the event that the Service is not available as a result of a failure by NASDAQ OMX to perform its obligations under this Agreement, NASDAQ OMX will endeavor, giving due regard for the cost, time, and effect on other Subscribers, to correct any such failure.
- (b) EXCLUSIVE REMEDY. IN THE EVENT THAT THE SERVICE IS NOT REASONABLY AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE, OR IS OTHERWISE MATERIALLY AFFECTED FOR A

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CONTINUOUS PERIOD OF FOUR (4) HOURS OR MORE DURING THE TIME NASDAQ OMX REGULARLY TRANSMITS THE SERVICE DUE TO THE FAULT OF NASDAQ OMX (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT), OR FOR MORE THAN A TOTAL DURATION OF TWELVE (12) HOURS IN A SINGLE CALENDAR MONTH DURING THE TIME THAT NASDAQ OMX REGULARLY TRANSMITS THE INFORMATION DURING A REGULAR CALENDAR MONTH, SUBSCRIBER'S EXCLUSIVE REMEDY AGAINST NASDAQ OMX SHALL BE (A) IF SUBSCRIBER CONTINUES TO RECEIVE THE SERVICE, A PRORATED MONTH'S CREDIT FOR THE AFFECTED TIME PERIOD, OR, (B) IF SUBSCRIBER NO LONGER RECEIVES THE SERVICE, A PRORATED MONTH'S REFUND FOR THE AFFECTED TIME PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY WRITTEN NOTICE TO NASDAQ OMX WITH ALL PERTINENT DETAILS.

Comment [m2]: Modified to match the *NASDAQ OMX Global Data Agreement*.

NASDAQ OMX feels that it appropriate to modify the *MFQS Access Agreement* to match the outage terms that apply to the market data community.

- (c) DISCLAIMER OF ALL OTHER WARRANTIES. BEYOND THE WARRANTIES STATED IN THIS SECTION, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, NON-INFRINGEMENT, ACCURACY, FREEDOM FROM INTERRUPTION ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE).

SECTION 11. NASDAQ OMX'S LIMITATION OF LIABILITY.

- (a) EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, NASDAQ OMX SHALL NOT BE LIABLE TO SUBSCRIBER, OR ANY OTHER PERSON FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, COST OF COVER, OR OTHER INDIRECT LOSS OR DAMAGE) OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF NASDAQ OMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) NASDAQ OMX SHALL NOT BE LIABLE TO SUBSCRIBER OR ANY OTHER PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE SERVICE THAT LASTS LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ OMX REGULARLY TRANSMITS THE SERVICE OR IF THE SERVICE IS MATERIALLY AFFECTED FOR LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ OMX REGULARLY TRANSMITS THE SERVICE UNLESS THE TOTAL DURATION OF SERVICE DISRUPTION EXCEEDS TWELVE (12) HOURS IN A SINGLE CALENDAR MONTH DURING THE TIME THAT NASDAQ OMX REGULARLY TRANSMITS THE INFORMATION DURING A REGULAR CALENDAR MONTH.
- (c) IF ANY (OR ALL) OF THE CORPORATIONS, SUBSIDIARIES AND

AFFILIATES THAT COMPRISE NASDAQ OMX IS FOR ANY REASON HELD LIABLE TO SUBSCRIBER OR TO ANY OTHER PERSON, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF ALL OR ANY OF THE CORPORATIONS, SUBSIDIARIES AND AFFILIATES THAT COMPRISE NASDAQ OMX IN ANY GIVEN YEAR OF SERVICES (FROM THE EFFECTIVE DATE OF THE AGREEMENT, OR ANNIVERSARY THEREOF) OF THE AGREEMENT, AND ANY OTHER PERSON CLAIMING THROUGH, ON BEHALF OF, OR AS HARMED BY SUBSCRIBER, IS LIMITED TO: (I) IF SUBSCRIBER OR ANY OTHER PERSON CONTINUES TO RECEIVE THE SERVICE OR ANY OTHER INFORMATION AND/OR SERVICE OFFERED BY NASDAQ OMX, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE TO NASDAQ OMX FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE PERIOD AT ISSUE OR, IF SUBSCRIBER OR ANY OTHER PERSON NO LONGER RECEIVES EITHER THE SERVICE OR ANY OTHER INFORMATION AND/OR SERVICE OFFERED BY NASDAQ OMX, A REFUND OF ANY MONIES DUE TO NASDAQ OMX FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE PERIOD AT ISSUE.

- (d) **THIS SECTION SHALL NOT RELIEVE NASDAQ OMX, SUBSCRIBER OR ANY OTHER PERSON FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.**
- (e) **SUBSCRIBER AND NASDAQ OMX UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY. BOTH PARTIES ALSO AGREE THAT THE EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES, AND THE LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**

Section 12. Virus Notification/Assumption of the Risk. Subscriber acknowledges that it is possible to contract a virus or similar "disease" by using the Internet or material downloaded from it. In addition, Web sites are inherently not as secure or reliable an environment as computers connected by dedicated lines and have been in the past vulnerable to attack by hackers and other third parties. Subscriber should obtain, use and update virus-checking software routinely when Subscriber is using information or data obtained from the Internet. NASDAQ OMX cannot assure Subscriber that the Service and the information or data downloaded from it will be virus or problem free. By using the Service, Subscriber agrees to assume the risk of any unavailability, interruption, delay, incompleteness, or inaccuracy of the Service.

Section 13. Force Majeure. Notwithstanding any other term or condition of the Agreement, none of NASDAQ OMX, its third party information providers or Subscriber shall be obligated to perform or observe its obligations undertaken in the Agreement (except for obligations to make payments hereunder and regulatory obligations) if prevented or hindered from doing so by any circumstances found to be beyond its control.

Section 14. Indemnification.

- (a) Subscriber shall be liable to, indemnify against, and hold NASDAQ OMX, its information providers, their employees, directors, and other agents harmless

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from, any and all Claims or Losses imposed on, incurred by or asserted against any of NASDAQ OMX, their employees, directors, and other agents to the extent that the Claims and Losses result from acts or omissions of the Subscriber, its employees, directors, and other agents or from the receipt or use of the Service (including representations about the Service) by Subscriber, its employees, directors, and other agents or by any other Person who directly or indirectly, with or without proper authorization, obtains access to or information from the Service via Subscriber. Subscriber's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) NASDAQ OMX shall promptly notify Subscriber in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Subscriber or NASDAQ OMX); and (ii) NASDAQ OMX shall cooperate fully with Subscriber in the defense thereof and Subscriber shall be liable to NASDAQ OMX for NASDAQ OMX' reasonable expenses (excluding reimbursement for the time value of NASDAQ OMX' employees, directors, and other agents in providing such cooperation). For the avoidance of doubt, Subscriber shall not be liable for any Claims or Losses arising out of the gross negligence or willful misconduct of NASDAQ OMX.

- (b) NASDAQ OMX shall defend Subscriber, its employees, directors, other agents, ~~and~~ affiliates and Fund sponsors from any and all Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, ~~and~~ other agents, affiliates and/or Fund sponsors as a result of any allegation that the Service infringes or misappropriates any third parties' U.S. or European Community intellectual property rights. NASDAQ OMX shall indemnify and hold Subscriber, its employees, directors, other agents, ~~and~~ affiliates and Fund sponsors harmless from any and all such Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, ~~and~~ other agents, affiliates and Fund sponsors up to the amount paid by Subscriber for the Service. NASDAQ OMX's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) Subscriber shall promptly notify NASDAQ OMX in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Subscriber or NASDAQ OMX); (ii) Subscriber shall cooperate fully with NASDAQ OMX in the defense thereof and NASDAQ OMX shall be liable to Subscriber for Subscriber's reasonable expenses (excluding reimbursement for the time value of Subscriber's employees, directors, other agents, ~~and~~ affiliates and Fund sponsors in providing such cooperation); and (iii) NASDAQ OMX shall have sole control of the defense and all related settlement negotiations, but upon Subscriber's request, shall apprise Subscriber of the status of any proceedings or negotiations.
- (c) For any and all Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, other agents, and affiliates as a result of any alleged infringement or misappropriation by the Service of any third parties' intellectual property rights other than U.S. or European Community intellectual property rights, Subscriber shall notify NASDAQ OMX in writing of the claim, action or allegation at least five (5) days before a responsive action is needed, so as not to prejudice the rights of Subscriber or NASDAQ OMX, but, in any event, said notification to NASDAQ OMX shall not be given later than 15 days after Subscriber receives notification of any alleged non-U.S. or non-European Community infringement or misappropriation. Notwithstanding the foregoing, in the case of late

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notification, NASDAQ OMX shall be relieved from its indemnification obligations set forth in this Section 14 only to the extent prejudiced by such delay.

- (d) NASDAQ OMX shall not have the obligation to defend, indemnify and hold Subscriber, its employees, directors, other agents and affiliates harmless for any and all Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, other agents and affiliates as a result of any allegation of infringement or misappropriation if the Service has not been used in accordance with this Agreement or to the extent it is based on use of a superseded version of the Service if such infringement or misappropriation would have been avoided by use of the current version of the Service.
- (e) In the event of a claim, action or allegation of infringement or misappropriation or if, in NASDAQ OMX's opinion, such a claim, action or allegation is likely to occur or if the use of the Service is enjoined because of infringement or misappropriation, NASDAQ OMX may, at its sole option and expense, procure for Subscriber the right to continue using the Service, replace or modify the Service to be non-infringing, or terminate the Service.
- (f) This subsection sets forth the entire liability and the exclusive remedy of NASDAQ OMX and Subscriber, its employees, directors, other agents, and affiliates for the infringement or misappropriation of intellectual property.

Section 15. Corporate Names; Proprietary Rights. Subscriber acknowledges and agrees that NASDAQ OMX has proprietary rights in certain names, including, but not limited to, "The NASDAQ Stock Market", "NASDAQ" and "NASDAQ OMX", and that Subscriber shall not use these names in any way that would infringe upon such names. Subscriber acknowledges and agrees that NASDAQ OMX or their information providers have proprietary rights in certain trademarks, service marks, copyrights or patents, registered or unregistered, and Subscriber shall not use these trademarks, service marks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents.

Section 16. Subsequent Parties; Limited Relationship. The Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective permitted successors or assigns. Neither Party shall assign this Agreement (including by operation of law) without the prior written consent of the other Party, such consent not to be unreasonably withheld. NASDAQ OMX may, however, assign this Agreement to any subsidiary or affiliate without the consent of the Subscriber. Nothing in this Agreement, express or implied, is intended to or shall (a) confer on any individual or entity other than the Parties hereto, or their respective permitted successors or assigns, any rights to remedies under or by reason of this Agreement; (b) constitute the Parties hereto partners or participants in a joint venture; or (c) appoint one Party the agent of the other. There are no third party beneficiaries of this Agreement except for NASDAQ OMX, NASDAQ OMX's third party information providers and the persons indemnified under Section 14.

Section 17. Entire Agreement. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, communications, writings, and understandings. In the event of any conflict between the provisions of this Agreement, the Attachments, or the NASDAQ OMX Requirements, the order of preference shall be the NASDAQ OMX Requirements, the Attachments, and this Agreement. All personal pronouns used in the Agreement, whether

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used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in the Agreement shall include the plural, and vice versa. Section headings are included for convenience only and are not to be used to construe or interpret this agreement.

Section 18. Amendment; Waiver.

Formatted: Underline

- (a) NASDAQ OMX may alter any term or condition of this Agreement on ninety (90) days notice to Subscriber, and any use of the Service after such date shall be deemed to be acceptance of the new term or condition. The means of notifying Subscriber of such new term or condition may include, but not be limited to, emailing such term or condition to Subscriber or posting such alteration on NASDAQ Trader.
- (b) No failure on the part of NASDAQ OMX or Subscriber to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement.

Section 19. Governing Law. The Agreement shall be deemed to have been made in the United States, State of New York, and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of New York, without reference to principles of conflicts of laws thereof. Subscriber hereby consents to submit to the jurisdiction of the courts in and of the State of New York in connection with any action or proceeding instituted relating to the Agreement.

Section 20. Authorization. The Agreement shall not be binding upon NASDAQ OMX unless executed by an officer of NASDAQ OMX. Subscriber, NASDAQ OMX, and the individuals executing the Agreement for the respective Parties represent that such individuals are duly authorized by all necessary and appropriate corporate or other action to execute the Agreement on behalf of NASDAQ OMX or Subscriber.

Section 21. Waiver; Severability. ~~No failure on the part of NASDAQ OMX or Subscriber to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any right, power, or privilege under the Agreement.~~ If any of the provisions of the Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid, or unenforceable, the remainder of the Agreement, or the application of such terms or provisions to individuals, entities, or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Comment [m3]: Duplicative of section 18 (b).

Signature Page

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, and the Terms and Conditions attached hereto and incorporated by reference, to be executed by their duly authorized officers.

Subscriber (Firm Name): _____ **Subscriber's Principal Place of Business:**

By: _____
(SIGNATURE)

Name of Signatory: _____

Title: _____

Date: _____

Identification of Subscriber:

a) type of entity, i.e., corporation, limited partnership, general partnership, sole proprietorship, etc.:

b) state or country of incorporation or registration, if applicable:

The NASDAQ OMX Group, Inc., on behalf of NASDAQ OMX Information, LLC and OMX Nordic Exchange Group Ltd.

By: _____

Name of Signatory: _____

Title: _____

Date: _____

Attachment A – MFQS Fund List

Subscriber fund list

NASDAQ OMX publishes a current directory of MFQS listed instruments on a daily basis via the NASDAQ Trader website. Within the [MFQS directory](#), NASDAQ OMX includes the Fund ID, Fund Name, and Fund Family Name.

MFQS listing procedure – U.S. Instruments

As of June 2009, NASDAQ OMX supports mutual funds, money market funds, unit investment trusts (UITs), structured products and annuities. In order to use MFQS for daily valuation reporting, a Subscriber must registered with the U.S. Securities and Exchange Commission (SEC).

In addition, the Subscriber must submit a listing application for each and every instrument that it wishes to report via MFQS.

Currently, MFQS supports the following two levels of participation based on how widely the data is disseminated by downstream users:

1) News Media List: Due to space limitations, newspaper and printed media may restrict the number of funds included in fund tables. In order to assist the newspapers in determining which funds have the broadest appeal to the investing public, NASDAQ OMX established the following eligibility requirements for this top level of funds.

Fund Type	Initial Eligibility Criteria	Maintenance Certification Criteria
News Media List – Open End Mutual Funds and Money Markets	<p><u>Fund Level:</u></p> <ul style="list-style-type: none"> • SEC registration of the fund AND • \$25 million in net assets OR • 1,000 shareholder accounts 	<p><u>Fund Level:</u></p> <ul style="list-style-type: none"> • SEC registration of the fund AND • \$15 million net assets OR • 750 shareholder accounts
News Media List – Closed End Funds and UITs	<p><u>Fund Level:</u></p> <ul style="list-style-type: none"> • SEC registration of the fund AND • \$60 million in net assets 	<p><u>Fund Level:</u></p> <ul style="list-style-type: none"> • \$30 million in net assets

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2) Supplemental List: Since the electronic media2 does not have the same space considerations as the print media, NASDAQ OMX provides a second level of funds for the smaller investment companies. The eligibility requirements for the Supplemental List are as follows:

Fund Type	Initial Eligibility Criteria	Maintenance Certification Criteria
Supplemental List – Mutual Funds (Open and Closed End), Money Market Funds, and UITs	<u>Instrument Level:</u> <ul style="list-style-type: none">• SEC registration of the fund <u>Subscriber Level:</u> <ul style="list-style-type: none">• \$10 million of total assets under management AND• Completion of one full year of operation	<ul style="list-style-type: none">• Not applicable

Attachment B – MFQS Data Formats

As of March 2, 2009, the MFQS system supports the following data fields on its real-time data products:

Mutual Funds, Structured Products, and Variable Annuities
<p>Daily price data:</p> <ul style="list-style-type: none"> ▪ Net Asset Value (NAV) ▪ Offer or Market Price ▪ Total Net Assets ▪ Footnotes <p>Dividend data:</p> <ul style="list-style-type: none"> ▪ Cash dividend amount ▪ Stock dividend amount ▪ Ex-Date ▪ Record Date ▪ Payment Date <p>Other data:</p> <ul style="list-style-type: none"> ▪ Capital Gains (Short Term, Long Term, Other) ▪ Unallocated Distributions
Money Market Funds
<ul style="list-style-type: none"> ▪ Average Maturity ▪ Seven Day Yield ▪ Effective Annualized Seven Day Yield ▪ Total Net Assets ▪ Footnotes
Unit Investment Trusts (UITs)
<p>Daily price data for all UITs:</p> <ul style="list-style-type: none"> ▪ Redemption Net Asset Values (NAV) ▪ Offer Price ▪ Wrap Price ▪ Footnotes <p>Daily price data for debt UITs only:</p> <ul style="list-style-type: none"> ▪ Current Yield ▪ Estimated Long Term Return ▪ Accrued Interest ▪ Par Value Per Unit <p>Other data for all UITs:</p> <ul style="list-style-type: none"> ▪ Income Distribution ▪ Capital Distribution ▪ Record Date ▪ Payment Date

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In addition, MFQS provides the following listing information to the market data community:

All MFQS Supported Instruments
Fund Type
Fund Code
Fund Symbol
Fund Name
Fund Family / Trust Name
CUISIP
Pricing Agent
Newspaper Heading / Newspaper Symbol (for News Media Lists only)
For Unit Investment Trusts only
Deposit Date
Termination Date
Distribution Frequency (Monthly, Quarterly, Semi-Annually, Annually, Other)
Distribution Type (Cash, Reinvest, Wrap, Wrap Cash, Wrap Reinvest)

Subscriber's List of Affiliates

This List of Affiliates is for the Mutual Fund Quotation Service Access Agreement and/or other relevant NASDAQ OMX agreements.

"Affiliate" shall mean any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party.

By submitting the names of its Affiliate(s), Subscriber agrees that the contact information set forth herein shall be deemed to be the contact information for each Affiliate, as may be modified by Subscriber from time to time, and that SUBSCRIBER SHALL ASSUME ALL RESPONSIBILITY FOR AND WILL HOLD HARMLESS AND INDEMNIFY NASDAQ OMX AGAINST ANY ACTION OR INACTION BY AN AFFILIATE AS IF SUCH ACTION OR INACTION WERE THAT OF SUBSCRIBER, AND, SUBSCRIBER AND ITS AFFILIATE(S) SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL ACTIONS AND/OR INACTIONS OF THE OTHER(S).

Date	
Subscriber Name	

Affiliated Company Names	Registered Address