

the position limits of 100,000 contracts on either side of the market, with no more than 60,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring S&P SmallCap 600 options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.<sup>23</sup>

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides that the CBOE will monitor, semi-annually, the Index and will notify staff of the Commission in the event that certain index component capitalization and volume levels fall below designated thresholds. The Commission believes that this monitoring provision is not a material change that raises regulatory concerns not already addressed by the proposal. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons, making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-94-43 and should be submitted by April 20, 1995.

#### V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (File No SR-CBOE-94-43), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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BILLING CODE 8010-01-M

[Release No. 34-35533; File No. SR-NASD-95-06]

#### Self-Regulatory Organizations; Notice of Filing of Proposed rule Change by National Association of Securities Dealers, Inc. Relating to Interpretation of the Board of Governors—Forwarding of Proxy and Other Material Under Article III, Section 1 of the NASD Rules of Fair Practice

March 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1995,<sup>1</sup> 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.

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

The NASD is proposing to amend its Interpretation of the board of Governors—Forwarding of Proxy and Other Material under Article III, Section

<sup>24</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>25</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> The NASD initially submitted the proposed rule change on February 5, 1995. Amendment No. 1, submitted on March 22, 1995, replaces the proposed rule change in its entirety.

1 to the NASD Rules of Fair Practice.<sup>2</sup> Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

#### NASD Rules of Fair Practice

#### Business Conduct of Members

\* \* \* \* \*

#### Article III, Section 1

#### Interpretation of the Board of Governors

#### Forwarding of Proxy and Other Materials Introduction

A member has an inherent duty in carrying out high standards of commercial honor and just and equitable principles of trade to forward (i) all proxy material which is properly furnished to it by the issuer of the securities or a stockholder of such issuer, to each beneficial owner of shares of that issue (*or the beneficial owner's designated investment adviser*) which are held by the member for the beneficial owner thereof and (ii) all annual reports, information statements and other material sent to stockholders, which are properly furnished to it by the issuer of the securities to each beneficial owner of shares of that issue (*or the beneficial owner's designated investment adviser*) which are held by the member for the beneficial owner thereof. For the assistance and guidance of members in meeting their responsibilities, the Board of Governors has promulgated this interpretation. The provisions hereof shall be followed by all members and failure to do so shall constitute conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice of the Association.

#### Interpretation

Section 1. No member shall give a proxy to vote stock which is registered in its name, except as required or permitted under the provisions of Section 2 or 3 hereof, unless such member is the beneficial owner of such stock.

Section 2. Whenever an issuer or stockholder of such issuer soliciting proxies shall timely furnish to a member:

(a)[1] sufficient copies of all soliciting material which such person is sending to registered holders, and

(b)[2] satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation, such member shall transmit promptly to each beneficial owner of stock of such issuer (*or the beneficial owner's designated investment adviser*) which is in its possession or control and registered in a name other than the name of the beneficial owner all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy

<sup>2</sup> NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.05.

<sup>23</sup> Securities Exchange Act Release No. 30944 (July 28, 1992), 57 FR 33376.

records maintained by the member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of rule 17a-4 of the General Rules and Regulations under the Securities Exchange Act of 1934, 17 C.F.R. 240.17a-4. Notwithstanding the provisions of this section, a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they do desire.

Section 3. A member may give a proxy to vote any stock registered in its name if such member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member which has in its possession or within its control stock registered in the name of another member and which desires to transmit signed proxies pursuant to the provisions of Section 2, shall obtain the requisite number of signed proxies from such holder of record.

Notwithstanding the foregoing,

(a) any member designated by a named ERISA Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary;<sup>3</sup> and

(b) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member, may vote such proxies.

Section 4. A member when so requested by an issuer and upon being furnished with:

(a)[1] sufficient copies of annual reports, information statements or other material sent to stockholders, and

(b)[2] satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner (or the beneficial owner's designated investment adviser) of stock of such issuer which is in its possession and control and registered in a

name other than the name of the beneficial owner all such material furnished.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

*Section 5. For purposes of this Interpretation, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to stock holders. The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser. Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC pursuant to the Investment Advisers Act of 1940 and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information. Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.*

\* \* \* \* \*

## 2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the NASD Board of Governors at its meeting on January 16, 1995, which authorized the filing of the rule change with the SEC. No other action by the NASD is necessary for the filing of the rule change. Article VII, Section 1(a)(4) of the By-Laws permits the Board of Governors to make interpretations of the Rules of Fair Practice without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to John H. Pilcher, General Counsel's Office, at (202) 728-8287.

## 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 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

The NASD reviewed recent amendments to New York Stock Exchange ("NYSE") rules,<sup>4</sup> to allow a beneficial owner of stock to designate a registered investment adviser to vote proxies and receive proxy and related issuer material in lieu of the beneficial owner. Upon review, the NASD believes that providing beneficial owners with the right to make this type of designation benefits investors, and that uniformity between NASD rules and NYSE rules on this subject is appropriate. The NASD also believes that certain investment managers of ERISA Plans in the over-the-counter market should be allowed to vote proxies.<sup>5</sup> The NASD, therefore, proposes to amend the Board of Governors Interpretation—Forwarding of Proxy and Other Materials under Article III, Section 1 of the NASD Rules of Fair Practice ("Interpretation") to make the NASD rules on these subjects substantially similar to NYSE rules.

### Designated Registered Investment Advisers

The rule change would allow a beneficial owner of any issuer's stock to inform an NASD member that is the record holder of that stock that the beneficial owner has authorized a designated registered investment adviser to receive and vote proxies and to receive related issuer material in lieu of the beneficial owner.

The rule change would provide that, for purposes of the Interpretation, a "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to receive and vote the proxy, and to receive annual reports and other material sent to stock holders. The beneficial owner would be required to sign a written designation to the member; such designation must be addressed to the member; and such designation must include the name of the designated investment adviser. The beneficial owner would have an

<sup>4</sup> Securities Exchange Act Release No. 34596 (Aug. 25, 1994), 59 FR 45050 (Aug. 31, 1994) ("Release 34-34596").

<sup>5</sup> NYSE Rule 450(1) is comparable to the proposed rule change. See 2 NYSE Guide, Rules of Board, Rule 450 (CCH) ¶ 2450.

<sup>3</sup> For purposes of this interpretation, the term "ERISA" is an acronym for the Employee Retirement Income Security Act of 1974.

unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission would have to be in writing and submitted to the member.

The rule change would require that a member who receives a written designation from a beneficial owner ensure that the beneficial owner's designated investment adviser is registered under the Investment Advisers Act of 1940; is exercising investment discretion pursuant to an advisory contract for the beneficial owner; and is designated in writing by the beneficial owner to receive and vote proxies for stock which is in the possession of the member. Members would be required to keep records substantiating this information.<sup>6</sup>

#### ERISA Investment Managers

The rule change would provide that any member designated by a named ERISA Plan fiduciary as the investment manager<sup>7</sup> of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities of the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset, and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>8</sup> in that the rule change will benefit investors by: (i) Providing investor with the ability to designate their registered investment advisers to receive and vote their proxies and to receive other material; (ii) providing authority to certain investment managers of ERISA Plans to receive and vote proxies and (iii) providing desired uniformity between NASDA rules and NYSE rules on such proxy procedures.

<sup>6</sup>Release 34-34596, *supra* n. 4, clarified that the NYSE would provide certain additional guidance regarding the NYSE rule changes under an NYSE Information Memo. The NASD's rule change would contain substantially similar requirements as described under Release 34-34596 and contained in the NYSE Information Memo (See NYSE Information Memo No. 94-41 (Sept. 7, 1994)).

<sup>7</sup>ERISA defines the term "investment manager" to mean any fiduciary (other than a trustee or named fiduciary, as defined in Section 1102(a)(2) of Title 29): (A) Who has the power to manage, acquire, or dispose of any asset of a plan; (B) who is: (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in that Act; or (iii) an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to that plan. See 29 U.S.C. 1002 (38).

<sup>8</sup>15 U.S.C. 78o-3.

#### (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, as amended.

#### (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 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 self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 SR-NASD-95-06 and should be submitted by April 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

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BILLING CODE 8010-01-M

[Rel. No. IC-20967; 811-4355]

#### Kidder, Peabody Tax-Free Income Fund; Notice of Application

March 24, 1995.

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

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Kidder, Peabody Tax-Free Income Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on March 7, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 60 Broad Street, New York, New York 10004.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

#### SUPPLEMENTARY INFORMATION:

The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### Applicant's Representations:

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On July 19, 1985, applicant filed a notification of registration pursuant to section 8(b) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on November 22, 1985, and applicant commenced the initial public offering of its National Tax-Free