

Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWSA), 42 U.S.C. 10154. Under section 134 of NWSA, the Commission, at the request of any party to the proceeding must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, proceeded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWSA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the

proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated March 31, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457.

Dated at Rockville, MD, this 5th day of May 1995.

For the Nuclear Regulatory Commission.

**Alan B. Wang,**

*Project Manager, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-11758 Filed 5-11-95; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**Requests Under Review by Office of Management and Budget**

Agency Clearance Officer: Michael E. Bartell, (202) 942-8800

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549

**Extension:**

Rule 19d-3—File No. 270-245

Rule 19h-1—File No. 270-247

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections for the following:

Rule 19d-3 prescribes the form and content of application to the Commission for review of final disciplinary sanctions, denials of membership, participation or association with a member or prohibitions or limitations of access to services imposed by self-regulatory organizations. It is estimated that approximately 50 respondents will incur an average burden of 18 hours per year to comply with this rule, for a total annual burden of 900 hours.

Rule 19h-1 prescribes the form and content of notices and applications by self-regulatory organizations regarding proposed admissions to, or

continuances in, membership, participation or association with a member of any person subject to a statutory disqualification. It is estimated that approximately 70 respondents will incur an average burden of 4.5 hours per year to comply with this rule, for a total annual burden of 315 hours.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, Project numbers 3235-0204 (Rule 19d-3) and 3235-0259 (Rule 19h-1), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 1995.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-11771 Filed 5-11-95; 8:45 am]

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[Release No. 34-35681; File No. SR-NASD-95-06]

**Self-Regulatory Organizations; Order Approving 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**

May 5, 1995.

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") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder.<sup>3</sup> The proposed rule change amends its Interpretation of the Board of Governors—Forwarding of Proxy and Other Material under Article III, Section 1 of the NASD Rules of Fair Practice<sup>4</sup> ("Interpretation") to allow a

<sup>1</sup> The NASD initially submitted the proposed rule change on February 6, 1995. Amendment No. 1, submitted on March 22, 1995, replaced the initial submission in its entirety.

<sup>2</sup> 15 U.S.C. 73s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> *NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.05.*

beneficial owner to stock to designate a registered investment adviser to vote proxies and receive proxy and related issuer material in lieu of the beneficial owner, and to allow certain investment managers of ERISA Plans<sup>5</sup> to vote proxies.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35533, March 24, 1995) and by publication in the **Federal Register** (60 FR 16521, March 30, 1995). No comment letters were received. This order approves the proposed rule change.

### Designated Registered Investment Advisers

The Interpretation currently does not permit 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 except as permitted under the rules of any national securities exchange to which the NASD member that is the holder of record also belongs.<sup>6</sup> By contrast, the New York Stock Exchange, Inc. ("NYSE") recently amended its rules<sup>7</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. The Commission recognized that allowing investors to designate an investment adviser to receive proxy and related issuer materials and vote their proxies removes impediments to a free and open market.<sup>8</sup> Investors have been requesting that investment advisers be authorized to receive issuer materials and vote proxies for the investor. Investors choosing an investment adviser arrangement may believe that they do not need to receive issuer information because the investment adviser is making investment decisions on the investor's behalf. Furthermore, the Commission recognized that some investors, in choosing to utilize the services of an investment adviser, are indicating that they do not have the knowledge or inclination to review complicated issuer or proxy materials or to vote proxies. These investors, in

particular, may feel frustrated when they receive unwanted issuer materials.

The rule change approved today will allow a beneficial owner of any issuer's stock to inform any NASD member that is the holder of record 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 will provide beneficial owners with the right to make this type of designation whether or not the member holding the beneficial owner's securities is also an NYSE member.

The rule change provides 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 designed 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 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 requires 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.

### ERISA Investment Managers

NYSE Rule 450(1)<sup>9</sup> provides that any NYSE member organization designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan may vote the proxies in accordance with its 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 fiduciary. The rule change approved today will conform the Interpretation to NYSE Rule 450(1). The rule change permits any member designated by a named ERISA Plan fiduciary as the investment manager<sup>10</sup> of stock held as assets of the ERISA Plan to vote the proxies in accordance with 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.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>11</sup> in that the rule change will benefit investors by: (i) providing investors 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 NASD rules and NYSE rules on such proxy procedures.

The Commission believes that allowing investors to designate an investment adviser to receive proxy and related issuer materials and vote their proxies removes impediments to a free and open market. As noted above, the Commission has recognized that investors have been requesting that investment advisers be authorized to receive issuer materials and vote proxies for the investor. Those investors may feel that they do not need to receive issuer information since the investment adviser is making investment decisions on the investor's behalf. The Commission acknowledges that investors might view the receipt of issuer materials and the ability to vote proxies as part of the investment adviser's continuing activities in managing customer accounts. The Commission also acknowledges that some investors, in choosing to utilize the services of an investment adviser, are indicating that they do not have the knowledge or inclination to review

<sup>5</sup> For purposes of this interpretation, the term "ERISA" is an acronym for the Employee Retirement Income Security Act of 1974.

<sup>6</sup> The records of the members must clearly indicate which procedure it follows.

<sup>7</sup> Securities Exchange Act Release No. 34596 (Aug. 25, 1994, 59 FR 45050 (Aug. 31, 1994)).

<sup>8</sup> *Id.*

<sup>9</sup> 2 NYSE Guide, Rules of Board, Rule 450 (CCH) ¶ 2450.

<sup>10</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>11</sup> 15 U.S.C. 78o-3.

complicated issuer or proxy materials or to vote proxies. These investors, in particular, may feel frustrated when they receive unwanted issuer materials. Furthermore, the Commission believes that the proposed rule change will permit the investment adviser to make more expedient, informed investment decisions, thereby facilitating securities transactions in accordance with the Act. For these reasons, the Commission believes that the proposed rule change appropriately gives investors the freedom to choose whether to receive proxy and related issuer materials and vote the proxies or to designate an investment adviser to perform these functions on their behalf.

The Commission also believes that amending the Interpretation to allow a member that is the investment manager for an ERISA Plan to vote proxies on behalf of the ERISA Plan is consistent with the policies embodied in Section 15A(b)(6) because the amendment would conform the Interpretation to NYSE Rule 450(1) and will permit the member to vote proxies in accordance with its ERISA Plan fiduciary responsibilities. The Commission notes that in voting proxies as a plan fiduciary, an investment manager must consider those factors which would affect the value of the plan's investment and is prohibited from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. In addition, the Commission believes that the rule change should prevent potential conflicts between NASD rules and ERISA guidelines.<sup>12</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR-NASD-95-06 be, and hereby is, approved.

<sup>12</sup> In an interpretive letter dated February 23, 1988, the Pension and Welfare Benefits Administration of the United States Department of Labor ("Department") set forth its view regarding proxy voting by fiduciaries of employee retirement plans subject to ERISA. In the interpretive letter, the Department stated that the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock. The Department stated its position that, with respect to the inquiry set forth in the request for interpretation (*i.e.*, a proposal to change the state of incorporation of a corporation in which a plan owned shares, and a proposal to rescind "poison pill" arrangements, the decision as to how proxies should be voted are fiduciary acts of plan asset management. The Department concluded that, to the extent that the plan permits a named fiduciary to appoint an investment manager to manage, acquire and dispose of plan assets, and the named fiduciary has not expressly reserved the voting rights to itself, there would be an ERISA violation if, during the duration of such delegation, any person other than the investment manager were to decide how to vote any proxy with respect to shares owned by the plan. See Department Letter on Proxy Voting By Plan Fiduciaries, dated February 23, 1988, BNA Pension Reporter, February 29, 1988, vol. 15, p. 391.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-11772 Filed 5-11-95; 8:45 am]

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[Release No. 34-35687; File No. SR-NYSE-95-17]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Specialists Displaying the Full Size of Certain Orders**

May 8, 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 April 21, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of an Information Memo which discusses procedures under Exchange rules with respect to specialists displaying orders received through the SuperDOT order routing system and the full size of orders received by specialists manually which are subsequently entered into the electronic book.

**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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

**1. Purpose**

The Exchange is proposing to issue an Information Memo outlining its policy with respect to displaying certain orders received by a specialist.<sup>1</sup> The policy requires specialists to display the full size<sup>2</sup> of all orders received through the SuperDOT order routing system and the full size of all orders received by specialists manually which are subsequently entered into the electronic book. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer. The policy also sets forth the specialist's responsibility when a member who gives an order requests that less than the full size of the order be shown in the quotation. In that situation, a specialist is only responsible to enter in the electronic book and show the size requested. The portion not requested to be shown will be handled manually as a "held" order, but will be last in terms of time priority to all other orders on the specialist's electronic book at that price. If the specialist is subsequently requested to show an additional portion, or the remainder, of the order, the specialist would enter the price and size into the electronic book, with the order so entered having priority on the book *vis-a-vis* other orders as of the time of entry on the book. The specialist would increase the quotation size to reflect the additional amount entered on the book.

The Exchange believes that this policy is consistent with Exchange Rule 104, which requires the effective execution of agency orders received by specialists, and with NYSE Rule 60(e).<sup>3</sup> The Exchange expects that specialists would display *as soon as practicable* any order which, in relation to current market conditions in a particular security,

<sup>1</sup> In Information Memo No. 93-12, the Exchange has previously advised specialists that, pursuant to NYSE Rule 79A.10, all orders received by specialists through the SuperDOT system are deemed to be accompanied by an instruction that they be quoted at the limit price on the order when such limit price is better than the current quotation.

<sup>2</sup> Currently the Exchange is capable of displaying quotations up to 99,900 shares. The Exchange plans to expand this capability in the future.

<sup>3</sup> NYSE Rule 60(e) requires a specialist to promptly report the highest bid and lowest offer made in the trading crowd and the associated quotation size that he wishes to make available to quotation vendors. The rule also requires a specialist to promptly report whenever a bid, offer or quotation size he previously reported is to be revised and whenever a bid and/or offer he previously reported is to be cancelled or withdrawn.