

remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the amended proposed change to NYSE rule 36 supports the mechanism of free and open markets by providing for increased means by which communications to and from the Floor of the Exchange may take place.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### 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 Exchange consents, the Commission will:

(A) By order approve the 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, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 Exchange. All should refer to File No. SR-NYSE-2002-11 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1879 Filed 1-27-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47215; File No. SR-NYSE-2002-50]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rules 450 ("Restrictions on Giving of Proxies"), 451 ("Transmission of Proxy Material"), 452 ("Giving Proxies by Member Organizations"), and 465 ("Transmission of Interim Reports and Other Material")

January 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 16, 2002, 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 NYSE. On December 19, 2002, the NYSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE is proposing to amend NYSE rule 450 ("Restriction on Giving

of Proxies"), NYSE rule 451 ("Transmission of Proxy Material"), NYSE rule 452 ("Giving Proxies by Member Organizations"), and NYSE rule 465 ("Transmission of Interim Reports and Other Material") to allow authorized state-registered investment advisers to receive and vote proxy materials on behalf of beneficial owners. The text of the proposed rule change is below. Proposed new language is in italics; deleted language is in brackets.

#### Restriction on Giving of Proxies

Rule 450. No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of rule 452, unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing,

(1) Any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) Any person registered as an investment adviser, *either* under the Investment Advisers Act of 1940 *or under the laws of a state*,<sup>4</sup> 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 organization, may vote such proxies.

#### Transmission of Proxy Material

Rule 451. (a) Whenever a person soliciting proxies shall furnish a member organization:

(1) [C]opies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that [he] *the person* will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation,

such member organization shall transmit to each beneficial owner of stock which is in its possession or

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 19, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE revised the first footnote of proposed NYSE rule 451 to define the term "state" by reference to the Investment Advisers Act of 1940, instead of the Securities Exchange Act of 1934

<sup>4</sup> The term "state" as used herein shall have the meaning given to such term in Section 3(a)(16) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

control or to an investment advisor, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter “designated investment adviser”) to receive soliciting material in lieu of the beneficial owner, the furnished material; and

(b) No Change.

\* \* \* \* \*

### Giving Proxies by Member Organizations

Rule 452. A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

#### *Voting Member Organization Holdings as Executor, etc.*

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

#### *Voting Procedure Without Instructions*

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment advisor, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter “designated investment adviser”) to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of rule 451, and which has not received instructions from the beneficial owner or from the beneficial owner’s designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to voted such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not

include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

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### Transmission of Interim Reports and Other Material

Rule 465. A member organization, when so requested by a company, and upon being furnished with:

(1) Copies of interim reports of earnings or other material being sent to stockholders, and

(2) Satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises investment discretion pursuant to an advisory contract for such beneficial owner.

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## 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 Exchange 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 Exchange 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

#### I. Purpose

##### *Background and Prior Amendments*

On August 25, 1994, the Commission approved amendments to Exchange rules related to voting of proxies and transmission of proxy and related issuer material.<sup>5</sup> The affected rules were NYSE rule 450 (“Restrictions on Giving of

Proxies”), NYSE rule 451 (“Transmission of Proxy Material”), NYSE rule 452 (“Giving Proxies by Member Organizations”), and NYSE rule 465 (“Transmission of Interim Reports and Other Material”).

The 1994 amendments gave beneficial owners the ability to authorize investment advisers registered under the Investment Advisers Act of 1940 (“Advisers Act”)<sup>6</sup> who exercise investment discretion pursuant to an advisory contract and who have been designated to the member organization in writing by the beneficial owner, to receive proxy soliciting materials, annual reports and other related issuer material and to vote proxies for the beneficial owners of securities. In other words, the amendments permitted member organizations to comply with such duly authorized customer requests, provided the designated adviser was registered under the Advisers Act.

Prior to these amendments, Exchange rules required transmission of proxy and related materials by the member organization to each beneficial owner of stock held in the member organization’s possession and control. In fact, pre-amendment NYSE rule 451 explicitly required that proxy materials be sent to a beneficial owner even if such owner had instructed the member organization not to do so.

#### *The National Securities Market Improvement Act Amendments*

Effective July 1997, the Commission adopted new rules and rule amendments under the Advisers Act to implement provisions under title III of the National Securities Markets Improvement Act of 1996 that reallocate regulatory responsibilities for investment advisers between the Commission and the states.<sup>7</sup> Generally, title III (a/k/a The Investment Advisers Supervision Coordination Act or the “Coordination Act”) provides for Commission regulation of advisers with \$25 million or more of assets under management, and state regulation of advisers with less than \$25 million of assets under management.

Specifically, new section 203A(a) of the Advisers Act<sup>8</sup> provides that an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from

<sup>6</sup> 15 U.S.C. 80b.

<sup>7</sup> 62 FR 28112 (May 22, 1997); Release No. IA-1633, File No. S7-31-96.

<sup>8</sup> 15 U.S.C. 80b-3a.

<sup>5</sup> See Exchange Act Release No. 34596, 59 FR 45050 (August 31, 1994) and NYSE Information Memo Number 94-41 (September 7, 1994).

registering with the Commission unless the adviser:

(i) Has assets under management of not less than \$25 million (or such higher amount as the Commission may, by rule, deem appropriate), or

(ii) Is an adviser to an investment company registered under the Investment Company Act of 1940.

#### *The Proposed Amendments*

The provisions of the Coordination Act have been estimated to reduce by two-thirds the number of advisers eligible to register with the Commission.

Consequently, a large number of investment advisers (those with less than \$25 million under management) who exercise investment discretion pursuant to an advisory contract, and have been designated to the member organization in writing by the beneficial owner to receive and vote proxy materials, are no longer authorized to do so under NYSE Rules. NYSE believes that amending NYSE rules 450, 451, 452, and 465 to allow such authorization to be extended to advisers registered under state law would allow for the reasonable customer expectation that duly designated advisers, subject to regulation, be permitted to receive and vote proxy materials on their behalf.

The Exchange represents that the proposed amendments are consistent with a proposed rule change recently filed by the National Association of Securities Dealers, Inc. with the Commission.<sup>9</sup>

#### 2. Statutory Basis

NYSE believes that the basis under the Exchange Act for this proposed rule change is the requirement under section 6(b)(5) of the Act<sup>10</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 NYSE. All submissions should refer to the file number in the caption above and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1881 Filed 1-27-03; 8:45 am]

**BILLING CODE 8010-01-P**

#### **SMALL BUSINESS ADMINISTRATION**

##### **[Declaration of Disaster #3459]**

##### **State of Texas (Amendment #7)**

In accordance with a notice received from the Federal Emergency Management Agency, dated January 16, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 31, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 17, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-1923 Filed 1-27-03; 8:45 am]

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#### **DEPARTMENT OF STATE**

##### **[Public Notice 4223]**

#### **Secretary of State's Advisory Committee on Private International Law: Study Group on Reciprocal Enforcement of Child Support Obligations; Notice of Meetings**

There will be a public meeting of a Study Group on International Child Support of the Secretary of State's Advisory Committee on Private International Law, on Wednesday, February 5, 2003, from 1 p.m. to 4 p.m. at the Hyatt Regency Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC (Columbia Room, Ballroom level).

The purpose of this meeting is to assist the Department of State and the Office of Child Support Enforcement of the Department of Health and Human Services in preparing for the upcoming negotiation, under the auspices of the Hague Conference on Private International Law, of a new international convention on the international recovery of child support and other forms of family maintenance. The first session of this negotiation is scheduled for May 2003 in The Hague. Documents relevant to this project can be found on the web site of the Hague Conference ([www.hcch.net](http://www.hcch.net)).

The Study Group meetings are open to the public up to the capacity of the meeting rooms. Interested persons are invited to attend and to express their views. Persons who wish to have their views considered are encouraged, but not required, to submit written

<sup>9</sup> See Exchange Act Release No. 47214 (January 17, 2003).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).