(c) does not involve overreaching on the part of any person concerned.

4. No Series or Series Affiliate will cause an Unaffiliated Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is the Depositor or a person of which the Depositor is an affiliated person (each an ''Underwriting Affiliate''). An offering during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

5. The board of directors of an Unaffiliated Underlying Fund, including a majority of the disinterested directors, will adopt procedures reasonably designed to monitor any purchases by the Unaffiliated Underlying Fund of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of directors will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in shares of the Unaffiliated Underlying Fund. The board of directors will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from Underwriting Affiliates have changed significantly from prior years. The board of directors shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

6. An Unaffiliated Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than 6 years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first 2 years in an easily accessible place, a written record of each purchase made once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeded the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

7. Prior to an investment in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the board of directors of the Unaffiliated Fund and the investment adviser to the Unaffiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period not less than 6 years from the end of the fiscal year in which any investment occurred, the first 2 years in an easily accessible place.

8. The Trustee will waive or offset fees otherwise payable by a Series in an amount at least equal to any compensation (including 12b–1 Fees) received by the Depositor or Trustee, or an affiliated person of the Depositor or Trustee, from an Unaffiliated Fund in connection with the investment by a Series in the Unaffiliated Fund.

9. Any sales charges and/or service fees (as those terms are defined in Rule 2830 of the NASD Conduct Rules) charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–23050 Filed 9–9–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 26172; 812–12895]**

## ISI Strategy Fund, Inc., et al.; Notice of Application September 4, 2003.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

*Summary of Application:* The requested order would permit ISI Strategy Fund, Inc. (''Fund'') not to reconstitute its board of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Los Angeles Capital Management and Equity Research, Inc. (''LA Capital'') to rely upon the safe harbor provisions of section 15(f).

*Applicants:* The Fund, International Strategy & Investment Inc. (''ISI'') and LA Capital.

*Filing Dates:* The application was filed on October 15, 2002 and amended on September 2, 2003.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2003, and should be accompanied by proof of service on the applicants, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o R. Alan Medaugh, ISI Strategy Fund, Inc., 535 Madison Avenue, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Jean E. Minarick, Senior Counsel, at (202)

942–0527, or Mary Kay Frech, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

**Applicants' Representations**

1. The Fund, a Maryland corporation, is registered under the Act as an open-end management investment company. ISI, a Delaware corporation, serves as the investment adviser to the Fund and is registered under the Investment Advisers Act of 1940 (''Advisers Act''). LA Capital, a California corporation, serves as the sub-adviser to the Fund and is registered under the Advisers Act.

2. Until March 29, 2002, Wilshire Asset Management, the asset management division of Wilshire Associates, Incorporated (''Wilshire'') and an investment adviser registered under the Advisers Act, served as sub-adviser to the Fund pursuant to a sub-advisory agreement between Wilshire and ISI. On March 29, 2002, Wilshire spun off its asset management division into a separate, independent company, LA Capital (''Transaction''). Upon the consummation of the Transaction, Wilshire's investment sub-advisory agreement with the Fund was automatically terminated. Pursuant to a new sub-advisory agreement approved by the Fund's Board of Directors (''Board''), including a majority of directors who are not interested persons of the Fund, ISI or LA Capital as set forth in section 2(a)(19) of the Act, on March 27, 2002, LA Capital became the sub-adviser to the Fund effective March 29, 2002. On June 26, 2002, shareholders of the Fund approved the sub-advisory agreement with LA Capital. In connection with the Transaction, for the three year period beginning March 29, 2002, LA Capital has determined to seek to comply with the ''safe harbor'' provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, more than 25 percent of the Fund's Board would be ''interested persons'' for purposes of section 15(f)(1)(A) of the Act.

3. Applicants state that Mr. Carl Vogt is and has been a director of the Fund since 1995. Mr. Vogt is of counsel in the Washington, DC office of Fulbright & Jaworski L.L.P. (''Fulbright'').[1] Applicants state that the Los Angeles, CA office of Fulbright (''Fulbright LA'') has rendered general corporate legal services to and received legal fees from LA Capital in connection with the formation of LA Capital. Fulbright LA continues to provide general corporate legal services to LA Capital. Applicants state, however, that these services do not relate in any way to the Fund, the Act, or the Advisers Act. Applicants represent that the fees paid to Fulbright LA by LA Capital are expected to represent significantly less than 1% of Fulbright's total annual revenues. Applicants represent that Mr. Vogt has not participated in Fulbright LA's representation of LA Capital in any manner and will not be involved in such representation for as long as he is a director of the Fund. Applicants represent that Mr. Vogt has no professional or business relationships with LA Capital other than his position as a director of the Fund.

**Applicants' Legal Analysis**

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser as defined in Section 2(a)(3) of the Act) to realize a profit on the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A), which provides that, for a period of three years after the sale, at least 75 percent of the board of directors of the investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(iv) provides that any person or partner or employee of any person who has acted as legal counsel to the investment adviser or principal underwriter of an investment company at any time since the beginning of the last two fiscal years of such investment company is an interested person of such investment adviser or principal underwriter. Consequently, Mr. Vogt could be deemed to be an interested person of LA Capital as a result of Fulbright LA's representation of LA Capital.

2. The Fund currently has five directors, three of whom are not interested persons of ISI or LA Capital. Without the requested exemption, the Fund would have to reconstitute its Board to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act.

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) from section 15(f)(1)(A) of the Act. Applicants submit that the addition of directors to achieve the 75 percent disinterested director ratio required by section 15(f)(1)(A) would make the Board unduly large and unwieldy, unnecessarily increase the ongoing expenses of the Fund, and cause the Fund to incur additional expenses in connection with the selection and election of the additional directors.

5. Applicants assert that the requested exemption is consistent with the protection of investors. Applicants state that the Fund will continue to treat Mr. Vogt as an interested person of the Fund and LA Capital for all purposes other than section 15(f)(1)(A) of the Act so long as Mr. Vogt is considered an ''interested person'' as defined in section 2(a)(19) of the Act. Applicants also state that the conditions to the requested order further would assure investor protection.

6. Applicants also submit that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants assert that the legislative history of section 15(f) indicates that Congress intended the Commission to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on an investment company. Applicants also state that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where an investment company's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser.

[1] Mr. Vogt retired as a partner on December 31, 2001 and effective January 1, 2002, he became ''of counsel'' on a part-time basis to Fulbright. Mr. Vogt's compensation is based directly on the hours of service performed by him and billed to Fulbright's clients. Mr. Vogt currently receives as compensation a percentage of his own hours billed, or a percentage of the fees paid less expenses on fixed-fee arrangements. Mr. Vogt is not compensated in relation to Fulbright's overall profits and receives no economic benefit from legal representations by Fulbright in areas outside his own personal practice. Mr. Vogt does not have fixed hours of employment and sets his work schedule based on his clients' needs and he does not serve as a billing partner. Mr. Vogt does not render legal advice regarding any issues relating to investment companies or investment advisers. Mr. Vogt's practice involves solely aviation law, a specialized area of law distinct from any subject matter that LA Capital has consulted, or would consult, with Fulbright.

Applicants assert that these circumstances do not exist in the present case.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. If, within three years of the completion of the Transaction, it becomes necessary to replace any director of the Fund, that director will be replaced by a director who is not an ''interested person'' of LA Capital or ISI within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of LA Capital or ISI.
2. Mr. Vogt will not be involved in Fulbright's representation of LA Capital.
3. Fees paid to Fulbright by LA Capital shall not, in the aggregate, exceed 1% of Fulbright's total revenues during any fiscal year.
4. Mr. Vogt will not be compensated in relation to the overall profits of Fulbright and will not receive any economic benefit from legal representation by Fulbright in areas outside of his own personal practice.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–23049 Filed 9–9–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48434; File No. SR–NASD–2003–81]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Quote Decrementation in SuperMontage

September 3, 2003.

### I. Introduction

On May 12, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 4710 and the decrementation of Quotes/Orders of order delivery Electronic Communication Networks (''Order Delivery ECNs'') in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''). On May 29, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on June 12, 2003.[4] The Commission received one comment letter on the proposed rule change.[5] This order approves the proposed rule change, as amended.

### II. Description of the Proposed Rule Change

Nasdaq proposes to modify the SuperMontage decrementation process when an Order-Delivery ECN declines,[6] partially-fills, or fails to respond to a non-directed order delivered to it within 30 seconds (''time-out'').[7] Currently, SuperMontage rules provide that when an Order Delivery ECN declines, partially-fills, or times-out, without immediately transmitting a revised attributable Quote/Order at an inferior price, SuperMontage will zero out all of the ECN's Quotes/Orders on the same side of the market at the price of the declined order (or better). Under this proposal, Order Delivery ECNs will not have all of their trading interest at the declined price level (or better) removed from the system. Instead, SuperMontage would only remove the total amount of each individual Quote/Order to which an order was delivered by SuperMontage.

Nasdaq provided the following example of how the proposed modification to the decrementation process would operate for an ECN alone at the inside that elected to enter three separate bid Quotes/Orders at the same price level in SuperMontage:

ECN Quote (#1)—1,000 shares @ 20.00
ECN Order (#2)—500 shares @ 20.00
ECN Order (#3)—300 shares @ 20.00

The inside aggregated bid shows 1,800 shares @ 20.00.

1. SuperMontage receives an 800 share market sell order.
2. In response, SuperMontage sends an 800 share delivery to ECN Quote (#1). Upon dispatch, SuperMontage immediately decrements ECN Quote (#1) by the amount of the delivery (800 shares) leaving a display quote of 1,000 shares in ECN Quote (#1) that remains available for execution.
3. The ECN declines to execute the 800 share delivery to ECN Quote (#1).
4. The ECN's decline results only in the immediate removal of ECN Quote (#1), *i.e.,* the 800 shares originally decremented and the 200 share remainder of ECN Quote (#1). Orders (#2) and (#3) remain in the system and continue to be eligible for execution.

The system reallocates the 800 shares from the incoming order in Step 1 against ECN orders (#2) and (#3), if not executed by a subsequent incoming order, before moving, if necessary, to the next best bid.[8]

Thus, under the proposal, only individual Quotes/Orders would be removed in full by a decline, partial-fill, or a time-out when no revised attributable Quote/Order is immediately transmitted at an inferior price; not all trading interest at the declined price level or better. Other ECN Quotes/Orders at a particular price level that are not part of a SuperMontage delivery resulting in a decline, partial-fill, or time-out would be retained in the system and remain available for execution, and are not traded through. Nasdaq represents that locked or crossed markets will not be created as a result of the proposed rule change.

### III. Summary of Comments

The Commission received one comment letter from Bloomberg Tradebook, LLC (''Bloomberg'') on the proposed rule change.[9] Bloomberg neither explicitly supported nor opposed the proposed rule change, although it commented on decrementation generally, as well as on the proposed rule change. Bloomberg noted that conceptually, ''(d)ecrementation is a design feature of SuperMontage that is intended to preserve the continuity of the market

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 29, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq replaced the proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 47993 (June 5, 2003), 68 FR 35246 (June 12, 2003).

[5] *See* letter from Kim Bang, Bloomberg Tradebook, LLC, to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated July 14, 2003 (''Bloomberg Letter'').

[6] An ECN's decline of a delivered order must comply with the Commission's Quote Rule, 17 CFR part 240. 11Ac1–1. NASD Regulation surveils for Quote Rule violations.

[7] *See* Securities Exchange Act Release No. 48196 (July 17, 2003), 68 FR 43777 (July 24, 2003) (Notice of filing and immediate effectiveness of File No. NASD–2003–108 to temporarily increase the non-directed order maximum response time for Order-Delivery ECNs in Nasdaq's SuperMontage System.)

[8] Nasdaq clarified under the proposal a subsequent incoming order could potentially execute against an ECN's remaining orders prior to the return of a declined order to the system. Telephone conversation between Thomas P. Moran, Associate General Counsel, Office of the General Counsel, to Marc McKayle, Special Counsel, Division, Commission on August 27, 2003.

[9] *See* Bloomberg Letter, *supra* note 5.