

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹² and rule 19b-4(f)(6) thereunder.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to operate the PostData pilot program without interruption through February 28, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 NASD. All submissions should refer to file number SR-NASD-2003-02 and should be submitted by February 18, 2003.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47214; File No. SR-NASD-2002-124]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Amendment to Rule 2260 To Expand the Definition of "Designated Investment Adviser" To Include State Registered Investment Advisers for the Purpose of Receiving and Voting Proxy Materials on Behalf of Beneficial Owners

January 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² notice is hereby given that on September 19, 2002, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. On January 8, 2003, the NASD submitted Amendment No. 1 to the proposed rule change.³ 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

NASD is proposing to amend NASD Conduct rule 2260 to expand the definition of "designated investment adviser" to include all state registered investment advisers.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Kosha K. Dalal, Assistant General Counsel, Regulatory Policy and Oversight, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated January 8, 2003 ("Amendment No. 1"). In Amendment No. 1, the NASD proposes to (1) revise the first footnote of proposed NASD rule 2260 to define the term "state" by reference to the Investment Advisers Act of 1940, instead of the Securities Exchange Act of 1934, and (2) underline the text of two proposed footnotes in proposed NASD rule 2260 to indicate that they are proposed new text.

Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 2260. Forwarding Proxy and Other Materials.

(a)-(e) No change.

(f) For purposes of this rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 *or registered as an investment adviser under the laws of a state*,⁴ 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 security holders.

(1) The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser.

(2) Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act of 1940 *or with a state as an investment adviser under the laws of such state*,⁵ 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.

(3) 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.

(g) No change.

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

In its filing with the Commission, 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. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁴ The term "state" as used herein shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

⁵ Members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository ("IARD") system.

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

1. Purpose

Rule Modernization

In July 2001, NASD announced in Notice to Members 01-35 its intention to move forward with an initiative designed to ensure that NASD rules are as streamlined as possible and impose the least burden necessary to accomplish their objectives while achieving investor protection. In response to Notice to Members 01-35, some commenters asked NASD to review NASD Conduct rule 2260 to consider expanding the categories of persons to whom a member may forward proxy and other materials.

Based on the research and analysis of NASD Conduct rule 2260 conducted by NASD staff and the Economic Advisory Board ("EAB"), which was formed by NASD to assist with an economic analysis of certain NASD rules, the EAB made a formal recommendation to expand the definition of "designated investment adviser" in NASD Conduct rule 2260 to include all state registered investment advisers.

Proposed Expansion

Currently, NASD Conduct rule 2260 requires members to forward proxy material, annual reports, information statements and other material sent to security holders to the beneficial owner or the beneficial owner's "designated investment adviser."⁶ The rule defines a "designated investment adviser" as a person registered under the Investment Advisers Act of 1940 ("Advisers Act") 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 security holders.

NASD Conduct rule 2260 was amended in 1995 to include federally registered investment advisers.⁷ However, as a result of the passage in 1996 of the National Securities Markets Improvement Act ("NSMIA"), certain state registered investment advisers

need not be registered under the Advisers Act.⁸ NASD Conduct rule 2260 was not updated to account for this change. As a result, under the current rule, beneficial owners cannot designate state registered investment advisers to receive proxy and other materials. The proposed rule change would expand the definition of "designated investment adviser" to include persons registered under the Advisers Act and persons registered by a state as an investment adviser.

NASD believes that the current exclusion of state registered investment advisers serves no valid investor protection purpose. NASD Conduct rule 2260 will continue to require that the beneficial owner execute a written designation addressed to the member that includes the name of the designated investment adviser. The beneficial owner will continue to have an unqualified right at anytime to rescind designation of the investment adviser to receive materials and to vote proxies. The recession must be in writing and submitted to the member.

The proposed rule change will continue to require that a member that receives a written designation from a beneficial owner must ensure that the beneficial owner's designated investment adviser is registered under the Advisers Act or, for state registered investment advisers, is registered as an investment adviser under the laws of the state. A member may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository ("IARD") system. Under the proposed rule change, members must continue to ensure that the designated investment adviser 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 that is in the possession of the members. Members also must continue

to keep records substantiating this information.

The Commission notes that the New York Stock Exchange, Inc. has filed a similar proposed rule change.⁹

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change to expand the definition of "designated investment adviser" in NASD Conduct rule 2260 is designed to accomplish these ends by updating NASD Conduct rule 2260 to be consistent with the goals of NSMIA and to address an inconsistency in the treatment of Federally-registered versus State-registered investment advisers that does not serve a valid investor protection purpose.

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

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 for this proposed rule change. In connection with its rule modernization initiative, NASD issued Notice to Members 02-10 (January 2002) that surveyed members on a broad range of topics that included subject matter related to this rule proposal. However, as NASD views the responses received as general survey material, it is not included in this filing.

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:

⁹ See Exchange Act Release No. 47215 (January 21, 2003).

¹⁰ 15 U.S.C. 78o-3(b)(6).

⁸ National Securities Markets Improvement Act of 1996, Pub.L. No. 104-290, 110 Stat. 3416 (1996). The Commission notes that title III of NSMIA (a/k/a The Investment Advisers Supervision 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. The Commission also notes that new section 203A(a) of the Advisers Act 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 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 advisor to an investment company registered under the Investment Company Act of 1940. 15 U.S.C. 80b-3a.

⁶ In April 2002, the SEC approved a proposed rule change to NASD Conduct rule 2260 making its provisions applicable to non-municipal debt securities. The rule change became effective on July 9, 2002. See Securities Exchange Act Release No. 45736 (April 11, 2002), 67 FR 19291 (April 18, 2002) (SR-NASD-2002-11).

⁷ See Securities Exchange Act Release No. 35681 (May 5, 1995), 60 FR 25749 (May 15, 1995) (SR-NASD-95-06).

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, 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 20549-0609. 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 NASD. All submissions should refer to File No. SR-NASD-2002-124 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47197; File No. SR-NSCC-2002-13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adding Services Data Services Only Members are Permitted To Access

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 6, 2002, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. 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 adds additional services that Data Services Only members of NSCC are permitted to access.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The proposed rule change adds additional NSCC services that Data Services Only members will be permitted to access.³ Data Services Only members will be permitted to access all features of NSCC's Insurance Processing Services, provided that Data Services Only members will not be able to settle transactions through NSCC's facilities. NSCC's current fee schedule will be applied to Data Services Only members' use of such services.

The proposed rule change will increase automation of data transmission and reception and permit greater access to such information thus facilitating the prompt and accurate clearance and settlement of securities transactions. NSCC therefore believes that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder.

² The Commission has modified parts of these statements.

³ For additional information about the category of Data Services Only members, see Securities Exchange Act Release Nos. 44960 (October 19, 2001), 66 FR 56383 [File No. SR-NSCC-2001-14] and 45560 (March 14, 2002), 67 FR 13200 [File No. SR-NSCC-2001-18].

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change effects a change in an existing service of NSCC that (i) does not adversely affect the safe-guarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights and obligations of the clearing agency or persons using the service, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(4)⁵ promulgated thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2002-13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(4).