Energy (6.0%), Financials (20.6%), Health Care (15.3%), Industrials (11.3%), Information Technology (14.4%), Materials (2.8%), Telecommunication Services (4.0%), and Utilities (2.8%).

Given the large diversification, capitalization, and relative percentage weightings of the companies included in each group of companies comprising the Index, the Commission continues to believe, as it has concluded previously, that the listing and trading of securities that are linked to the S&P 500 Index, should not unduly impact the market for the underlying securities comprising the S&P 500 Index or raise manipulative concerns.[23] As discussed more fully above, the Commission also believes that the relative percentage weightings of the ten groups of companies comprising the Index should ensure that no one stock or group of stocks significantly minimize the potential for manipulation of the Index. Moreover, the issuers of the underlying securities comprising the S&P 500 Index, are subject to reporting requirements under the Act, and all of the component stocks are with listed on Nasdaq, the NYSE, or the Amex. In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the S&P 500 Index.[24] Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act,[25] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASD–2003–22) is hereby approved on an accelerated basis.

[23] *See* note 7, *supra.*

[24] *See* note 13, *supra.*

[25] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6071 Filed 3–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47459; File No. SR–NASD–2002–124]

Self-Regulatory Organizations; Order Approving Proposed Rule Change, as Amended by Amendment No. 1 Thereto, by the National Association of Securities Dealers, Inc. Relating to Proposed Amendment to NASD Conduct 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

March 6, 2003.

On September 19, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''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 Conduct 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. On January 8, 2003, the NASD submitted Amendment No. 1 to the proposed rule change.[3]

The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on January 27, 2003.[4] The Commission received one comment letter relating to the proposal.[5] This order approves the amended proposal.

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.'' 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. The NASD represents that when the National Securities Markets Improvement Act was passed in 1996, and certain state registered investment advisers were no longer required to be registered under the Advisers Act, 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 by a state as an investment adviser.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act.[7] The Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,[8] which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that amending NASD Conduct Rule 2260 to expand the definition of ''designated investment adviser'' to include persons registered by a state as an investment adviser, would allow for the reasonable

[27] 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 proposed to (1) revise the first footnote of proposed NASD Conduct 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 Conduct Rule 2260 to indicate that they are proposed new text.

[4] *See* Securities Exchange Act Release No. 47214 (January 17, 2003), 68 FR 3915.

[5] *See* letter from Christine A. Bruenn, NASSA President and Maine Securities Administrator, North American Securities Administrators Association, Inc. (''NASAA''), to Jonathan G. Katz, Secretary, Commission, dated February 18, 2003. In its comment letter, the NASAA expressed support for the proposal. *See also infra* note 9.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

expectation that all registered advisers, either state or federal, subject to due authorization and regulation, be permitted to receive and vote proxy materials on their behalf. The Commission also believes that this change recognizes, and is consistent with, the regulatory scheme set up for the registration of investment advisors under state and federal law pursuant to Title III of the National Securities Markets Improvement Act of 1996 (the ''Coordination Act'').[9]

The rule 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. Members must also 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. Nasdaq rules would also require members to keep records substantiating this information. These requirements should help to ensure that any state registered adviser is acting on behalf of the beneficial owner.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2002–124), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[9] *See* NASAA Comment Letter, *supra* note 6. In its comment letter, the NASAA stated that while federal and state-registered advisers are distinguished based on their levels of assets under management, both federal and state-registered advisers generally perform similar functions. According to the NASAA, while not all clients may want their adviser to vote on their behalf, NASAA believes this option should be available to all investors.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47452; File No. SR–NYSE–2001–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change, as Amended by Amendment No. 1 Thereto, by the New York Stock Exchange, Inc. Relating to Amendments to Section 804 of the Listed Company Manual and Rule 499 of the Exchange

March 6, 2003.

I. Introduction

On August 17, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 Section 804 of the Listed Company Manual to specify that public directors will constitute a majority of the directors of the Committee for Review voting on final delisting determinations; and to codify this change in the parallel Exchange Rule 499, as well as make other minor conforming changes. On January 22, 2003, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3]

The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on February 3, 2003.[4] No comments were received on the proposal. This order approves the amended proposal.

II. Description of the Proposal

Section 804 of the Listed Company Manual describes the procedures to be followed when the Exchange determines that a security should be removed from the list. It provides that the issuer has a right to request a review of the Exchange's determination by a Committee of the Board of Directors of the Exchange, and currently specifies that that committee is to be ''comprised of a majority of public Directors.'' This requirement was added as part of a larger revision of these procedures that became effective in 2000.[5] The Committee for Review is the committee of the Board that reviews both disciplinary and delisting matters and, according to the NYSE, it has often been comprised of equal numbers of public and industry directors. According to the Exchange, in order to reconcile the majority of public Directors requirement with the Committee's traditional composition, and to allow all members of the Committee for Review present at a meeting to participate in discussions, the Committee required that the quorum for delisting matters include two public directors and one industry director. Consequently, a rotation system was established with respect to industry directors voting on delisting matters so that those voting were comprised of a majority of public directors and at least one industry director.[6]

The proposal amends section 804 of the Listed Company Manual to more accurately describe the Exchange's procedures. In addition, pursuant to the proposed rule change, the Chairman of the Committee would be required to disclose to the issuer and the staff at the commencement of each delisting hearing which of the industry directors will be voting on the delisting matter. Furthermore, the decision relating to the delisting appeal would be required to identify by name which directors participated only and which directors voted on the matter. The written decision issued by the Committee would also be required to clearly state that, in reaching its decision, the Committee considered only the oral arguments, written briefs and accompanying materials presented by the parties at the time of the hearing. The Exchange also proposes to codify these changes in the parallel Exchange Rule 499. Proposed NYSE Rule 499 also reflects a previous amendment to

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 17, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 47253 (January 24, 2003), 68 FR 5322.

[5] *See* Securities Exchange Act Release No. 42863 (May 30, 2000), 65 FR 36488 (June 8, 2000).

[6] Pursuant to the rotation system, the Committee designates prior to each delisting hearing which industry director(s) shall vote. At all hearings, all public directors present shall vote. For example, at a Committee meeting attended by three (3) public directors and three (3) industry directors at which two delisting appeals are considered, all public directors present and industry directors 1 and 2 will vote on the first delisting matter and all public directors present and industry directors 3 and 1 will vote on the second delisting matter. If, on the Committee's next review date, the meeting is attended by two (2) public directors and three (3) industry directors and one delisting appeal is considered, all public directors present and industry director 2 will vote on the matter; industry directors 1 and 3 will not vote. If any of the industry directors designated to vote next is not present at a Committee meeting, the next succeeding industry director(s) will vote. The rotation system is subject to the composition of the Committee, which varies at each meeting as described above, depending upon each director's availability. As is the case with other procedures of the Committee, the rotation system may also be changed from time to time.