

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.

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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 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 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.⁵ 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”)⁶ 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.⁷ 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 Act⁸ 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

⁶ 15 U.S.C. 80b.

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

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

⁸ 15 U.S.C. 80b-3a.