

January 8, 2003

Via Electronic Mail and Hard Delivery

Ms. Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2002-124, Amendment No. 1 – Proposed
Amendment to Rule 2260 to Expand the Definition of “Designated
Investment Adviser”**

Dear Ms. England:

Pursuant to conversations with the staff of the SEC’s Division of Market Regulation, NASD hereby submits Amendment No. 1 to the above-referenced rule filing. The revised text of Rule 2260 is attached.

(1) In subsection (f), footnote 1, we are amending the proposed definition of the term “state” to have the same meaning as defined in Section 202(a)(19) of the Investment Advisers Act of 1940, rather than Section 3(a)(16) of the Securities Exchange Act of 1934.

(2) In our initial rule filing, we failed to underline the text of two proposed footnotes to indicate that they are proposed new text. These footnotes appear in subsection (f) and subsection (f)(2). We are resubmitting the proposed rule change to Rule 2260(f) showing the proposed footnotes with underlining to indicate that they are proposed new text.

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If you have any questions, please contact the undersigned at (202) 728-6903 or via e-mail at kosha.dalal@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Kosha K. Dalal
Assistant General Counsel
Regulatory Policy and Oversight

cc: Jennifer Lewis, SEC, Division of Market Regulation

ATTACHMENT

Proposed new text submitted in the original filing is underlined; proposed new text in this amendment is double-underlined; and proposed deleted text is in brackets.

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,¹ 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,² and that the investment adviser is exercising investment discretion over the customer’s account pursuant to an advisory

¹ 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, [Section 3(a)(16) of the Securities Exchange Act of 1934,] and as such term may be amended from time to time therein.

² Members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository (“IARD”) system.

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.