

municipal securities unless the issuer commits, among other things, to provide material events notices to the Board's CDI system or to all Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs") and to the applicable state information depository.³ In addition, the Rule prohibits dealers from recommending municipal securities without having a system in place to receive material events notices.⁴ To conform to the new Commission requirements, the Board revised the CDI system and implemented an interim system designed to accept material event notices while a larger permanent system is being designed.⁵ The Commission approved operation of the interim system through December 31, 1995.⁶

The Board is requesting an extension for the interim system through September 30, 1996, to gain additional experience with the new disclosure scheme of SEC Rule 15c2-12 while the permanent system is being designed. The amendments to SEC Rule 15c2-12 regarding material event notices were effective in July 1995, and will not be fully effective until January 1, 1996. Issuers and their agents are still in the process of adjusting to the amendments. The current volume of material event notices has been within the capacity of the interim system. Additional experience will allow the Board to design the permanent system to more efficiently accommodate the expected volume of material event notices. In addition, the permanent system is being designed to accommodate longer documents.

The Board believes that an extension of the operation of the interim CDI system through September 30, 1996, will give it sufficient time to determine the system changes needed, in consultation with the Commission as well as potential users of the system, including NRMSIRs. Prior to that time, the Board plans to ask the Commission for approval of the permanent CDI system, which will be described in a filing with the Commission.

The Board believes the proposed rule change is consistent with Section

15B(b)(2)(C) of the Act, which provides that the Board's rules:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL™ system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board will continue to operate the output side of the CDI system to ensure that the information is available to any party who wishes to subscribe to the service. As with all MSIL™ system services, this service is available, on equal terms, to any party requesting the service.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five days prior to the filing date; and (iv) does not become operative for thirty days from the date of its filing on November 28, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-95-19 and should be submitted by January 18, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-31354 Filed 12-27-95; 8:45 am]

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[Release No. 34-36611; File No. SR-NASD-95-53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Requiring Members Who Participate in the Transfer of Limited Partnership Securities To Use Standard Transfer Forms

December 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1994,¹ the National Association of

¹ The proposed rule change was initially filed on November 8, 1995, but was subsequently amended on December 11, 1995, and again on December 15, 1995, in order to clarify that the proposed rule change does not apply to limited partnership securities that are traded on the Nasdaq Stock Market or a registered national securities exchange.

³ Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590. This provision of the Rule became effective on July 3, 1995. See Securities Exchange Act Release No. 35911.

⁴ The effective date of this provision of the Rule is January 1, 1996.

⁵ The Board also terminated the pilot phase of the CDI System and filed its Report on the Conclusion of the CDI Pilot of the Municipal Securities Information Library™ System with the Commission on August 25, 1995.

⁶ Securities Exchange Act Release No. 35911 (June 28, 1995), 60 FR 35248.

Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is herewith filing a proposed rule change to amend Section 1 and add new Section 73 and Exhibit A to the NASD's Uniform Practice Code. Below is the text of the proposed rule change to Sections 1 and 73 of the Code. Proposed new language is italicized.

Uniform Practice Code

Scope of Uniform Practice Code

Sec. 1.

(a) All over-the-counter secondary market transactions in securities between members shall be subject to the provisions of this Code except:

(i)-(iv) (No change).

(v) transactions in Direct Participation Program securities as defined in Article III, Section 34 of the Association's Rules of Fair Practice, *except as otherwise provided in this Code.*

* * * * *

Limited Partnership Securities

Sec. 73.

Each member who participates in the transfer of limited partnership securities, as defined in Article III, Section 34 of the Association's Rules of Fair Practice, shall use standard transfer forms in the same form as set forth in Exhibit A of this section. This section shall not apply to limited partnership securities which are traded on The Nasdaq Stock Market or a registered national securities exchange.

* * * * *

Proposed Exhibit A to Section 73 of the Uniform Practice Code contains the standard transfer forms, including a "Transferor's (Seller's) Application For Transfer," a "Transferee's (Buyer's) Application For Transfer," a "Registration Confirmation Form," and a "Distribution Allocation Agreement." Briefly, the Transferor and Transferee forms are each two pages in length and contain all of the essential information necessary to perform a valid transfer; the Registration Confirmation Form confirms to the buyer/transferee that the transfer has been completed; the Distribution Allocation Agreement contains certain affirmations on which the transferor/seller and transferee/buyer agree, and would act as a contract between them setting forth their

agreement regarding all unpaid distributions.²

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 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. The NASD 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

The Uniform Practice Code ("Code") governs the delivery and settlement of all over-the-counter secondary market transactions in securities between members, with certain exceptions. The Code provides and exception, among others, for transactions in Direct Participation Program securities ("DPP securities") as defined in Article III, Section 34 of the NASD's Rules of Fair Practice, including limited partnership securities also defined in Article III, Section 34. The NASD is proposing to modify and add a new section to the Code to require members to use standardized limited partnership transfer forms when transferring a limited partnership security.

Historically, limited partnership securities were not structured to be freely transferable in secondary market transactions. Trading markets now exist, however, for many limited partnership securities in addition to the large publicly-traded partnerships which are traded on The Nasdaq Stock Market and the national securities exchanges. Quick and accurate processing of the transfer of limited partnership securities has, therefore, become more critical.

The terms and requirements relating to the assignment and transfer of limited partnership interests are contained in and controlled by the partnership agreement,³ almost all of which state that assignment or transfer of limited

partnership interests requires the consent and approval of the general partner(s). As a result, when transferring limited partnership interests, NASD members are currently confronted with transfer requirements unique to each partnership which may vary widely on the type and amount of documents necessary for the valid transfer of a partnership interest. Some partnership agreements require information so extensive that the transfer documents sometimes reach 30 to 40 pages in length. Thus, the transfer of the partnership interest may take up to six months, in some cases, to become finalized.

Partnership terms for record dates and distribution or dividend payment dates are equally varied. Transfer delays and non-standardized payment provisions have caused or contributed to delays or mistakes in the allocation of cash distributions between buyers and sellers. A seller of a limited partnership interest, as a recordholder of the securities, often receives distributions that rightly should have accrued to the buyer and subsequently disposes of such distributions without knowledge of the claims of purchasers. Particularly problematic are special distributions other than cash distributions (such as proceeds from capital transactions, capital distributions, sale or refinancing proceeds, liquidating distributions, distributions with respect to terminating transactions) which, under many partnership agreements, are paid to the owner of record of the partnership unit in the prior quarter. Thus, under current transfer standards and practices, buyers and sellers of limited partnership securities in the secondary market are unable to protect their rights to such distributions. This leads to disputes over distributions that often must be settled by broker/dealers at their own expense or through arbitration or litigation.⁴

The NASD recognizes that the transfer of limited partnership interests is controlled by the terms of the partnership agreement under various state limited partnership statutes. However, the NASD also recognizes that, in most cases, prior to the recognition by the general partner of the actual transfer of the partnership property interest from one holder (transferor/seller) to another (transferee/purchaser), a security interest in the property is created whenever the

² The contents of the proposed forms are not reproduced here. Copies of proposed Exhibit A are available from the NASD by calling (202) 728-6960, and are available for inspection and copying in the Commission's Public Reference Room.

³ The Revised Uniform Limited Partnership Act and the Delaware Revised Uniform Limited Partnership Act expressly provide for the ability to recognize transfers and admit new partners under whatever rules the general partners design.

⁴ The NASD believes these problems are exacerbated by the fact that general partners relying on no-action letters issued by the Division of Market Regulation do not believe they are required under SEC Rule 10b-17 to publicly disclose the payment of regular or special distributions.

purchaser gives, and seller accepts, economic consideration to secure the purchaser's right to have the partnership interests transferred. The security interest creates the right for the purchaser to have the partnership interest transferred in advance of the date specified in the partnership agreement and entitles the purchaser to legal certainty that his/her ownership rights can be recognized and protected until the transfer of the partnership interest is completed.

In order to provide a uniform way for member firms engaged in the transfer of limited partnership interests to receive and recognize information on the valid transfer of the security interest separate and apart from the partnership interest, and to record such information of valid transfer on their books and records, the NASD is proposing to amend Section 1(a)(v) to allow the Code to apply to over-the-counter secondary market transfers of direct participation programs to the extent provided in individual provisions of the Code and to add new Section 73 of the Code to require members to use standardized transfer forms, as set forth in proposed Exhibit A to Section 73, when transferring limited partnership securities. The proposed forms will standardize the format for gathering transfer information by registered representatives, reduce the amount of information necessary to perform a valid transfer, and eliminate delays and inefficiencies in the transfer and settlement process. Proposed new Section 73 will not apply to limited partnership securities which are traded on The Nasdaq Stock Market or a registered national securities exchange.

The proposed standardized transfer forms include "Transferor's (Seller's) Application For Transfer," "Transferee's (Buyer's) Application For Transfer," "Registration Confirmation Form," and "Distribution Allocation Agreement," as set forth in proposed Exhibit A to Section 73. The Transferor and Transferee forms are each two pages in length and contain all of the essential information necessary to perform a valid transfer, including customer identification, partnership identification, tax identification, quantity transferred, broker/dealer and registered representative involved and signature execution. The Registration Confirmation Form confirms to the buyer/transferee that the transfer has been completed and contains information regarding, among other things, the partnership's NASD symbol, CUSIP number, tax identification number, number of units transferred and the effective/admission date.

The Distribution Allocation Agreement would be completed at the time the transfer documents are completed and sent to the general partner of the limited partnership security being transferred. The agreement contains certain affirmations on which the transferor and transferee agree and would act as a contract between the buyer and seller setting forth their agreement regarding all unpaid distributions. The agreement specifies when the unitholder of record is entitled to cash distributions and capital distributions, and who is responsible for correcting a distribution made to the wrong party. The agreement requires, among other things, the party who incorrectly receives a distribution to promptly endorse and deliver to the correct party the distribution checks or otherwise pay to the other party the amount of such distribution.

Although only NASD members would be required to use the standardized forms under the proposed amendments, the NASD is confident that general partners and transfer agents engaged in the transfer of limited partnership securities will use and honor the proposed forms so that uniform transfer practices and procedures could be established on an industry-wide basis.⁵

The NASD believes that standardized forms will significantly reduce the time and effort required by member firms to process limited partnership transfers from approximately 180 days to less than 30 days. In particular, the use of the Distribution Allocation Agreement will provide certainty as to the buyer/transferee and seller/transferor regarding distributions not yet announced or received by memorializing the agreement among the buyer and seller as to the method for handling distributions. The Distribution Allocation Agreement will also prevent member broker-dealers representing such buyers and sellers from effecting and settling trades without knowledge of the buyers' and sellers' rights to any distribution.

The NASD is requesting an effective date for NASD members of 60 days after the date on which SEC approval of the proposed rule is announced in an NASD Notice to Members, which announcement shall be made no later than 45 days after Commission approval.

⁵ In fact, the NASD has worked closely with transfer agents who specialize in the transfer of partnership securities, and the Investment Program Association, a trade organization for the partnership industry, to reach an informal consensus on the general applicability of forms throughout the industry.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of customers and the public interest in that the proposed rule change standardizes the process and the means by which limited partnership securities are transferred on the secondary markets, thereby significantly eliminating the delays and inefficiencies in the transfer process, substantially improving the accuracy of dividend and capital distributions and minimizing litigation in that regard, and facilitating the transfer of limited partnership securities.

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

The 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

The proposed rule change was published for comment in Notice to Members 94-75 (September 1994) ("NTM 94-75"). Fourteen comment letters from thirteen commenters were received in response thereto.⁷ Nine commenters supported the proposed rule change, two commenters were opposed and two commenters neither supported nor opposed the proposed rule change.

General Comments

One commenter suggested that the forms be typeset. Two commenters stated that the forms are too technical, complicated and cumbersome for the average investor and that the forms should be streamlined. One of the commenters stated that investors would not have the necessary information to complete the forms without help from their registered representative.

The NASD understands the concerns expressed by these commenters but emphasizes that the forms were never intended to be completed by investors. The forms are intended to be used by general partners, transfer agents and financial intermediaries.

⁶ 15 U.S.C. § 78 o-3.

⁷ Copies of the Comment letters received by the NASD in response to NTM 94-75 are available for inspection and copying at the NASD or at the Commission's Public Reference Room.

Two commenters stated that the proposed forms have no ability to include certain transferor and transferee representations required by the issuer's prospectus or partnership agreement in conjunction with transfer documents. One of these commenters suggested that general partners and sponsors might be more willing to adopt the proposed forms if they incorporate certain additional provisions, acknowledgements and representations commonly found in existing transfer documents (e.g., illiquidity, lack of a public market, availability of public information, distribution and tax allocations, etc.). Another commenter suggested that general partners should be allowed to use their own forms. Similarly, one commenter recommended that the forms serve as model guides subject to reasonable modifications by a general partner or sponsor.

Three commenters objected to the requirement that use of the proposed forms be mandatory for members. One commenter requested that the proposed modification to the Uniform Practice Code requiring members to use the forms not be made. Another commenter recommended that the proposal be clarified to require members only to accept the proposed documentation and not that they be required to use it. One commenter stated that the NASD must have a strategy for compelling issuers to adopt the new forms and procedures or else use by members is meaningless. The same commenter also stated that only issuers know the exact number of units a seller owns and the exact registration information, and that these same issuers are often unresponsive, slow and inaccurate in verifying this information. The commenter added that any policy set with regard to dividend distributions can only be accomplished if issuers agree to adopt and accept the proposed new procedures and that the proposed Registration Conformation Form would not help members if issuers and transfer agents do not promptly notify all parties of the receipt and approval of a transfer. The commenter concludes that unless the proposed forms are adopted by issuers, use of the forms should not be mandatory for members.

One commenter, while supporting the initiative, stated that the standardization should not be limited to transfer forms, but also should include signature verification, authorization and supporting documentation to insure uniformity and efficiency in the DPP transfer process. The commenter stated that attempting to establish uniformity without developing procedural

guidelines in these areas would do little to reduce inefficiencies and delays.

Despite the concerns expressed, the NASD believes the proposed forms will become the standard forms used by the industry. Since 1990, the NASD's Direct Participation Program Committee and the special Ad Hoc Committee on Uniform Settlement and Transfer Procedures for Direct Participation Program Securities have gathered and assessed information from the major market participants that act as principal or agent for customers in the fragmented limited partnership secondary market and consulted with the major limited partnership issuers in order to develop limited partnership transfer forms that have universal applicability. Both the staff and the members of the NASD's Direct Participation Program Committee, some of whom represent major limited partnership sponsors, are committed, through supporting a number of initiatives undertaken by the NASD in addition to the standardized transfer forms, to developing a broad, accessible framework through which the transfer and distribution process for limited partnership securities becomes streamlined and efficient for issuers, transfer agents and NASD members.⁸

While it is true that the NASD cannot compel non-member limited partnership issuers to use the proposed forms, many of these issuers have had significant input into the development of the proposed forms and generally agree that the forms are workable. Limited partnership issuers also understand that, once the proposed forms are approved by the SEC, member firms, transfer agents and other limited partnership secondary market intermediaries will begin using the forms as part of their standard transfer process. Therefore, the NASD is confident that issuers will generally not be adverse to using the proposed forms and that, in fact, it will be in their best interest to do so.

The NASD believes that the proposed forms contain all the essential information to effect a valid transfer of the security interest in a timely fashion. To allow the forms to be used as mere

models or guides would defeat the fundamental aim of standardizing the limited partnership transfer process. Nonetheless, nothing precludes a particular general partner, member or transfer agent from requesting additional information in order to complete certain books, records or documentation requirements of the partnership agreement. However, the failure to obtain such additional information should not prevent a valid transfer of the security interest from taking effect where the transfer forms are complete and contain all of the required information for a valid transfer.

Specific Comments

Transferor/Transferee Forms

One commenter suggested that the terms "Buyers" and "Seller" be deleted from the proposed applications for transfer forms since transfers are not limited to buy/sell transactions.

The "Reasons For Transfer" section in the transferor's form contains fields for "reregistration," "sale," "death," "gift" and "other." Thus, the forms do recognize that a transfer can be effected in ways other than a purchase and sale.

Partnership ID Information

Three commenters suggested modifications to the Partnership ID Information section of the proposed forms. Once commenter stated that the tax Shelter Identification Number is a unique number to each partnership and, therefore, problematic in its application, that not all partnerships have a tax number and that it is not clear whether transfer agents track such a number for identification purposes. The other commenter suggested that the additional partnership identifiers, such as the CUSIP #, the NASD Symbol, the Partnership Tax ID and the Tax Shelter ID, are not particularly helpful to the average investor and should be replaced with information to be completed by the secondary market intermediary completing the form. Finally, one commenter stated that the symbols in the NASD symbol directory were confusing and should be changed suggesting a different format for the symbols.

The proposed forms were designed to accommodate not any particular DPP secondary market participant but the transfer processing in general. Thus, some information required by the forms may be unnecessary for certain transfers. Regarding confusion to the average investor, the NASD wishes to emphasize again that the proposed forms were never intended to be completed by investors; the forms are

⁸These initiatives include: (1) the development of a Direct Participation Program Symbol Directory; (2) the submission of a petition to the SEC to subject limited partnerships to the dividend and distribution reporting requirements of SEC Rule 10b-17; and, (3) the submission of a petition to the SEC requesting modification of SEC Rule 17Ad-4(a) to require the application of Rules 17Ad-2 (Turnaround, Processing, and Forwarding of Items), 17Ad-3 (Limitations on Expansion), and 17Ad-6(a) (1) through (7) and (11) (Recordkeeping) to the transfer of interests in publicly traded limited partnerships by transfer agents and to modify Rule 17Ad-10 to establish a limited buy-in provision for publicly traded partnership interests.

intended to be used by general partners, transfer agents and financial intermediaries. The NASD does not view the symbols in the proposed symbol directory as confusing or difficult to use.

Quantity

One commenter suggested that the quantity section of the proposed forms include either the original investment amount or the original cost per unit. The commenter claims that some general partners use a "dollar for dollar" investment amount rather than a unit amount, which creates confusion when different secondary markets randomly assigned unit values to these partnerships. The commenter also stated that investors are more likely to know how much money they initially invested rather than how many units they purchased. The commenter concluded that this additional information would eliminate confusion and would ensure that all involved parties are "speaking the same language."

The NASD believes that since most partnership documents offer an initial unit value of measurement to the investor and continue to use such a measurement for books and records and tax allocation purposes, a unit value is the best measure of quantity transferred.

Required Representations and Acknowledgments

One commenter suggested that both the proposed transferor and transferee forms contain certain representations and acknowledgments that (1) specify an "effective date" for the right to receive distributions of cash and allocations or profits and losses, (2) recognize certain restrictions in the partnership agreement and state-imposed suitability requirements, and (3) recognize the general partner as the designated person to maintain the list required under Section 6112 of the Internal Revenue Code. The same commenter stated that in order to clarify the enforcement and interpretation of the parties' agreement for the transfer of the interests, both the transferor's and transferee's forms should state that the application for transfer is irrevocable and specify the governing law.

In response to the comments above, the NASD has added a field to the Registration Confirmation Form for "Effective/Admission Date." The NASD does not believe that the inclusion in the proposed forms of the additional suggested representations and acknowledgments is necessary in order to effect a valid transfer.

Sale Price

Two commenters suggested including in the proposed applications for transfer a space to insert the sale price or other consideration paid for the interests being transferred (Comments 7,10). One Commenter explained that, with this information, general partners or sponsors could maintain data on current sales transactions for prospective buyers or sellers to obtain current market prices of interests or for others to use in valuing interests held by estates.

NASD research indicates that knowledge or recordation of the sales price is not necessary for a general partner to effect the transfer of a limited partnership interest. In any case, the NASD is actively working to permit certain public limited partnerships to be listed or quoted on the NASD's OTC Bulletin Board. Transactional data, including price, would be available for a nominal fee for general partners who would be interested in such information.

Fees

Three commenters commented on the instructions in the proposed transfer forms requiring the transferor and transferee form to be submitted together with the required fees. One commenter requested authority for the issuer to implement its own fee structure. Another commenter stated that advance notice of fee changes to members by issuers should be mandatory. Another commenter stated that transfer fees ought to be standardized.

The NASD believes that, notwithstanding the proposed standardization of transfer forms, the amount of resources expended in the transfer process by secondary market intermediaries in what is still a fragmented and somewhat disorganized marketplace may vary significantly from one entity to another. It is therefore inappropriate to impose a standard fee structure as part of the proposed forms.

Signature Execution

Two commenters suggested changes regarding signature execution. One commenter also recommend that the application for transfer forms should include a signature block and date line for the general partner or sponsor to execute or acknowledge, either by manual signature of an officer or partner or by a generic signature stamp to alleviate confusion and possible disagreements as to whether applications for transfer have been accepted. The other commenter suggested, when applicable, adding an explanation that the custodian's

signature is required, noting that most partnerships require the custodian's and the client's signatures. The commenter stated that there are numerous limited partnership units held in custodial accounts (e.g., IRA, pension plans etc.) and investors are often confused as to whose signature is required on these forms. The commenter also suggested that Instruction #7 on the proposed forms state that satisfactory evidence of the custodian's authority be represented.

In response to the comments above, the NASD has changed the forms to incorporate the use of the medallion stamp, and believes that this proposed change will help to alleviate concerns about signature verification.

Transferor Form

Application to Transfer: New Language

One commenter suggested that the first full paragraph of the transferor form be modified as shown (new language is underlined).

"The transferor hereby makes application to transfer and assign, subject to the general partner's rights, to the transferee all rights, *title and interest in and to the profits, losses, and distributions of the partnership*, as set forth in the partnership below and for the transferee to succeed to such interest as a Substitute Limited partner, successor in interest or assignee."

Under the assumption that the intent of the above commenter's suggested changes was to make the forms more consistent, the NASD has, in response, changed the first full paragraph of the proposed transferee's form by deleting the words "and assign" and "title" to correct the form and to make the language more consistent with the proposed transferor's form.

Quantity

Two of the fourteen commenters suggested modifications to the quantity section of the proposed form. One commenter suggested that the number of units to be held after transfer be labeled on the transferor's form as "must be completed" rather than "optional." Another commenter believes that requesting information on the number of units to be held after transfer may result in delays when attempting to verify this information.

The NASD has included the field for number of units to be held after transfer as an optional field for informational purposes only. Verification of the information should not result in delays, since the information is optional.

Transferee Form

Required Representations and Acknowledgements

One commenter suggested adding certain acknowledgements and representations regarding liquidity and tax status to the proposed transferee form. The commenter suggested adding to the proposed transferee form: (1) the acknowledgement that there may not be a public market in the future through which the transferee can liquidate his/her investment in the partnership, (2) the representation that the taxpayer identification number is correct and that the transferee is not subject to backup withholding, and (3) if a resident is a non-alien, the representation that IRS form 4224 is correct.

The NASD does not believe that the inclusion in the proposed forms of the additional suggested representations and acknowledgements is necessary in order to effect a valid transfer.

Partnership Information

One commenter suggested modification to the Partnership Tax I.D. number on the Transferee's Form. The commenter indicated that for those Direct Participation Programs that have obtained from the Internal Revenue Service tax shelter registration numbers, the transferee's application should also contain the tax shelter registration notification required by the Internal Revenue Service regulations. However, the commenter stated that in order to limit the length of the form, such notification could be included as part of the Registration Confirmation Form.

The IRS tax notification requirements was intended, in part, to provide some federal oversight, through tax law, for partnerships that were intentionally constructed to have little or no economic value and generate excessive tax losses. The NASD believes that the universe of public partnerships traded in the secondary markets with which it is concerned contains, for the most part, partnerships which were designed to return some real economic value to the investor and which do not generally make use of the IRS notification requirement.

Registration Type

One commenter suggested adding the categories "Money Purchase Pension Plan" and "Profit Sharing Plan" to the "Tax Deferred" section under "Registration Type." In response to the comments above, the NASD has added the categories "Money Purchase Pension Plan" and "Profit Sharing Plan" to the "Tax Deferred" section under "Registration Type."

Secondary Address Information

Two commenters suggested modifications to the Secondary Address Information Section on the Transferee's Form. One commenter stated that distribution payment instructions are very important to partnership processing and sending distributions to the wrong address is costly both in processing time and bank fees. The same commenter stated that the form does not make it clear where distribution payment is to be made, and suggested that a statement could be added such as: "If the secondary address field is not filled in, then payment will be made to the legal address," as well as an additional field to solicit the custodian account number so that distribution payments can be accurately audited. The second commenter suggested adding a space for the buyer to include distribution instructions, with a note to the effect that if no instructions are given, all distributions will be paid to the registered transferee. The commenter stated that adding such space and instructions will enable the buyer to direct distributions to a brokerage account or mutual fund account.

The NASD agrees that the correct payment of distributions is an important part of the transfer process. In response to the comments above, the NASD has added space to the proposed Registration Confirmation Form entitled "Distribution Address (if different than address of record)," and, in addition, has developed a Distribution Allocation Agreement to allow transferor and transferee to agree to specify how and to whom distributions will be paid.

Suitability

One commenter, a registered transfer agent, suggested revising the Transferee's (Buyer's) Form to include suitability standards. The commenter stated that many partnerships are required to limit transfers to buyers who satisfy the suitability standards established at the time of each partnership's initial offering. The commenter suggested the following suitability information be added to the form:

Please indicate your annual net income, and your current net worth (exclusive of home, automobiles, and home furnishings).

Income	Net worth
\$35,000-\$44,999	\$35,000-\$44,999
\$45,000-\$59,999	\$45,000-\$59,999
\$60,000 or above	\$60,000-\$74,999
	\$75,000-\$149,999
	\$150,000-\$174,999

Income	Net worth
	\$175,000-\$249,999
	\$250,000 or above.

In researching this issue, the NASD found that only California required a suitability determination when a partnership security was sold or transferred in a secondary market transaction. The forms contain the necessary disclosure requiring the prior written consent of the Commissioner of Corporations of the State of California.

Registration Confirmation Form

Four commenters suggested modifications to the Registration Confirmation Form. One commenter stated that an apparent unintentional consequence of the proposed confirmation form is to notify the client that he/she has actually been admitted into the partnership when in fact completion of the closing documents can take a considerable amount of time. The commenter favors a two-step process that first confirms receipt of the documents in a timely fashion and then later confirms the actual acceptance of the client into the partnership.

Another commenter stated that the language in the first paragraph, "You have been, or will be admitted as a Limited Partner in the Partnership indicated below" was confusing and suggested more simple wording that would state, "Your transfer request has been processed. The effective date or admission date as a limited partner in the partnership is indicated below." The same commenter also believes that a field should be added to the form requesting a date processed.

Another commenter stated that the confirmation form was similar to forms already in use and it was not likely that a standardized confirmation form would replace certificates. The commenter suggested that, since investors are not satisfied with a confirmation and want a certificate, issuers should be required to issue only non-negotiable certificates so that investors would not be required to pay for lost certificates.

Another commenter recommended four modifications to the form. First, the seller's name should be added to the form to eliminate any confusion regarding the parties involved in the transaction. Second, the form should contain space to add the name of the individual at the general partner processing the paperwork, so that an NASD member would have a contact person should any questions come up concerning the transaction. Third, information should be provided on the form indicating when the first

distribution would take place, including any information available with regard to the amount of that distribution and the date it would be paid. Finally, a specified time period in which a general partner or transfer agent must respond to a transfer request should be indicated on the form.

In response to the comments above, the NASD added changes to the Registration Confirmation Form. The first sentence of the first full paragraph on the form was changed to state, "Your transfer request has been processed. The effective date or admission date as a limited partner in the partnership is indicated below." In addition, the portion of the form which asks for the date of admission to the partnership has been changed to state "Effective/ Admission Date." Finally, space was provided at the bottom of the form to indicate an address for distributions if different than the address of record.

Distribution Affirmation Form

Four commenters responded to the request for comment in NTM 94-75 on whether a dividend distribution affirmation/agreement should be used in conjunction with the proposed transfer forms or should be optional. One commenter requested that the affirmation requirement be optional. Another commenter believes that the affirmation that a seller gives up all distributions not yet declared or paid can only work if issuers will uniformly adopt such practices. The same commenter added that the agreement by a member with a seller to such a contractual term, followed by the issuer not honoring such term, creates a legal conflict and a contractual term which becomes pragmatically unenforceable. The commenter concluded that the affirmation should only be included if the issuer will uniformly agree to it.

One commenter stated that while it is important to include distribution allocation language to the proposed documentation, it would also be important to include language with respect to tax allocations to facilitate investors understanding as to whether they will or will not be allocated gains or losses for tax purposes.

Another commenter stated that distribution procedures were so important that they should be standardized in the industry and a statement should be included on the form for the seller to affirm that it agrees to give up any undeclared or unpaid distributions.

In response to the comments above, the NASD has developed a proposed distribution allocation agreement that would be executed by the parties at the

time the transfer documents are completed and sent to the general partner of the limited partnership security being transferred. The agreement contains certain affirmations on which the transferor and transferee agree and would act as a contract between the buyer and seller setting forth their agreement regarding all unpaid distributions. The agreement specifies when the transferee becomes the unitholder of record, when a unitholder of a record is entitled to cash distributions and capital distributions, and who is responsible for correcting a distribution made to the wrong party. The agreement requires, among other things, the party who incorrectly receives a distribution to promptly endorse and deliver to the correct party the distribution checks or otherwise pay to the other party the amount of such distribution. Thus, the distribution allocation agreement, which incorporates this information, would evidence the parties' agreement as to the treatment of distributions and make it clear that they have agreed to all material terms of the transaction.

As mentioned above, while it is true that the NASD cannot compel non-member DPP issuers to use the proposed forms, major DPP issuers, working in conjunction with the NASD's Direct Participation Program Committee and the special Ad Hoc Committee on Uniform Settlement and Transfer Procedures for Direct Participation Program Securities, have had an opportunity for input into the development of the agreement. The NASD believes that issuers will uniformly use the proposed agreement in conjunction with the proposed transfer forms.

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:

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.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-95-53 and should be submitted by January 18, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Excel Industries, Inc., Common Stock, No Par Value) File No. 1-8684

December 20, 1995.

Excel Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged for striking the Security from listing and registration include the following:

According to the Company, trading in the Security on the New York Stock Exchange, Inc. commenced at the opening of business on December 12, 1995 and, concurrently therewith, trading on the Amex was suspended. At its October 19, 1995 meeting, the Company's Board of Directors considered the direct and indirect costs and expenses attendant with maintaining a dual listing of the Security. The Board determined that there was no particular advantage in the

⁹ 17 CFR 200.30-3(a)(12).