

Currently the Fund's common shares trade at a discount from net asset value ("NAV").

2. The Fund wishes to institute a fixed distributions policy under which the Fund would distribute to shareholders each month either a fixed dollar amount or a fixed percentage of its NAV at the time of declaration ("Distribution Policy"). Any amount paid under the Distribution Policy which exceeds the sum of the Fund's investment income and net realized capital gains will be treated as a return of capital. If the sum of the Fund's annual net investment income, net short-term realized capital gains, and net long-term capital gains exceeds the amount required to be paid under the Distribution Policy, the Fund intends to pay such excess to shareholders once a year but may, in its discretion, retain and not distribute net long-term capital gains to the extent of the excess. Applicant believes that the Distribution Policy will help avoid or reduce the discount from NAV at which its shares may trade.

3. The Fund's board of directors, including a majority of disinterested directors, approved the fixed monthly distributions policy at a meeting held on June 16, 1998. The board considered, among other factors, that the policy was believed to have a positive effect on the price of shares of funds with similar investment objectives and strategies to that of the Fund and was therefore in the best interests of the Fund's shareholders. The board also considered that the Distribution Policy would probably enable shareholders to better achieve their investment goals and would avoid burdening them with complicated tax returns.

4. The Fund requests an order to permit it, so long as it maintains in effect the Distribution Policy, to make up to twelve capital gains distributions (as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code")) in any one taxable year.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b-1(a) permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Code. Rule 19b-1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not

exceeding 10% of the total amount distributed for the year. Rule 19b-1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. The Fund asserts that the limitation on the number of net long-term capital gains distributions in rule 19b-1 under the Act prohibits the Fund from including available net long-term capital gains in certain of its fixed distributions. The Fund further asserts that, in order to distribute all of its long-term capital gains within the limits on the number of long-term capital gains distributions in rule 19b-1, the Fund may be required to make certain of its fixed distributions in excess of the fixed percentage called for by its Distribution Policy.

3. The Fund believes that the concerns underlying section 19(b) and rule 19b-1 are not present in the Fund's situation. The Fund notes that one of these concerns is that shareholders might not be able to distinguish frequent distributions of capital gains from dividends from investment income. The Fund states that its prospectus has disclosed that the Fund intended to implement the Distribution Policy and described its provisions. In addition, the Distribution Policy will be described in the Fund's communications to its shareholders, including the Fund's quarterly reports and annual reports. The Fund also states that it will send to shareholders, with each distribution, information statements that comply with rule 19a-1 under the Act. The Fund also states that a statement showing the amount and source of distributions received during the year is included with the Fund's IRS Form 1099-DIV reports of distributions for that year sent to the Fund's shareholders who received distributions during the year (including shareholders who sold shares during the year).

4. The Fund notes that another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper sales practices, including in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend"), when the distribution would result in an immediate, corresponding reduction in a fund's NAV and would be, in effect, a return of the investor's capital. The Fund submits that this concern does not apply to closed-end investment companies, such as the Fund, that do not continuously distribute shares. The Fund states that the condition to the requested relief would further assure that the concern about selling the

dividend would not arise in connection with a rights offering by the Fund.

5. The Fund states that increased administrative costs also are a concern underlying section 19(b) and rule 19b-1. The Fund asserts that this concern is not present because it will continue to make fixed distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the Fund believes that the requested exemption meets the standards set forth in section 6(c) of the Act.

Applicant's Condition

The Fund agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its common stock other than: (1) a non-transferable rights offering to shareholders of the Fund, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fees; or (2) an offering in connection with a merger, consolidation, acquisition, or reorganization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41199; International Series Release No. 1189; File No. 10-126]

Tradepoint Financial Networks plc; Order Granting Limited Volume Exemption From Registration as an Exchange Under Section 5 of the Securities Exchange Act

March 22, 1999.

I. Summary

Tradepoint Financial Networks plc ("Tradepoint" or the "Exchange") operates as a securities exchange from facilities in London under the marketing

name Tradepoint Stock Exchange. it is a Recognised Investment Exchange under section 37(3) of the U.K. Financial Services Act 1986. The Exchange does not have a physical trading floor; it is a screen-based electronic market for the trading of securities ("Tradepoint System"). All of the securities currently traded through the Tradepoint System are listed on the London Stock Exchange ("LSE"), which is the primary market for those securities.

By letter dated November 20, 1997, Tradepoint filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 5 of the Securities Exchange Act of 1934 ("Exchange Act"), an application for exemption from registration as a national securities exchange under Section 6 of the Exchange Act if Tradepoint operates the Tradepoint System in the United States. Tradepoint anticipates that the Exchange will account for limited volume in trading of securities.¹

The Commission published Tradepoint's application for comment on July 2, 1998.² In response, the Commission received eight comment letters.³ Based on its conclusion that Tradepoint will effect a limited volume of transactions and that it is practicable and not necessary or appropriate in the public interest or for the protection of investors for Tradepoint to register under Section 6 of the Exchange Act, the Commission hereby grants Tradepoint's application for exemption from registration as a national securities exchange.

II. Description of the Tradepoint System

The Exchange is an alternative market to the LSE. From its facilities in London, the Exchange supplies automated trading services to market-makers, broker-dealers and institutional investors (collectively, "Members") on identical terms and conditions. Potential Members must meet the eligibility requirements of the

Exchange.⁴ Status as a Member of the Exchange does not carry voting rights or any other rights, other than the right to trade using the Tradepoint System.⁵

The Tradepoint System provides to Exchange Members an electronic, order-driven market that handles order entry and management, information display, matching, execution, and immediate trade publication and settlement message routing for certain securities listed on the LSE.⁶ Members are able to access the current market position in any security traded on the Exchange, monitor selected market information provided by the Exchange on a real time basis; enter or revise orders; send orders to the instant auction or periodic auction books for execution;⁷ set up, access, and request trading and market reports; and input settlement routing instructions. In addition to these functions, the Exchange also supports order processing and management of the order book, order book display and updating, maintenance of individual trading status books, maintenance and updating of individual stock watch lists, and market supervision, surveillance and compliance. Most of these functions are controlled by the Exchange, but allow for some customization by the Member.

The Exchange maintains an electronic order book for each traded security, with Members entering bids or offers directly into the Tradepoint System. Orders with the same bid or offer price are prioritized according to the time they are entered into the Tradepoint System. The minimum display size for any order is 1,000 shares. The Exchange

does not provide a facility for "reserve" orders. A Member may have software that controls sending an order, however, so that if a Member wishes to sell 10,000 shares in 1,000 share increments, the Member's software will route the next increment to the Exchange after the previous increment is executed. Newly routed orders are then placed at the end of the queue for time priority. The Tradepoint System is completely anonymous.⁸

Members of the Exchange are also able to enter "cross trades." Cross trades are trades between two customers of the same firm at a price between the bid and offer. To effect a cross trade, a Member will simultaneously enter a bid and an offer for a security, which will match after exposure to the electronic order book.⁹ Thus, if there is no other superior price on the book, a cross trade will be entered into the Tradepoint System by the firm essentially for reporting purposes.

In addition, the Exchange may create a "specialist" capability for some of the stocks traded on the Exchange. The Exchange would enter into an arrangement with a specific Member ("Committed Liquidity Provider" or "CLP"), who would commit to providing liquidity with respect to a particular security. The CLP would function in a manner similar to that of a specialist on a U.S. exchange. The CLP's orders would be subject to the same price and time priorities as other system orders. As payment, the CLP would receive a percentage of the Exchange's net transaction fees resulting from execution of the orders entered by the CLP.

In order for a Member to access the Tradepoint System, he or she must have a Personal Identification Number, which is assigned by the Exchange.¹⁰ Access to the Tradepoint System in the United Kingdom is currently available through an internal network of personal computers via a stand alone PC, through a separate application on an existing Reuters RT terminal, ICV-Topic 3 Trader workstation, through a Liberty InterTrade Direct Screen, or through a

¹ See Letter from Joseph S. Cohn, Davis Polk & Wardwell, counsel for Tradepoint, to Jonathan G. Katz, Secretary, dated November 20, 1997, available in the Commission's Public Reference Room (File No. 10-126). On April 6, 1998, Tradepoint filed an amendment to the filing. On June 30, 1998, Tradepoint filed a second amendment to the filing. Both amendments are also available in the Commission's Public Reference Room.

² Exchange Act Release No. 40161 (July 2, 1998), 63 FR 37146 (July 9, 1998) ("Tradepoint Notice"). The file number originally assigned to Tradepoint was 10-101. Tradepoint has been reassigned to File No. 10-126.

³ Most commenters favored granting Tradepoint a low volume exemption from exchange registration. The comment letters are discussed in Section IV of this Order.

⁴ These requirements are set forth in Tradepoint Market Rule 3.4 (see Exhibit A(2)(b) of Tradepoint's application). Both U.S. and non-U.S. applications must be authorized to conduct investment business, have arranged for clearing arrangements with an Exchange Clearing Member (a Member of the Exchange that is also a member of the London Clearing House, as more fully described below), and meet the standards of financial responsibility and operational capability prescribed by the Exchange.

⁵ Tradepoint is listed on the Vancouver Stock Exchange and on the Alternative Investment Market of the LSE. The Exchange is a publicly held, for-profit company.

⁶ Tradepoint does not list securities; it offers trading only in securities listed on other exchanges.

⁷ The Exchange operates two types of auctions: instant and periodic. A security may be traded in either an instant auction or a periodic auction, but not both. In the instant auction, orders are matched electronically, in full or in part. Execution is automatic and continuous. Thus, a Member's orders are executed as soon as a contra-side order reaches the order book. The periodic auction is used for smaller capitalization and infrequently traded securities. It allows orders for these securities to accumulate over a period of time at the end of which the central computer matches qualifying buy and sell orders at a "balance price." See Section II of the Tradepoint Notice for a more complete description of the periodic auction.

⁸ The Tradepoint Notice stated that the names of Members were revealed upon clearance and settlement. This is not the case. The names of Members are not revealed to each other at any point in the trading process.

⁹ If there is a bid or an offer on the Exchange's book that matches either side of the cross trade, however, that bid or offer will have priority over the bid or offer that is part of the cross, and will receive execution. As a result some portion of that side of the trade will be left on the Exchange's book.

¹⁰ All individuals who have access to the Tradepoint System must have completed training from representatives of the Exchange in the use of the Tradepoint System.

Bloomberg terminal. Access to the Tradepoint System in the United States will be either through a Bloomberg terminal or through a direct connection to the Exchange through an existing global private data network operator. In the future, the Exchange's screens may be accessible from other distributors of information services as well.

All trades executed on the Exchange must be registered with the London Clearing House ("LCH") for clearances and settlement through CREST¹¹ (with the exception of cross trades, which are settled as described below).¹² All Members (including U.S. Members)¹³ must either be a member of the LCH ("Clearing Member") or have entered into a direct or indirect clearing arrangement with a Clearing Member ("Non-Clearing Member"). It is expected that U.S. Members will be Non-Clearing Members. Cross trades are settled directly through CREST by the Member that entered the trade (or by a sponsor of the Member that is a member of CREST). The LCH is not involved in the clearance and settlement of cross trades.

The settlement cycle in the U.K. is five business days, as opposed to three in the United States. U.S. Members' trades will not settle on the normal U.S. cycle, but on the U.K. cycle.

III. Trading by U.S. Members

The Exchange will permit U.S. persons to become Members in accordance with its normal business procedures.¹⁴ To comply with the U.S. securities laws, however, the Exchange will offer two different levels of service—one for all U.S. Members ("Public Market") and one limited to U.S. Members who are "qualified institutional buyers" ("QIBs") as defined in Rule 144A under the Securities Act of 1933¹⁵ ("Securities Act") (as may be amended from time to

time), international agencies, and non-U.S. persons (within the meaning of Regulation S).¹⁶ Bids and offers in U.K. securities registered under the Exchange Act, either in American Depositary Receipt ("ADR") form or in ordinary share form, will be available in the Public Market; bids and offers in those securities that are not registered under the Exchange Act will be available only to QIBs, non-U.S. persons, and international agencies ("QIB Market"). U.S. Members in the QIB Market will be required to resell any securities purchased on the Exchange through the Exchange or outside the United States. Such resales will be limited to other QIBs, international agencies, and non-U.S. persons.¹⁷

Other than these restrictions, U.S. Members will trade on the Exchange under the same terms as non-U.S. Members. U.S. Members will also trade on the Exchange during London business hours.¹⁸ In addition, U.S. Members will be subject to the same fees as all other Members.¹⁹

IV. Comments

In response to the Tradepoint Notice, the Commission received eight comment letters.²⁰ In general, the

¹⁶ A "non-U.S. person" within the meaning of Regulation S may include a U.S. broker-dealer that is acting as agent for an account held for the benefit of a non-U.S. person. This broker-dealer, when acting in its capacity as agent for this type of account, would have access to Tradepoint's QIB Market. The same broker-dealer may have accounts held for the benefit of U.S. persons as well. Such a broker-dealer would not be permitted to effect trades in the QIB Market for these accounts (unless the owners of those accounts are QIBs), or for its own proprietary account (unless it is a QIB).

¹⁷ The Exchange generally will not provide access to U.S. Members to securities for which there is a U.S. transfer agent or that are eligible for deposit at a registered clearing agency. U.S. Members may have access to such securities, however, if the annual trading volume in the U.S. of such securities is less than ten percent of the securities' annual worldwide trading volume.

¹⁸ The Exchange will be available to U.S. Members from 7:30 a.m. to 5:30 p.m. London time (2:30 a.m. to 12:30 p.m. Eastern standard time).

¹⁹ See Exhibit N, Sections 4 and 6, of Tradepoint's Form 1 filing for the specific fees charged by the Exchange.

²⁰ See letters from: New York Stock Exchange, Inc. ("NYSE") dated August 10, 1998; Joan C. Conley, Corporate Secretary, National Association of Securities Dealers, Inc. ("NASD") dated August 10, 1998 (in reference to File No. S7-12-98); Professor Anthony Neuberger, London Business School dated July 9, 1998; Robin Fellgett, Deputy Director, HM Treasury ("Treasury") dated July 10, 1998; John Packett, Director, Union Securities (International) Ltd. ("Union") dated July 21, 1998; Kevin M. Foley, Bloomberg L.P. ("Bloomberg") dated August 10, 1998; Steve Klein, Director of Global Equity Trading, American Century Investment Management ("ACIM") dated August 3, 1998; and Benn Steil dated July 17, 1998. All of the letters are contained in Public File No. 10-126 in the Commission's Public Reference Room. The staff has also prepared a summary of comments which can be found in the file.

commenters favored Tradepoint's application, stating that it will provide investors in the U.S. with greater opportunities to invest in foreign securities. A number of commenters stated that the Tradepoint System would enable broker-dealers in the U.S. to compete on equal footing with foreign broker-dealers with respect to trades in U.K. securities.²¹ Commenters also stated that Tradepoint would reduce the costs of trading for investors, thereby increasing shareholder return.²² In addition, commenters stated that making Tradepoint available to U.S. investors would increase transparency.²³ As further discussed below, only one commenter, the NYSE, objected to Tradepoint's application.²⁴

One commenter stated that, although he strongly supports Tradepoint's application for exemption from registration, he believes that the low volume basis for exemption provided by Section 5 of the Exchange Act is

²¹ Bloomberg Letter at 1; Treasury Letter at 1; Steil Letter at 1; Neuberger Letter at 1.

²² See Steil Letter 1 (commenting that the Tradepoint system is a "low-cost non-intermediated" vehicle through which U.S. investors can trade U.K. equities, and stating that the availability of direct access electronic trading methods will enable fund managers to reduce trading costs considerably, resulting in increased return for fundholders); ACIM Letter at 1-2 (stating that it has supported and encouraged the creation of low-cost trading alternatives driven by evolving technological changes; that Tradepoint will provide a welcome alternative to traditional trading systems in the U.K.; and that Tradepoint's ability to succeed has been hampered by the "entrenched conservatism of local U.K. dealing practices combined with regulatory impediments to the expansion of a U.S. customer base"; also stating that it believes Tradepoint offers investors the benefit of direct, anonymous electronic access to a central limit order book in U.K. stocks with zero cost, apart from clearing fees, to the initiator of a bid or offer). See also Union Letter at 1 (stating that settlement guarantees by the London Clearing House minimize counterparty risk; noting that trades on the LSE currently carry no guarantees other than that of the broker; citing the fact that orders may be posted on the Tradepoint system anonymously; and stating that the Tradepoint system provides a lower cost alternative for U.S. investors to trade in U.K. securities); HM Letter at 1 (stating that it favors Tradepoint's application for exemption from registration under Section 5, and stating that Tradepoint's application is an example of the "potential benefits to investors and financial intermediaries from opening up the provision of exchange services to international operators"); Bloomberg Letter at 1 (stating that Tradepoint will provide U.S. broker-dealers with lower cost U.K. equity trading on behalf of their investor clients).

²³ Neuberger Letter at 1 (supporting Tradepoint's application because Tradepoint offers investors the opportunity to deal directly with the rest of the market by putting orders in at will and managing them over time; and stating that Tradepoint is a transparent market because all investors have access to the same information). See also Union Letter at 1 (stating that the Tradepoint system is transparent because most major U.K. institutions have access to Tradepoint's market display).

²⁴ See *infra* Sections IV.C and IV.D. for a discussion of the NYSE's comments.

¹¹ The CREST system is operated by CRESTCo Limited, a corporation incorporated in England under the Companies Act of 1985. CRESTCo Limited was established by the Bank of England to provide facilities for the settlement of U.K. equity transactions in uncertificated form.

¹² After a trade is registered with the LCH, the LCH becomes the counterparty to both sides of that trade, guaranteeing settlement.

¹³ A U.S. Member is Member who is accessing the Tradepoint System from within the U.S.

¹⁴ The Exchange's rules for participation are set forth in Tradepoint Market Rules 3.4.1 and 3.4.2. The standards are objective, considering such factors as regulatory status and capital. The Commission expects that Tradepoint will admit applicants fairly based on these standards. A discriminatory denial of access to Tradepoint would constitute grounds for withdrawal of this Order. As a condition of the order, Tradepoint will be providing the Commission with a list of U.S. applicants who have been denied access to the Tradepoint System on a quarterly basis.

¹⁵ 17 CFR 230.144A.

fundamentally flawed in that a less liquid exchange, for that reason alone, does not provide investors better protection than a more liquid exchange.²⁵

ACIM also questioned whether, in a broader sense, exemption under Section 5 is the optimum way for the Commission to balance its regulatory responsibilities with respect to investor protection against the benefits of innovation, competition, and lower costs.²⁶ ACIM stated that in theory, the more attractive the benefits of trading on Tradepoint, the more likely it is that an unanticipated number of investors will trade on the exchange, thus jeopardizing its low volume exception.²⁷

Only the NASD directly addressed whether the volume levels the Commission proposed as the threshold for the low volume exemption were appropriate.²⁸ While the NASD stated that it is in favor of a low volume exemption for Tradepoint, it also noted that the Commission may be creating incentives for U.S. exchanges to create subsidiaries abroad to conduct activity in the U.S. through the low volume exemption.²⁹ The NASD also stated that it believes granting Tradepoint's application would pave the way for a U.S. market "to create an OTC Bulletin Board to publish quotations from NASD members, on a real-time basis, in unregistered foreign securities in another jurisdiction."³⁰

The Commission believes that an exchange operated offshore but targeting U.S. persons, which is owned or controlled, directly or indirectly, through a financial interest or otherwise, by a U.S. national securities exchange or national securities association, would be considered a U.S. market operated by an SRO. As such, it would be subject to Commission oversight. The Commission notes that Tradepoint, as a condition to this Order, has agreed that it is subject to the Commission's jurisdiction.

²⁵ Steil Letter at 2. The Commission notes that the only statutory basis for granting an exemption from registration as a national securities exchange under Section 5 is low volume. The Commission has adopted new rules permitting, among other things, alternative trading systems to register as broker-dealers or as exchanges. See Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Adopting Release").

²⁶ ACIM Letter at 2.

²⁷ ACIM Letter at 2.

²⁸ The NASD stated that it believes "the volume levels that the Commission proposed as the thresholds for the exemption are appropriate." NASD Letter at 9. The NASD Letter also expresses the views of NASD's subsidiaries, NASD Regulation, Inc. and The Nasdaq Stock Market, Inc.

²⁹ NASD Letter at 9.

³⁰ NASD Letter at 9.

V. Limited Volume Exemption

Section 5 of the Exchange Act requires that all exchanges subject to the jurisdiction of the United States either register with the Commission as a national securities exchange or obtain a Commission exemption from that requirement.³¹ Section 5 authorizes the Commission to grant an exemption from registration if the Commission finds that, "by reason of the limited volume of transactions affected [the] exchange, it is not practicable and not necessary or appropriate in the public interest for the protection of investors" to require such registration.³²

In the last sixty years, the Commission has granted one of the exemption from registration as a national securities exchange on the basis of low volume of the Arizona Stock Exchange ("AZX").³³ In its order granting a limited volume exemption from registration as an exchange to AZX,³⁴ the Commission used the volume levels of the fully regulated national securities exchanges at that time as the benchmark for low volume for AZX.³⁵ Consequently, AZX's exemption order was conditioned upon its volume staying below that of the national securities exchange with the lowest average daily trading volume.³⁶ AZX's trading is also limited to securities registered under the Exchange Act³⁷ that were also traded on registered U.S. exchanges or Nasdaq.

VI. Tradepoint Exemption

The Commission agrees with the majority of commenters that permitting the Exchange to operate in the U.S. on a low volume basis would provide U.S. investors with greater opportunities to invest in foreign securities. By providing direct access, the Exchange

offers U.S. investors a lower cost trading alternative. As one commenter stated, Tradepoint offers investors an excellent low-cost non-intermediated mechanism for trading U.K. stocks.³⁸ Moreover, the Commission believes that given Tradepoint's limited size, it would be unnecessary to compel Tradepoint to satisfy all of the regulatory requirements imposed upon registered national securities exchanges under the Exchange Act. For example, if Tradepoint were to register as a national securities exchange under the Exchange Act, it would be required to become a self-regulatory organization, to file copies of proposed rules with the Commission for approval or disapproval,³⁹ to allow only broker-dealers to become members, and to trade only registered securities.⁴⁰ Because Tradepoint is regulated in the U.K. as an exchange, requiring Tradepoint to comply with the U.K. and U.S. regulation of exchanges might, at times, be inconsistent. In light of Tradepoint's anticipated limited volume of trading in the U.S., the Commission believes it would be impracticable and unnecessary to require Tradepoint to comply with all the requirements applicable to national securities exchanges. At the same time, the Commission is concerned with affording U.S. investors who use the Exchange with sufficient protection. Consequently, the Commission is imposing conditions in exempting Tradepoint from registration as a national securities exchange.

A. Volume Level

Trading volume in the United States is generally measured in number of shares. In the United Kingdom, the monetary value of trading is the common measure of a securities transaction and of overall market activity.⁴¹ In the U.K., share prices are roughly one-seventh of what they are in the U.S. for a comparable security.⁴²

³⁸ Steil letter at 1.

³⁹ Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1).

⁴⁰ Tradepoint's Members currently are both broker-dealers and institutions. Under Section 6 of the Exchange Act, registered exchanges may have only broker-dealer members. See Regulations ATS Adopting Release, *supra* note 25, at notes 363-374 and accompanying text.

⁴¹ According to the Exchange, commissions in the United Kingdom are also based on a percentage of the share price, rather than on the number of shares purchased.

⁴² In 1990, when AZX was granted an exemption, the average daily volume of all regional stock exchanges was 24.5 million shares and the average price of shares traded was \$28.51. In 1997, the average daily volume of all regional stock exchanges was 59.2 million shares and the average price of shares traded was \$42.20. In 1997, the

³¹ 15 U.S.C. 78e (1988).

³² *Id.*

³³ See Exchange Act Release No. 28899 (Feb. 20, 1991), 56 FR 8377 (February 28, 1991) ("AZX Release"). AZX was originally named Wunsch Auction Systems, Inc.

³⁴ See AZX Release at note 33.

³⁵ *Id.*

³⁶ For calendar year 1990, this was the Cincinnati Stock Exchange ("CSE"). In 1990 the CSE's average daily trading volume, expressed in shares, was 1,238,241. In 1996, AZX's volume threshold was increased to 5,965,346 shares, which was the average daily trading volume of shares traded on the Philadelphia Stock Exchange ("Phlx") in 1995, the Phlx was the national securities exchange with the lowest average daily trading volume.

³⁷ As a condition to AZX's limited volume exemption, the Commission required "the effective registration of any security traded on [AZX] under sections 12(b) or 12(g) of the Act, or the provision of information with respect to the security pursuant to section 15(d) of the Act, or an exemption from registration because the security is a 'government security' as defined in section 3(a)(42)(A), (B), or (C) of the Act."

This difference in share price is also reflected in the trading ADRs in this country, where each ADR is generally a multiple of the ordinary shares that are traded on the LSE.⁴³

In order to adjust for these factors, the Commission is granting the Exchange's application for exemption from exchange registration, using dollar value as a benchmark for volume, rather than average daily number of shares traded. This will permit the Exchange to operate in the U.S. under a benchmark which more appropriately reflects the difference in dollar value between U.S. and U.K. markets, and the difference in the way trading is measured in the U.K.

In addition, the Commission believes that it is appropriate to grant a low volume exemption only to an exchange that is a low volume exchange in its home country. The Commission believes that a U.S. limited volume exchange should not be owned, directly or indirectly, by a foreign exchange that has a significant market share in its home country. In 1997, LSE volume was 1.1 billion shares. The Exchange's volume was 3.1 million shares, significantly less than one percent of the LSE's average daily volume. The Commission is therefore conditioning the Exchange's operation in the U.S. upon it remaining a low volume exchange in the U.K.

Under the exemption, the Exchange will be exempt so long as:

(i) The average daily dollar value of trades (measured on a quarterly basis) involving a U.S. Member does not exceed \$40 million;⁴⁴ and

(ii) Its worldwide average daily volume (measured on a quarterly basis) does not exceed ten percent of the average daily volume of the LSE.

The limitation on the Exchange's worldwide trading volume would ensure that the Commission could reevaluate the appropriateness of the low volume exemption should the Exchange achieve significant volume relative to the LSE.

average daily volume on the LSE was 1.1 billion shares and the average price of shares traded was \$6.04.

⁴³For example, British Airways PLC ("BAB") is traded on the New York Stock Exchange ("NYSE") in ADR form. The ADR ratio for BAB is 1:10; thus, each ADR is equivalent to ten ordinary shares. Glaxo Wellcome PLC ("GLX") is also traded on the NYSE in ADR form. The ADR ratio for GLX is 1:2. SmithKline Beecham PLC ("SBH") is also traded on the NYSE in ADR form. The ADR ratio for SBH is 1:5. These securities will all be available for trading through the Exchange in their ordinary share form in the U.S.

⁴⁴The average price of shares traded on all regional changes in 1997 was \$42.20. Thus, \$40 million is equivalent to significantly less than 1.2 million shares a day, which was the original volume limitation placed on AZX.

B. QIB Access to Unregistered Securities

As noted above, under the terms of the Order the Commission is issuing today, Tradepoint will operate a QIB Market in the U.S. consisting of U.K. securities not registered under the Exchange Act.⁴⁵ Only QIBs, non-U.S. persons, and international agencies will have access to the screens displaying quotations in these securities, and securities purchased in the QIB Market must be resold through the Tradepoint QIB Market or otherwise outside the U.S. These conditions are designed to ensure that a public market does not develop in the U.S. in these unregistered securities. In its comment letter, the NYSE stated that it believes that any securities traded in the QIB Market should be limited to Rule 144A securities.⁴⁶ The NYSE stated that it believes that the Commission "limited private trading systems to Rule 144A securities in order to prevent the establishment of a semi-public market in unrestricted, but unregistered, foreign securities" and that absent an articulation by the Commission of a change in policy in this area, the QIB Market should be limited to Rule 144A securities.⁴⁷

Tradepoint is not a system designed to trade Rule 144A or other types of "restricted" securities under the Securities Act. Rather, it is a system designed to trade securities that are freely tradable under the Securities Act but some of which are not registered under the Exchange Act. The Commission is imposing a number of requirements on that portion of the Tradepoint System through which foreign securities that are not registered under the Exchange Act will trade in order to assure against the establishment of a U.S. public market in those securities.

The Commission's approval in allowing Tradepoint to operate a closed QIB-only market in foreign securities that are not registered under the Exchange Act is premised on Tradepoint's continuing to qualify for

⁴⁵As of September 23, 1998, according to the Exchange, 75 securities whose issuers also have securities registered in the United States traded on Tradepoint. This number may change in the future, as issuers' registration status under the Exchange Act changes. As a condition to this Order, the Exchange is required to inform the Commission of any changes in the registration status of the securities it trades. As described above, the registration status of a given security under the Securities Act and under the Exchange Act has an effect on how it will be traded through the Tradepoint System in the U.S.

⁴⁶"Rule 144A securities" are securities that have been sold by an issuer pursuant to a private offering exemption under the Securities Act and are eligible for resale under Securities Act Rule 144A.

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the limited volume exemption from exchange registration as described in this Order. Were that exemption not available, and were Tradepoint therefore required to register as a national securities exchange, Tradepoint would not be permitted to trade unregistered foreign securities, whether in a QIB-only market or otherwise.

C. Dissemination of Quotation and Last Sale Information

In its comment letter, the NYSE also stated that it believes that Tradepoint must be required to disseminate quotation and last sale information for all registered Tradepoint securities that trade in the U.S. public market.⁴⁸ The NYSE noted that the 64⁴⁹ Tradepoint securities that are traded in ADR form in the U.S. should be subject to Rules 11Aa3-1⁵⁰ ("Last Sale Reporting Rule") and 11Ac1-1⁵¹ ("Firm Quote Rule") under the Exchange Act. In the NYSE's view, if the Commission required Tradepoint to register as a national securities exchange, it would be subject to these rules with respect to the registered securities. The NYSE stated that it did not believe that if Tradepoint registered as a national securities exchange the fact that ADRs publicly traded in the U.S. are not fungible with the securities in the Tradepoint System and that Tradepoint securities are traded and quoted in pence, while the ADRs are traded and quoted in dollars, would be sufficient to exempt the Exchange from the Firm Quote and last Sale Reporting Rules.⁵²

The Last Sale Reporting Rule requires registered national securities exchanges and associations to report transaction prices and volumes for listed equity and Nasdaq securities that trade in their markets. Similarly, the Firm Quote Rule requires registered national securities exchanges and associations to collect and disseminate quotation information for listed equity and Nasdaq securities that trade in their markets. By their terms, these rules do not apply to Tradepoint, if exempted, because the Last Sale Reporting Rule and the Firm Quote Rule apply only to registered national securities exchanges, not to

⁴⁸NYSE Letter at 2-3.

⁴⁹In its comment letter, the NYSE stated that 64 securities traded on Tradepoint also trade in the U.S. in ADR form. Tradepoint believes 75 securities are currently traded on Tradepoint whose issuers also have securities registered in the U.S. Some of these securities may be traded in ordinary share form in the U.S., which may explain the discrepancy between the numbers provided by Tradepoint and by the NYSE.

⁵⁰17 CFR 240.11Aa3-1.

⁵¹17 CFR 204.11Ac1-1

⁵²NYSE Letter at 2.

exempt exchanges.⁵³ In addition, requiring Tradepoint to report to the Consolidated Tape is impracticable. Prices on Tradepoint are quoted in decimals and in pence. Moreover, Tradepoint operates between the hours of 2:30 a.m. and 12:30 p.m. Eastern standard time; during much of this time, the Consolidated Tape is not operating.

The Commission agrees, however, that it is important that transaction information be available to investors and the public. Tradepoint currently disseminates transaction volume and price information via its internet website. Tradepoint has agreed to update this information every twenty minutes. There is no charge to access the site.⁵⁴ In addition, Tradepoint's trading information will be available via Bloomberg and Reuters to all subscribers of subscribers of those vendors on a real-time basis.⁵⁵

D. Other Conditions

The Commission is also imposing other conditions on the Exchange beyond the low volume requirements discussed above. In considering for the first time a foreign exchange's operation in the United States, the Commission has considered both the need to protect U.S. investors and the interest of U.S. investors in gaining direct access to a foreign market. The Commission believes that when a foreign market seeks to operate in the United States—either as a registered exchange or pursuant to a limited volume exemption under Section 5 of the Exchange Act—that market must agree to comply with key provisions of the federal securities laws. When Tradepoint initially applied for an exemption last year, both its market rules and its member agreement included English Choice of law and choice of forum (arbitration in England) clauses. Under those provisions, a U.S.

Member effectively would have waived its rights and protections under the federal securities laws. Such an outcome would have been inconsistent with investor protection, the public interest, and Section 29(a) of the Exchange Act, which provides: "any condition, stipulation, or provision binding any person to Waive compliance with any provision of this title or of any rule or regulation thereunder, or of any rule of an exchange required thereby shall be void."⁵⁶

Accordingly, as a condition to the Commission's approval of Tradepoint's application, Tradepoint has agreed to amend its market rules and member agreement to include provisions that expressly preserve a U.S. Member's anti-fraud protections under the federal securities laws. All Tradepoint Members must agree to honor these provisions. In particular, Tradepoint's market rules and member agreement must make clear that, notwithstanding any other provision or rule, a court or tribunal with jurisdiction over any dispute arising out of or in connection with a transaction made on the Exchange shall apply the U.S. federal securities law statutes to any cause of action based upon fraudulent acts or omissions that either (a) occurred in the United States or (b) resulted in damages suffered in the United States. For example, a U.S. Member entering an order or executing a trade on Tradepoint would satisfy this requirement. It is the Commission's intention and expectation that these provisions will apply to U.S. Members and U.S. investors involved in or affected by a transaction that takes place over the Exchange, as well as to any other Member or person who is involved in or affected by such a transaction. The "U.S. federal securities laws" include the statutes the Commission administers, the rules and regulations promulgated under such statutes, and Commission and judicial decisions applying and interpreting those statutes. Thus, what constitutes a "fraudulent act or omission" is determined by looking to Commission and Judicial decisions.

Invoking these provisions will require an allegation that a fraudulent act or omission has taken place, at least in part, in the U.S., or that damages occurred (*i.e.*, effects were felt) in the U.S. Such a claim could involve Members, investors, or the Exchange itself. For example, if a U.S. Member enters an order on Tradepoint on behalf of a customer based on oral, written, or electronic information the U.S. Member

or customer alleges was misleading, either the U.S. Member or investor could invoke the market rules to preserve fraud claims under the federal securities laws.

Although the Exchange's market rules and member agreement require members to arbitrate their disputes in England, the Commission believes and expects that English arbitrators and courts will follow the above requirements and interpret and apply the U.S. federal securities laws as defined above. The Commission will monitor any litigation under this condition and reserves the right to modify or withdraw Tradepoint's exemption from exchange registration.

Other conditions will allow the Commission to monitor the Exchange for compliance with all applicable sections of the Securities Act and the Exchange Act (such as the anti-fraud and securities registration provisions), and will ensure that the Commission has access to books, records, and personnel of the Exchange should the need arise.⁵⁷ Specifically, the Commission is requiring the Exchange to keep and provide the following to the Commission upon request as a condition on the operation of the Exchange in the U.S.

- (a) Daily summaries of trading and time-sequenced records of each transaction involving a U.S. Member;
- (b) Information disseminated to U.S. Members, such as quotation and transaction information regarding securities traded through the Tradepoint System, as well as market notices to Members and other communications (such as to the trading hours);
- (c) Daily pound and the equivalent dollar value of transactions, and daily share volume of business transacted through the Tradepoint System (separately for orders entered by non-U.S. and U.S. Members, and in the aggregate);
- (d) A list of securities for which U.S. orders are accepted; and
- (e) Copies of Member applications and standards for admission to the Exchange.

The Exchange will also be required to provide 30 days prior notice to the

⁵³ In the order granting AZX a limited volume exemption, the Commission noted that there was no real-time transaction reporting service, including the Consolidated Tape Association and Nasdaq, available to systems that trade outside the NYSE's normal trading hours. Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 28, 1991). In addition, the Commission notes that Tradepoint will not be trading "covered" securities within the meaning of the Firm Quote Rule.

⁵⁴ Prior to filing its application for exemption from registration with the Commission, Tradepoint updated this information on an hourly basis. Because U.S. exchanges generally provide this information without charge on a twenty minute delayed basis, Tradepoint agreed to modify its dissemination practices to more closely reflect those of U.S. exchanges. Tradepoint's website address is <<http://www.tradepoint.co.uk>>.

⁵⁵ Like U.S. market centers, Tradepoint charges a fee for real-time trade dissemination. Tradepoint has represented to the Commission that it will make its trading information available in real-time to any entity for a reasonable, non-discriminatory fee.

⁵⁶ 15 U.S.C. 78cc(a).

⁵⁷ The Commission is exempting the Exchange from Rules 6a-1, 6a-2, 6a-3 and 24b-1 under the Exchange Act. Rules 6a-1, 6a-2 and 6a-3 set forth the procedures regarding amendments and supplemental material exchanges must file. Essentially the same information required by these rules will be provided to the Commission by the Exchange under the other conditions. To require the Exchange to comply with these rules would be duplicative, and would not result in the Commission receiving the material in as useful a form as proposed under the conditions set forth here.

Commission of any material changes in the operation of the Tradepoint System. The Exchange will also provide the Commission with direct access to real-time quotes and trading information.

Furthermore, the Exchange will supply to the Commission on a quarterly basis within 30 days of the end of each quarter:

(a) Total volume and average daily volume of transactions effected through the system during the period and year-to-date aggregates of these numbers, expressed in:

(i) Number of units of securities (for transactions in common stock, number of ordinary shares; for transactions in securities other than stock, other appropriate commonly used measure of value of such securities);

(ii) Number of transactions; and

(iii) Monetary value (for transactions in common stock, pound value and equivalent dollar value; for transactions in securities other than stock, other appropriate commonly used measure of value of such securities and equivalent dollar value); and

(b) Records regarding the identity of U.S. Members in the Tradepoint System and the identity of those denied participation in the Tradepoint System and the reason for such denial, as well as a description of the reason for terminating a former U.S. Member's ability to use the Tradepoint System.

The Exchange will be required to provide separate unit, transaction, and monetary volume and average daily volume information for the period covered by the report reflecting:

(a) Tradepoint System activity in securities involving a U.S. Member and;

(b) Tradepoint System activity in securities not involving a U.S. Member.

The primary market and hours for each type of security will also be identified.

The Exchange will also adopt and implement procedures to conduct surveillance of trading by Exchange employees and requirements to ensure the non-disclosure of confidential information in the possession of Exchange employees.⁵⁸ In addition, in response to regulatory trading halts on U.S. markets, the Exchange will be required to either suspend trading on the Tradepoint System for U.S. Members or consult with the Commission with respect to a possible suspension of trading. As a condition to the exemption granted by this Order, Tradepoint must cooperate with any investigation in connection with trading on the Tradepoint System conducted by

the Commission, including allowing Commission staff access to the facilities, books and records and other documents, as well as employees for interviews, and it will provide the Commission with any requested information (including documents) in connection with trading on the Tradepoint System. The Exchange will also be required to maintain an agent for service of process in the U.S. at all times that the Exchange is offering its services in the U.S.

The Exchange will adopt any necessary rule changes to conform its market rules and member agreement to the requirements, conditions, and language of this Order. An express condition of the Commission's approval is that the Exchange will have the capacity to enforce compliance by its Members with the rules of the Exchange with respect to the terms and conditions of this Order.

Finally, the Exchange will disclose to its U.S. Members, either by broadcasting over the Tradepoint System, or through such other means as it normally communicates with its Members, information regarding the trading priorities of the Exchange and the response time of orders entered into the Tradepoint System by U.S. Members as compared to the response time of orders entered by European or other non-U.S. Members. In addition, the Exchange will be required to disclose that the nature and timeliness of pre-trade and post-trade information provided by the Exchange differs from that provided by U.S. registered securities exchanges. Such information will include: (1) Notification that trades executed through the Exchange are not reported to the U.S. Consolidated Tape; (2) a description of clearance and settlement procedures and disclosure that the time for clearance and settlement under U.K. law is the date of the transaction plus five business days, as compared to three business days under U.S. law; and (3) disclosure of any Tradepoint System limitations affecting capacity to disseminate timely information or to handle Members' orders during peak or other periods.⁵⁹ The Exchange will also disclose to its U.S. Members risks that may arise due to capacity problems of the Tradepoint System.

This Order is subject to amendment if the Exchange offers trading in securities

⁵⁹ U.S. broker-dealers trading on behalf of U.S. customers should disclose to those customers any additional risks in executing customer orders for U.K. securities on Tradepoint, including the effects of Tradepoint's choice of law and forum clauses. Any U.S. Member entering orders in the Tradepoint System for the accounts of others may be required to register with the Commission as a broker-dealer unless an exception or exemption applies.

listed on any market (in the U.K. or otherwise) other than the LSE. The Exchange will also be required to continue to operate at all times in accordance with all applicable U.K. laws.

No provision contained in this Order or in any other agreement or document, nor any actions taken pursuant to them, shall be construed to affect or limit, or shall affect or limit, any right or responsibility of the Commission to take any action under the federal securities laws. The Commission's assessment of the impact of the trading of unregistered securities (*i.e.*, of both domestic and foreign issuers), and of the appropriate regulatory posture to these developments, is still ongoing. This issue, and the broader issues involving recent trends and initiatives that give U.S. investors greater and more instantaneous access to foreign securities markets, create tensions between competing Commission goals. The Commission, for example, wishes to foster developments that enable U.S. investors to execute securities trades more efficiently, but also desires that foreign securities traded in U.S. markets have full and fair disclosure. These tensions and issues will continue to be addressed by the Commission in the future, including issues raised by exempt exchanges such as Tradepoint, as well as alternative trading systems.

In light of the limited volume of trading anticipated to be done on the Exchange, and in the view of the regulatory protections over system activity that are either currently in place or that will be imposed by the Commission upon the Exchange in the form of conditions upon this exemption, the Commission finds that it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require Tradepoint to register as a national securities exchange.

VII. Conclusion

The Commission has reviewed Tradepoint's application for exemption from registration as a national securities exchange.

It is therefore ordered, pursuant to Section 5 of the Exchange Act, that Tradepoint's exemption from registration as a national securities exchange be granted, subject to the conditions contained in this Order.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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⁵⁸ The Commission notes that Tradepoint already has such procedures in place.