

believes that it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market value of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant states that the requested relief is 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.

Applicant's Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the portfolio of a Series nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-13141 Filed 5-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37223; File No. SR-NASD-96-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definitions of Bona Fide Independent Market and Bona Fide Independent Market Maker

May 17, 1996.

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 April 24, 1996, the National Association of 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 Rule 2720 of the NASD's Conduct Rules to amend the definitions of "Bona fide independent market" and "Bona fide independent market maker." Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Conduct Rules

2000. Business Conduct

* * * * *

2700. Securities Distributions

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) General

(1) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by the member, the parent of the member, or an affiliate of the member and no member or parent of a member shall issue securities except in accordance with this Rule.

(2) No member or persons associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by a company if the member and/or its associated persons, parent or affiliates have a conflict of interest with the company, as defined herein, except in accordance with this Rule.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) and (2) No change.

(3) Bona fide independent market—a market in a security which:

(A) Is registered pursuant to the provisions of Sections 12(b) or 12(g) of the Act or issued by a company subject to Section 15(d) of such Act, unless exempt from those provisions;

[(B) Has an aggregate trading volume for the 12 months immediately preceding the filing of the registration statement of at least 100,000 shares;]

[(C) Has outstanding for the entire 12 month period immediately preceding the filing of the registration statement, a minimum of 250,000 publicly held shares; and]

[(D) In the case of over-the-counter securities, has had at least three bona fide independent market makers for a period of at least 30 days immediately preceding the filing of the registration

statement and the effective date of the offering.]

(B) *Has a market price as of the close of trading on the trade date immediately preceding filing of the registration statement or offering circular of five dollars or more per share, and which has traded at a price of five dollars or more per share in at least 20 of the 30 trading days immediately preceding the filing of the registration statement or offering circular; and*

(C) *For at least 90 calendar days immediately preceding the filing of the registration statement or offering circular with the Department:*

(i) *Has been listed on and is in compliance with the requirements for continued listing on a national securities exchange; or*

(ii) *Has been listed on and is in compliance with the requirements for continued listing on The Nasdaq Stock Market and has had at least two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement and the effective date of the offering; and*

(D) *For the 90 calendar day period immediately preceding the filing of the registration statement or offering circular:*

(i) *Has an aggregate trading volume of at least 500,000 shares; or*

(ii) *Has outstanding a minimum of 5,000,000 publicly held shares.*

(4) Bona fide independent market maker—a market maker which:

[(A) Continually maintains net capital as determined by Rule 15c3-1 under the Act, of \$50,000 or \$5,000 for each security in which it makes a market, whichever is less;]

[(B) Regularly publishes bona fide competitive bid and offer quotations in a recognized interdealer quotation system;]

[(C) Furnishes bona fide competitive bid and offer quotations to other brokers and dealers on request; and]

[(D) Stands ready, willing and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers.)

(A) *Is registered as a Nasdaq market maker in the security to be distributed pursuant to this Schedule;*

(B) *Is not an affiliate of the entity issuing securities pursuant to paragraph (c) of this Schedule and, together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement and at the commencement of the distribution, five percent or more of the outstanding voting securities of such entity which is a corporation or beneficially own a partnership interest*

in five percent or more of the distributable profits or losses of such entity which is a partnership; and
(C) Is not a recipient of any of the net proceeds of the offering.

* * * * *

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

Introduction and Background

Rule 2720 of the NASD's Conduct Rules (the "Rule") (formerly, Schedule E to the NASD's By-Laws) addresses the concern that public investors be adequately protected against conflicts of interest regarding the conduct of due diligence and pricing of securities when investing in securities issued by an NASD member, its parent or an affiliate of a member that is going public or by an issuer with which the member has a conflict of interest ("Rule 2720 offering"). The Rule prohibits a member from underwriting or participating in the underwriting or distribution of a Rule 2720 offering of equity or debt unless the price of the equity offering is established no higher, or the yield of the debt offering is established no lower, than the price recommended by a qualified independent underwriter, who shall also participate in the preparation of the registration statement and prospectus, offering memorandum, or similar document, and exercise usual standards of "due diligence" regarding the offering. Rule 2720 provides an exception from the qualified independent underwriter requirement for offerings of equity securities for which a bona fide independent market exists. Rule 2720 defines a bona fide independent market as a market in a security which has, among other things, at least three bona fide independent market makers.

The NASD has reviewed the definitions of bona fide independent market and bona fide independent

market maker, which were part of the original version of Rule 2720 when it was adopted as Schedule E in 1972. The NASD is proposing to revise the definitions to incorporate new requirements for listing, public float, trading volume, price, number of bona fide independent market makers, and limitations on the relationship of the bona fide independent market maker to the issuer that will significantly improve the criteria used for determining that a market of sufficient depth and duration exists to constitute an efficient pricing mechanism for the securities to be distributed. The NASD believes that the proposed new definitions will permit members, in appropriate situations, to conduct a secondary offering without the burden and expense of engaging a qualified independent underwriter, while ensuring the public that the added protection of a qualified independent underwriter will be required in situations where the market cannot be relied on to price the securities appropriately.

Description of Proposed Amendments

Bona Fide Independent Market Definition

Registration Requirement

The proposed rule change retains the current requirement in the definition of bona fide independent market that it must be a market in a security which is registered pursuant to Sections 12(b) or 12(g) of the Act or issued by a company subject to Section 15(d) of that Act.

Price Requirement

The current definition of bona fide independent market does not contain a price requirement. The NASD is concerned that a public float requirement, as set forth below, without a corresponding standard for the market price of the securities does not establish a valid benchmark for a bona fide independent market. Therefore, the NASD is proposing to adopt a new provision in the definition of a bona fide independent market that would require that the security have a market price of at least \$5 a share as of the close of trading on the day immediately preceding the filing of the registration statement or offering circular, and have traded at a price of \$5 or more per share on at least 20 of the 30 trading days immediately preceding the date on which the offering circular or registration statement was filed.

Listing and Market Maker Requirement

The current definition of bona fide independent market does not contain a

listing requirement. The NASD believes that a listing on a national securities exchange or The Nasdaq Stock Market indicates that the security trades in an efficient, regulated, and active market and would bring to the definition of bona fide independent market the qualitative standards of a regulated trading environment, such as quote transparency and real-time transaction reporting. Therefore, the NASD is proposing to adopt as one of the requirements for the definition of a bona fide independent market that the security, for at least 90 calendar days immediately preceding the filing of the registration statement or offering circular, have been listed on, and is in compliance with, the requirements for continued listing on (i) a national securities exchange, or (ii) The Nasdaq Stock Market so long as such Nasdaq listing has two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement or offering circular and the effective date of the offering. Securities quoted on the NASD OTC Bulletin Board service and those traded in the general over-the-counter market, such as the "pink sheets," cannot rely on this requirement.

The proposed requirement that the security have at least two bona fide independent market makers for listings on the Nasdaq Stock Market would replace the current requirement of at least three bona fide independent market makers. Given that a security is permitted to be listed on the Nasdaq Stock Market with two market makers, the NASD believes that two market makers are sufficient to demonstrate the presence of a bona fide independent market away from any Rule 2720 affiliate that may also be making a market in the issuer's securities.

Trading Volume and Public Float Requirement

The current definition of bona fide independent market contains independent requirements for trading volume and public float. Under the current rule, a security is considered to have a bona fide independent market if, for the 12 months immediately preceding the filing of the registration statement, it has *both* an aggregate trading volume of at least 100,000 shares *and* a minimum of 250,000 publicly held shares. Under the proposed rule change, the requirements for trading volume and public float will be in the alternative. That is, for a bona fide independent market to exist, the proposed rule would require a security to have for the 90 calendar day period

immediately preceding the filing of the registration statement or offering circular *either* an aggregate trading volume of at least 500,000 shares or a minimum of 5,000,000 publicly held shares outstanding.

The NASD believes that raising the current aggregate 12-months trading volume requirement of 100,000 shares to 500,000 shares in the 90-calendar-day period before the filing of the registration statement or offering circular provides a criterion that is more indicative of an active, current and, therefore, efficient market. Such greater price efficiency establishes a better benchmark for justifying an exemption from the requirement that a qualified independent underwriter establish the price of the offering.

The NASD considers the alternative requirement of a five-million-share public float as the minimum necessary to assure that the market for an issuer's securities will not suffer undue volatility from the dilution that occurs when a large number of shares is offered to the public. In this regard, the NASD notes that a typical "follow-on" offering¹ of a company's stock adds between one- and two-million shares to the public float, which is equal to a 40 percent dilution at the five-million-share level.

Bona Fide Independent Market Maker Definition

The Rule currently defines a bona fide independent market maker as one which meets certain net capital requirements, publishes bona fide bid and ask quotations in a recognized interdealer quotation system, furnishes such quotes to other brokers and dealers on request, and stands ready, willing and able to effect transactions at quoted prices with other brokers and dealers. The current standards of the definition were developed at the time the Rule was adopted in 1972 as Schedule E and applied to all securities in the over-the-counter market.

The NASD believes that the current standards for the definition of bona fide independent market maker are no longer necessary in light of the proposed requirement of the definition of bona fide independent market that the security be listed on The Nasdaq Stock Market. Market makers for securities listed on The Nasdaq Stock Market are required to meet certain net capital standards, publish bona fide bid and ask quotations in Nasdaq, which is a recognized interdealer quotation system, furnish quotes to other brokers and

dealers on request, and stand ready, willing and able to effect transactions at quoted prices with other brokers and dealers. Therefore, the NASD is proposing that the current requirements be incorporated into a single standard requiring that the market maker be registered as a Nasdaq market maker.

The NASD believes that the definition of bona fide independent market maker should also provide investors with greater assurance that the market maker's activities are independent of any influences that may arise when the issuer's ownership of securities or interest in the offering becomes material. Therefore, the NASD is also proposing to adopt as part of the new definition that a bona fide independent market maker (i) must not be a recipient of any of the net proceeds of the offering, (ii) must not be an affiliate of the entity issuing the securities, and, (iii) together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement or offering circular, five percent or more of the outstanding voting securities of the entity issuing the securities, if a corporation, or a five percent or more partnership interest in the distributable profits or losses of the entity, if a partnership.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,² 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, by amending the requirements to qualify for the exception to the qualified independent underwriter requirement for an equity security with a bona fide independent market, significantly improves the criteria used for determining the presence of a bona fide independent market for Rule 2720 offerings and reinforces the standard that a bona fide independent market should be stringent enough to assure the public that a market of sufficient depth and duration exists to constitute an efficient pricing mechanism for the securities to be distributed.

(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 95-44 (June, 1995) ("NTM 95-44"). Three (3) comment letters were received in response. All 3 commenters were in favor of the proposed rule change; one commenter suggested substantive changes to the proposed rule change.

Sullivan and Cromwell ("S&C") suggested revisions to clarify the meanings of the definitions of both "bona fide independent market" and "bona fide independent market maker" and to ease compliance with these requirements.

Bona Fide Independent Market Definition

The term "listing requirements" in the version of the definition of "bona fide independent market" published for comment in NTM 95-44 would have required compliance with listing requirements on a national securities exchange or the Nasdaq Stock Market. S&C stated it presumed that this requirement referred to maintenance criteria rather than original listing standards since the definition would otherwise exclude various issuers currently in compliance with appropriate maintenance criteria for continued listing but who, for various reasons, no longer meet initial listing standards.

The NASD agrees that the proposed definition of "bona fide independent market" was not intended to require continuous satisfaction of initial listing requirements of the Nasdaq Stock Market or national securities exchanges. Therefore, the proposed rule language has been amended to specifically require compliance with the requirements for continued listing on The Nasdaq Stock Market or a national securities exchange.

The NASD also agrees with S&C that the parenthetical "(Trading Volume Test)" in Section 2(c)(4)(i) should be deleted since the term is not used again in the rule language.

S&C also stated that the definition of "bona fide independent market" appears to require compliance with "listing requirements" only on the filing date of the registration statement and not throughout the preceding 90 calendar days. The NASD believes that the literal language of the proposed rule is clear that compliance with the listing requirements is required throughout the 90 calendar days preceding the filing of the registration statement.

¹ The term "follow-on" offering refers to a secondary offering of shares by the issuer.

² 15 U.S.C. 78o-3.

Bona Fide Independent Market Maker Definition

In the version of the proposed rule change published for comment in NTM 95-44, "bona fide independent market maker" was defined, in part, as a market maker who is not affiliated with the issuer and, together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement, 5% or more of the issuer's outstanding voting securities, common equity, preferred equity, or subordinated debt ("five percent requirement"). The NASD stated in NTM 95-44 that the proposed new standards for the definition of bona fide independent market maker were largely drawn from the current definition of qualified independent underwriter in the Rule and from the current definition of qualified independent underwriter in the Rule and from the reporting requirements imposed on beneficial owners by Section 13 of the Act. S&C objected to the five percent requirement on a number of grounds.

First, S&C stated that there is a fundamental difference between qualified independent underwriters and bona fide independent market makers that makes it inappropriate to apply the same standards to each. In particular, a qualified independent underwriter directly participates in the offering process and is usually a party to an agreement with the issuer outlining each party's responsibilities under the Rule. A registered market maker for a Nasdaq-listed stock, however, might not be a participant in the distribution and thus not a party to any agreement with either the issuer or the managing underwriter. Thus, a market maker could not be compelled, contractually or otherwise, to divulge the information needed for the issuer and managing underwriter to determine whether the market maker qualifies under the five percent requirement as a bona fide independent market maker.

Second, S&C stated that, contrary to the suggestion in NTM 95-44, the issuer and managing underwriter cannot necessarily obtain the required information from filings made by market makers under Section 13 of the Act. Section 13 (d) and (g) filing requirements apply only to acquisitions of equity securities that are "voting securities" and do not provide information regarding a market maker's investment in an issuer's non-convertible preferred stock or subordinated debt. Additionally, under Exchange Act Rule 13d-1(b)(1), many market makers which beneficially own

more than five percent (but less than ten percent) of an issuer's outstanding voting securities will not be required to file any related disclosure statement under Section 13, thus eliminating the need to file a Schedule 13 regarding registered equity securities acquired by them in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer.

Third, S&C noted that the five percent requirement prohibits a bona fide independent market maker from holding a five percent securities position *either* at the filing date or at the commencement of the distribution. S&C stated that a market maker not participating in the distribution, who would otherwise qualify as a bona fide independent market maker on the filing date, might very well refuse to provide any undertakings to the issuer regarding the securities positions it will hold on the commencement date. Consequently, an issuer may be unable to ensure that a broker-dealer who qualifies as a bona fide independent market maker on the filing date will remain so qualified on the commencement date.

Finally, S&C noted that the definition of bona fide independent market maker proposed in NTM 95-44 requires that securities ownership by the member's associated persons and immediate family members, parents, and affiliates be aggregated for purposes of the five percent limitation, whereas the current definition of qualified independent underwriter does not require such aggregation. S&C stated that it is odd to include such an aggregation requirement in view of the fact that NTM 95-44 stated that the proposed definition of bona fide independent market maker is intended, in part, to conform to the current definition of qualified independent underwriter.

S&C recommended that the NASD either delete the five percent ownership requirement entirely or at least that element of the five percent requirement that requires aggregation of "associated persons and their immediate family, parents and affiliates."

The NASD agrees that the nature of Section 13 filing requirements appears to make such reporting an inadequate substitute source of information for ensuring compliance with the definition of bona fide independent market maker proposed in NTM 95-44. Therefore, the NASD has eliminated the requirement that a bona fide independent market maker have no more than a five percent beneficial ownership position in the *non-voting* securities of an issuer including common equity, preferred equity, and subordinated debt, but has

retained the five percent ownership requirement with respect to the issuer's *voting* securities. The NASD believes that if a market of sufficient depth and liquidity exists to meet the other stringent requirements of the definition of a bona fide independent market, then the integrity of the pricing of the offering is preserved regardless of whether one or more market makers hold positions in the issuer's non-voting securities.

The NASD also agrees that the requirements for a bona fide independent market maker proposed in NTM 95-44 are more stringent than the current requirements imposed on a qualified independent underwriter under the Rule. Therefore, the NASD has eliminated the requirement to aggregate the ownership of the immediate family, parents and affiliates of the member and its associated persons with any direct ownership by the market maker and its associated persons. However, when a bona fide independent market maker and its associated persons "beneficially own" voting securities of the same issuer, the NASD considers aggregation of ownership to be appropriate.³

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

³ "Beneficial Ownership" is defined in the Rule to mean the right to the economic benefits of a security.

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 the file number in the caption above and should be submitted by June 14, 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. 96-13143 Filed 5-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37229; File No. SR-PHILADEP-95-12]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking To Establish a Centralized Office Processing System

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 19, 1995, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PHILADEP-95-12), which Philadep amended on March 20, March 27, March 28, and April 1, 1996,² as described in Items I, II, and III below, which items have been prepared primarily by Philadep. 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

Philadep proposes of offer to its participants a customer name safekeeping and branch receive processing service known as the Centralized Office Processing Service ("COPS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

COPS is a customer name⁴ safekeeping and branch receive processing service that Philadep proposes to offer to interested participants for both depository eligible and ineligible securities provided that all such securities have a valid CUSIP number. The primary objective of COPS is to allow Philadep participants to utilize Philadep as a custodial agent for customer name securities.

COPS is designed to offer broker-dealers the opportunity to eliminate a labor intensive, low profit service from the broker-dealers' operations. Philadep believes COPS will serve several functions including relieving Philadep participants from the processing and auditing responsibilities associated with receiving customer name securities, reducing the costs Philadep participants bear in connection with maintaining safekeeping for physical certificates, and centralizing more securities certificates in a depository environment.

Under COPS, deliveries of customer name certificates from Philadep participants will be deposited into Philadep's vault for safekeeping.⁵ Upon an appropriate instruction from the submitting participant to withdrawn positions held in customer name or if a participant's customer wishes to sell the securities, Philadep may either (i) send these certificates to the participant or (ii) if the securities are depository eligible and possess all necessary endorsements and stock or bond powers, forward them to the transfer agent for reregistration into Philadep's

nominee name and subsequently deposit them into the participant's general Philadep account.⁶

As proposed, COPS also will permit Philadep participants to collect, process, and forward certificates and related documentation directly to Philadep from their branch offices. This enables Philadep to operate as the participants' central processing office. Thus, COPS will eliminate steps in the ordinary certificates routing process by allowing participants' branch offices to forward these documents directly to Philadep. The branch receive processing facility will apply to both customer name safekeeping positions and to ordinary deposits that participants will forward to the depository to be placed in Philadep's nominee name.

The COPS program will require Philadep participants utilizing the new service to send their securities to Philadep through Philadep's Automated Deposit System ("ADS"). This will allow Philadep participants to report their deliveries to Philadep in advance of the physical delivery.⁷ Philadep will verify the contents of the incoming deliveries and will provide intraday reconciliation through computer-to-computer capabilities. Philadep will endeavor to resolve with the delivering participant any discrepancies between the ADS transmission and the contents of the packages. If the participant does not properly reconcile its submissions with Philadep or supply the proper instructions regarding these items within thirty days, Philadep will automatically send these exception items back to the respective participant's branch or central office. Philadep has not established fees for COPS; therefore, prior to its implementation, Philadep will file a proposed rule change with the Commission setting forth the fees for COPS.

In connection with providing the COPS service, Philadep believes that it operates as a control location for securities deposited into COPS within the meaning of Section 15(c) of the Act and Rule 15c3-3(c)(5) promulgated thereunder. In accordance with 15c3-3(c)(5), Philadep states (i) it qualifies as

⁶ For customer name securities that are not depository eligible at the time a transfer request is made, Philadep will perform all necessary due diligence on such securities to make them depository eligible so that the securities can be registered in Philadep's nominee name and subsequently available for book-entry delivery into the participant's general Philadep account.

⁷ In addition to reporting incoming deposits prior to physical delivery, ADS will check securities against Philadep's certificate master file to ascertain whether the securities possess a valid CUSIP number.

¹ 15 U.S.C. § 78s(b)(1) (1988).

² Letters from J. Keith Kessel, Esq., Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Senior Counsel, Division of Market Regulation, Commission (March 20, March 22, March 28, and April 1, 1996).

³ The Commission has modified the text of the summaries submitted by PHILADEP.

⁴ Customer name securities refer to securities that are registered in the name of the beneficial owner.

⁵ Philadep will segregate all customer name certificates from nominee name certificates in its vault.