

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on May 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 700 Central Avenue, St. Petersburg, Florida 33701.

FOR FURTHER INFORMATION CONTACT: Diana L. Titus, Paralegal Specialist, at (202) 942-0584, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Maryland corporation. On March 27, 1990, applicant registered under the Act and filed a registration statement on Form N-2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of applicant's common stock. The registration statement was declared effective on May 23, 1990 and the initial public offering of applicant's shares commenced on that date.

2. On December 5, 1995, applicant's Board of Directors approved a plan of reorganization providing for a transfer of all or substantially all of applicant's assets in exchange for Class I shares of Franklin Global Utilities Fund ("Franklin Global"), a series of Franklin Strategic Series. In accordance with rule 17a-8 under the Act, which governs mergers of certain affiliated investment companies, the board determined that the reorganization was in the best interests of applicant and that the interests of applicant's existing

shareholders would not be diluted as a result of the reorganization.¹

3. On December 19, 1995, applicant filed proxy materials with the SEC. On or about January 19, 1996, proxy materials were sent to shareholders. At a meeting held on February 20, 1996, the reorganization was approved by applicant's shareholders.

4. On March 29, 1996, Franklin Global acquired all or substantially all of the assets of applicant in exchange in Class I shares of Franklin Global and the assumption by Franklin Global of certain identifiable liabilities of applicant. The number of full and fractional shares of Franklin Global that was issued to applicant's shareholders was determined on the basis of the relative net asset values per share and the aggregate net assets of Franklin Global and applicant as of the close of business on the New York Stock Exchange on that date.

5. Expenses incurred in connection with the reorganization were approximately \$72,537. Applicant, its adviser, Templeton Global Advisors Limited, Franklin Global, and its adviser, Franklin Advisors, Inc. shared these expenses equally. No brokerage commissions were paid to transfer ownership of portfolio securities by applicant to Franklin Global.

6. Applicant has no remaining assets, debts, or liabilities, and has no securityholders.

7. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file a certificate of dissolution in accordance with Maryland laws.

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

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

¹ Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. 34-37309; International Series Release No. 993; File No. 600-29]

Self-Regulatory Organizations; Cedel Bank; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

June 12, 1996.

I. Introduction

On August 31, 1995, Cedel Bank, société anonyme, Luxembourg ("Cedel")¹ filed with the Securities and Exchange Commission ("Commission") an application on Form CA-1² for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")³ and Rule 17Ab2-1 thereunder.⁴ Cedel's application includes procedures and guidelines for its proposed offering of clearance, settlement, and credit support services for transactions in U.S. securities⁵ conducted by U.S. entities. The Commission is publishing this notice to solicit comments from interested persons.

II. Description of Cedel Operations

A. Clearance and Settlement

Cedel currently offers to its customers international clearance and settlement of securities transactions in primary and secondary markets, trade confirmation, securities custody, and securities lending services. The securities that Cedel clears are fixed income bonds such as Eurobonds, domestic and convertible bonds, money market instruments, short and medium term notes, equities, and warrants.

¹ Cedel Bank is a wholly-owned subsidiary of Cedel International. On January 1, 1995, Cedel, which was established in 1970, was converted into Cedel Bank to perform lending, clearing, and settlement activities, and a parent company, Cedel International, was created into which Cedel transferred the nonbanking subsidiaries. Cedel Bank is licensed in Luxembourg both as a bank and as a "professionnel du secteur financier" ("PSF") and is under the supervision of the Institut Monétaire Luxembourgeois ("IML"), Luxembourg's banking and securities regulatory authority. Cedel International is licensed as a non-bank PSF and also is under the supervision of the IML. The IML establishes capital and liquidity requirements, evaluates the financial condition and performance of all Luxembourg financial institutions, conducts on-site inspections, and monitors all financial institutions and their controlling companies for adherence to Luxembourg laws and regulations. On April 24, 1996, the Federal Reserve Board granted Cedel's request to establish a representative office in New York.

² Copies of the application for exemption are available for inspection and copying at the Commission's Public Reference Room.

³ 15 U.S.C. § 78q-1.

⁴ 17 CFR 240.17Ab2-1.

⁵ The services will cover all types of U.S. equity, debt, and government securities.

From its inception, Cedel has provided delivery-versus-payment ("DVP") settlement for securities transactions.⁶ DVP settlement is made possible by the legal environment for securities custody and transfer in Luxembourg.⁷ Cedel is not a party to the securities transactions in its clearance and settlement system.

Liquidity facilities are negotiated with financial institutions to permit Cedel to extend financing to customers to meet their settlement requirements in local currencies. To enable it to extend such financing, Cedel maintains a US\$1 billion committed revolving credit facility with a syndicate of major banks and a US\$500 million commercial paper facility. Cedel also has a US\$1.8 billion letter of credit guaranteeing transmissions across the bridge established between Cedel and the Euroclear System ("Euroclear").⁸ Cedel also has approximately US\$8 billion of uncommitted lines of credit available.⁹

Cedel's presettlement trade matching service, which has been available since 1987, consists of a trade comparison system that allows customers in both Cedel and Euroclear to compare their trade data. Income trade data is compared in one of four daily matching runs. Information on the status of a transaction is made available to the counterparties ninety minutes after processing of the trade data for each matching run.

Cedel operates two securities processing systems, overnight settlement processing and daytime settlement processing.¹⁰ Overnight processing is possible because of the

most recent bridge agreement established between Cedel and Euroclear which was implemented in September 1993.¹¹ The new bridge agreement facilitates the two-way exchange of counterparty data, enabling both Cedel and Euroclear to settle overnight and to provide early morning position statements. Under the new bridge, with multiple overnight processing, Cedel's customers can settle trades with Euroclear participants for same day value. Multiple overnight processing also allows "chaining" of securities transactions in and between Cedel and Euroclear.¹²

Each settlement within the overnight and daytime processing systems is distinguished by whether it is an "internal" or "external" settlement at Cedel. An internal settlement is the settlement of a transaction between two Cedel customers where the securities being transferred are maintained by book-entry at Cedel. These services are performed at Cedel without notifying or instructing its securities depositories. Funds transfers necessary to settle transactions may be made to or from an account maintained at Cedel or to or from one of its correspondent banks. Because transfers of securities accepted at both Euroclear and Cedel may be settled and cleared through the bridge, Cedel treats settlements between customers of Cedel and Euroclear involving such securities as internal. An external settlement is the settlement of a transaction where one of the counterparties to a transaction is not a Cedel customer or where a Cedel customer is transferring securities that are not maintained by book-entry at Cedel.

Cedel also has developed links to accommodate customer settlements of domestic government and corporate securities. These links are accounts with domestic clearing agencies or bank custodians which have access to domestic settlement system.

¹¹ The electronic bridge enables trades to be processed on a book-entry basis between Cedel and Euroclear rather than by the physical delivery of securities. Under the terms of the original bridge agreement, Euroclear was able to clear trades overnight, having received the necessary data on counterparties from Cedel, while Cedel had to settle the following day after receiving counterparty data from Euroclear's overnight processing run. This created a backlog of settlements for Cedel and a time-lag between initiation of the delivery of securities and payment for them.

¹² Cedel's chaining system allows securities to be bought and sold many times during the day. Cedel's chaining program scans open transactions until all cash and securities resulting from same day settlements are reemployed to settle further transactions for same day value. Therefore, for back-to-back transfers for equivalent funds, customers may not need to pay because proceeds from sales are used to settle purchases.

Transactions for settlement on a given day are matched at Cedel and are settled if the delivering party has unencumbered securities sufficient to make delivery¹³ and the receiving party has sufficient cash and credit facilities to pay for the securities.¹⁴ If either condition is not met, the transaction will fail. If securities are delivered against uncollected or borrowed funds, a collateral interest is taken in the receiving participant's securities holding within the system to secure the creditor. Because Cedel is not a party to the securities transactions in its clearance and settlement system, Cedel believes its operations are essentially devoid of settlement risk to Cedel and therefore does not rely on a clearing fund or the resources of its customers.

The relationship between Cedel and each of its customers is governed by the General Terms and Conditions agreement ("Customer Agreement") and the Cedel Customer Handbook ("Customer Handbook"). Cedel must notify the customer in writing of any amendment to the Customer Agreement and the effective date of the amendment. Customers have the opportunity to object to the amendment in writing within ten business days of receipt of the notice of amendment. If a customer does not object in such a manner, it is deemed to have accepted the amendment. Similarly, customers also are notified of changes to Cedel's Customer Handbook ten days prior to the effective date of such changes.¹⁵ Any objection to a change must be in writing within ten business days of the receipt of notice and must be brought to the attention of the Cedel User Group or customer support personnel.

B. Global Credit Support Service

One of the primary reasons for Cedel's request for exemption from registration as a clearing agency is its proposed implementation of a Global Credit Support Service ("GCSS").¹⁶ GCSS is a book-entry, real-time collateral management service for cross-border securities collateralization. GCSS is intended to enable GCSS customers to reduce the credit risk associated with their financial exposure to counterparties by offering an efficient and safe means of monitoring exposures and by

¹³ The securities may be owned outright or borrowed.

¹⁴ Acceptable cash and credit facilities for a customer include cash in its account, pre-advice of funds to be received that day, and any predetermined borrowing capacity.

¹⁵ Changes to the Cedel Customer Handbook are customarily motivated by evolving market practice and procedure.

¹⁶ Cedel currently is running pilot tests on GCSS with a limited number of institutions.

⁶ In 1994, Cedel settled over US\$7 trillion worth of securities at an average rate of US\$30 billion each business day for over 2,900 customers. At that time, over 60,000 instruments were eligible for settlement in the Cedel system.

⁷ The Luxembourg legal framework provides for the finality of settlements on Cedel's books and the fungibility of securities deposited with Cedel.

⁸ Similar to Cedel, Euroclear provides clearance and settlement services for internationally traded debt and equity securities. Euroclear is operated under contract with the Euroclear Clearance System, société coopérative ("Euroclear Cooperative"), by Morgan Guaranty Trust Company of New York through the Euroclear Operations Centre in Brussels. The Euroclear Cooperative is a Belgian cooperative corporation whose participants include international banks, brokers, and other securities professionals. See *infra* note 11 and accompanying text.

⁹ In each of the thirty countries where Cedel has established a settlement link to provide its customers with foreign currency settlement capabilities, Cedel can access uncommitted lines of credit with domestic lenders to facilitate foreign currency settlement for its customers.

¹⁰ Daytime and overnight settlement processing are the same except that securities lending and borrowing services are not available to customers on an automatic basis in overnight settlement processing.

providing credit support for GCSS customers using a variety of bilateral credit support legal arrangements. GCSS functions will include the standard functions of an agent, such as exposure recording, asset valuation and movement, safekeeping, and reporting. GCSS will interpose itself as an operational agent but will not assume any principal or decision-making role in the event of disputes between parties.

The GCSS Fiduciary Agreement is the basic governing document for participation in GCSS. Each counterparty will be required to have a GCSS Fiduciary Agreement with Cedel in order to participate in GCSS. Between the GCSS customer transferring assets as collateral and Cedel, the GCSS Fiduciary Agreement will operate as a transfer of ownership of securities to Cedel upon delivery to GCSS.

Each GCSS customer will establish the parameters of their bilateral arrangements, which will be captured by GCSS. A pair of GCSS customers generally will have one agreement although GCSS can provide for multiple agreements. Each agreement will define such things as the eligible collateral, haircuts, rehypothecation authorization, frequency of exposure entry and securities valuation, and minimum transfer amounts. Eligible collateral can be selected from any of the securities or currencies accepted by Cedel. GCSS customers also may establish counterparty-specific eligibility tables to either restrict or broaden their eligibility criteria and/or haircuts in their dealings with specific counterparties.

GCSS customers also will be able to establish a preference table to rank in order which assets they would prefer to deliver when a delivery is necessary and which assets they would prefer to receive in a return situation. For each bilateral agreement, GCSS customers also will be able to enter the number of days within which any credit support shortfall must be covered by a counterparty.

All cash and securities in GCSS will be held in an omnibus account within the Cedel core clearance and settlement system. Transfers into and out of GCSS will be made by book-entry transfer of securities from a GCSS customer's account or from a GCSS customer's correspondent account at Cedel to GCSS's omnibus account at Cedel.¹⁷

GCSS will operate two main daily processing cycles to provide credit support and generate reports. GCSS customers will select which of the two

cycles they will use. The cycle will provide assessments of existing credit support and required additional assets which counterparties may satisfy in the next cycle or at the latest in the same cycle on the next day. GCSS customers will inform GCSS of the level of exposure from their net counterparty positions to be covered by GCSS. This exposure level will be the basis on which GCSS will compute credit support requirements for the period. Based on the size of the net exposure and the terms of the bilateral agreement between two GCSS customers, GCSS will move free of payment securities and/or cash between the parties' accounts.

GCSS will report to each GCSS customer their available positions (*i.e.*, the customer's own securities and cash it has in system that are not in use), the amounts delivered out, the amounts received, the amounts "on-transferred,"¹⁸ new credit support amounts expected in from counterparties, and new credit support amounts required.

GCSS may notify a GCSS customer of the need to bring more assets into the system to meet a shortfall in the value of credit support assets at GCSS. GCSS customers will be able to move assets to their GCSS account in several ways: by transferring eligible assets from a clearing and settlement account in Cedel during the next available Cedel processing cycle, by providing GCSS with a power of attorney to transfer assets from its clearing and settlement account at Cedel to its GCSS omnibus account at Cedel, by entering into a securities borrowing arrangement within a Cedel clearing and settlement account to obtain a loan of the required securities, or by moving eligible securities over a cross-border link into Cedel.

One of the more important services offered by GCSS allows customers to reuse the securities held as credit support. As GCSS customers do not have identical bilateral eligibility criteria, haircuts, and preference tables, there is an opportunity for GCSS to facilitate the most efficient use of available customer assets.

For those GCSS customers permitted by their counterparties to reuse assets, GCSS will enable "on-transfer" of securities. GCSS will track and value assets subjected to on-transfers and will

keep records of the original and all subsequent transferrers and transferees of the asset. Where on-transfers are permitted, a position may be subdivided and on-transferred to multiple counterparties.

C. Securities Lending and Borrowing Services

Cedel also proposes to provide its securities lending and borrowing service to U.S. entities. Under Cedel's lending and borrowing service, all customers are required to act as principal and Cedel's role is to effect the transfers for the lending or borrowing transactions by book-entry movement in the Cedel system and to monitor the associated collateral. Customers elect to participate as either "automatic" or "case by case" lenders or borrowers. As either an automatic lender or automatic borrower, a customer authorizes Cedel to lend or borrow securities upon the identification of an excess of securities in a lender's account or an insufficiency in a borrower's account. Automatic borrowings only may occur when there is an adequate volume of eligible securities available from a lender participating in the program and the borrower is eligible to borrow under the terms of the program. Case by case borrowings are handled by Cedel in chronological sequence of receipt of instructions. As a case by case lender or as a case by case borrower, a customer is required to authorize each loan or borrowing. Cedel effects loans and borrowings for automatic lenders and automatic borrowers before it effects loans and borrowings for case by case lenders and case by case borrowers.

Under this service, a syndicate of banks guarantees borrower performance and each borrower is required to post and maintain collateral sufficient to secure the guarantee obligation of the guarantor syndicate. The collateral, which can be qualifying securities or cash, is blocked in the borrower's account by Cedel for the benefit of the guarantors. Cedel monitors the collateral daily to ensure that the collateral value of the securities or cash is at all times greater than or equal to the market value of the securities loaned plus an additional percentage of the market value. Borrowers are required to deposit sufficient additional collateral as appropriate, and Cedel is authorized to debit accounts of the borrower to the extent required to maintain the required collateral coverage. Borrowers are expressly permitted to substitute equivalent collateral for any collateral previously delivered.

¹⁷ There is no requirement that a GCSS customer have an account at Cedel in order to utilize the services provided by GCSS.

¹⁸ GCSS customers will indicate in their GCSS agreement whether they will permit counterparties to reuse assets. If so permitted, counterparties may then transfer within GCSS the securities they have received as credit support ("on-transfer") or take the securities outside of GCSS and enter into repurchase or reverse repurchase agreements.

D. Credit Facilities

Cedel provides four main types of credit facilities to its customers: pre-advice, technical overdraft facilities, tripartite financing arrangements, and unconfirmed funds facilities. Customers can obtain short term credit through the use of pre-advice. Under this service, a customer will notify Cedel that funds will be credited to its account on that day or the next day. Cedel will credit funds to the customer's account on the basis of this pre-advice. A customer must be previously approved to receive such an advance of funds with approval based on the customer's paid-in capital. Cedel also establishes a maximum pre-advice line of credit based on the customer's paid-in capital and other factors that Cedel deems relevant. During any business day, Cedel will not advance an amount that exceeds the amount of the line of credit or the collateral value of qualifying securities held in the customer's account.

Cedel also can provide to customers a technical overdraft facility ("TOF"). TOFs are short-term financing facilities used to facilitate clearance of securities transactions against payment. Under the TOF service, Cedel pays the selling customer in advance of receipt of payment by the purchasing customer. Cedel accepts the securities from the selling customer and delivers them into the purchasing customer's account. To protect itself from market and credit risk, Cedel then blocks the securities in the purchasing customer's account to ensure that the purchasing customer does not remove the securities until it clears its net debit position. If the purchasing customer fails to clear its net debit position within forty-eight hours, Cedel may liquidate the customer's assets to satisfy the net debit position.¹⁹

Cedel also will act as collateral agent in specifically negotiated tripartite financing arrangements ("TFA"), which provide longer term financing for customers than pre-advice and TOFs. Generally, the TFA is an agreement between three parties, the borrower (Cedel customer), the lender (the financing bank), and the collateral agent (Cedel). Cedel may introduce lenders to borrowers but does not play a substantial role in the negotiations of TFAs. After a TFA has been negotiated, Cedel acts solely as collateral agent whereby Cedel determines the adequacy of and monitors the pledged collateral which is blocked in the borrowing customer's account with Cedel. Cedel

bears no credit exposure with regard to TFAs.

In addition to pre-advice, TOFs and TFAs, Cedel customers may be able to use their unconfirmed funds facility ("UFF") to finance settlements. Use of a customer's UFF is allowed only at Cedel's discretion. If a customer's TOF or TFA is insufficient to settle all securities transactions on its account in a given settlement processing, Cedel may permit the customer to use its UFF for settlement purposes. A customer's UFF limit is dependent to a large extent upon the financial standing of the institution. The UFF also must be collateralized. By blocking collateral against unconfirmed funds, Cedel is covering the contingent risk that anticipated funds may not be received. As with TOFs and TFAs, only the actual amount of credit drawn under the UFF must be collateralized.

III. Cedel's Request for Exemption

Cedel states that it operates to reduce the risks related to the clearance and settlement process and to standardize that process to facilitate secure and accurate cross-border securities settlement for the benefit of all market participants. Cedel intends to offer GCSS in order to provide a flexible and efficient means for counterparties to agree upon marked-to-market credit exposures and in order to provide appropriate credit support through securities and cash on deposit with Cedel. As discussed more specifically below, Cedel believes an exemption from clearing agency registration is appropriate.

A. Regulatory Comity and Legal Integrity

Cedel believes that deference should be granted to the existing Luxembourg legal and regulatory framework which governs supervision of Cedel by the Institut Monetaire Luxembourgeois ("IML") and all Cedel obligations to and relations with its customers. Cedel also believes that Luxembourg law should govern all contractual arrangements with its customers for clearing and settlement. Cedel believes that altering its clearing and settlement arrangements from bilateral contractual arrangements which appoint Cedel as agent and depository under Luxembourg law to a self-regulatory entity which would require Cedel to perform a regulatory function under the laws of the United States would upset and complicate the existing legal structure of international cross-border clearance and settlement and almost certainly prove impractical.

B. International Enforceability

As a Luxembourg-based bank which conducts its activities pursuant to Luxembourg law and serves international markets world-wide, Cedel believes it is not and cannot become a self-regulatory organization as required for a registered clearing agency under Section 17A of the Exchange Act. Any rules promulgated by Cedel would have only questionable application in the home markets of Cedel's international customers outside the United States. However, Cedel believes that the objectives of Section 17A are fulfilled by Cedel's existing structure and operations. Cedel also believes that the contractual relationships currently existing between Cedel and its customers, as governed by the laws of Luxembourg, are effective and enforceable as a matter of international commercial law.

C. Operational Capacity

Cedel believes it operates its clearing and settlement activities according to the standards of international best practice and continually strives to improve the integrity and reliability of its systems and the quality of services provided to its customers. Because Cedel is not a monopoly provider of services in any market, it is subject to commercial and competitive discipline. As such, Cedel believes that it substantially complies with all Commission standards for clearing and settlement operations and that no additional benefits are likely to accrue from the imposition of U.S. regulatory requirements as a result of the registration of Cedel as a clearing agency.

Cedel seeks to provide clearing and settlement services for U.S. securities as it currently provides for the securities in thirty other domestic markets. As a result, Cedel customers would have a single interface into the U.S. clearance and settlement system, standardized message formats, and regional customer support. Cedel believes that these are all substantial benefits to Cedel customer institutions which otherwise have no presence in the U.S. investment markets.

D. Public Interest and Protection of Investors

Cedel believes that acceptance of U.S. securities within the Cedel system would contribute greatly to the secure and efficient cross-border clearance and settlement of securities transactions and the establishment of linkages among major national markets. In addition, Cedel believes that settlement through

¹⁹ Under the TOF agreement between Cedel and its customers, Cedel is granted a lien on all securities and other assets in a participating customer's account with Cedel.

the Cedel system has increasing appeal as broker-dealers, institutional investors, and custodians place greater emphasis on securities lending, back-to-back transactions, and financing techniques such as repurchase agreements and reverse repurchase agreements. As a clearance and settlement system which conducts multi-currency settlement and which has links to major domestic markets, Cedel believes it can efficiently accommodate customer demands for sophisticated transaction processing.

Finally, Cedel believes its existing legal, regulatory, and operational arrangements for clearance and settlement are rigorous and well-understood and that uncertainty and confusion could result from the imposition of U.S. legal and regulatory requirements which potentially could be in conflict with Cedel's existing legal, regulatory, and operational arrangements. Cedel believes that an exemption from registration would preserve the certainty of those existing arrangements while allowing Cedel to extend the benefits of settlements in U.S. securities to its customers.

IV. Proposed Exemption

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission to develop a national clearance and settlement system through, among other things, the registration and regulation of clearing agencies.²⁰ In fostering the development of a national clearance and settlement system generally and in overseeing clearing agencies in particular, Section 17A authorizes and directs the Commission to promote and facilitate certain goals with due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents.²¹ Furthermore, Section 17A, as amended by the Market Reform Act of 1990, directs the Commission to use its authority to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.²² In addition to the statutory

²⁰ 15 U.S.C. 78b-1.
²¹ For legislative history concerning Section 17A, see, e.g., Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

²² Market Reform Act of 1990, Section 5, amending Section 17A(a)(2) of the Exchange Act, 15 U.S.C. 78q-1 (1990).

requirements of Section 17A, the Commission's Division of Market Regulation ("Division") has published standards based on Section 17A for clearing agency registration.²³

Section 17A(b)(1) authorizes the Commission to exempt applicants from some or all of the requirements of Section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. Recently, the Commission exercised for the first time its authority to exempt an applicant entirely from registration as a clearing agency.²⁴

Generally, U.S. Treasuries are the preferred securities for use as collateral in securing international credit obligations. Therefore, Cedel believes it is essential that it be able to accept U.S. Treasury securities in GCSS if it is to efficiently facilitate cross-border collateralization. In part, it is the "on-transfer" of rehypothecation of U.S. securities for U.S. entities in GCSS which subjects Cedel to the registration requirements of Section 17A.²⁵ As a

²³ Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (announcement of standards for the registration of clearing agencies ["Standard Release"]). See, also, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting full registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

See, also, Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b-4, 17 CFR 240.19b-4, setting forth certain procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

²⁴ Clearing Corporation for Options and Securities, Securities Exchange Act Release No. 36573 (December 12, 1995), 60 FR 65076. The Commission has granted temporary registrations that included exemptions from specific Section 17A statutory requirements in a manner designed to achieve the statutory goals of Section 17A. In granting these temporary registrations it was expected that the subject clearing agencies would eventually apply for permanent clearing agency registration. See, e.g., order approving Government Securities Clearing Corporation's ("GSCC"), temporary registration as a clearing agency where the Commission temporarily exempted GSCC from compliance with Section 17A(b)(3)(C). Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

²⁵ In 1993, Cedel requested a no-action position from the Division relating to Cedel's providing clearance, settlement, and other services to participants in U.S. government securities. The Division issued a no-action letter to Cedel on September 15, 1993, stating that the staff of the Division would not recommend to the Commission that it take enforcement action if Cedel accepts U.S. Treasury debt securities maintained in book-entry

condition of the no-action position provided to Cedel in 1993, Cedel agreed not to act as an agent in facilitating repurchase agreements between Cedel customers and others with regard to U.S. Treasury securities and agreed that none of the collateral services performed by Cedel would be such that the services could be interpreted as authorizing the purchase and sale of U.S. Treasury securities, including repurchase agreement transactions, by Cedel's customers or affiliates using Cedel's systems. However, under GCSS, all types of U.S. securities will be accepted and the services provided by GCSS may be interpreted as facilitating repurchase agreement transactions.

In light of the foregoing, the Commission believes it is appropriate for applicants requesting exemption from clearing agency registration to meet standards substantially similar to those required of registrants under Section 17A in order to assure that the fundamental goals of the Exchange Act (e.g., safe and sound clearance and settlement) will not be undermined. Therefore, the Commission invites commenters to address whether granting Cedel's application for exemption from clearing agency registration, subject to the specific conditions which are set forth in detail below, would further the goals of Section 17A.

B. Conditions

The Commission is proposing to impose two types of conditions on Cedel in conjunction with the grant of any exemptive relief from clearing agency registration. The first type will consist of certain clearing and transactional volume limitations on

form as collateral for certain obligations of Cedel's customers without registering as a clearing agency pursuant to Section 17A of the Exchange Act. The no-action letter did not extend to clearance and settlement services for Cedel customers in U.S. government securities. *Letter regarding Cedel S.A.* (September 15, 1993).

Under Section 3(a)(23) of the Exchange Act, the term "clearing agency" is defined to mean, among other things, any person, such as a securities depository, who permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. Cedel's proposal for the implementation of GCSS places Cedel within the scope of the activities of a clearing agency because GCSS could be deemed to permit or facilitate the hypothecation or lending of securities in a book-entry environment. However, the activities of GCSS are not the sole basis for considering Cedel's proposed activities to be those of a clearing agency. Cedel's proposal, which includes the clearance and settlement of U.S. securities involving U.S. entities, also places Cedel within the definition of clearing agency for purposes of Section 17A of the Exchange Act.

Cedel's processing of U.S. securities transactions involving U.S. entities. The second type will consist of an arrangement with Cedel and the IML which will give the Commission access to information necessary to ascertain whether the volume limitations are being honored and access to information relating to the default or near default of certain Cedel customers.

1. Volume Limits

The Commission proposes to place a limit on the transactions in U.S. securities conducted by U.S. entities that can be processed through Cedel. This approach was adopted by the Commission in granting the Clearing Corporation for Options and Securities ("CCOS") an exemption from clearing agency registration.²⁶ In that exemptive order, the Commission imposed volume limitations of US\$6 billion net daily settlement for government securities and US\$24 billion for repurchase agreements and reverse repurchase agreements transactions calculated on an average daily basis over a ninety day period. The CCOS volume limits were designed to limit CCOS's activity to approximately five percent or less of the average daily dollar value of transactions in U.S. Treasuries and of repurchase agreements and reverse repurchase agreements involving U.S. Treasuries.

Cedel has represented to the Commission that it cannot differentiate between regular way trading and repurchase and reverse repurchase agreements transactions in its clearance and settlement system. Therefore, the Commission believes the most feasible volume limit is an average daily volume of US\$30 billion based upon the aggregate volume for the previous twelve months to be measured each quarter on a rolling quarterly basis. For purposes of calculating the average daily volume, the following will be included: (1) All settlements, both internal and external, within Cedel's clearance and settlement system²⁷ involving a U.S. customer or its affiliate²⁸ and U.S. securities; (2) each movement of U.S. securities into the GCSS system involving a U.S. customer or its affiliate; (3) each delivery of U.S. securities involving a U.S. customer or its affiliate within the GCSS system; and (4) each delivery of U.S. securities involving a U.S. customer or its affiliate

out of the GCSS system. However, the Commission will only count the initial movement of collateral (the "on-leg") of each GCSS delivery or movement. The return of collateral will not be included in the calculation of the volume limit.

The Commission believes the proposed volume limit is appropriate in that it is large enough to allow Cedel to commence effective operations in clearing and settling U.S. securities transactions involving U.S. entities and to allow the Commission to observe the effects of Cedel's activities on the U.S. securities market and is sufficiently limited so that the safety and soundness of the U.S. markets would not be materially affected should Cedel experience financial or operational difficulties. Either upon Cedel's request or by its own initiative, the Commission may review whether the current volume limit should be modified. Cedel will not be permitted to exceed the US\$30 billion volume limit without either having the Commission modify its exemptive order or registering as a clearing agency.

2. Commission Access to Information

To facilitate the monitoring of compliance with the proposed volume limits, the proposed exemption would require Cedel to provide information on a monthly basis regarding aggregate volume for all Cedel customers for transactions in U.S. securities.²⁹ Under the proposed exemption, Cedel also would be required to notify the Commission regarding material adverse changes in any account maintained by Cedel for its customers that are members or affiliates of members of a U.S. registered clearing agency. Cedel also would be required to respond to a Commission request for information about a U.S. customer or its affiliate about whom the Commission has financial solvency concerns. The Commission will require a satisfactory Memorandum of Understanding ("MOU") with the IML, Luxembourg's banking and securities regulatory authority, to facilitate the provision of information by Cedel to the Commission. In addition to the above information, the Commission will monitor Cedel through its review of

information provided to the IML by Cedel³⁰ and its external auditors.³¹

The Commission seeks comment on the conditions, in particular the volume limits and information sharing, which would be imposed on Cedel as a condition of its obtaining an exemption from clearing agency registration. Specifically, commenters are requested to address the structure and the appropriate size of such limits. Commenters also are requested to address the types of information which should be provided to the Commission to help maintain the safety and soundness of the U.S. securities markets. In addition, comments are sought on the types of entities which should be deemed affiliates of members of U.S. clearing agencies for purposes of the volume limitations and commission access to information.

C. Fair Competition

Section 17A of the Exchange Act requires the Commission, in exercising its authority under that section, to have due regard for the maintenance of fair competition among clearing agencies.³² Therefore, the Commission must consider an applicant's likely effect on competition and on the U.S. securities markets in its review of any application for registration or exemption from registration as a clearing agency.

Consistent with this approach, the Commission invites commenters to address whether granting Cedel an exemption from registration would result in increased competition, including greater access to the U.S. securities market by foreign clearing agencies. Such competition may result in the development of improved systems capabilities, new services, and perhaps lower costs to market participants. The Commission also invites commenters to address whether the proposal would impose any burden on competition that is inappropriate under the Exchange Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by July 19, 1996. Such written data, views, and arguments will be considered by the Commission in

²⁶ *Supra* note 24.

²⁷ *Supra* Section II(A).

²⁸ For purposes of calculating the volume limits and for purposes of Commission access to information, "affiliate" shall mean any entity directly or indirectly controlling, controlled by, or under common control with a U.S. customer.

²⁹ In its oversight of Cedel, the Commission does not anticipate conducting on-site examinations. However, the Commission understands that it will have the ability to observe Cedel operations and to talk to Cedel personnel on-site.

³⁰ Cedel is required to submit to the IML monthly balance sheets, foreign exchange position reports, and liquidity ratios. Cedel also is required to submit quarterly income statements and reports on large exposures and on the maturity structure of Cedel's assets and liabilities. See *also supra* note 1.

³¹ Cedel's external auditors are required, among other things, to review Cedel's accounting and risk management systems and to assess the reliability of Cedel's periodic reports to the IML.

³² 15 U.S.C. 78q-(a)(2).

deciding whether to grant Cedel's request for exemption from registration. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. 600-29. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³³

Margaret H. McFarland,
Deputy Secretary.

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Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Preservation of Records

June 11, 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 June 4, 1996, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR-MSRB-96-5). The proposed rule change is described in Items I and II below, which Items have been prepared by the Board. 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 Board is proposing to amend rule G-9, on preservation of records. The proposed rule change would require that brokers, dealers and municipal securities dealers (collectively, "dealers") retain the records required by rule G-8(a)(xv) for a period of three years. The Board requests that the Commission set the effective date for the proposed rule for 30 days after filing.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section (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

Among other things, Board rule G-36 requires that, with certain exceptions, each dealer acting as an underwriter in a primary offering of municipal securities submit a copy of the final official statement, if one is prepared, to the Board. Underwriters also are required to send advance refunding documents to the Board if an offering of municipal securities "advance refunds" an outstanding issue of municipal securities.

Rule G-8(a)(xv) requires that dealers maintain a record of sending to the Board, Forms G-36(O/S) and G-36(ARD) and the corresponding required documentation. Rule G-9, on preservation of records, currently does not state a time period for preservation of these records.

The proposed amendment to rule G-9 would require that dealers retain the records required by rule G-8(a)(xv) for a period of three years. This three-year period would coincide with the record retention requirement for the documentation supporting proof of delivery of official statements to purchasers of new issues securities as required by rule G-32 on disclosures in connection with new issues.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(G) of the Act, which requires, in pertinent part, that the Board's rules:

prescribe records to be made and kept by municipal securities brokers and municipal securities dealers and the periods for which such records shall be preserved.

(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 on 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 (30) days from the date of its filing, the Board has submitted this proposed rule change to become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Board believes that the proposed rule change qualifies as a "non-controversial filing" in that the proposed amendment does not significantly affect the protection of investors or the public interest and does 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 purpose 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 submissions, 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.

³³ 17 CFR 200.30-3(a)(16).