

Regulation is proposing to broaden this exception to cover those limited partnership securities that are quoted on the OTC Bulletin Board that trade with such frequency that use of the Forms would not be appropriate. To qualify for this exemption, the limited partnership securities must be in a depository and must settle regular way.<sup>5</sup> The Association believes these criteria identify that group of non-Nasdaq OTC limited partnership securities that would not benefit from using the Standardized Transfer Forms. The Forms were specifically adopted to address problems associated with the settlement of limited partnership interests that are generally liquid and where the transfer requirements contained in the General Partnership Agreement vary widely as to the type of information and documents necessary for a valid transfer of an interest.

#### *B. Amendment to Rule NASD 11870*

Since the adoption of NASD Rule 11580, members have inquired as to whether the Forms can be used to accomplish account transfers under NASD Rule 11870. In order to clarify this issue, NASD Regulation is proposing to amend Rule 11870 to provide that, in the case of limited partnership securities, members must use the Standardized Transfer Forms unless exempted by that rule.

### **III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of Section 15A.<sup>6</sup> Specifically, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>7</sup> because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.<sup>8</sup>

Historically, limited partnership securities were not structured to be transferred freely in secondary market

transactions, unless the issuer listed the securities on an exchange or qualified them for inclusion on Nasdaq. OTC markets now exist, however, for many limited partnership securities, and trading volumes reportedly have increased. As a result, quick, and accurate processing of the transfer of limited partnership securities has become more critical. To help address this situation, the NASD, after consulting the Investment Program Association<sup>9</sup> and various transfer agents, developed a set of standardized transfer forms for these securities and required that members use them in lieu of their own in-house forms.<sup>10</sup> The use and recognition of standardized forms should bring greater consistency and certainty in transactions involving limited partnership securities. In addition, the use of the Forms should significantly reduce the time and effort required by member firms to process the transfer of limited partnership securities. The Commission believes the proposed amendments to NASD Rule 11580 and NASD Rule 11870 further promote these benefits.

#### *A. Amendment to Rule 11580*

The Commission believes it is appropriate to expand the exemption currently contained in Rule 11580(a) to include non-Nasdaq OTC limited partnership securities that are physically present in a depository and settle regular way. The use of the Standardized Transfer Forms facilitates the transfer process. Nevertheless, the Forms need to meet the legitimate needs of issuers and transfer agents to be effective. In this regard, the Commission believes it is appropriate to exempt the OTC limited partnership securities identified by the NASD from utilizing the Forms. The criteria chosen by the Association are reasonable choices to identify that group of non-Nasdaq OTC limited partnerships that trade with such frequency that use of the Forms would not improve the transfer process. Indeed, it is possible that mandating that members utilize the Forms for these limited partnership securities could disrupt currently existing processes that are functioning efficiently.

#### *B. Amendment to Rule 11870*

The Commission believes it is appropriate to require members to utilize the Forms when transferring a customer's account. Limited partnership securities generally are not held in the

beneficial owner's name. Rather, the beneficial owner's broker-dealer is listed on the partnership's books as the owner. As a result, broker-dealers must transfer "ownership" of the limited partnership securities whenever a customer whose account contains these securities decides to transfer that account to a different broker-dealer. This requires the customer's current broker-dealer to submit the appropriate paperwork to the general partner to transfer "ownership" of the securities to that customer's new broker-dealer. Although this transfer does not involve a sale of the securities, the process and paperwork is essentially the same. Therefore, many of the same efficiencies associated with the use of the Forms in connection with the sale of a limited partnership security can be realized when a broker-dealer is transferring a customer's account that contains these securities.

### **IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASD-97-05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38591; File No. SR-NASD-96-46]

#### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by NASD Regulation, Inc. Relating to the Submission of Information in Electronic Form**

May 9, 1997.

### **I. Introduction**

On March 17, 1997,<sup>1</sup> the National Association of Securities Dealers Regulation, Inc. ("NASDR") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> On December 17, 1996, the NASDR filed the proposed rule change with the Commission. However, Amendment No. 1, which modified the rule language, replaced the original rule filing. See Amendment No. 1, from Joan C. Conley, Secretary, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated March 17, 1997.

<sup>5</sup> The securities must be physically present in a depository to qualify for this exception. Simply being "eligible for deposit" in a depository is not enough.

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

<sup>9</sup> The Investment Program Association is a trade organization for the partnership industry.

<sup>10</sup> Use of the standardized forms became mandatory for NASD members on May 15, 1996.

("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend Rule 8210 of the Procedural Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to request that members provide regulatory information in electronic form and to establish electronic submission programs for regularly filed regulatory information. A notice of the proposed rule change appeared in the **Federal Register** on April 8, 1997.<sup>4</sup> The Commission received no comment letters concerning the proposed rule change. The Commission is approving the proposed rule change.

The proposed rule change addresses an NASDR rule that requires members to maintain records of compliance so that information will be available to NASDR staff for on-site examination. Rule 8210 of the Association's Conduct Rules (formerly, Article IV, Section 5 of the Rules of Fair Practice) requires members to respond to any NASD request for information for the purpose of any investigation or determination as to the filing of a complaint or any hearing of a complaint and to submit such information "orally or in writing." This provision covers the Association's request for investigatory information in the context of an individual examination or investigation of a member firm and also covers the Association's programs for the receipt of regular reports from members.

## II. Description of the Proposal

The Association believes that the current provision of Rule 8210 that permits the Association to request that a member or a person associated with a member report "in writing" covers information stored by a member in the form of electronic media, as the electronic format merely retains the written record. Thus, NASDR is proposing to amend Rule 8210 to provide specifically that a member may be required to submit a report in electronic form where the member maintains the information in that manner. The proposed rule change would amend subparagraph (a)(1) to require "\* \* \* any member of the Association, person associated with a member, or person no longer associated with a member when such person is subject to the Association's jurisdiction to report, either informally or on the record, orally or in writing or electronically (if the requested information is maintained in electronic

form) with regard to any matter involved in any such investigation or hearing \* \* \*" and would amend subparagraph (b) to insert the word "electronic" in the provision regarding the receipt of any notice requiring a report (emphasis provided).

The NASDR has also worked with the membership over many years to develop procedures for the electronic submission of periodic reports or other frequently requested investigatory data that would otherwise be submitted in written form in order to better fulfill its regulatory responsibilities under the federal securities laws. Programs for electronic submissions have already been established for filing of members' FOCUS Reports, Blue Sheet Reports, Short Interest Reports, Form U-4 and U-5 with the Central Registration Depository ("CRD").<sup>5</sup> The Association is, therefore, proposing to amend rule 8210 to add new paragraph (c) to provide general authority for the Association to establish programs for the submission of information on a regular basis through direct or indirect electronic interface between the Association and members, upon approval by the Commission.

## III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.<sup>6</sup> Specifically, the Commission believes that approval of the proposed rule change is consistent with Sections 15A(b)(6)<sup>7</sup> and 15A(b)(7)<sup>8</sup> of the Act. Consistent with Section 15A(b)(6), the proposal should improve NASD's ability to monitor

<sup>5</sup> The FOCUS Filing Plan was approved in Securities Exchange Act Rel. No. 29105 (April 18, 1991); 56 FR 19131 (April 25, 1991). The Short Interest Reporting requirement was permanently approved in Securities Exchange Act Rel. No. 23482 (July 30, 1986); 51 FR 28472 (Aug. 7, 1986). The Blue Sheet Reporting Plan was approved in Securities Exchange Act Rel. No. 26539 (Feb. 13, 1989); 54 FR 7318 (Feb. 17, 1989). The Central Registration Depository electronic filing requirements were approved, but the revised Forms U-4 and U-5 are not being used at this time. See Securities Exchange Act Rel. No. 37439 (July 15, 1996); 61 FR 37950 (July 22, 1996).

<sup>6</sup> In approving the rule, the Commission has considered the proposal's impact on efficiency, competition and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f) (1996).

<sup>7</sup> Section 15A(b)(6) requires the Commission to determine that a registered national securities association's rules are designated to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

<sup>8</sup> Section 15A(b)(7) requires that the rules of the Association provide that its members and persons associated with its members be appropriately disciplined for violation of the rules of the MSRB or the rules of the Association.

its members' compliance with its rules, those of the Commission and of the MSRB, thus possibly detecting fraudulent and manipulative acts and practices before they seriously harm investors and the public interest. Consistent with Section 15A(b)(7), the speed of receipt of information should enable the NASDAR to detect violations rapidly and discipline accordingly.

The proliferation of securities transactions and attendant increase in volume has increased the need for rapid computer-based ("electronic") technology. According to the NASDR, most of its members currently maintain their trading records in electronic, rather than hard copy form. Surveys conducted by the Association indicate that most members store their primary trading records in some form of electronic storage media.<sup>9</sup> To the extent that members stores their important trading records in electronic storage media, the Commission agrees that allowing Association members to electronically disseminate this information in response to inquiries will both increase examination efficiency and eliminate costs associated with providing electronically maintained information to examine in hard copy form.

As the Association continue to increase services to its membership and enhance its ability to survive for regulatory compliance through the use of computer-based technology, the Commission agrees that it should establish electronic submission programs for information required to be submitted by members on a regular basis, upon approval by the Commission. Similar programs have been established for which members are currently submitting information electronically.<sup>10</sup> The Commission supports these programs and believes they provide a framework for future programs. The Commission believes that implementing such programs will benefit the Association and its members as any delays associated with paper submission will be decreased and any errors detected can be easily corrected.

## IV. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the

<sup>9</sup> See, e.g., Survey and Analysis Concerning the Redesign of the Short Position Reporting System and the Electronic Submission Mechanism, submitted by Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated March 25, 1997.

<sup>10</sup> See *supra* note 5.

<sup>2</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>3</sup> 17 CFR 240.19b-4 (1995).

<sup>4</sup> Securities Exchange Act Release No. 38468 (April 2, 1997); 62 FR 16884 (April 8, 1997).

provisions of the Act, and in particular with Sections 15A(b)(6) and 15A(b)(7).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASD-96-46) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38593; File No. SR-NASD-97-33]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Rule 2210 of the Conduct Rules

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 1, 1997, the NASD Regulation Inc. ("NASD Regulation") 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 NASD Regulation. NASD Regulation has designated this proposal as concerned solely with the administration of the National Association of Securities Dealers, Inc. ("NASD" or "Association") pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>2</sup> and paragraph (e) of Rule 19b-4<sup>3</sup> thereunder, which renders the rule effective upon the Commission's receipt of this filing. 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

NASD Regulation is proposing to amend Rule 2210 of the Conduct Rules of the NASD, by merging into this rule, effective immediately, the provisions contained in Section 8(c)(1) (A) and (B) of the Government Securities Rules, which provisions were deleted on August 20, 1996. Below is the text of the

proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

#### CONDUCT RULES

##### 2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC 2210. Communications with the Public

\* \* \* \* \*

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810), *and advertisements concerning government securities (as defined in Section 3(a)(42) of the Act)* shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations [registered under the Securities Act of 1933], and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate ranking or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The

member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

(a) The Government Securities Act Amendments of 1993 ("Government Securities Amendments") were signed into law on December 13, 1993, and eliminated the statutory limitation on the NASD's authority to regulate the sales practices of exempted securities, including government securities transactions, other than municipals.<sup>4</sup>

In order to implement the expanded sales practice authority granted to the NASD pursuant to the Government Securities Amendments, the NASD filed a rule change on September 15, 1995, to merge the rules which has governed the conduct of members with respect to transactions in government securities ("Government Securities Filing"), where applicable, into the Rules of Fair Practice ("Conduct Rules") and to make other related changes.<sup>5</sup> Section 8(c)(1) (A) and (B) of the Government Securities Rules, were intended to be merged into the Conduct Rules, but were inadvertently omitted in the Government Securities Filing. This filing is intended to clarify the intent of the Government Securities Filing by merging old Section 8(c)(1) (A) and (B) of the Government Securities Rules into

<sup>4</sup> The terms "exempted securities", "government securities" and "municipal securities" are defined in Sections 3(a)(12), 3(a)(42) and 2(a)(29) of the Act, respectively.

<sup>5</sup> See Securities Exchange Act Release No. 36383 (October 17, 1995), 60 FR 54530 (October 24, 1995) [File No. SR-NASD-95-39].

<sup>11</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 15 U.S.C. § 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(e) (1991).