

(3) The annual report on the internal controls, policies and procedures of the Euroclear System ("SAS-70 Report").⁴⁰

Euroclear also has agreed to provide the Division with prompt notice upon the occurrence of any of the following events;

(1) The termination of any Euroclear System participant;

(2) The liquidation of any securities collateral pledged by a participant to secure an extension of credit made through the Euroclear System;

(3) The institution of any proceedings to have any Euroclear System participant declared insolvent or bankrupt; or

(4) The disruption or failure in the operations of the Euroclear System in whole or in part from its regular operating location or its contingency center.

Finally, Euroclear also has agreed to provide the Commission with quarterly reports, calculated on a twelve-month rolling basis, of the following:

(1) The average daily volume of transactions in eligible U.S. Government securities for U.S. participants and their affiliates that are subject to the volume limit described in IV.B.1 above; and

(2) The average daily volume of transactions in eligible U.S. Government securities for all participants, whether or not subject to the volume limit described in Section IV.B.1 above.

The Commission seeks comment on these proposed volume limits and the informational requirements. 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. clearance and settlement systems and the U.S. securities markets. Finally, commenters are invited to comment on the specific information that Euroclear has agreed to provide to the Commission and on the occurrence of events for which Euroclear must notify the Commission.

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.⁴¹ 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 Euroclear an exemption from registration would result in increased competition, including greater access to the U.S. securities market by foreign broker-dealers, banks, and 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.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by June 16, 1997. Such written data, views, and arguments will be considered by the Commission in deciding whether to grant Euroclear'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. 601-01. 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.⁴²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGES COMMISSION

[Release No. 34-38585; File No. SR-NASD-97-05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Transfer of Limited Partnership Securities

May 8, 1997.

I. Introduction

On January 29, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to expand the current exemptions concerning the use of the Limited Partnership Transfer Forms and to require that these forms be utilized by members when transferring customer accounts containing limited partnership securities.

The proposed rule change was published for comment in the **Federal Register** on March 24, 1997.³ No comments were received on the proposal. This order approves the proposal.

II. Description

On January 29, 1996, the Commission approved new NASD Rule 11580 to the NASD's Uniform Practice Code.⁴ It requires members to use the Standardized Transfer Forms ("Forms") when transferring limited partnership securities. NASD Regulation is proposing two amendments related to the use of the Forms. The first is an amendment to NASD Rule 11580 to expand the current exceptions to include limited partnerships that trade in the non-Nasdaq over-the-counter ("OTC") market that are in a depository. The second is an amendment to NASD Rule 11870 to require members to use the Standardized Transfer Forms when transferring customer accounts that contain limited partnerships.

A. Amendment to NASD Rule 11580

Limited partnership securities that are listed on an national securities exchange or the Nasdaq Stock Market are not required to use the Forms. NASD

⁴⁰ In addition, the Division will review the annual reports on Form 10-K and the quarterly reports on Form 10-Q for J.P. Morgan & Co. Incorporated, MGT's parent, which are already provided to the Commission.

⁴¹ 15 U.S.C. 78q-1(a)(2).

⁴² 17 CFR 200.30-3(a)(16).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 38398 (Mar. 13, 1997), 62 FR 13921 (Mar. 24, 1997).

⁴ Securities Exchange Act Release No. 36783 (Jan. 29, 1996), 61 FR 3955 (Feb. 2, 1996).

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.⁵ 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.⁶ Specifically, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁷ 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.⁸

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 Association⁹ 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.¹⁰ 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,¹¹ that the proposed rule change (SR-NASD-97-05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

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, 1997,¹ 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

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 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.

⁵ 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.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 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).

⁹ The Investment Program Association is a trade organization for the partnership industry.

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