

responsible of correcting a distribution made to the wrong party.

III. Discussion

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.⁸ Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

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 in Nasdaq. Over-the-counter 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 even more critical.

Generally, before the transfer of a limited partnership interest may take place, it must be approved by the general partner(s). The elements for a valid transfer are dictated by the terms of partnership agreements under various state limited partnership statutes. As a result, when transferring limited partnership interests, NASD members are currently confronted with transfer requirements unique to each partnership which may vary widely on the type and amount of documentation necessary for the valid transfer of a limited partnership interest. This, in turn, results in non-standardized transfers of limited partnerships that, in some instances, may take many weeks or even months to become finalized.

In addition, partnership terms for record dates and distribution or dividend payment dates are equally varied. Transfer delays and non-standardized payment provisions have caused or contributed to delays or mistakes in the allocation of cash distributions between buyers and sellers. For example, a seller of a limited partnership interest, as the recordholder of the securities until a change is made on the records of the partnership, often receives distributions that rightly should have accrued to the buyer. Particularly problematic are special distributions other than cash

distributions (e.g., proceeds from capital transactions, capital distributions, sale or refinancing proceeds, liquidating distributions) which, under many partnership agreements, are paid to the owner of record of the partnership unit in the prior quarter. Thus, under current transfer standards and practices, buyers and sellers of limited partnership securities in the secondary market are unable to protect their rights to such distributions.

The use and recognition of standardized forms will bring greater consistency and certainty in transactions involving limited partnership securities. Such forms should act to significantly reduce the time and effort required by member firms to process the transfer of limited partnership securities. In addition, the use of the Distribution Allocation Agreement will provide certainty to the buyer/transferee and seller/transferor regarding the method for handling various distributions of the limited partnership.

To be effective, however, the forms approved today must meet the legitimate needs of issuers and transfer agents. The Commission encourages the NASD to monitor the currency of the forms on a periodic basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-53 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-2221 Filed 2-1-96; 8:45 am]

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[Release No. 34-36782; International Series Release No. 923; File No. SR-Philadep-96-01]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change to Appoint the West Canada Depository Trust Company as a Correspondent Depository

January 26, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 25, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange

Commission ("Commission") the proposed rule change (File No. SR-Philadep-96-01) as described in Items I and II below, which items have been prepared primarily by Philadep. On January 25, 1996, and on January 26, 1996, Philadep filed amendments to the proposed rule change.² The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through June 30, 1996.

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

The purpose of the proposed rule change is to allow Philadep to appoint the West Canada Depository Trust Company ("WCDTC") as Philadep's nonexclusive agent and custodian in receiving Philadep.

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.

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

The purpose of the proposed rule change is to allow Philadep to authorize WCDTC to act as a nonexclusive agent and custodian for Philadep in receiving securities deposited by certain WCDTC sponsored participants for credit to their respective subaccounts in WCDTC's omnibus account at Philadep. These participant and custodial arrangements will be effectuated by contracts executed between Philadep and WCDTC and as to the Philadep participant arrangement by the rules and procedures of Philadep.

At or before 12:45 p.m. (Philadelphia time) on any business day Philadep is open, WCDTC will notify Philadep via facsimile transmission or through

² Letters from William W. Uchimoto, General Counsel, Philadep, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (January 25, 1996 and January 26, 1996).

⁸ 15 U.S.C. § 78o-3(b)(6).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1) (1988).

Philadep's Automated Deposit System of initiated and pending instructions to Canadian transfer agents to transfer various Canadian securities held by WCDTC into Philadep's nominee name. Philadep will credit WCDTC's account(s) for Canadian issues at the time of this notification. Philadep will credit WCDTC's account(s) for incoming deposits of U.S. issues (received by WCDTC and designated for physical delivery and deposit to its Philadep account(s)) at the time of physical receipt of the securities by Philadep. Philadep has created a new screen and functionality to reduce the processing time required on the part of WCDTC for U.S. issues. Therefore, this credit upon receipt approach provides a faster and more efficient credit procedure than the former Midwest Securities Trust Company ("MSTC")/WCDTC arrangement approved by the Commission.

With regard to Canadian issues, WCDTC will cause the Canadian transfer agent to reregister the shares in Philadep's nominee name and to deliver them to WCDTC as agent and custodian of Philadep. With respect to acting as Philadep's agent for interfacing with Canadian transfer agents, WCDTC has more direct knowledge of and familiarity with Canadian transfer agents. WCDTC has a Canadian address and is expected to obtain receipt of certificates faster than Philadep would obtain receipt through the international postal system. Earlier receipt of certificates means earlier certainty with respect to the value and validity of deposited certificates. This is a benefit to Philadep because the earlier Philadep receives notice of defects in a certificate the sooner it can reverse the credit to the WCDTC's account and the better it can limit the risk that the securities will have been transferred out of the account before the reversal of the credit can take place.

For Canadian issues returning to WCDTC from the Canadian transfer agent, WCDTC will safeguard the deposited securities and will hold them with deposit tickets attached and segregated from other securities held by WCDTC until forwarded to Philadep via licensed air courier or other carrier agreed upon by the parties. Securities held overnight will be deposited in WCDTC's vault. If WCDTC fails to deliver these securities to Philadep, Philadep will apply a short charge to WCDTC's account for the full value of the fails. For fails to deliver resulting from settled CNS transactions, Philadep will short the participant's CNS account with the Stock Clearing Corporation of Philadelphia ("SCCP"), Philadep's

affiliated clearing corporation. SCCP will mark to market all short positions and collect marks daily.

If the deposited securities are U.S. securities, WCDTC will forward the securities directly to Philadep on the day the securities are reported to Philadep. Securities will be shipped to Philadep via licensed air courier or other carrier agreed upon by the parties.

WCDTC and Philadep have agreed that securities placed within the custody and control of WCDTC on behalf of Philadep will not be subject to any right, charge, security interest, lien or claim of any kind in favor of WCDTC or any person claiming through WCDTC. WCDTC and Philadep have further agreed that WCDTC will have no legal or equitable right, title, or interest in or to such securities including but not limited to any right, title, or interest in or to any principal or interest coupons, redemption proceeds, payments or payable amounts relating to any securities. In addition, WCDTC will maintain adequate insurance coverage with respect to any securities which are in its custody on behalf of Philadep. Furthermore, WCDTC will make a participants fund contribution of \$750,000, which is in excess of the minimum amount required under the applicable formulae, and WCDTC's parent organization, the Vancouver Stock Exchange, has committed to and is in the process of executing an irrevocable standby letter of credit in the amount of \$2 million (Canadian Dollars) to be issued to Philadep securing its guaranty obligations.³

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the rule proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities and funds in its custody or control or for which Philadep is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. Philadep will

³ During the temporary approval of the proposed rule change, the current value of WCDTC's participants fund contribution or letter of credit should not be reduced.

notify the Commission of any written comments received by Philadep.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.⁴ The Commission believes that Philadep's designation of WCDTC as a correspondent depository is consistent with Philadep's obligations under Section 17A(b)(3)(F) because the proposed rule change should help foster cooperation and coordination between the U.S. and Canadian clearance and settlement systems by facilitating a link between Philadep and WCDTC.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow Philadep to immediately enter into a custodial arrangement with WCDTC thus allowing WCDTC to continue to settle without any disruption securities transactions between U.S. broker-dealers and Canadian broker-dealers. Currently, WCDTC acts as a correspondent depository for and conducts clearance and settlement with the Midwest Securities Trust Company ("MSTC") and the Midwest Clearing Corporation ("MCC"). The arrangement among WCDTC, MSTC, and MCC, including WCDTC's correspondent depository arrangement, will cease on January 26, 1996, as a result of MSTC's and MCC's decision to withdraw from the depository and clearance and settlement business.

The Commission is granting temporary approval of the proposed rule change through June 30, 1996, so that Philadep and the Commission can continue to monitor and analyze the development of WCDTC as a correspondent depository before granting permanent approval. During this period, the Commission will monitor the correspondent depository arrangement between Philadep and WCDTC to ensure that proper risk management procedures are in place. In this regard, the Commission requests that Philadep submit prior to filing for continued approval a report concerning specific surveillance measures that Philadep has implemented with regard

⁴ 15 U.S.C. § 78q-1(b)(3)(F)(1988).

to the WCDTC account. Such a report should include but should not be limited to a detailed report outlining the risk management procedures implemented specifically to monitor the WCDTC account, including any staff or systems additions, and an analysis of any impact on Philadep's business, including effects on liquidity needs from the acceptance of WCDTC as a participant. Furthermore, Philadep will be required to file monthly reports analyzing activity in WCDTC's omnibus account and subaccounts. In addition, while the Commission believes that approval of the proposed rule change at this time is necessary to prevent the disruption of services for the clearance and settlement of certain transactions between U.S. and Canadian broker-dealers, the Commission recognizes that the period for public comment was brief. Because the Commission is encouraging public comment on these proposals, the Commission believes that it is appropriate to permit additional opportunities for public comment in the future.⁵ For these reasons, the Commission is temporarily approving the proposed rule change through June 30, 1996. The staff of the Board of Governors of the Federal Reserve System have concurred with the Commission's granting of accelerated approval.⁶

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 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 Section, 450 Fifth Street, N.W.,

Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR-Philadep-96-01 and should be submitted by February 23, 1996.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the proposed rule change (File No. SR-Philadep-96-01) be, and hereby is, approved through June 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36781; File Nos. SR-Philadep-96-02 and SR-SCCP-96-01]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Changes to Provide for the Application of Article 8 of the New York Uniform Commercial Code

January 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 25, 1996, the Philadelphia Depository Trust Company ("PHILADEP") and the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-PHILADEP-96-02 and SR-SCCP-96-01) as described in Items I and II below, which Items have been proposed primarily by Philadep and SCCP. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes on a temporary basis through June 30, 1996.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

Philadep proposes to adopt Rule 32 and to amend Rule 1 of its rules, and SCCP proposes to adopt Rule 41 and to amend Rule 1 of its rules to govern the choice of law to be elected in certain transactions effecting Philadep, SCCP, their participants, and pledgees.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, Philadep and SCCP included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Philadep and SCCP have prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Philadep and SCCP hereby propose to adopt Rules 32 and Rule 41, respectively, and to amend Rule 1 of their rules to codify their decision to elect certain New York commercial code provisions to govern certain transactions for the purpose of providing a uniform, consistent, and predictable body of law. Specifically, Rule 32² and rule 41 will assure that the rights and obligations of Philadep and SCCP, their participants, and their pledgees with respect to transfers and pledges of securities, to the extent Article 8 of the Uniform Commercial Code ("UCC") applies thereto, will be governed by and construed in accordance with Article 8 of the UCC of New York in effect from time to time. The definition of "security" under Rule 1 of the Philadep's and SCCP's rules also will be amended to cite to New York UCC Article 8 as opposed to Pennsylvania UCC Article 8.

Philadep and SCCP note that uncertainty exists whether New York law or Pennsylvania law may apply to any particular transfers and whether some transfers within Philadep's or SCCP's systems may be governed by Pennsylvania's UCC Article 8 while other transaction within such systems may be governed by New York's UCC Article 8. With so many of the transactions for which Philadep and SCCP provide depository, clearance, and settlement services potentially being affected (e.g., those transactions effected through interface with broker-dealers, banks, and other institutions which are participants in The

⁵ Prior to June 30, 1996, Philadep will be required to file a proposed rule change pursuant to Section 19(b) (2) of the Act to seek continued approval of the proposed rule change.

⁶ Telephone conversation between Don Vinnedge, Manager, Trust Activities Program, Board of Governors of the Federal Reserve Board, and Jonathan Kallman, Associate Director, and Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (January 26, 1996).

⁷ 17 CFR 200.30(a) (12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² In its filing, Philadep mistakenly cites proposed Rule 41. The correct reference is to proposed Rule 32. Telephone conversation between J. Keith Kessel, Compliance Officer, SCCP and Philadep, and Cheryl O. Tumlin, Staff Attorney, Division of Market Regulation ("Division"), Commission (January 25, 1996).