

purchaser gives, and seller accepts, economic consideration to secure the purchaser's right to have the partnership interests transferred. The security interest creates the right for the purchaser to have the partnership interest transferred in advance of the date specified in the partnership agreement and entitles the purchaser to legal certainty that his/her ownership rights can be recognized and protected until the transfer of the partnership interest is completed.

In order to provide a uniform way for member firms engaged in the transfer of limited partnership interests to receive and recognize information on the valid transfer of the security interest separate and apart from the partnership interest, and to record such information of valid transfer on their books and records, the NASD is proposing to amend Section 1(a)(v) to allow the Code to apply to over-the-counter secondary market transfers of direct participation programs to the extent provided in individual provisions of the Code and to add new Section 73 of the Code to require members to use standardized transfer forms, as set forth in proposed Exhibit A to Section 73, when transferring limited partnership securities. The proposed forms will standardize the format for gathering transfer information by registered representatives, reduce the amount of information necessary to perform a valid transfer, and eliminate delays and inefficiencies in the transfer and settlement process. Proposed new Section 73 will not apply to limited partnership securities which are traded on The Nasdaq Stock Market or a registered national securities exchange.

The proposed standardized transfer forms include "Transferor's (Seller's) Application For Transfer," "Transferee's (Buyer's) Application For Transfer," "Registration Confirmation Form," and "Distribution Allocation Agreement," as set forth in proposed Exhibit A to Section 73. The Transferor and Transferee forms are each two pages in length and contain all of the essential information necessary to perform a valid transfer, including customer identification, partnership identification, tax identification, quantity transferred, broker/dealer and registered representative involved and signature execution. The Registration Confirmation Form confirms to the buyer/transferee that the transfer has been completed and contains information regarding, among other things, the partnership's NASD symbol, CUSIP number, tax identification number, number of units transferred and the effective/admission date.

The Distribution Allocation Agreement would be completed at the time the transfer documents are completed and sent to the general partner of the limited partnership security being transferred. The agreement contains certain affirmations on which the transferor and transferee agree and would act as a contract between the buyer and seller setting forth their agreement regarding all unpaid distributions. The agreement specifies when the unitholder of record is entitled to cash distributions and capital distributions, and who is responsible for correcting a distribution made to the wrong party. The agreement requires, among other things, the party who incorrectly receives a distribution to promptly endorse and deliver to the correct party the distribution checks or otherwise pay to the other party the amount of such distribution.

Although only NASD members would be required to use the standardized forms under the proposed amendments, the NASD is confident that general partners and transfer agents engaged in the transfer of limited partnership securities will use and honor the proposed forms so that uniform transfer practices and procedures could be established on an industry-wide basis.<sup>5</sup>

The NASD believes that standardized forms will significantly reduce the time and effort required by member firms to process limited partnership transfers from approximately 180 days to less than 30 days. In particular, the use of the Distribution Allocation Agreement will provide certainty as to the buyer/transferee and seller/transferor regarding distributions not yet announced or received by memorializing the agreement among the buyer and seller as to the method for handling distributions. The Distribution Allocation Agreement will also prevent member broker-dealers representing such buyers and sellers from effecting and settling trades without knowledge of the buyers' and sellers' rights to any distribution.

The NASD is requesting an effective date for NASD members of 60 days after the date on which SEC approval of the proposed rule is announced in an NASD Notice to Members, which announcement shall be made no later than 45 days after Commission approval.

<sup>5</sup> In fact, the NASD has worked closely with transfer agents who specialize in the transfer of partnership securities, and the Investment Program Association, a trade organization for the partnership industry, to reach an informal consensus on the general applicability of forms throughout the industry.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of customers and the public interest in that the proposed rule change standardizes the process and the means by which limited partnership securities are transferred on the secondary markets, thereby significantly eliminating the delays and inefficiencies in the transfer process, substantially improving the accuracy of dividend and capital distributions and minimizing litigation in that regard, and facilitating the transfer of limited partnership securities.

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

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The proposed rule change was published for comment in Notice to Members 94-75 (September 1994) ("NTM 94-75"). Fourteen comment letters from thirteen commenters were received in response thereto.<sup>7</sup> Nine commenters supported the proposed rule change, two commenters were opposed and two commenters neither supported nor opposed the proposed rule change.

#### *General Comments*

One commenter suggested that the forms be typeset. Two commenters stated that the forms are too technical, complicated and cumbersome for the average investor and that the forms should be streamlined. One of the commenters stated that investors would not have the necessary information to complete the forms without help from their registered representative.

The NASD understands the concerns expressed by these commenters but emphasizes that the forms were never intended to be completed by investors. The forms are intended to be used by general partners, transfer agents and financial intermediaries.

<sup>6</sup> 15 U.S.C. § 78 o-3.

<sup>7</sup> Copies of the Comment letters received by the NASD in response to NTM 94-75 are available for inspection and copying at the NASD or at the Commission's Public Reference Room.