

Two commenters stated that the proposed forms have no ability to include certain transferor and transferee representations required by the issuer's prospectus or partnership agreement in conjunction with transfer documents. One of these commenters suggested that general partners and sponsors might be more willing to adopt the proposed forms if they incorporate certain additional provisions, acknowledgements and representations commonly found in existing transfer documents (e.g., illiquidity, lack of a public market, availability of public information, distribution and tax allocations, etc.). Another commenter suggested that general partners should be allowed to use their own forms. Similarly, one commenter recommended that the forms serve as model guides subject to reasonable modifications by a general partner or sponsor.

Three commenters objected to the requirement that use of the proposed forms be mandatory for members. One commenter requested that the proposed modification to the Uniform Practice Code requiring members to use the forms not be made. Another commenter recommended that the proposal be clarified to require members only to accept the proposed documentation and not that they be required to use it. One commenter stated that the NASD must have a strategy for compelling issuers to adopt the new forms and procedures or else use by members is meaningless. The same commenter also stated that only issuers know the exact number of units a seller owns and the exact registration information, and that these same issuers are often unresponsive, slow and inaccurate in verifying this information. The commenter added that any policy set with regard to dividend distributions can only be accomplished if issuers agree to adopt and accept the proposed new procedures and that the proposed Registration Conformation Form would not help members if issuers and transfer agents do not promptly notify all parties of the receipt and approval of a transfer. The commenter concludes that unless the proposed forms are adopted by issuers, use of the forms should not be mandatory for members.

One commenter, while supporting the initiative, stated that the standardization should not be limited to transfer forms, but also should include signature verification, authorization and supporting documentation to insure uniformity and efficiency in the DPP transfer process. The commenter stated that attempting to establish uniformity without developing procedural

guidelines in these areas would do little to reduce inefficiencies and delays.

Despite the concerns expressed, the NASD believes the proposed forms will become the standard forms used by the industry. Since 1990, the NASD's Direct Participation Program Committee and the special Ad Hoc Committee on Uniform Settlement and Transfer Procedures for Direct Participation Program Securities have gathered and assessed information from the major market participants that act as principal or agent for customers in the fragmented limited partnership secondary market and consulted with the major limited partnership issuers in order to develop limited partnership transfer forms that have universal applicability. Both the staff and the members of the NASD's Direct Participation Program Committee, some of whom represent major limited partnership sponsors, are committed, through supporting a number of initiatives undertaken by the NASD in addition to the standardized transfer forms, to developing a broad, accessible framework through which the transfer and distribution process for limited partnership securities becomes streamlined and efficient for issuers, transfer agents and NASD members.⁸

While it is true that the NASD cannot compel non-member limited partnership issuers to use the proposed forms, many of these issuers have had significant input into the development of the proposed forms and generally agree that the forms are workable. Limited partnership issuers also understand that, once the proposed forms are approved by the SEC, member firms, transfer agents and other limited partnership secondary market intermediaries will begin using the forms as part of their standard transfer process. Therefore, the NASD is confident that issuers will generally not be adverse to using the proposed forms and that, in fact, it will be in their best interest to do so.

The NASD believes that the proposed forms contain all the essential information to effect a valid transfer of the security interest in a timely fashion. To allow the forms to be used as mere

models or guides would defeat the fundamental aim of standardizing the limited partnership transfer process. Nonetheless, nothing precludes a particular general partner, member or transfer agent from requesting additional information in order to complete certain books, records or documentation requirements of the partnership agreement. However, the failure to obtain such additional information should not prevent a valid transfer of the security interest from taking effect where the transfer forms are complete and contain all of the required information for a valid transfer.

Specific Comments

Transferor/Transferee Forms

One commenter suggested that the terms "Buyers" and "Seller" be deleted from the proposed applications for transfer forms since transfers are not limited to buy/sell transactions.

The "Reasons For Transfer" section in the transferor's form contains fields for "reregistration," "sale," "death," "gift" and "other." Thus, the forms do recognize that a transfer can be effected in ways other than a purchase and sale.

Partnership ID Information

Three commenters suggested modifications to the Partnership ID Information section of the proposed forms. Once commenter stated that the tax Shelter Identification Number is a unique number to each partnership and, therefore, problematic in its application, that not all partnerships have a tax number and that it is not clear whether transfer agents track such a number for identification purposes. The other commenter suggested that the additional partnership identifiers, such as the CUSIP #, the NASD Symbol, the Partnership Tax ID and the Tax Shelter ID, are not particularly helpful to the average investor and should be replaced with information to be completed by the secondary market intermediary completing the form. Finally, one commenter stated that the symbols in the NASD symbol directory were confusing and should be changed suggesting a different format for the symbols.

The proposed forms were designed to accommodate not any particular DPP secondary market participant but the transfer processing in general. Thus, some information required by the forms may be unnecessary for certain transfers. Regarding confusion to the average investor, the NASD wishes to emphasize again that the proposed forms were never intended to be completed by investors; the forms are

⁸ These initiatives include: (1) the development of a Direct Participation Program Symbol Directory; (2) the submission of a petition to the SEC to subject limited partnerships to the dividend and distribution reporting requirements of SEC Rule 10b-17; and, (3) the submission of a petition to the SEC requesting modification of SEC Rule 17Ad-4(a) to require the application of Rules 17Ad-2 (Turnaround, Processing, and Forwarding of Items), 17Ad-3 (Limitations on Expansion), and 17Ad-6(a) (1) through (7) and (11) (Recordkeeping) to the transfer of interests in publicly traded limited partnerships by transfer agents and to modify Rule 17Ad-10 to establish a limited buy-in provision for publicly traded partnership interests.