

the Federal Reserve System's fedwire should have no detrimental impact on the settlement process. In addition, the modifications to the opening of processing activity for security transactions were discussed and agreed to by the Operations Committee, which consists of participant representatives. Participants also have had the opportunity to comment on the proposal during the pilot program and no written comments were received by PTC or the Commission. Finally, the Commission believes that participants should have the opportunity to become familiar with the modification to the pilot program which permits the return of securities collateral to participant positions using PTC's CLF mechanism beginning at 7:00 a.m. (i.e., the prepilot program opening time for return of securities collateral) before the implementation of SPEED Release 5.6 on January 8, 1996. The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's decision to grant accelerated approval.⁶

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with Section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-PTC-95-08) be and hereby is approved on an accelerated, permanent basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority,⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-363 Filed 1-9-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36681; File No. SR-Philadep-95-08]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of a Proposed Rule Change Converting the Settlement System for Securities Transactions to a Same-Day Funds Settlement System

January 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ Telephone conversation between John R. Rudolph, Board of Governors of the Federal Reserve System, and Ari Burstein, Division of Market Regulation, Commission (December 27, 1995).

⁷ 15 U.S.C. § 78s(b)(2) (1988).

⁸ 17 CFR 200.30-3(a)(12).

("Act"),¹ notice is hereby given that on November 3, 1995, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-Philadep-95-08) as described in Items I, II, and III below, which items have been prepared primarily by Philadep. On December 19, 1995, Philadep filed an amendment to the proposed rule change.² 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

The Philadelphia Depository Trust Company ("Philadep") proposes to amend Rules 1, 4, and 9 and adopt Rule 4(A) and certain Philadep Procedures.³ The proposed rule change reflects a planned industry conversion to an expanded same-day funds settlement ("SDFS") environment.

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 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

1. Introduction

The proposed rule change sets forth the rules and procedures governing Philadep's SDFS system service. Philadep intends to provide SDFS depository services for all eligible securities. Philadep has made a substantial commitment to designing and building the data processing and computer network that will be the

¹ 15 U.S.C. § 78s(b)(1) (1988).

² Letter from Keith Kessel, Compliance Officer, Philadep and SCCP to Peter R. Geraghty, Esq., Division of Market Regulation, Commission (December 14, 1995).

³ The text of these proposals is attached as Exhibit B to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

foundation for Philadep's SDFS system. Throughout this major industry conversion, Philadep has worked closely with the Stock Clearing Corporation of Philadep ("SCCP"), other registered clearing agencies, the Commission and the Board of Governors of the Federal Reserve System ("Federal Reserve").

In accordance with the SDFS service, Philadep will accept deposits of securities certificates for safekeeping and will provide the full range of SDFS depository services which include, but are not limited to, deposits, book-entry delivery and receive orders, withdrawals, pledges, trade confirmations, affirmations, transfers and dividend/interest payments. New Philadep Rules and Procedures have been created for, among other things, pledging, failure to settle, transaction processing, risk management and money settlement in an expanded SDFS environment. Philadep has made substantial revisions to its current SDFS Procedures Manual and has included some of the salient procedural sections as exhibits to this rule change.⁴

In assessing the impact of an expanded SDFS environment, the operational requirements, risk, liquidity needs, among other matters, were evaluated on a joint SCCP/Philadep basis. Operationally, both wholly-owned subsidiaries of the Philadelphia Stock Exchange, Inc. ("PHLX") are integrally-related. Both registered clearing as well as strategic business objectives.

Many links or tie-ins between SCCP and Philadep exist by by-law, rule and agreement. For example, pursuant to a long-standing joint agency agreement between SCCP and Philadep, SCCP, on behalf of Philadep, effects, among other things, daily money settlements on behalf of Philadep participants for securities received into and delivered out of their accounts; processing of CNS movements from one participant to another; processing of all SCCP/Philadep dividend and reorganization settlements; and the preparation, rendering and collection of bills to Philadep participants for depository services.

In addition to these services, Philadep, on behalf of SCCP, facilitates book-entry movements through a joint SCCP and Philadep allocation system in order to assure continuous net settlements for the accounts of SCCP participants. Philadep also has

⁴ The text of the proposed procedures are attached as Exhibits B (3)-(6) to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

contractually agreed to provide SCCP with the means to pledge collateral to banks so that SCCP may obtain secured loans from such respective banks.

2. Risk Management Controls

Risk management controls play a major role in the design of Philadep's SDFS system.⁵ Philadep's risk management controls are intended to protect Philadep participants against the inability of a participant to pay for its settlement obligations. Philadep employs two primary risk management controls for securities processing; specifically, the collateral monitor and the net debit cap. As a result of the close nexus between Philadep and SCCP, Philadep's collateral monitor and net debit cap analysis incorporates SCCP settlements with Philadep.

Philadep will utilize two features to manage risk. The first involves participant collateralization; the second involves the regulation of net debits. Philadep has designed the collateralization aspect of SDFS to assure that a participant will have sufficient collateral in its account to liquidate in the event that it (i) becomes insolvent and/or (ii) fails to pay for its settlement obligation. In addition to collateralization, the procedures governing operational activity would prevent the completion of transactions if their completion would cause a participant's individual net debit to exceed its net debit cap. In this regard, the net debit cap application helps to assure that Philadep will have sufficient cash liquidity to complete settlement if any single participant fails to settle.

An individual participant's net debit cap is limited by Philadep's established maximum net debit cap. The largest net debit cap is always set lower than Philadep's total available liquidity. Presently, based on a planned SCCP/Philadep total liquidity level of \$60 million, the maximum net debit cap a participant may incur is \$40 million.

A. Collateralization

Philadep shall operate its SDFS system on a fully collateralized basis. Participants will be required to have sufficient collateral in their accounts to support their net settlement debits. If a participant does not have sufficient collateral in its account, the transaction will not be completed. The respective participant cannot allow its net debit to exceed the total value of its collateral; otherwise, these transactions are held

on a recycle (pend) queue until sufficient collateral is generated to allow their completion.

A participant may have several sources of collateral. The primary sources of collateral are the following:

- (1) Deposits by the participant to the Participants Fund;
- (2) Proprietary or firm positions that the participant designates as collateral;
- (3) Securities received versus payment, for which the participant has not yet paid (includes CNS deliveries); and
- (4) Securities added to a participant's account, but not received versus payment (e.g., deposits, free deliveries, free pledge releases, release of segregated securities) that the participant designates as collateral.

Because collateralization is an integral part in Philadep's SDFS service, Philadep will conservatively assign values to various sources of collateral, which will be subject to haircuts. Securities designated as collateral by participants are valued based on the securities' prior business day's closing market price, less an applicable haircut.

Philadep employs haircuts to protect itself and its participants against price fluctuations in collateral in the event that Philadep must liquidate the collateral of an insolvent participant. Moreover, because Philadep may have to finance a participant's failure overnight and borrow against a participant's collateral, Philadep's haircut structure takes into consideration the haircuts imposed by its lending institutions. Ordinarily, banks will not assign the full market value to securities used to collateralize loans, rather banks will generally consider the relative price volatility of the collateral and impose a haircut accordingly.

Philadep haircuts the value of securities in a manner consistent with industry standards and which will satisfy the dual objectives of (i) adequately protecting Philadep and its participants from loss and (ii) enhancing Philadep's ability to secure sufficient financing in the event of a failure to settle situation. The haircut levels configured by security type are as follows:

Equities—10%
Corporate and Municipal Debt—5%
Money Market Instruments—2%, 5% or up to 100%
 (depending on their term and investment grade rating)

Philadep may revisit its liquidity needs at any time, including intraday. Philadep reserves the right to reprice and modify haircuts intraday if it

determines these changes to be in the best interest of Philadep and its participants.

B. Net Debit Caps

Net debit caps are central to Philadep's SDFS risk management controls. Net debit caps limit the amount of settlement net debits (amount to be paid by the participant) that a participant may incur at any point during the processing day. Philadep will apply a net debit cap to each participant's account, determined by such participant's net debit history at Philadep and SCCP. Net debit caps are dynamic and, accordingly, will periodically adjust in relation to the participant's ongoing activity.

A participant may not allow its net settlement debit to exceed its net debit cap. If a participant's net settlement debit would exceed its respective net debit cap for transactions that are subject to risk management control,⁶ the system will not allow the participant to complete the transaction. The transaction will be placed in a pending queue until the account generates sufficient offsetting credits from subsequent account activity. Most credits come from securities deliveries versus payment; securities pledges for value; principal, dividend or interest allocations; or from received funds (Settlement Progress Payments or "SPP") wired to Philadep's account at Philadep's designated settling bank(s).

Philadep will calculate net debit caps on daily net settlement activities and may adjust these figures monthly. A participant's net debit cap will be specifically determined by the following steps:

(1) Philadep calculates a participant's average of the three highest end-of-day net debit settlements over a rolling three-month period to establish a "base figure." For purpose of calculating a participant's net debit settlement, Philadep includes the net CNS settlement.

(2) A participant's base figure is then multiplied by a factor to determine the participant's individual net debit cap, which cannot exceed Philadep's currently established maximum net debit cap of \$40 million. Factors are

⁶ CNS and reclamation activity will be exempt from risk management controls at the inception of SDFS. In other words, SCCP/Philadep will still process these activities. However, when a participant exceeds the net debit cap as a result of these activities, SCCP/Philadep may request settlement prepayments to reduce the daily debit. If SCCP/Philadep does not receive such prepayments, Philadep may reverse unsettled book-entry receives previously accepted to attain a positive collateral position, reducing the net debit to an amount under the net debit cap.

⁵ The text of the new SDFS risk management controls is attached as Exhibit B(4) to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

based on a sliding scale, ranging from 1 to 2, where lower base figures are multiplied by larger factors and higher base figures are multiplied by smaller factors.

(3) Notwithstanding the specific net debit cap calculated for any particular participant in subparagraph (2) above, all participants are subject to a minimum net debit cap to be computed based on 50% of the combined SCCP and Philadep Participants Funds. The minimum net debit cap⁷ will be recalculated and adjusted semiannually.

Despite the participant's base figure, Philadep reserves the right to make adjustments to a participant's net debit cap. Philadep may effect such change for a length of time deemed necessary and appropriate by Philadep's management.

C. Proposed Rule 4(A)

Philadep proposes to adopt Rule 4(A) in order to clarify that Philadep is authorized to pledge, repledge, hypothecate, transfer, create a security interest, and/or assign (any of the foregoing shall heretofore be termed a "pledge") any or all property received by Philadep from its participants and earmarked for Philadep to use as collateral for participant's unsatisfied obligations.⁸

Philadep defines the following as eligible collateral to secure unsatisfied obligations: (i) deposits in the Participants Fund; (ii) the securities or repurchase agreements in which the Participants Fund is invested overnight; (iii) certain qualifying securities which secure the open account indebtedness of the participant; (iv) securities which have been pledged to Philadep as a voluntary deposit to the Participants Fund; and (v) any or all securities designated as collateral (collectively "allowable assets").

Philadep may pledge allowable assets to a lender. For instance, Rule 4(A) specifies that Philadep shall have the right to pledge securities to lenders in the event a participant fails to settle.

If Philadep pledges these allowable assets, Philadep will make the appropriate account entries, reflecting the creation and transfer of the respective security interest from the participant to Philadep and from Philadep to the lender. Likewise, if a participant designates securities as net additions, Philadep will record the security interest on its books for such

net additions, reflecting the decrease in the account of the pledging participant and an increase in Philadep's account corresponding to such net additions. Philadep will reverse these journal entries upon the release and return of any pledged assets, reflecting a decrease in the account of any pledgee and an increase in the account of the pledgor as appropriate.

D. Use of the Collateral Monitor to Measure Participants' Available Collateral

Philadep will monitor the collateral in each of the participant's accounts. The mechanism to be used to regulate the collateral is referred to as the "collective monitor." The collateral monitor cannot become negative.

At the start of each business day, Philadep credits each participant's collateral monitor with its respective participants Fund deposit. The collateral monitor reflects at all times the amount by which the collateral in a participant's account secures the net debit in its settlement account. Thus, the collateral monitor equals the arithmetic summation of the difference of the value of the participant's collateral (less an applicable haircut) and its net settlement obligation.⁹ In other words, a participant's collateral (less an applicable haircut) must equal or exceed a given participant's net settlement obligation.

Philadep continually verifies the collateral value to assure that the deliverer and receiver's collateral monitor would not become negative as a result of Philadep processing an incipient transaction. If the transaction would cause either participant to be under-collateralized, Philadep prevents the transaction until the deficient participant has infused sufficient collateral into its account for the transaction to complete.¹⁰

E. Methods of Controlling Collateral

Philadep's SDFS system will provide an on-line, real-time mechanism to monitor and infuse intraday collateral.

Controls comprise: (i) classifying collateral, (ii) updating collateral

⁹ For example, if a participant had collateral securities with a market value of \$10,000, subject to a 10% haircut, the value of the participant's collateral would be equal to \$9,000. If the participant also incurred a debit of \$8,000, its collateral monitor would equal \$1,000 $\{(\$10,000 - [10\% \times \$10,000]) + (-\$8,000)\}$.

¹⁰ The text of the new SDFS recycling procedure is attached as Exhibit B(5) to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

valuations and (iii) furnishing new collateral.¹¹

With regard to collateral classification, participants may designate free (unpledged) securities positions in participants' accounts as either collateral or non-collateral.

In addition to the opening free positions, intraday positions have collateral value. However, Philadep will not provide the same latitude to participants as described for free positions to classify certain other types of transactions. Specifically, Philadep's SDFS system will automatically designate securities received versus payment as collateral because they represent incomplete transactions (receiver-participants have not yet paid for these securities).

With regard to updating the collateral valuation, Philadep's SDFS system will credit a participant's collateral monitor with the collateral value; that is, its market value, less the applicable haircut.

With regard to both the classification and infusion of additional collateral, participants have several methods of managing collateral in their accounts, outlined as follows:

General Classification of Opening (Start-of-Day) Securities Positions as Collateral

Participants may give Philadep instructions to designate all securities in the participant's account as collateral at the opening of each business day. Philadep would then designate all start-of-day positions as collateral, and the respective participant's collateral monitor would be credited with its collateral value.

Automatic Classification of Free Securities Additions

Participants may give Philadep instructions to designate all free securities transactions to its collateral monitor (e.g., deposits, free delivery orders ("DOs") received).

Intraday Reclassification of Securities

Participants may submit instructions to Philadep, to reclassify a specific quantity of an issue as collateral, previously classified as non-collateral, resulting in a collateral monitor credit equal to the collateral value of the securities reclassified. Conversely, participants may request that Philadep reclassify as non-collateral those securities that have previously been classified as collateral. However, Philadep would not fulfill such instruction if such removal of collateral from the participant's account would cause its collateral monitor to become negative.

¹¹ A discussion of the collateral controls is attached as Exhibit B(4) to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

⁷ Presently estimated at \$3,500,000.

⁸ The text of proposed Rule 4(A) is attached as Exhibit B(2) to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

Settlement Progress Payments ("SPPs")

Participants could increase their collateral monitor by wiring SPPs to Philadep's account at its designated settling bank(s). The participant's collateral monitor, as well as its settlement account, would be credited for the amount of the SPP; thus, a participant's actual net debit would be reduced.

In summary, Philadep is building a computerized system that will continuously track the value of each participant's collateral on a real-time, on-line basis, to ensure that the collateral's value is equal to or exceeds the participant's current net settlement debit. If a participant does not have sufficient collateral to cover the resulting net settlement debit from a proposed transaction, the participant may pledge more collateral or cash to enable Philadep to act on the transaction instructions; otherwise, such transaction will not be completed and pend in the system until Philadep receives sufficient collateral on the participant's behalf. Participants may wire funds to Philadep intraday to satisfy their collateral requirements.

3. Pending Transactions—Recycle Algorithm

If an incoming delivery order would cause a participant to exceed its net debit cap and/or create insufficient collateral, Philadep will place such transactions in a recycle (pending) queue and prioritize it accordingly.¹² Transactions that continue to pend at the close of the processing day will be purged from the system and must be subsequently re-entered by the participant that initially entered it.

4. Settlement and Failure to Settle Procedures

At the end of the processing day, Philadep will provide each participant with a net settlement amount, which will be the aggregate of the end-of-the-day net debits and credits in the participant's SCCP and/or Philadep accounts. Money settlements will occur daily with immediately available funds in the form of fed wire transfers into and out of Philadep's account at its designated settling bank(s).

In the event a participant or its representative bank/depository institution fails to settle, Philadep will utilize its liquidity resources to finance such participant's unsettled net debit. Philadep will prioritize the order in which it will use the resources. Philadep will first use cash from the

Participants Fund and other immediately available internal sources prior to drawing upon its external bank credit facilities. In the event that Philadep must use external lines of credit to secure an extension of credit in connection with the defaulting participant, Philadep shall secure the participant's assets as collateral as described earlier in subsections 2 (D) and (E).

When and if the participant settles by 10:00 A.M., Eastern Time, the next morning, Philadep will use the settlement payment received to repay the principal and finance charges of the lending bank. Philadep will then return the pledged collateral to the participant. For example, if the defaulting participant is solvent and pays its net debit balance and interest charge in same-day funds on the day after the default, Philadep would generally reverse the procedures followed on the day of the default. Philadep would repay lenders and restore pledged securities.

If, on the other hand, the defaulting participant remains in default the next business day, Philadep may take the following steps in successive order: (1) apply the defaulting participant's Clearing Fund deposit to satisfy the participant's obligation; (2) apply collateral of the defaulting participant which are the subject of incomplete transactions; (3) apply any other collateral of the defaulting participant, including collateral which are not subject to incomplete transactions; (4) if the participant's collateral is exhausted, apply pro rata net credit reductions to all participants who delivered securities to the defaulting participant on the day of the default, such reductions being limited to the amount of the net credit balance of each participant resulting from transactions with the defaulting participant; (5) in the alternative to such net credit reductions, resell to the delivering participant securities that were sold to the defaulting participant on the day of the default; and (6) make pro rata net credit reductions to all participants with net credit balances, including those participants that did not make deliveries to the defaulting participant on that day.

5. Paying Agent Charge-Back Procedures

With respect to principal, dividend, interest and corporate reorganization payment obligations ("P&I payments") under the proposed rule change, Philadep will pay such amounts when paid. Specifically, Philadep will pay participants in same-day funds upon receipt of payment by paying agents of such distributions in same-day funds in

accordance with Philadep's operating procedures. Philadep worked diligently to affect paying agents' timely disbursement of P&I payments to Philadep by payable dates. Philadep has witnessed dramatic improvement over the past year in paying agents' timely disbursement of P&I payments in same-day funds to Philadep. Philadep remains steadfastly committed to working closely with the industry, the Commission and the Federal Reserve, among others, in educating paying agents and assuring their maximum adherence to the higher standards of payment performance required under the SDFS environment.

In order to induce the delivery of P&I payments in same-day funds from paying agents that would not otherwise receive such payments from issuers in same-day funds on payable date, Philadep may agree to provide rebates to such paying agents. Philadep will act as the conduit, passing along such rebate costs to those participants benefiting from receiving same-day P&I payments that would have otherwise received payment in next-day funds.

Philadep will be authorized to immediately charge-back participants that were previously credited with payments. In order to charge-back participants, the paying agent must furnish Philadep a written request within ten (10) business days of the payable date and may do so for several reasons: (1) an error by the paying agent; (2) a failure by the issuer to provide the paying agent with sufficient funds to cover the payments; (3) the bankruptcy of the issuer on or prior to the payable date; or (4) other paying agent default.

Additionally, Philadep may also charge-back participants for any errors made by Philadep, including errors as a result of erroneous announcements or payment calculations credited to participants in anticipation of payments which Philadep has not received. For either charge-back method, Philadep reserves the right to impute and recover interest from the respective participant.

With regard to charge-backs initiated by the paying agent, Philadep shall notify the participant one (1) business day prior to the date Philadep enters the charge-back in the participant's daily settlement account. Although Philadep usually verifies the facts stated in the notice from the paying agent, Philadep does not have any obligation to do so. If the paying agent notifies Philadep more than ten (10) business days after payment date, Philadep is not required to charge-back the participant's account, but will cooperate with the paying agent and the participant to resolve the matter. For Philadep initiated charge-

¹² An overview of the recycle process is attached as Exhibit B(5) to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

backs, Philadep generally will give participants one (1) day notice of the charge-back.

6. Revised Participants Fund

To compensate for the risks in a SDFS environment and to respond to Philadep's increased liquidity needs, Philadep will modify its Participants Fund in its form and size. Philadep will maintain an all cash Participants Fund.

The all cash requirement applies to both the minimum and any additional, voluntary deposits. If participants decide to make voluntary, additional deposits, they will accomplish two objectives: first, it allows them to increase the level of settlement activities that may occur without potential disruption and, second, they will receive interest rebates from SCCP/Philadep for deposits in excess of \$50,000 in accordance with SCCP/Philadep's procedures.

Each Philadep participant must deposit a minimum amount of \$10,000.¹³ Whereas some inactive participants will only maintain a required deposit of \$10,000, many participants will have to deposit additional amounts based upon the type and extent of their clearing and depository activities. In order to effect the transition of Philadep and its participants to the SDFS environment, Philadep will implement these changes on or before February 1996.

Philadep will calculate the required cash deposit according to a participant's activity¹⁴ in accordance with the following formulae [formulae (a), (b) and (c) below are not additive; a participant shall be only responsible for making the highest deposit amount required by any single formula below]:

- (a) Inactive Accounts: \$10,000.00¹⁵ (less than \$100 of average monthly billings)
- (b) Specialized Services:

(maximum \$50,000 required with \$100 or greater in average monthly billings for either Deposit or Transfer activity)

—Deposit Activity: \$25,000.00 plus

—Transfer Activity: \$25,000.00

- (c) Participants not doing Specialized Service activity with service fees of \$100 or greater in average monthly billings The greater of either:
 - (1) \$25,000, or;
 - (2) 1% of the average of the three highest net debits over the past three months, if higher than the SCCP required deposit (rounded to the next \$5,000 increment).

Philadep will recalculate the Participants Fund deposit requirements at the end of each month based on the previous three months prior to the most recent month. Philadep will notify its participants of any required deposit increases and the amount of such additional deposit within ten (10) business days of the end of the month. Participants whose deposit requirements have decreased will be notified at least quarterly, although they may inquire and withdraw excess deposits monthly. In this way, participants may leave excess cash deposits in the participants fund and reduce the level of monthly administration that would otherwise be necessary. As previously stated, Philadep will also accept voluntary excess fund deposits to reduce administrative burdens.

Philadep estimates that at the time of implementing the foregoing modifications to the risk management controls, SCCP and Philadep will have combined liquidity resources of over \$60 million, comprising \$7 million in combined cash deposits to the Participants Fund (under the revised formulae), \$4.7 million in unrestricted capital and \$50 million in lines of credit,¹⁶ altogether designed to support the new SDFS system. SCCP/Philadep will routinely monitor these amounts and assess the need to increase them over time based on SCCP and Philadep activity levels. Considering SCCP/Philadep's risk and liquidity structure, Philadep's net debit cap levels are conservative, having been set in accordance with such combined liquidity resources and with due regard to SCCP's long-standing margin account financing program.

Philadep believes that the proposed rule change is consistent with Section 17A of the Act because it promotes the

prompt and accurate clearance and settlement of securities transactions in securities and funds in Philadep's custody and under its control. Philadep believes that with the development of the new SDFS system and its attendant risk management controls, Philadep and its participants are protected from the risk of a material loss. Philadep's Rules and Procedures are designed to promote efficiencies and protect Philadep and its participants in an expanded SDFS environment.

(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 notify the Commission of any written comments received by Philadep.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Philadep consents, the Commission will:

- (a) By order approve such proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

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, DC 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

¹³ See Exhibits B(1) and B(3) attached to File No. SR-Philadep-95-08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

¹⁴ For Philadep participants that utilize the RIO interface for settlement, half of the SCCP Clearing Fund deposit requirement shall be allocated to Philadep's Participants Fund to protect against potential settlement defaults for securities not eligible for the RIO interface. Similarly, those Philadep participants that clear and settle through CNS accounts at SCCP shall have their respective Philadep and SCCP Participants Fund deposits combined and then divided equally and allocated between Philadep and SCCP to satisfy the Fund deposit requirement at each clearing corporation.

¹⁵ For Philadep Inactive Participants that are also SCCP Inactive Participants, the Philadep Participants Fund deposit shall be \$5,000. For Philadep Inactive Participants that are also SCCP Active Participants, no additional Philadep Participants Fund deposit will be required.

¹⁶ As of the date of this filing, SCCP/Philadep has secured \$30 million in such credit lines and projects to secure \$20 to \$40 million in additional lines.

Section, 450 Fifth Street, NW., Washington, DC 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-95-08 and should be submitted by January 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-364 Filed 1-9-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21651; File No. 812-9674]

M Fund, Inc., et al.

January 3, 1996.

AGENCY: U.S. Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: M. Fund, Inc. ("Company") and M Financial Investment Advisers, Inc. ("Adviser").

RELEVANT ACT SECTIONS: Order requested under Section 6(c) for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order granting exemptions to the extent necessary to permit shares of any current or future series of the Company and shares of any other investment company that is offered as a funding medium for insurance products, and for which the Adviser or any of its affiliates may in the future serve as manager, investment adviser, administrator, principal underwriter or sponsor (the Company and such other investment companies are hereinafter referred to collectively as the "Funds"), to be sold and held by: (i) variable annuity and variable life insurance company separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); and (ii) certain qualified pension and retirement plans outside the separate account context ("Plans").

FILING DATE: The Application was filed on July 18, 1995, and amended on October 19, 1995. Applicants will amend during the notice period to make certain representations herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 29, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, M Fund Inc., c/o David F. Byrne, President, River Park Center, 205 S.E. Spokane Street, Portland, Oregon 97202.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Company is a Maryland corporation registered under the 1940 Act as an open-end diversified management investment company. The Company currently is composed of four separate portfolios; additional portfolios may be added in the future.

2. The Adviser for each of the Company's portfolios is a Colorado corporation registered with the SEC under the Investment Advisers Act of 1940. The Adviser is wholly-owned by the Management Partnership, an Oregon general partnership. The Adviser has engaged other registered investment advisers ("Sub-Advisers") to conduct the investment programs of each portfolio and has entered into investment sub-advisory agreements with each Sub-adviser. The Sub-advisers are not affiliated with the Adviser or the Company.

3. The Company intends to offer its shares to variable annuity and variable life separate accounts ("Separate Accounts") of both affiliated and unaffiliated insurance companies in support of variable annuity and variable life insurance contracts ("Contracts"). Insurance companies whose separate accounts will own shares of one or more portfolios of the Funds are referred to

herein as "Participating Insurance Companies." Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract which it issues.

4. The Company also intends to offer one or more portfolios of its shares directly to Plans. The Funds' shares sold to Plans which are subject to the Employee Retirement Income Security Act of 1984, as amended, may be held by the trustee(s) of the Plan.

5. The Adviser has no plans to offer investment advisory services to Plans or Plan participants, and will not act as investment adviser to any of the Plans that will purchase shares of the Company.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e-2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e-2(b)(15) are available only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying investment medium ("Underlying Fund") for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes that use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated

¹⁷ 17 CFR 200.30-3(a)(12) (1994).