

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AWP-13]

Proposed Amendment to Restricted Area R-2504; Camp Roberts, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 6, 1992. The NPRM proposed to amend the boundaries and time of designation for Restricted Area R-2504, Camp Roberts, CA. The FAA has determined that withdrawal of the proposal at this time is warranted because the Department of the Army has temporarily halted action on the proposal.

DATES: This proposed rule is withdrawn February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493-4050.

SUPPLEMENTARY INFORMATION: On May 6, 1992, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to change the boundaries and time of designation for R-2504, Camp Roberts, CA (57 FR 19409).

The FAA has decided to withdraw the proposal at this time to provide the Department of the Army the opportunity to compile additional information regarding the proposal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, Airspace Docket No. 91-AWP-13, as published in the **Federal Register** on May 6, 1992 (57 FR 19409), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Washington, DC, on January 26, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95-2736 Filed 2-8-95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-35323; File No. S7-4-95]

RIN 3235-AG28

Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing new rules and amendments to existing rules concerning unlisted trading privileges ("UTP") in listed initial public offerings ("IPOs"). The proposed rules would reduce the period that exchanges have to wait before extending UTP to any listed IPO security, from the third trading day, to the first trade reported by the listing exchange to the Consolidated Tape. The proposed rules also would require exchanges to have rules and oversight mechanisms in place to ensure fair and orderly markets and the protection of investors with respect to UTP in the securities.

DATES: Comments should be submitted on or before March 13, 1995.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., D.C. 20549, and should refer to File No. S7-4-95. All submissions will be made available for public inspection and copying at the Commission's Public

Reference Room, Room No. 1024, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Betsy Prout, 202/942-0170, Attorney, Office of Self-Regulatory Oversight and Market Structure, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5-1), 450 5th Street, N.W., Washington D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1994, the Unlisted Trading Privileges Act of 1994 ("UTP Act") became effective. The UTP Act amends Section 12(f) of the Securities Exchange Act of 1934 ("Exchange Act"). Section 12(f) governs when a national securities exchange ("exchange") may trade a security that is not listed and registered on that exchange, *i.e.* by extending unlisted trading privileges ("UTP") to the security. Pursuant to the UTP Act, the Commission today is proposing rules under Section 12(f).

A. Section 12(f) Prior to the UTP Act

Prior to the UTP Act, Section 12(f) required exchanges to apply to the Commission before extending UTP to a particular security.¹ An exchange application for the extension of UTP named the security (or frequently, securities) for which the applicant exchange sought Commission approval for UTP. The Commission was required to provide interested parties with at least ten days notice of the application, which the Commission accomplished by publishing each UTP application for comment in the **Federal Register** at least ten days prior to approving UTP for a security. In addition, prior to approving the UTP application, the Commission had to find that the extension of UTP to each security named, if listed and registered on another exchange ("listed security" on a "listing exchange"), would be consistent with the maintenance of fair and orderly markets and the protection of investors. If so, the

¹ When an exchange "extends UTP" to a security, the exchange allows its members to trade the security as if it were listed on the exchange. For discussions of the history of UTP in U.S. markets and Section 12(f) of the Exchange Act, *see, e.g.*, Stephen L. Parker & Brandon Becker, Unlisted Trading Privileges, 14 *Rev. Sec. Reg.* 853 (1981); and Walter Werner, Adventure in Social Control of Finance: The National Market System for Securities, 75 *Colum. L. Rev.* 1233 (1975).

Commission published an approval order in the **Federal Register**.

Section 12(f) gave interested parties an opportunity to comment and to participate in a hearing regarding the extension of UTP to any security. Pursuant to Section 12(f), the Commission processed hundreds of exchange applications for the extension of UTP each year, yet comments on the applications were extremely rare. Indeed, virtually no comments have been submitted to the Commission on a UTP application in over ten years.

As a consequence of the application, publication, and approval process, applicant exchanges had to wait several weeks before competing with listing exchanges that already were trading the securities. Moreover, while exchanges were required to await Commission approval before competing with the listing exchange, dealers trading off an exchange could trade any security immediately upon its effective registration with the Commission.²

As noted above, Section 12(f) also required the Commission to review each UTP application to ensure the maintenance of fair and orderly markets and the protection of investors with respect to the extension of UTP to the securities named in the application. Pursuant to this standard of review, the staff identified, over time, certain areas of particular concern as they relate to UTP. Accordingly, the staff reviewed each application to ensure, among other things, that the applicant exchange had proper trading rules in place to provide a fair and orderly market in each security named and had sufficient standards for regulatory oversight of each security to provide for the protection of investors. While Commission review of the applications led to occasional discoveries of material deficiencies and errors in the applications, the overwhelming majority of applications raised no substantive issues and over 99% of the applications were approved.

In response to the Concept Release that initiated the Market 2000 Study,³ resulting in the Division of Market Regulation's ("Division") report, *Market 2000: An Examination of Current Equity Market Developments*, some commenters noted that the regulatory

process for UTP could be a potential area for reform.⁴ Shortly after publication of the Concept Release, the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce ("Subcommittee") began working on draft legislation to amend Section 12(f).⁵ These efforts, along with the efforts and support of the various self-regulatory organizations, ultimately led to the UTP Act.

B. Statutory Changes Under Amended Section 12(f)

The UTP Act, among other matters, removes the application, notice, and Commission approval process from Section 12(f) of the Exchange Act, except in cases of Commission suspension of UTP in a particular security on an exchange. Thus, the amendment generally allows an exchange to extend UTP to any security when it becomes listed and registered on another exchange or included in Nasdaq,⁶ subject to certain limitations.

First, the UTP Act contains special provisions for the extension of UTP to any listed security that is the subject of an initial public offering ("listed IPO security").⁷ The amendment includes a

⁴ See letter from William G. Morton, Jr., Boston Stock Exchange, John L. Fletcher, Midwest (currently Chicago) Stock Exchange, Leopold Korins, Pacific Stock Exchange, and Nicholas A. Giordano, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated December 11, 1992. See also, Division of Market Regulation, Securities and Exchange Commission, *Market 2000: An Examination of Current Equity Market Developments* (January 1994).

⁵ The Subcommittee held a hearing on the UTP Act on June 22, 1994, at which a Division representative and representatives of several self-regulatory organizations appeared and submitted written comments on the legislation. The Unlisted Trading Privileges Act of 1994 and Review of the SEC's Market 2000 Study: Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 103d Cong., 2d Sess. (1994) ("UTP Hearing").

⁶ Section 12(f), as amended, also removes the application and approval requirements for exchange UTP in securities that are registered under 12(g) of the Exchange Act (generally, "OTC securities"). Exchange extensions of UTP to OTC securities, and specifically to Nasdaq/National Market securities, are subject to limitations provided in Section 12(f) and provided in an on-going pilot program. See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103. While the UTP Act removed the relevant application procedures for Nasdaq stocks, UTP in OTC securities continues to be subject to the on-going pilot program and the limitations it provides. For that reason, the Commission will consider issues involved in UTP extensions to OTC securities as the Commission continues its on-going review of the operation of the pilot program.

⁷ Section 12(f)(1)(B), read jointly with Section 12(f)(1)(A)(ii), as amended, provides this exception for listed IPO securities. In defining securities that fall within the exception, new subparagraphs 12(f)(1)(G)(i) and (ii) provide:

(i) a security is the subject of an initial public offering if—

temporary provision that requires exchanges to wait until the third day of trading in any listed IPO security on the listing exchange before they may allow their members to trade the security pursuant to UTP. This provision also requires the Commission to prescribe by rule or regulation, within 180 days of the enactment of the UTP Act (or before April 21, 1995), the mandatory delay (or, "duration of the interval"), if any, that should apply to UTP extensions to listed IPO securities.⁸

Second, Section 12(f)(1)(D) provides the Commission with rulemaking authority to prescribe, by rule or regulation, additional procedures or requirements for extending UTP to any security.

Third, new Section 12(f)(2) allows the Commission summarily to suspend UTP in a security at any time within 60 days of the commencement of trading on the relevant exchange pursuant to UTP. Upon suspension, the exchange must cease trading in the security. Pursuant to Section 12(f)(2)(A)(ii), an exchange seeking to reinstate its ability to extend UTP to the security, following a Commission suspension, must file an application with the Commission. The exchange must apply pursuant to procedures that the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of the

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

15 U.S.C. 78j(f)(1)(G).

⁸ Specifically, amended Section 12(f)(1)(C) provides:

Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in this subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation, or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next trading day.

In short, this provision requires exchanges (until the earlier of the effective date of a Commission rule, or 240 days after the enactment of the UTP Act) to wait until the third trading day in a listed IPO security before trading the security pursuant to UTP.

² As a technical matter, Section 12(a) limits the trading of securities on an exchange to those securities that are listed and registered on that exchange. Section 12(f), both prior to and following this amendment, makes an exemption from this requirement for securities traded pursuant to UTP. Over-the-counter ("OTC") dealers are not subject to the Section 12(a) listing requirement because they do not transact business on an exchange.

³ See Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 ("Concept Release").

Exchange Act. New Section 12(f)(2) requires public notice and Commission review of applications to reinstate UTP that has been suspended summarily by the Commission. The procedures and Commission standard of review for approval of a reinstatement application are substantially similar to the application and review process that previously preceded an exchange's initial extension of UTP to a security under former Section 12(f) and the rules thereunder.

These amendments to Section 12(f) reduce the waiting period that previously delayed exchange extensions of UTP to securities listed on other exchanges, or to certain securities traded OTC. In addition, the amendments direct the Commission to prescribe rules for UTP in listed IPO securities, and otherwise empowers the Commission to establish rules for UTP generally as the Commission deems appropriate in furtherance of the purposes of the Exchange Act.

II. Proposed Rules and Amendments to Existing Rules Pursuant to Amended Section 12(f)

As described in more detail below, the Commission is proposing two new rules and amendments to and rescissions of existing rules. Specifically, the Commission is proposing new Rule 12f-2 concerning UTP in listed IPO securities, and is soliciting comment on alternatives to the proposed rule that would be consistent with the UTP Act. The Commission also is proposing and soliciting comment on new Rule 12f-5 regarding exchange rules to ensure the maintenance of fair and orderly markets and the protection of investors for all securities traded pursuant to UTP. To provide consistency between the amendments to Section 12(f) and the rules thereunder, the Commission also is proposing to amend existing Rules 12f-1 and 12f-3 and to rescind existing Rules 12f-2 and 12f-6. Finally, the Commission is soliciting comment on whether other Commission action concerning intermarket linkages, as they affect UTP in listed securities, is necessary to facilitate the operation of the UTP Act.

A. Listed Securities That Are the Subject of an Initial Public Offering (Proposed Rule 12f-2)

As discussed above, the UTP Act generally allows exchanges to extend UTP to securities when they become listed and registered on another exchange or included in Nasdaq, except in the case of listed IPO securities. In this regard, the UTP Act establishes a

temporary provision that requires exchanges to wait until the third day of trading in the security on the listing exchange before extending UTP to the security. Before April 21, 1995, the Commission must prescribe by rule or regulation the appropriate waiting period, if any, that would apply before an exchange may extend UTP to any listed IPO security following the commencement of its IPO.

The Commission is proposing new Rule 12f-2 under the Exchange Act to establish the waiting period that would govern the extension of UTP to a security that is the subject of an IPO. Proposed Rule 12f-2 would provide that an exchange may extend UTP to a listed IPO security when at least one transaction in the subject security has been effected on the listing exchange and the transaction has been reported pursuant to an effective transaction reporting plan as defined in Rule 11Aa3-1 under the Exchange Act.⁹ The proposed rule, therefore, would shorten the mandatory waiting period (or "interval," as it is described in the UTP Act) for UTP in listed IPO securities from two trading days, as temporarily specified by amended Section 12(f), to the time that it takes to effect and report the initial trade in the security on a listing exchange.

Rule 12f-2 would define the term "subject security" to mean a security that is the subject of an initial public offering, as that term is defined in Section 12(f)(1)(G) of the Exchange Act. To ensure that the proposed rule would not provide any means to circumvent other Section 12(f) objectives and requirements, the proposed rule also would provide that the extension of UTP pursuant to the rule would be subject to all the provisions set forth in Section 12(f) of the Exchange Act, as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

The Commission preliminarily believes that it is appropriate to minimize regulatory restraints on competition for trading listed IPO securities. Shortening the interval for UTP in listed IPO securities should enhance the ability of exchanges to compete for order flow in the subject securities, especially in light of the fact that OTC dealers may trade IPO securities immediately upon effective registration with the Commission. Accordingly, in the absence of a compelling reason to impose a restriction that would inhibit competition among exchanges, the

Commission initially believes that competing exchanges should be able to extend UTP to a listed IPO security after the first trade in the security on the listing exchange has been effected and reported.

The Commission is proposing a one-trade interval before exchanges may extend UTP to a listed IPO security because the Commission preliminarily believes that the first transaction in an IPO, as disseminated on the consolidated tape, conveys essential information to the public concerning the pre-evaluated offering price of the security. In addition, the timing of the initial trade and commencement of trading in a new issue entail significant coordination involving the issuer, the listing exchange, and the underwriters of the public offering of the security. If competing exchanges were to allow their members to trade a listed IPO security before it initially trades on the listing exchange, it may be difficult to ensure that all the preparation for the IPO had been completed before public trading in the security commenced.

During the legislative process preceding the UTP Act, conflicting views arose among interested parties concerning the appropriate waiting period, if any, for UTP in listed IPO securities. At the UTP Hearing, testimony and evidence were presented to show the negative impact that a mandatory waiting period for UTP has on competition.¹⁰ At the same time, however, one interested party asserted that listed IPO securities should trade in a central location for a "short" period of time to help ensure market efficiency immediately following an IPO, and that immediate UTP in listed IPO securities could increase the cost of raising capital for issuers.¹¹

In a report to Congress on the UTP Act, the House Committee on Energy and Commerce provided guidance concerning specific matters it considered relevant to the present Commission rulemaking and resolution of the above concerns:

The Committee expects that, in undertaking the IPO rulemaking authorized under the bill, the Commission will seek comments on the benefits associated with streamlining the regulatory process and enhancing competitive opportunities among market centers with respect to UTP in IPOs, and the identification of the negative effects if any that granting immediate UTP might

¹⁰ See prepared testimony of Nicholas A. Giordano, President and Chief Executive Officer, Philadelphia Stock Exchange, UTP Hearing, supra note 5.

¹¹ See prepared testimony of Edward A. Kwalwasser, Executive Vice President, Regulation, New York Stock Exchange, UTP Hearing, id.

⁹ 17 CFR 240.11Aa3-1 (1991).

have on the distribution of these securities. The Committee further expects the Commission to consider the experience of the third market trading in listed IPOs in the course of its examination of these questions. Finally, the Committee expects the markets to cooperate in providing the Commission with data regarding the nature and effect of trading activity (including, for example, any volatility effects on the security) in connection with IPO listings in order to enable the Commission to determine whether the benefits of confining early trading in IPOs to one marketplace are outweighed by the benefits of removing regulatory delays that inhibit competition among market.¹²

The Commission seeks comment on each of these matters. The Commission believes that identification and analysis of the potential harms and benefits that would result from either no waiting period, or from a longer waiting period than that proposed by the Commission, would be particularly useful in its review.

The Commission also seeks comment on the one-trade waiting period as proposed. To the extent that commenters believe a waiting period is appropriate, the Commission requests that they provide data to illustrate the potential negative effects on the pricing of an IPO. Commenters also may wish to provide an analysis of the effects of the current two-day waiting period. Finally, the Commission would be interested in receiving alternative proposed rules from commenters who believe that either no waiting period or a longer waiting period is appropriate.

B. Exchange Rules for Securities to Which Unlisted Trading Privileges are Extended (Proposed Rule 12f-5)

Section 12(f)(1)(D), as amended, authorizes the Commission to prescribe, by rule or regulation, such additional procedures or requirements for extending UTP to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of the Exchange Act. Pursuant to this authority, the Commission is proposing Rule 12f-5, which would prohibit an exchange from extending UTP to any security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP.

This rule is intended to preserve a benefit of Commission review of UTP applications prior to the UTP Act. Previously, the Commission reviewed each UTP application to ensure that the

applicant exchange had rules in place to cover the trading of the product class of the security for which the exchange applied. In general, applicant exchanges had listing rules in place that provided for transactions for most product classes of securities. Occasionally, however, an exchange would submit a UTP application to the Commission to trade a new or unusual product class of securities that had been approved for trading on the listing exchange, but had not been approved for trading on the applicant exchange.¹³

For example, the Commission would approve a proposed rule change to the Commission, pursuant to Section 19(b) of the Exchange Act, by an exchange to list and trade a new type of security. The proposed rule change established exchange rules to ensure the maintenance of fair and orderly markets in the securities and sufficient mechanisms for regulatory oversight of the named securities to provide for the protection of investors. A regional stock exchange occasionally filed a UTP application for the security without submitting a similar proposed rule change pursuant to Section 19(b) of the Exchange Act. The Commission's review procedures for UTP applications identified those instances so that necessary rules would be in place on the applicant exchange in order to ensure the maintenance of fair and orderly markets and the protection of investors.

The Commission is proposing Rule 12f-5 to require exchanges to ensure that these rules and oversight mechanisms exist on their exchanges for the relevant securities before extending UTP to the securities. The proposed rule reconfirms to exchanges their obligation to evaluate their extensions of UTP before allowing their members to trade the securities.

In soliciting comment on the proposed rule, the Commission is particularly interested in the views of market participants and other commenters concerning the need for the rule and whether it would, in practice, help ensure that an exchange has all the necessary rules in place to provide for fair and orderly markets in all securities to which the exchange extends UTP.

¹³ Prior to the UTP Act, exchanges were not permitted to apply to the Commission for UTP in any security for which the applicant exchange had not adopted listing standards and proper trading rules, pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder. Proposed Rule 12f-5 would make explicit the obligation to have the necessary rules in place before extending UTP to a specific type of security.

C. Proposed Amendments to Existing Rules 12f-1 and 12f-3, and Proposed Rescission of Existing Rules 12f-2 and 12f-6

Several of the rules prescribed under former Section 12(f) concerned the application process for extensions of UTP. The Commission is proposing to amend or rescind these rules to reflect statutory changes, and is soliciting comment on whether these proposed changes are appropriate.

First, the Commission is proposing to amend Rule 12f-1,¹⁴ to limit its operation to an exchange's application to reinstate UTP after a Commission suspension. Section 12(f), as amended, requires an exchange to apply to the Commission for UTP if the Commission has suspended the exchange's extension of UTP to the security. The proposed amendment would require essentially the same format for applications to reinstate UTP as was required by the rule under former Section 12(f) for applications to extend UTP.

Second, the Commission is proposing to rescind existing Rule 12f-2 and remove Form 27 referred to in the rule.¹⁵ This rule and form dealt with instances where an exchange might have been required to cease extending UTP, and to reapply for UTP, in a security that was "changed" immaterially for those purposes. The rule and form provide an exemption from reapplication for UTP in these cases. The Commission is proposing to rescind the rule because the application procedures, from which the rule provided an exemption, no longer exist.

Third, the Commission is proposing to rescind the last sentence of paragraph (b) of Rule 12f-3.¹⁶ Rule 12f-3 allows the issuer of a security that is traded pursuant to UTP, or any broker or dealer who makes a market in the security, or any other person having a bona fide interest in the question of termination or suspension of UTP in the security, to apply to the Commission for the termination or suspension of UTP in the security. The Rule also identifies the categories of information that should be provided in the application, which includes the applicant's statement that it has sent a copy of the application to the exchange from which the suspension or termination is sought. Thereafter, the Rule provides that the exchange may terminate or suspend UTP in the security in accordance with its rules. Finally, the Rule requires the exchange, upon suspension or

¹⁴ 17 CFR 240.12f-1 (1991).

¹⁵ 17 CFR 240.12f-2 (1991).

¹⁶ 17 CFR 240.12f-3 (1991).

¹² H.R. Rep. No. 626, 103d Cong., 2d Sess. (1994).

termination, promptly to file Form 28 with the Commission.

The Commission believes this final requirement no longer is necessary because exchanges are no longer required to apply to the Commission to extend UTP to a security. Thus, notifying the Commission of termination or suspension of UTP serves no purpose. The Commission, therefore, is proposing to rescind that last requirement from the Rule concerning Form 28, and to remove Form 28, in order to conform further with efforts to streamline the regulatory process concerning UTP.

Finally, the Commission is proposing to rescind Rule 12f-6.¹⁷ This rule exempts a merged exchange from the UTP application process in certain circumstances. The exemption no longer is necessary because the waiting period that restrained exchanges from extending UTP to most securities has been eliminated by the UTP Act.

The Commission is soliciting comment on each of these proposed Commission rule changes. The Commission is interested in comments on whether the proposed amendments and rescissions accomplish the Commission's goals with respect to the amendments or rescissions. The Commission also is interested in receiving comments concerning the continued necessity of other provisions of the rules, given the recent amendment to Section 12(f) of the Exchange Act.

D. Solicitation of Comment on Structural Implications of Immediate UTP

The Commission is seeking comment on whether any Commission action is necessary under Section 12(f), in order to carry out the congressional objectives of linked markets as required by Section 11A(a)(1)(D),¹⁸ to make changes to the consolidated quotation, trade reporting, and routing of customer and principal interest in securities that are traded pursuant to UTP, now that exchanges and linking facilities will have less time to prepare for multiple exchange market trading in the securities. The Commission is particularly interested in comments concerning any existing procedural delays that should be

corrected by Commission action in order to ensure that the operation of amended Section 12(f) is not impeded.

III. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. § 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small businesses" adopted by the Commission for purposes of the Regulatory Flexibility Act ("RFA"). As described in Section II, above, the Commission is proposing rules and changes to existing rules under Section 12(f) to comply with the UTP Act directives and to further the objectives of this recent amendment. Proposed Rule 12f-2 would require exchanges to wait, before extending UTP to such a security, until the listing exchange effects and reports the first transaction in the security.

Proposed Rule 12f-2 primarily has an impact on competitive initiatives of the self-regulatory organizations, which are not small businesses for the purposes of the RFA.¹⁹ The proposed rules also may have some economic effect on some businesses that may be, from time to time, small businesses for the purposes of the RFA. Specifically, the proposed rule may affect the order-routing choices available to broker-dealer firms and would designate the moment at which regional exchange specialist firms may compete for order flow in any listed IPO security. Some broker-dealers and some regional specialist firms may be small businesses. The Commission believes, however, that the economic impact of the rule may not be "significant" and the number of "small businesses" that would be affected by the rule may not be "substantial," as contemplated by the RFA. In this regard, the Commission notes, among other things, that listed IPO securities comprise only a fraction of the overall number of securities available for order-routing by broker-dealers and for trading by regional specialist firms, and only a small number of those firms are "small businesses." Furthermore, neither small nor large businesses would be subject to

reporting, recordkeeping, or other compliance requirements under the proposal.

The other proposals would restate existing standards for exchange extensions of UTP, and would amend existing rules under Section 12(f) to conform to the UTP Act and, therefore, should have no economic impact for the purposes of the RFA.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Betsy Prout, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 942-0170.

IV. Effects on Competition

Section 23(a)(2) of the Exchange Act²⁰ requires the Commission, in adopting rules under the Exchange Act, to consider any anti-competitive effects of the rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Act. As discussed in more detail above, the extension of unlisted trading privileges allows exchanges to compete with the listing exchange, other exchanges, and with dealers for order flow in the relevant securities. The rules promulgated under Section 12(f), therefore, may directly affect competition among market centers and their members. In addition, firms sending orders to the market centers for execution may also be affected by limitations that the proposed rules may place on their order-routing practices. The Commission is soliciting comment on the effect the proposed rules, and the proposed changes to existing rules, may have on exchanges, associations, their members, and order-routing firms.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the *Code of Federal Regulations* to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-

²⁰ 15 U.S.C. 78w(a)(2).

¹⁷ 17 CFR 240.12f-6 (1991).

¹⁸ Section 11A(a)(1)(D) of the Exchange Act provides:

The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

¹⁹ The relevant rule under the Act, 17 CFR 240.0-10, provides that, for the purposes of the RFA, "small business" (when referring to a broker or dealer) shall mean a broker or dealer that had total capital of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, or if not required to be prepared, on the last business day of the preceding fiscal year. Also, "small business" does not include any entity that is affiliated with another entity that is not a small business.

23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

2. By amending § 240.12f-1 by revising the section heading and introductory text of paragraph (a), redesignating paragraphs (a)(5) and (a)(6) as (a)(6) and (a)(7), adding paragraph (a)(5), and revising newly designated (a)(6), to read as follows:

§ 240.12f-1 Applications for permission to reinstate unlisted trading privileges.

(a) An application to reinstate unlisted trading privileges may be made to the Commission by any national securities exchange for the extension of unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to section 12(f)(2)(A). One copy of such application, executed by a duly authorized officer of the exchange, shall be filed and shall set forth:

(1) * * *

(5) The date of the Commission's suspension of unlisted trading privileges in the security on the exchange;

(6) Any other information which is deemed pertinent to the question of whether the reinstatement of unlisted trading privileges in such security is consistent with the maintenance of fair and orderly markets and the protection of investors; and

* * * * *

3. By revising § 240.12f-2 to read as follows:

§ 240.12f-2 Extending Unlisted Trading Privileges to a Security that is the Subject of an Initial Public Offering.

(a) *General provision*—A national securities exchange may extend unlisted trading privileges to a subject security when at least one transaction in the subject security has been effected on the national securities exchange upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan as defined in § 240.11Aa3-1.

(b) The extension of unlisted trading privileges pursuant to this section shall be subject to all the provisions set forth in Section 12(f) of the Act (15 U.S.C. 78l(f)), as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

(c) *Definition*. For purposes of this section, the term *subject security* shall mean a security that is the subject of an initial public offering, as that term is defined in section 12(f)(1)(G) of the Act (15 U.S.C. 78l(f)(1)(G)).

4. By amending § 240.12f-3 by revising paragraph (b) to read as follows:

§ 240.12f-3 Termination or suspension of unlisted trading privileges.

(a) * * *

(b) Unlisted trading privileges in any security on any national securities exchange may be suspended or terminated by such exchange in accordance with its rules.

5. By adding § 240.12f-5, to read as follows:

§ 240.12f-5 Exchange Rules for Securities to which Unlisted Trading Privileges are Extended.

A national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.

§ 240.12f-6 [Removed]

6. By removing and reserving § 240.12f-6.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

§ 249.27 and 249.28 [Removed]

8. By removing § 249.27 and § 249.28.

By the Commission.

Dated: February 2, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-3175 Filed 2-8-95; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Notice of Proposed Rulemaking Concerning Post-Investigation Retention and Use of Confidential Business Information From Investigations on Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Commission proposes to amend two of its final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) to codify a proposed new policy of allowing counsel who are signatories to an administrative protective order (APO) to

retain certain categories of confidential business information (CBI) from an investigation for prescribed periods and to use that CBI during the retention period for certain limited purposes.¹

The Commission hereby solicits written comments from interested persons to aid the Commission in determining whether to adopt the proposed rules set forth in this notice.

DATES: Comments will be considered if received on or before April 10, 1995.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210 eventually to replace the interim rules currently found in 19 CFR parts 210 and 211.² The interim rules in 19 CFR parts 210 and 211 (1994) apply to all pending investigations and related proceedings that were instituted before September 1, 1994. The final rules, which went into effect on August 31, 1994, and will be codified in 19 CFR part 210 in 1995, apply to all investigations and related proceedings instituted on or after September 1, 1994.³ On January 1, 1995, certain final rules were amended on an interim basis to implement the amendments to section 337 contained in the Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994) (URAA).⁴

Neither the interim nor the final Commission rules contain provisions governing the retention of CBI by counsel who are signatories to a section 337 APO. The Commission's traditional policy, however, has been to issue

¹ Commissioners Rohr and Newquist dissent from the Commission majority's decision to consider revising the final rules as described in this notice. See *infra n.9*.

² See 59 FR 39020, Part II (Aug. 1, 1994).

³ *Id.*

⁴ See 59 FR 67622 (Dec. 30, 1994).