

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, October 9, 2001, will be:

Institution of an administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 2, 2001.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [66 FR 49727, September 28, 2001].

**STATUS:** Open Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Wednesday, October 3, 2001 at 10 a.m.

**CHANGE IN THE MEETING:** Deletion of Item.

The following item will not be considered at the open meeting scheduled for Wednesday, October 3, 2001: Final Rule Amendments to Broker-Dealer Books and Records Rules 17a-3 and 17a-4 Under the Securities Exchange Act of 1934.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 2, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-25126 Filed 10-2-01; 4:31 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 44874/September 28, 2001]

### Securities Exchange Act of 1934; Exemptive Order Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 Issuing Exemptive Relief To Respond to Market Developments

Section 36 of the Securities Exchange Act of 1934 (Exchange Act) authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Following the events of September 11, 2001, trading in the equity and options markets halted for four days. To facilitate the reopening of trading, the Commission, recognizing that purchases by registrants of their own securities can represent an important source of liquidity to maintain fair and orderly markets, used its authority under section 12(k)(2) of the Exchange Act to relax certain regulatory provisions to permit additional flexibility in making such purchases.<sup>1</sup> While there is no longer an emergency and the markets are functioning well, nonetheless, under the current highly unusual circumstances, it continues to be useful to facilitate issuers repurchases to enhance orderly markets. We believe that this exemption providing similar relief is appropriate in the public interest. This exemption, particularly in light of the other provisions of Rule 10b-18 that remain applicable and its limited duration, is consistent with the protection of investors.

Accordingly, *It is Ordered*, pursuant to section 36 of the Exchange Act, that,

In connection with a Rule 10b-18 purchase<sup>2</sup> or with a Rule 10b-18 bid that is made during the period covered by this Order by the use of any means

or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated section 9(a)(2) of the Exchange Act or Rule 10b-5 under the Exchange Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made or the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer meets all of the conditions in Rule 10b-18<sup>3</sup> with the exception that:

1. The timing condition in paragraph (b)(2) may be satisfied by an issuer whose security has an average daily trading volume (ADTV) value of \$1,000,000 or more and a public float value of \$150 million or more if that issuer effects purchases that (a) do not constitute the opening transaction in the security, and (b) occur up to the ten minutes before the scheduled close of trading on the primary market for such security; and

2. The volume condition of paragraph (b)(4) may be satisfied if the issuer makes all Rule 10b-18 purchases other than block purchases of a reported or exchange traded security in an amount that, when added to the amount of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or an affiliated purchaser of the issuer on that day, does not exceed 100 percent of the trading volume (excluding the week of September 10, 2001 from the four week calculation) for that security;<sup>4</sup> and

*It is Further Ordered* that,

Notwithstanding the pooling-of-interest provisions in the Accounting Principles Board Opinion No. 16, *Business Combinations*, and the related interpretations of the American Institute of Certified Public Accountants,

<sup>3</sup> All other conditions of Rule 10b-18 remain in effect, including the timing condition with respect to issuers whose securities do not meet the \$1,000,000 average daily trading volume (ADTV) value and \$150 million public float test stated in paragraph 1 above. ADTV and public float shall be determined in a manner consistent with 17 CFR 242.100. This Order is separate from the Emergency Order issued on September 14, 2001 and extended on September 21, 2001. Securities Exchange Act Release No. 44791 (September 14, 2001); Securities Exchange Act Release No. 44827 (September 21, 2001).

<sup>4</sup> The four-week trading volume calculation excludes the week of September 10, 2001. For example, if an issuer's Rule 10b-18 purchases occur on October 2, 2001, the four calendar week trading volume calculation should be determined using the calendar weeks beginning on August 27th, September 3rd, September 17th, and September 24th.

<sup>1</sup> Securities Exchange Act Release No. 44791 (September 14, 2001). Securities Exchange Act Release No. 44827 (September 21, 2001).

<sup>2</sup> Terms used in this order have the same meaning as those terms used in Exchange Act Rule 10b-18 unless stated otherwise.