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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46002; File No. S7–18–02]

RIN 3235–AI52

Repeal of Options Trade-Through Disclosure Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing to repeal its rule that requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission or the customer order was executed as part of a block trade, because the Commission preliminary believes that, due to changed circumstances, this rule is no longer needed.

DATES: Comments should be submitted on or before July 22, 2002.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exhange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–18–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*). The Commission does not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Assistant Director, at (202) 942–0075, Patrick Joyce, Special Counsel, at (202) 942–0779, and Jennifer Lewis, Attorney, at (202) 942–7951, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

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I. Discussion of Proposed Repeal of the Trade-Through Disclosure Rule

A.Background

Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'')[1] sets forth Congress findings concerning the establishment of a national market system. Congress found that it was in the public interest, and appropriate for the protection of investors and the maintenance of fair and orderly markets, to assure the availability of quote and transaction information to brokers, dealers, and investors and ''the practicability of brokers executing investors'' orders in the best market.''[2] Congress believed that linking all of the markets for qualified securities would ''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.''[3]

Recognizing that there were significant differences among the markets for various types of securities, Congress granted the Commission broad powers to implement a national market system without forcing all securities markets into a single mold.[4] Accordingly, the Commission recognized and classified markets, firms, and securities as appropriate or necessary in the public interest or for the protection of investors.[5]

Many of the national market system initiatives were implemented in the equities markets at a time when standardized options trading was relatively new.[6] Therefore, the Commission deferred applying many of the national market system initiatives to options to give options trading an opportunity to develop. With the onset of widespread multiple trading in options, beginning in August 1999, the Commission became increasingly concerned about customer orders that are sent to one exchange being executed at prices inferior to quotes published by another market. For that reason, the Commission took several actions described below, including adopting the

[1] 15 U.S.C. 78k-1.

[2] Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C).

[3] Section 11A(a)(1)(D) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(D).

[4] Senate Committee on Banking, Housing, and Urban Affairs, Report to Accompany S. 249, S. Rep. 94–75, 94th Cong., 1st Sess. 7 (1975) (''Senate Report''). *See also* Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 2 (1975) (''Conference Report''). The Committee of Conference stated that the unique characteristics of securities other than common stocks may require different treatment in a national market system.

[5] Section 11A(a)(2) of the Exchange Act authorizes the Commission to designate, by rule, securities qualified for trading in the national market system. 15 U.S.C. 78k–1(a)(2).

[6] The trading of standardized options on securities exchanges began in 1973 with the organization of the Chicago Board Options Exchange (''CBOE'') as a national securities exchange. See Securities Exchange Act Release No. 9985 (February 1, 1973), 1 S.E.C. Doc. 11 (February 13, 1973). Currently, the American Stock Exchange (''Amex''), the CBOE, the International Securities Exchange (''ISE''), the Pacific Exchange (''PCX''), and the Philadelphia Stock Exchange (''Phlx'') (collectively, ''Options Exchanges'') are the only national securities exchanges that trade standardized options.

Trade-Through Disclosure Rule in November 2000.

B. Commission's Response to Intermarket Trade-Throughs of Customer Orders in the Options Markets

Because of concerns about the increasing likelihood of intermarket trade-throughs of customer orders in the options markets following the widespread expansion of multiple trading, in October 1999 the Commission ordered the Options Exchanges to work together to file a national market system plan for linking the options markets.[7] To comply with this order, Amex, CBOE, and ISE submitted identical linkage plans, and Phlx and PCX each submitted its own plan.

The Commission approved the plan filed by Amex, CBOE, and ISE in July 2000 (''Linkage Plan'').[8] Although PCX and Phlx subsequently joined the Linkage Plan,[9] the Commission did not mandate their participation in the Linkage Plan or require that any exchange that was a participant remain one.[10] However, to encourage market participants to obtain the best price for customer orders across markets without requiring that markets join the Linkage Plan, the Commission instead proposed,[11] and later adopted,[12] Rule 11Ac1–7 under the Exchange Act,[13] the ''Trade-Through Disclosure Rule.'' Rule 11Ac1–7 was adopted to encourage the Options Exchanges to develop mechanisms to reduce the frequency of intermarket trade-throughs and to require market participants to disclose to their customers when their orders have been traded through.

The Trade-Through Disclosure Rule requires a broker to disclose to its customer when the customer's order for listed options has been executed at a price inferior to a better published quote (''intermarket trade-through''), and to disclose the better published quote available at the time.[14] The Trade-Through Disclosure Rule provides, however, that a broker-dealer is not required to disclose this information to its customer if the transaction is effected on an exchange that participates in a Commission-approved linkage plan that includes provisions reasonably designed to limit trade-throughs of customer orders.[15]

Once implemented, the Linkage Plan would reasonably limit intermarket trade-throughs on each of the options markets,[16] provided that the Options Exchanges remain participants in the Linkage Plan. If all of the Options Exchanges remained participants in the Linkage Plan, broker-dealers always would be excepted from the disclosure requirements of the Trade-Through Disclosure Rule. If, however, an exchange were to withdraw from the Linkage Plan, and did not participate in another linkage plan with provisions reasonably designed to limit intermarket trade-throughs, broker-dealers effecting transactions on such exchange would be required to provide their customers with information about intermarket trade-throughs and customers would, therefore, be better able to evaluate the quality of executions achieved by their brokers.[17]

C. Amendments to the Linkage Plan

On April 15, 2002, the Options Exchanges filed proposed amendments to the Linkage Plan,[18] approved by the Commission today,[19] to permit an exchange to withdraw from participation in the Linkage Plan only if it can satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting intermarket trade-throughs of prices on other markets. The amendments also require the Options Exchanges to implement the linkage in two phases by specified dates.[20] These amendments establish clear deadlines by which a linkage must be implemented that reasonably limits trade-throughs of customer orders and requires each of the options exchanges to remain participants in the Linkage Plan, unless an alternative means is established for so limiting trade-throughs.[21] The Commission

[7] Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999). The Commission Order directed Amex, CBOE, PCX, and Phlx to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply traded options. The Commission also requested ISE, which had applied with the Commission to become a registered national exchange, to participate with the four options exchanges in developing an intermarket linkage plan. The Commission granted the ISE's registration as a national securities exchange for options trading on February 24, 2000. See Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[8] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[9] *See* Securities Exchange Act Release Nos. 43310 (September 20, 2000), 65 FR 58583 (September 29, 2000) (approving an amendment to the Linkage Plan adding the PCX as a participant); and 43311 (September 20, 2000), 65 FR 58584 (September 29, 2000) (approving an amendment to the Linkage Plan adding the Phlx as a participant).

[10] The Commission today is approving an amendment to the Linkage Plan proposed by the options exchanges that deletes the provision that permits any participant to withdraw after 30 days written notice and requires, instead, that a participant wishing to withdraw from the Linkage Plan first satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting trade-throughs of prices on other markets. Securities Exchange Act Release No. 46001 (May 30, 2002).

[11] Securities Exchange Act Release No. 43085 (July 28, 2000), 65 FR 47918 (August 4, 2000) (''Proposing Release'').

[12] Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) (''Adopting Release'').

[13] 17 CFR 240.11Ac1–7.

[14] Exchange Act Rule 11Ac1–7(b)(1), 17 CFR 240.11Ac1–7(b)(1). This disclosure, which must be made to the customer in writing at or before the completion of the transaction, may be included on the confirmation statement routinely sent to investors. *Id.*

[15] Exchange Act Rule 11Ac1–7(b)(2)(i), 17 CFR 240.11Ac1–7(b)(2)(i). In the Adopting Release, the Commission noted that to reasonably limit trade-throughs of customer orders, a linkage plan must, at a minimum: (1) limit participants from trading through the quotes of all exchanges, including exchanges that are not participants in such plan; (2) require plan participants to actively surveil their markets for trades executed at prices inferior to those publicly quoted on other exchanges; and (3) make clear that the failure of a market with a better quote to complain within a specified period of time that its quote was traded through may affect potential liability, but does not signify that a trade-through has not occurred. *See* Adopting Release, *supra* note .

The Trade-Through Disclosure Rule specifically excludes block trades from coverage, Exchange Act Rule 11Ac1–7(b)(2)(ii), 17 CFR 240.11Ac1–7(b)(2)(ii), and identifies several circumstances, such as OPRA delays and systems malfunctions, under which a trade executed at a price inferior to a published price on another market would not be considered an intermarket trade-through for purposes of the rule, Exchange Act Rule 11Ac1–7(b)(4), 17 CFR 240.11Ac1–7(b)(4).

[16] The Linkage Plan, as approved by the Commission in July 2000, was not reasonably designed to limit trade-throughs of customer orders. Accordingly, the Options Exchanges proposed and the Commission, in June 2001, approved an amendment to the Linkage Plan. Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[17] The initial compliance date of the Trade-Through Disclosure Rule was April 1, 2001. Because the Options Exchanges have not yet fully implemented the linkage, the Commission, at the request of broker-dealers, twice extended the compliance date of the Trade-Through Disclosure Rule for broker-dealers, most recently until April 1, 2002. Securities Exchange Act Release Nos. 44078 (March 15, 2001), 66 FR 15792 (March 21, 2001); and 44852 (September 26, 2001), 66 FR 50103 (October 2, 2001). On March 27, 2002, the Commission issued an order temporarily exempting for 90 days broker-dealers from compliance with the Trade-Through Disclosure Rule. Securities Exchange Act Release No. 45654 (March 27, 2002), 67 FR 15637 (April 2, 2002). In conjunction with this proposal to repeal the Trade-Through Disclosure Rule, the Commission today is extending for an additional 180 days the exemption from compliance with the Trade-Through Disclosure Rule. Securities Exchange Act Release No. .46003 (May 30, 2002).

[18] *See* Securities Exchange Act Release No. 45795 (April 22, 2002), 67 FR 21302 (April 30, 2002).

[19] *See supra* note 10.

[20] *Id.*

[21] Under the terms of the implementation schedule, intermarket testing will begin on December 1, 2002 and the linkage will be fully implemented no later than April 30, 2003. Any failure on the part of the Options Exchanges to meet the deadlines for implementing the Linkage Plan would be a violation of Commission rules. Exchange Act Rule 11Aa3–2(d), 17 CFR 240.11Aa3–2(d).

preliminarily believes that these amendments to the Linkage Plan render the Trade-Through Disclosure Rule unnecessary because all transactions would be executed on markets that reasonably limit trade-throughs of customer orders.

Without these amendments to the Linkage Plan, nothing would have prevented an exchange from withdrawing from the Linkage Plan and trading through the quotes of any other exchange. In view of the amendments to the Linkage Plan approved today, however, the Commission preliminarily believes that the Trade-Through Disclosure Rule is no longer needed and, accordingly, the Commission is proposing that the Trade-Through Disclosure Rule be repealed.

II. Request for Comment

The Commission invites comment from the public with respect to the proposed repeal of the Trade-Through Disclosure Rule described in this release. In particular, the Commission solicits comment on the following questions:

- Is the proposed repeal of the Trade-Through Disclosure Rule appropriate?
- Do the amendments to the Linkage Plan adequately address the concerns that resulted in the Commission's adoption of the Trade-Through Disclosure Rule?
- Is retaining the Trade-Through Disclosure Rule necessary to provide an incentive for any new options exchange to join a qualified, Commission-approved linkage plan, or to find an alternative means acceptable to the Commission to the accomplish the same goals of limiting intermarket trade-throughs of customer orders?

Commenters may also wish to discuss whether there are any reasons why the Commission should consider an approach other than the repeal of the Trade-Through Disclosure Rule.

- For instance, should the Commission exempt broker-dealers from compliance with the Trade-Through Disclosure Rule until such time as the participants have fully implemented the Linkage Plan?

III. Paperwork Reduction Act

If an agency's proposed rule would require a ''collection of information,''[22] the Paperwork Reduction Act of 1995 (''PRA'')[23] requires the agency to obtain approval of the collection of information from the Office of Management and Budget (''OMB''). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The PRA does not apply in this instance because the proposed repeal of the Trade-Through Disclosure Rule would not impose recordkeeping or information collection requirements, or other collections of information that require the approval of OMB under the PRA. When the Commission adopted the Trade-Through Disclosure Rule, it estimated that broker-dealers complying with the Trade-Through Disclosure Rule would incur one-time paperwork costs of between $8,250,000 and $16,500,000, and that the total continuing paperwork burden of the disclosures required to be made by brokers would be ''nominal'' because it would merely require a small amount of additional information on customer confirmation statements. If the Commission repeals the Trade-Through Disclosure Rule, both the one-time and continual costs of complying with the collection of information imposed by the Trade-Through Disclosure Rule would be eliminated.

IV. Costs and Benefits of the Proposed Repeal of the Trade-Through Disclosure Rule

As discussed above, the Commission is proposing to repeal the Trade-Through Disclosure Rule. The Trade-Through Disclosure Rule was intended to provide an incentive for the Options Exchanges and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs, without mandating the form of mechanism employed. Further, the rule was designed to inform customers of intermarket trade-throughs, permitting them to select a broker-dealer that effects transactions on a market that participates in an approved linkage plan with provisions reasonably designed to limit customer trade-throughs. As discussed above, the Commission today approved amendments to the Linkage Plan, which establish implementation dates for the linkage and prevent an exchange from withdrawing from the Linkage Plan unless it can satisfy the Commission that it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting intermarket trade-throughs of prices on other markets. Therefore, the Commission preliminarily believes the Trade-Through Disclosure Rule is no longer necessary and is proposing to repeal the rule.

Under the Trade-Through Disclosure Rule, a broker-dealer is required to disclose to its customer in writing at or before the completion of the transaction when a trade-through has occurred, unless the trade was effected on a market that is a participant in a Commission-approved intermarket linkage plan that contains provisions reasonably designed to limit trade-throughs. The proposed repeal of the Trade-Through Disclosure Rule would eliminate this requirement for broker-dealers. No broker-dealers have yet been obligated to comply with the Trade-Through Disclosure Rule because initially, the effective date of the rule was extended by the Commission, and currently broker-dealers have been temporarily exempted from compliance with the rule, to permit the Options Exchanges time to develop and implement the Linkage Plan.[24]

The Commission has identified below certain costs and benefits of the proposed repeal of the Trade-Through Disclosure Rule. The Commission requests comment on all aspects of this cost-benefit analysis, including identification of additional costs or benefits of the proposed changes. The Commission encourages commenters to identify or supply any relevant data concerning the costs or benefits of the proposed repeal of the Trade-Through Disclosure Rule.

A. Costs

A trade-through is costly to an investor primarily because the investor receives an execution at a price that is not the best price available. A trade-through also has potential opportunity costs for the broker-dealer or customer responsible for the best quote because that quote or customer order does not receive the execution it would have if the order that was executed at a price inferior to the best quote were instead routed to it. Consequently, intermarket trade-throughs may increase the incidence of unexecuted customer limit orders.

The Commission adopted the Trade-Through Disclosure Rule to encourage the Options Exchanges to develop mechanisms to reduce the frequency of intermarket trade-throughs and to require that market participants disclose to customers when their orders are traded-through. The Trade-Through Disclosure Rule provides that a broker-dealer is not required to disclose to customers when a customer's order has been executed at a price inferior to a better published quote if the transaction is effected on an exchange that participates in a Commission-approved linkage plan that is reasonably designed to limit trade-throughs of customer

[22] *See* 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

[23] 44 U.S.C. 3501 *et seq.*

[24] *See supra* note 17.

orders. All of the Options Exchanges are currently participants in the Linkage Plan; therefore, once the Linkage Plan is implemented, all broker-dealers effecting options transactions for their customers on those exchanges would be excepted from the disclosure requirements of the Trade-Through Disclosure Rule.

The repeal of the Trade-Through Disclosure Rule would mean that there would be no regulatory obligation that a broker-dealer inform its customer when the customer's order is executed at a price inferior to the best available price. The Commission notes, however, that the Commission today has approved amendments to the Linkage Plan that establish implementation dates and restrict the ability of exchanges to withdraw from the Linkage Plan, which will ensure that all options exchanges either remain in the Linkage Plan or find an alternative means acceptable to the Commission to accomplish the same goals as the Linkage Plan of limiting intermarket trade-throughs of customer orders. When adopting the Trade-Through Disclosure Rule, the Commission stated that investors would benefit from the Trade-Through Disclosure Rule because they would be informed when their orders are executed at a price inferior to the best available price. With that information, investors would have the opportunity to reduce the likelihood that their orders would be executed at a price inferior to a price displayed by another market by selecting broker-dealers that effect their transactions on markets that are participants in an approved linkage plan with provisions reasonably designed to limit trade-throughs. However, because the Commission preliminarily believes that the amendments to the Linkage Plan approved today will achieve the same goals as the Trade-Through Disclosure Rule, the costs to the investor of not receiving from its broker-dealer the disclosures required by the Trade-Through Disclosure Rule should be minimized.

The Commission requests comment on the costs of the repeal of the Trade-Through Disclosure Rule. The Commission also requests commenters' views on the effect on investors of the proposed repeal of the Trade-Through Disclosure Rule.

B. Benefits

The proposed repeal of the Trade-Through Disclosure Rule would eliminate the possibility that broker-dealers would incur both one-time and ongoing costs to comply with the Trade-Through Disclosure Rule, such as one-time costs to modify existing systems. For example, the Trade-Through Disclosure Rule would impose one-time costs on broker-dealers that must modify systems to provide the functionality to determine when trade-throughs have occurred and to issue notifications to customers of trade-throughs.

In addition, the Trade-Through Disclosure Rule requires broker-dealers to incur ongoing costs associated with the rule's requirement that broker-dealers provide customer notifications at or before the completion of the transaction. Under the Trade-Through Disclosure Rule, a broker-dealer may provide this disclosure to its customers in conjunction with the confirmation statements routinely sent to customers. The Commission notes, however, pursuant to the Trade-Through Disclosure Rule, an alternative to modifying customer confirmation statements is for broker-dealers to route orders to exchanges participating in an approved linkage plan. Although the Trade-Through Disclosure Rule does not require the implementation of such a plan, it does envision that an approved plan could be implemented. Currently, all five of the Options Exchanges are participants in an approved Linkage Plan, which contains provisions reasonably designed to limit the incidence of intermarket trade-throughs of customer orders. Therefore, arguably, any benefits that could be achieved by repealing the Trade-Through Disclosure Rule may be achieved even if the rule is not repealed provided the Linkage Plan is implemented in a manner consistent with the amendments approved by the Commission today.

V. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 3(f) requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[25] The Trade-Through Disclosure Rule was adopted to encourage the Options Exchanges to develop mechanisms to reduce trade-throughs and to require market participants to disclose to customers when their orders have been traded through. The Commission notes that the proposed repeal of the Trade-Through Disclosure Rule should enhance efficiency because it would eliminate a disclosure requirement for broker-dealers, while the Linkage Plan would benefit investors because it is designed to limit trade-throughs of customer orders.

In addition, Exchange Act Section 23(a) requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts.[26] Because the proposed repeal of the Trade-Through Disclosure Rule would apply equally to all relevant market participants, the Commission does not believe that the proposal would have any anti-competitive effects. The Commission requests comment on any anti-competitive effects of the proposal.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[27] It relates to the proposed repeal of Exchange Act Rule 11Ac1–7.

The proposed repeal of the Trade-Through Disclosure Rule, Rule 11Ac1–7, would eliminate the requirement that a broker-dealer disclose to its customer when a trade-through has occurred unless the trade was effected on a market that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through better published price (''intermarket trade-throughs'').

A. Reasons for the Proposed Action

The Trade-Through Disclosure Rule was implemented to provide an incentive to the Options Exchanges and their members to develop mechanisms to reduce the frequency of intermarket trade-throughs and to inform customers of trade-throughs. Because the Options Exchanges have proposed to amend the Linkage Plan to restrict the ability of exchanges to withdraw from the Linkage Plan, absent an alternative means acceptable to the Commission by which the exchange can achieve the same goals as the Linkage Plan of limiting intermarket trade-throughs, the Commission preliminarily believes that the Trade-Through Disclosure Rule is no longer necessary.

B. Objectives and Legal Basis

As noted above, the proposed repeal of the Trade-Through Disclosure Rule is

[25] 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78w(a).

[27] 5 U.S.C. 601. Pursuant to 5 U.S.C. 603 when an agency is engaged in a proposed rulemaking, ''the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.''

intended to eliminate the requirement that broker-dealers disclose to their customers when a customer's order for listed options has been executed at a price inferior to a better published quote.

The Commission is proposing to repeal the Trade-Through Disclosure Rule under the authority set forth in Exchange Act Sections 3(b), 15, 11A, 17, and 23(a).

C. Small Entities Subject to the Rules

Commission rules generally define a broker-dealer as a small entity for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person) that is not a small entity.[28] The Commission estimates that as of December 31, 2000, approximately 900 Commission-registered broker-dealers were small entities under the Regulatory Flexibility Act.[29] However, the Commission estimates that none of the 900 registered broker-dealers that would be considered small entities for purposes of the statute regularly represent options orders on behalf of their customers. As of December 31, 2000, data indicates that only one broker-dealer that was a small entity was an options specialist or market maker.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed repeal of the Trade-Through Disclosure Rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

D. Reporting, Recordkeeping, and other Compliance Requirements

The Trade-Through Disclosure Rule requires a broker-dealer to disclose to its customer when its order has been executed at a price inferior to a published price on another exchange, unless the options trade is executed on an exchange that participates in an approved linkage plan that has rules reasonably designed to limit intermarket trade-throughs. The proposed repeal of the Trade-Through Disclosure Rule would eliminate this requirement.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes there are no rules that duplicate, overlap, or conflict with the proposed repeal of the Trade-Through Disclosure Rule.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed repeal of the Trade-Through Disclosure Rule, the Commission considered the application of the proposed repeal of the Trade-Through Disclosure Rule to small entities.

The Commission believes that the application of the proposed repeal of the Trade-Through Disclosure Rule to small entities would achieve the primary goal of limiting trade-throughs or providing information to customers when their orders are traded-through.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission requests comments regarding: (1) The number of small entities that may be affected by the proposed repeal of the Trade-Through Disclosure Rule; (2) the existence or nature of the potential impact of the proposed repeal of the Trade-Through Disclosure Rule on small entities discussed in the analysis; and (3) how to quantify the impact of the proposed repeal of the Trade-Through Disclosure Rule. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed repeal of the Trade-Through Disclosure Rule.

VII. Statutory Authority

We are proposing to repeal the Trade-Through Disclosure Rule pursuant to our authority under Exchange Act Sections 3(b), 15, 11A, 17, and 23(a).

List of Subjects in 17 CFR Part 240

Brokers, Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as set forth below.

[28] 17 CFR 240.0–10(c).

[29] The Commission's estimate of 900 small entities includes all of the registered broker-dealers that do not have relationships with clearing firms.

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, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.11Ac1–7 [Removed]

2. Section 240.11Ac1–7 is removed.

Dated: May 30, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14010 Filed 6–4–02; 8:45 am]

BILLING CODE 8010–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR parts 201, 204, 206 and 207

Rules of General Application; Investigations of Effects of Imports on Agricultural Programs; Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, and Review of Relief Actions; and Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission (Commission) proposes to amend its Rules of Practice and Procedure concerning rules of general application, safeguard investigations, and antidumping and countervailing duty investigations and reviews.The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

DATES: To be assured of consideration, written comments must be received no later than 5:15 p.m. on August 5, 2002.