SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–47013; File No. S7–18–02]

RIN 3235–AI52

Repeal of the Trade-Through Disclosure Rules for Options

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is repealing its options trade-through disclosure rule under the Securities Exchange Act of 1934, which requires a broker-dealer to disclose to a customer when the customer's order for listed options has been executed at a price inferior to a better published quote, unless the order was executed as part of a block trade or the transaction was affected on a market that participates in an intermarket options linkage plan featuring adequate trade-through protections. The Commission has determined that recent amendments to the Options Intermarket Linkage Plan have satisfied the regulatory goals that the options trade-through disclosure rule was designed to address, and is therefore repealing the rule as unnecessary.

EFFECTIVE DATE: December 27, 2002.

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SUPPLEMENTARY INFORMATION: We are proposing to repeal rule 11Ac1–7 under the Securities Exchange Act of 1934, the ''Trade-Through Disclosure Rule.''

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I. Repeal of the Trade-Through Disclosure Rule

A. Background

Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'')[1] sets forth the findings of Congress with respect to the establishment of a national market system. Congress believed that linking all of the markets for qualified securities would improve efficiency, enhance competition, increase the information available to broker-dealers and investors, and contribute to the ''best execution'' of orders.[2] 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 of the securities markets into a single mold.[3]

Many national market system initiatives were implemented in the equities markets at a time when standardized options trading was relatively new.[4] 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.

In October 1999, the Commission ordered the Options Exchanges to collaborate on a national market system plan for linking the options markets.[5] In July 2000, the Commission approved an Options Intermarket Linkage Plan (''Linkage Plan'') that the Amex, the CBOE, and the ISE had proposed.[6] The Commission did not mandate, however, that all of the Options Exchanges participate in the Linkage Plan. As discussed in the order approving the Linkage Plan, the Plan did not adequately address ''intermarket trade-throughs,'' which occur when broker-dealers execute customer orders at prices inferior to the quotes for the same options disseminated by other exchanges.[7]

B. The Trade-Through Disclosure Rule

In November 2000, in an effort to reduce intermarket trade-throughs in the options markets without mandating linkage, the Commission promulgated the Trade-Through Disclosure Rule, rule 11Ac1–7 under the Exchange Act.[8] The Trade-Through Disclosure Rule requires a broker-dealer 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, and to disclose the better published quote that was available at the time.[9] Significantly, however, a broker-dealer is not required to disclose this information to its customer if the transaction was effected on an exchange that participates in a Commission-approved linkage plan that includes provisions reasonably designed to limit trade-throughs of customer orders.[10]

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[1] 15 U.S.C. 78k–1.

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

[3] *See* Senate Committee on Banking, Housing, and Urban Affairs, Report to Accompany S. 249, S. Rep. 94–75, 94th Cong., 1st Sess. 7 (1975); *see also* Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 2 (1975).

[4] 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 CBOE, the American Stock Exchange (''Amex''), 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.

[5] Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999).

[6] Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). The PCX and the Phlx later joined the Plan. *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).

[7] *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[8] 17 CFR 240.11Ac1–7; *see* Securities Exchange Act Release No. 43085 (July 28, 2000), 65 FR 47918 (August 4, 2000) (''Proposing Release''); Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) (''Adopting Release'').

[9] The broker-dealer must make this disclosure to the customer in writing, and may do so on the customer's confirmation statement. *See* Rule 11Ac1–7(b)(1) under the Exchange Act, 17 CFR 240.11Ac1–7(b)(1).

[10] Rule Ac1–7(b)(2)(i) under the Exchange Act, 17 CFR 240.11Ac1–7(b)(2)(i). The Linkage Plan that the Commission approved in July 2000 was not reasonably designed to limit trade-throughs of customer orders. 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 conduct active surveillance of 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 8. The Options Exchanges thereafter proposed an amendment to

The Commission recognized that the Linkage Plan would reasonably limit intermarket trade-throughs on each of the options markets only if the Options Exchanges remained participants in the Linkage Plan. If 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 on all exchanges, the Trade-Through Disclosure Rule would require broker-dealers effecting transactions on that exchange to provide their customers with information about intermarket trade-throughs.

C. Amendments to the Linkage Plan

The Options Exchanges proposed amendments to the Linkage Plan that would require any exchange wishing to withdraw from the Linkage Plan to first satisfy the Commission that it could achieve, by alternative means, the Linkage Plan's stated goal of limiting intermarket trade-throughs. The Commission approved the proposed amendments in May 2002.[11] At the same time, the Commission proposed to repeal the Trade-Through Disclosure Rule because it believed that, once the linkage is fully implemented, the amendments to the Linkage Plan will ensure that all options transactions are executed in markets that reasonably limit intermarket trade-throughs of customer orders.[12] Pending its consideration of the proposed repeal of the Trade-Through Disclosure Rule, the Commission also issued an Order exempting broker-dealers from compliance with the rule until January 1, 2003.[13]

II. Discussion

In proposing the Trade-Through Disclosure Rule in 2000, the Commission expressed the view that the rule's contingent disclosure requirement would create an incentive for the options markets to develop effective means to access other markets, remove barriers to better prices, and limit the incidence of intermarket trade-throughs.[14] Several interested parties commented on the merits of the proposal. Notably, the Securities Industry Association (''SIA'') argued that the Commission and the options industry should focus not on the after-the-fact disclosure of trade-throughs to investors, but on preventing intermarket trade-throughs by the implementation of an effective Linkage Plan.[15] In the Adopting Release, the Commission noted that it intended the Trade-Through Disclosure Rule to encourage the options markets to participate in a Commission-approved intermarket linkage plan, but also expressed the belief that broker-dealers would develop effective means of accessing the better-published quotes of other markets and thereby avoid intermarket trade throughs.[16]

After the Trade-Through Disclosure Rule became effective in February 2001, the SIA and other market participants requested that the Commission extend the Trade-Through Disclosure Rule's compliance date beyond the original deadline of April 2001.[17] In particular, the SIA argued that the Trade-Through Disclosure Rule would impose on broker-dealers a costly regulatory burden of disclosure that would become obsolete once the Options Exchanges became linked by the Linkage Plan.[18] In response to the industry's concerns, and pending the Options Exchanges' full implementation of an adequate Linkage Plan, the Commission extended the rule's compliance date and later temporarily exempted broker-dealers from compliance with the rule.[19]

The Commission solicited comment from the public with respect to the proposal to repeal the Trade-Through Disclosure Rule. In particular, the Commission sought public comment on: (1) Whether the amended Linkage Plan[20] adequately addresses concerns with respect to intermarket trade-throughs; (2) whether repeal of the Trade-Through Disclosure Rule was appropriate in the light of the amended Linkage Plan; and (3) whether an approach other than the repeal of the Trade-Through Disclosure Rule would be more appropriate.

Two market participants opposed the proposal.[21] One, a market maker on the PCX, expressed the view that the proposed repeal of the Trade-through Disclosure Rule would serve only to help large investment houses and broker-dealers justify trade-throughs.[22] In particular, the market maker argued that internalization of order flow, ''front running,'' and other conflicts of interest allow orders to circumvent the competitive trading environment, thereby compromising order executions to the detriment of the public interest. This commenter was concerned that the proposed repeal of the Trade-Through Disclosure Rule would allow ''more gaming'' by brokerages and order flow providers and give those firms ''a means to justify their actions.'' [23]

Another market participant described his concerns about trade-throughs in the context of current automatic execution practices in the options industry.[24] This commenter argued that several of the Options Exchanges do not honor their own posted quotes with automatic executions, which causes trade-throughs to occur on a regular basis. In his view, many trade-throughs would be eliminated if the five Options Exchanges were ''forced to honor their posed quotes with auto executions.'' [25]

The Commission has carefully considered the concerns raised in the comment letters. In the Commission's

the Linkage Plan that incorporated improvements consistent with the Commission's guidance, and the Commission approved the amended Linkage Plan in June 20001. *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[11] *See* Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002) (Order approving Amendments Nos. 2 and 3).

[12] Securities Exchange Act Release 46002 (May 30, 2002), 67 FR 38610 (June 5, 2002) (''Release Proposing Repeal''). The Linkage Plan is being implemented in two phases. The first phase, which includes the elements of linkage that are necessary for automatic execution, will be implemented by February 1, 2003. The second phase, which includes all other elements of the linkage, will be implemented by no later than April 30, 2003. *See* Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002).

[13] Securities Exchange Act Release No. 46003 (May 30, 2002), 67 FR 38689 (June 5, 2002).

[14] *See* Proposing Release, 65 FR at 47919–20.

[15] *See* letter from William McGowen, Chairman, Options Committee, SIA, to Jonathan G. Katz, Secretary, Commission, dated October 31, 2000.

[16] *See* Adopting Release, 65 FR at 75443–45.

[17] *See* letter from Mark E. Lackritz, President, SIA, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated February 20, 2001.

[18] *Id.*

[19] At the request of broker-dealers and others, the Commission extended the compliance date from April 1, 2001, to April 1, 2002. *See* Securities Exchange Act Release Nos. 44078 (March 15, 2001), 66 FR 15792 (March 21, 2001) (extending compliance date to October 1, 2001) and 44852 (September 26, 2001), 66 FR 50103 (October 2, 2001) (extending compliance date to April 1, 2002). The Commission thereafter temporarily exempted broker-dealers from compliance with the trade-Through Disclosure Rule until January 1, 2003. *See* Securities Exchange Act Release Nos. 45654 (March 27, 2002), 67 FR 15637 (April 2, 2002) (Order granting exemption for broker-dealers until July 1, 2002) and 46003 (May 30, 2002), 67 FR 38689 (June 5, 2002) (Order granting exemption for broker-dealers until January 1, 2003).

[20] As noted above, the Linkage Plan was amended to ensure that any exchange wishing to withdraw from the Plan must satisfy the Commission that it will otherwise achieve the Plan's stated goal of limiting intermarket trade-throughs. *See supra* note 11.

[21] A third comment letter, misaddressed to File No. S7–18–02, raised concerns about executive compensation and other matters that are not relevant to the proposed repeal of the Trade-Through Disclosure Rule. *See* e-mail from *CathyCyrus@aol.com* to *Rule-comments@SEC. gov* dated July 9, 2002.

[22] Letter from Mark A. Buffington of Phoenix Capital, LLC, to Jonathan G. Katz, Secretary, Commission, dated June 26, 2002.

[23] *Id.*

[24] Letter from Mike Ianni to Jonathan G. Katz, Secretary, Commission, dated July 21, 2002.

[25] *Id.*

view, retention of the Trade-Through Disclosure Rule would not address the concerns with respect to the operation of the options markets expressed in both comment letters. The Commission notes that the Linkage Plan, and not the Trade-Through Disclosure Rule, imposes trade-through restrictions with respect to the trading of options on the five Options Exchanges. Significantly, the Linkage Plan's trade-through protections would not be affected if the Trade-Through Disclosure Rule were repealed. Therefore, the Commission believes that useful comments on the topics of internalization and auto execution would be more properly directed to other marketplace initiatives related to order execution quality.

Accordingly, the Commission believes that, because the amended Linkage Plan [26] now contains provisions designed to reasonably limit intermarket trade-throughs on each of the Options Exchanges, and an exchange cannot withdraw from the Linkage Plan unless it can accomplish, by alternative means, the same goals as the Linkage Plan of limiting intermarket trade-throughs, the Trade-Through Disclosure Rule is no longer necessary and should be repealed. Therefore, the Commission hereby repeals the Trade-Through Disclosure Rule, Rule 11Ac1–7 under the Exchange Act.[27]

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [28] requires the agency to obtain approval from the Office of Management and Budget (''OMG'') if an agency's rule would require a ''collection of information,'' as defined by the PRA.[29] The PRA does not apply in this instance because the 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. At the request of broker-dealers, the Commission extended the initial compliance date of the Trade-Through Disclosure Rule form April 1, 2001, to April 1, 2002, and thereafter temporarily exempted broker-dealers from compliance with the rule until January 1, 2003.[30] As a result, the Commission understands that no broker-dealer has incurred any significant costs in connection with the Trade-Through Disclosure Rule. Because the Commission is repealing the Trade-Through Disclosure Rule, broker-dealers will completely avoid the costs of collecting and disseminating information required by the rule.

IV. Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act [31] generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective. However, this requirement does not apply if the rule grants or recognizes an exemption or relieves a restriction.[32] The Commission finds that the repeal of rule 11 Ac1–7, the Trade-Through Disclosure Rule, relieves a restriction. As discussed above, the amendments to the Linkage Plan, recently approved by the Commission, require any exchange wishing to withdraw from the Linkage Plan to first satisfy the Commission that it would achieve, by alternate means, the Linkage Plan's stated goal of limiting intermarket trade-throughs. Because the Linkage Plan, as amended, is designed to achieve the same goals as the Trade-Through Disclosure Rule, the repeal of the Trade-Through Disclosure Rule will eliminate an agency rule rendered unnecessary, thereby relieving broker-dealers of the requirements of the Rule. Therefore, the Commission finds that the Trade-Through Disclosure Rule may be repealed without a delayed effective date.

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

As discussed more fully in part II, above, the Trade-Through Disclosure Rule requires a broker-dealer 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, unless the transaction was effected on an exchange that participates in a Commission-approved linkage plan that includes provisions reasonably designed to limit trade-throughs of customer orders. As recently amended, the Linkage Plan should now adequately limit intermarket trade-throughs, and the Options Exchanges cannot withdraw from the Linkage Plan unless they can achieve, by other means, the Linkage Plan's stated goal of limiting intermarket trade-throughts. Therefore, once the Options Exchanges have fully implemented the Linkage Plan, every transaction in standardized option will occur on an exchange that has in place adequate intermarket trade-through provisions. The Commissions is therefore repealing the Trade-Through Disclosure Rule as unnecessary.

To assist the Commission in its evaluation of the costs and benefits that may result from the repeal of the Trade-Through Disclosure Rule, commenters were requested to provide comment on the costs and effects on investors of the repeal of the Rule.

A. Costs

As noted above, a PCX market maker expressed the view that the proposed repeal of the Trade-Through Disclosure Rule would help large investment houses and broker-dealers justify trade-throughts.[33] In the Commission's view, the retention of the Trade-Through Disclosure Rule would not address the PCX market maker's concerns. The Commission believes this commenter incorrectly assumed that the Trade-Through Disclosure Rule requires broker-dealers to disclose intermarket trade-throughs in listed options despite the exchange's participation in the amended Linkage Plan. On the contrary, as all five national Options Exchanges are parties to the amended Linkage Plan, the Trade-Through Disclosure Rule would impose no obligations on broker-dealers to disclose an intermarket trade-through if the transaction if effected on any Options Exchange.

The Commission notes that, by operation of four Commission Orders, broker-dealers have never been required to comply with the Trade-Through Disclosure Rule.[34] Moreover, as all broker-dealer trading listed options would qualify for the Trade-Through Disclosure Rule's exemption from the disclosure requirement once the Linkage Plan is fully implemented, the Trade-Through Disclosure Rule would not impose any disclosure obligation on broker-dealers even if the rule were retained. Accordingly, the Commission believes that the Linkage Plan adequately ensures trade-through protections, and that repealing the

[26] Each self-regulatory organization that is a participant in an effective national market system plan is required to, ''absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.'' *See* Exchange Act Rule 11 Ac3–2(d).

[27] 15 U.S.C. 78k–1.

[28] 44 U.S.C. 3501 *et seq.*

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

[30] *See supra* note 19.

[31] 5 U.S.C. 553(d).

[32] 5 U.S.C. 553(d)(1)

[33] *See supra* note 22.

[34] *See supra* note 19.

Trade-Through Disclosure Rule does not impose any costs on investors.

B. Benefits

As noted above, the SIA has commented that the Trade-Through Disclosure Rule would impose on broker-dealers a contingent, but costly, regulatory burden of the disclosure that would effectively be lifted once the Options Exchanges became linked through the Linkage Plan.[35] The repeal of the Trade-Through Disclosure Rule eliminates the possibility that broker-dealers will incur the initial costs of compliance, such as the one-time cost of modifying their existing systems to determine when trade-through have occurred. The repeal of the Trade-Through Disclosure Rule eliminates the potential costs of compliance with the rule and ensures that those costs will not be imposed in the future. Furthermore, when the rule was adopted to reduce the incidence of intermarket trade-throughs and the costs to investors associated with such trade-throughs, the repeal of the Rule should have no effect on investors because the amended Linkage Plan, when fully implemented, should limit intermarket trade-throughs, thereby achieving the same goal as the rule.

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

Section 3(f) of the Exchange Act provides that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, must consider whether the action will promote efficiency, competition, and capital formation.[36] In the Proposing Release, the Commission noted that the Trade-Through Disclosure Rule was adopted to encourage the Options Exchanges to develop mechanisms to reduce trade-throughs.[37] The Commission has approved an amendment to the Linkage Plan that requires any exchange wishing to withdraw from the Linkage Plan to first satisfy the Commission that it would achieve, by alternative means, the Linkage Plan's stated goal of limiting intermarket trade-throughs.[38] The Linkage Plan, as amended, is designed to achieve the same goals as the Trade-Through Disclosure Rule, and therefore the Commission is repealing the Trade-Through Disclosure Rule as unnecessary. The Commission has considered whether the repeal of the Trade-Through Disclosure Rule will promote efficiency, competition, and capital formation and does not believe that repeal of the Trade-Through Disclosure Rule will have a detrimental effect on efficiency, competition, and capital formation. We reach this conclusion because the repeal of the Trade-Through Disclosure Rule will apply equally to all market participants. Furthermore, because the Linkage Plan is designed to achieve the same goals as the Trade-Through Disclosure Rule, another mechanism will be in place to limit intermarket trade-throughs.

In addition, Section 23(a) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopted.[39] In the Proposing Release, the Commission noted that because the repeal of the Trade-Through Disclosure Rule would apply equally to all relevant market participants, the Commission preliminarily believed that the proposal would not have any anti-competition effects.[40] The Commission did, however, request comment on any anti-competitive effects on the proposal.[41] The Commission did not receive any comments regarding the competitive impact of the repeal of the Trade-Through Disclosure Rule.

The repeal of the Trade-Through Disclosure Rule applies equally to each options market and other relevant option market participants. Thus, the Commission believes that the repeal of the Trade-Through Disclosure Rule will not have an anti-competitive impact on the options markets.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[42] It relates to the repeal of rule 11Ac1–7 under the Exchange Act. An Initial Regulatory Analysis (''IRFA'') was prepared in accordance with 5 U.S.C. 603 and was made available to the public.[43] The Commission is repealing the Trade-Through Disclosure Rule as proposed.

The repeal of the Trade-Through Disclosure Rile, rule 11Acl–7, will 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 intermarket trade-throughs.

A. Reasons for the 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. Because the Options Exchanges have amended 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 believes that the Trade-Through Disclosure Rule is no longer necessary.

B. Objectives and Legal Basis

As noted above the repeal of the Trade-Through Disclosure Rule is intended to eliminate the requirement that broker-dealers disclose to a customer when the customer's order for listed options has been executed on an exchange without adequate trade-through protection mechanisms at a price inferior to a better published quote on other exchanges.

The Commission is repealing the Trade-Through Disclosure Rule under the authority set forth in Section 3(b), 15, 11A, 17, and 23(a) of the Exchange Act

C. Significant Issues Raised by Public Comment

As required by the Regulatory Flexibility Act,this section (i) summarizes the significant issues raised by public comments in response to the IRGA, (ii) summarizes the Commission's assessment of such issues, and (iii) states any changes made in the proposed rules as result of such comments.[44]

The Commission received no comments in response to the IRFA.

D. 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

[35] *See supra* note 17.

[36] 15 U.S.C. 78c(f).

[37] *See* Release Proposing Repeal, *supra* note 12.

[38] *See* Amendments Nos. 2 and 3, *supra* note 11.

[39] 15 U.S.C. 78w(a).

[40] *See* Release Proposing Repeal, *supra* note 12.

[41] *Id.*

[42] 5 U.S.C. 601.

[43] *See* Release Proposing Repeal, *supra* note 12.

[44] *See* 5 U.S.C. 604(a)(2).

natural person) that is not a small entity.[45]

Once the Trade-Through Disclosure Rule is repealed, no small entities will be subject to the Rule.

E. 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 reasonable designed to limit intermarket trade-throughs. The repeal of the Trade-Through Disclosure Rule eliminates this requirement

F. Duplicative, Overlapping, or Conflicting Federal Rules

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

[45] 17 CFR 240.0–10(c)

G. 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.

As discussed above, the repeal of the Trade-Through Disclosure Rule has no impact on small entities. The Commission has considered other alternatives and has decided that the repeal of the Trade-Through Disclosure Rule is the best alternative.

VIII. Statutory Authority

The Commission is repealing the Trade-Through Disclosure Rule pursuant to the Exchange Act, and specifically our authority under sections 3(b), 15, 11A, 17, and 23(a).

List of Subject in 17 CFR Part 240

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 amended as set forth below.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES 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, 78*l*, 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.

§ 240.11 [Removed]

2. Section 240.11aC1–7 is removed.

Dated: December 17, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32469 Filed 12–26–02; 8:45 am]

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