

the proposal from either notice publication.

The Commission issued an order on January 27, 1995, approving the proposed rule changes referenced above.<sup>5</sup>

## II. Discussion

As explained in the Approval Order, the purpose of the rule changes is to ensure that all broker-dealers registered in the United States report open short positions to an SRO. The proposed rule changes emanated from an initiative by the SROs, as Intermarket Surveillance Group ("ISG") members, to ensure uniform short position reporting in U.S. traded securities.

Substantively, the new reporting requirements will continue to include stocks and warrants, including odd-lots, in each such security traded on a United States securities exchange or association. Further, the reports will continue to include both customer and proprietary positions.

At the time the Approval Order was published, the Commission understood that broker-dealers with multiple proprietary accounts netted such accounts for purposes of reporting their short positions. In the interim, however, it has come to light that industry practice varies and that the preferred method is not to net multiple accounts. Specifically, the NYSE indicated in a letter submitted to the Commission on March 1, 1995, that "firms will use the gross method of reporting short interest positions rather than netting." The remaining ISG participants that adopted the rules at hand have confirmed that industry practice should not be disrupted for purposes of reporting firm short interest positions. The NYSE requested that the Approval Order be modified to reflect industry practice at the time of the rule filing.<sup>6</sup>

The Commission notes that the method of calculation was not a determinative factor in the decision to approve the short interest reporting rules. Rather, the Commission's goal was to assure uniformity in the calculation of short positions to provide comparable information to the marketplace. In this regard, the Commission has not identified advantages of one method over the other and agrees that, consistent with industry practice, short interest positions for both like and non-like accounts may be

reported gross for purposes of the new reporting requirements.

The Approval Order included an example to illustrate the method, net reporting, which the Commission understood to be the industry standard.<sup>7</sup> The modification requested by the NYSE would be reflected in this example by providing that the firm would not net its proprietary accounts.<sup>8</sup>

The Commission finds that the clarification does not alter the statutory basis relied upon in the Approval Order. The Commission continues to believe, therefore, that the short interest position reporting rules and methodology for such calculation as outlined herein is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) and 15A.<sup>9</sup> In particular, the Commission believes the proposal is consistent with the Sections 6(b)(5) and 15A(b)(6) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the proposal should enhance the ability of the SROs, both collectively and individually, to monitor short interest reporting, and to reinforce their regulatory and surveillance capabilities in this area.

## III. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the Approval Order is hereby revised as described above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>7</sup> See Approval Order, footnote 7.

<sup>8</sup> The example in the Approval Order concerns a broker-dealer with three accounts—account 1 has short interest of 100 shares, account 2 has short interest of 225 shares and account 3 is long 150 shares. As indicated in the Approval Order, if the three accounts are for different customers then the broker-dealer shall report a gross short interest of 325 (not netted to 175). In contrast to the Approval Order, however, if account 1 is a firm customer account, and accounts 2 and 3 are firm proprietary accounts, the broker-dealer would still report total short interest of 325 (not netted to 75), as the broker-dealer would not net the firm's proprietary positions but would report a total gross short position (customer 100 and firm 225).

<sup>9</sup> 15 U.S.C. 78f(b) and 78o-3 (1988).

<sup>10</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

*OMB Reviewer:* Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* Program Evaluation SBA 7(a) Loan Program.

*Form No.:* N/A.

*Frequency:* On Occasion.

*Description of Respondents:* 7(a) loan applicants.

*Annual Responses:* 1,700.

*Annual Burden:* 312.

Dated: March 2, 1995.

**Calvin Jenkins,**

*Assistant Administrator for Administration.*

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### [Declaration of Disaster Loan Area #2760; Amendment #3]

### California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective February 27, 1995, to include Kings County in the State of California as a disaster area due to damages resulting from winter storms causing flooding, landslides, mud and

<sup>5</sup> Securities Exchange Act Release No. 35287 (January 27, 1995), 60 FR 6743 (February 3, 1995) ("Approval Order").

<sup>6</sup> See letter from Salvatore Pallante, Senior Vice President, Member Firm Regulation, NYSE, to Holly Smith, Associate Director, Division of Market Regulation, Commission, dated March 1, 1995.