good cause to make this amendment effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(b)(B).

List of Subjects in 17 CFR Part 146

Privacy; Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, in particular, section 2(a)(11), the Commission amends Chapter I of Title 17, part 146 of the Code of Federal Regulations as follows:

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority for Part 146 is revised to read as follows:

Authority: 88 Stat. 1896 (5 U.S.C. 552a), as amended; 88 Stat. 1389 (7 U.S.C. 4a(j)).

2. Revise § 146.11, paragraph (a), introductory text, to read as follows:

§ 146.11 Public notice of records system.

(a) The Commission will publish in the **Federal Register** at least biennially a notice of the existence and character of each of its systems of records, which notice shall include—

* * * * *

Issued in Washington, DC on August 29, 2000, by the Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 00–22557 Filed 9–1–00; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43217; File No. S7–29–99]

RIN 3235–AH85

Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending Rule 12f–2 under the Securities Exchange Act of 1934 (''Exchange Act''), which governs unlisted trading privileges (''UTP'') in listed initial public offerings (''IPOs''). Under the amendment, a national securities exchange extending UTP to an IPO security listed on another exchange will no longer be required to wait until the day after trading has commenced on the listing exchange to allow trading in that security. Instead, a national securities exchange will be permitted to begin trading an IPO issue immediately after the first trade in the security is reported by the listing exchange to the Consolidated Tape.

EFFECTIVE DATE: This final rule is effective November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Ira Brandriss, Attorney, at (202) 942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 12(f) of the Exchange Act [1] governs when a national securities exchange may extend UTP to a security, *i.e.*, allow trading in a security that is not listed and registered on that exchange.[2] The UTP Act of 1994 (''UTP Act'') [3] substantially amended Section 12(f). Prior to that time, exchanges had to apply to the Commission for approval before extending UTP to a particular security. The UTP Act removed the application, notice, and Commission approval process from Section 12(f) (except in cases of Commission suspension of UTP in a particular security on an exchange). Accordingly, under Section 12(f) of the Exchange Act, exchanges may immediately extend UTP to a security listed on another exchange unless it is a listed IPO security.[4] For listed IPO securities, Rule 12f–2 of the Exchange Act requires exchanges to wait one full day before they can extend UTP to such securities.

On December 9, 1999, the Commission proposed for comment an amendment to Rule 12f–2 under the Exchange Act that would eliminate the one-day waiting period and permit a national securities exchange to extend UTP to an IPO security immediately after the first trade in the IPO security on the listing exchange is reported to the Consolidated Tape.[5]

A. Current Rule 12f–2

The UTP Act established a temporary two-day waiting period for extending UTP to an IPO security, but allowed the Commission to adopt a rule providing for a shorter waiting period.[6] On April 21, 1995, the Commission adopted Rule 12f–2 under the Exchange Act to provide for a shorter waiting period. The final rule differed from the original proposed rule, which would have allowed a UTP exchange to trade a listed IPO as soon as the first trade on the listing exchange was reported to the Consolidated Tape. The final rule instead established a one-day trading delay for extending UTP to listed IPOs.[7]

In arriving at this position in 1995, the Commission acknowledged the substantial volume of trading that occurs on the initial trading days of IPOs. As a general matter, the Commission agreed with the comments of the regional exchanges that early UTP in IPO securities would enhance the ability of multiple markets to compete for this volume. However, in response to concerns raised by the NYSE and two underwriting firms that IPO pricing could be at risk if there were no opportunity for early centralized trading, the Commission decided to require the one-day waiting period. In making this determination, the Commission noted the possibility that virtually immediate UTP in IPO securities could complicate the pricing and orderly distribution of IPO securities by increasing the risk of price volatility as the securities are distributed to the public. Another significant factor in the Commission's decision to adopt a one-day trading delay in 1995 was the fact that insufficient data was available with

[1] 15 U.S.C. 78*l*(f).

[2] Section 12(a) generally prohibits trading on an exchange of any security that is not registered (listed) on that exchange. Section 12(f) excludes from this restriction securities traded pursuant to UTP that are registered on another national securities exchange. 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. Over-the-counter (''OTC'') dealers are not subject to the Section 12(a) registration requirement because they do not transact business on an exchange.

[3] Pub. L. No. 103–389, 108 Stat. 4081 (1994).

[4] Section 12(f)(1)(B), read jointly with Section12(f)(1)(A)(ii), as amended, provides this exception for listed IPO securities. In defining securities that fall within the exception, subparagraphs 12(f)(1)(G)(i) and (ii) provide:

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

(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.

[5] Exchange Act Release No. 42209 (Dec. 9, 1999), 64 FR 69975 (Dec. 15, 1999) (''Proposing Release''). Commission staff also issued a no-action letter to several regional exchanges narrowing the scope of transactions that should be considered IPOs for purposes of Rule 12f–2. *See* note 32, *infra.*

[6] While providing temporarily for a two-day waiting period, the Act required the Commission to prescribe, by rule or regulation within 180 days of its enactment, the duration of the interval, if any, that the Commission would determine to be ''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 Act.

[7] *See* Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (April 28, 1995).

which to assess the potential impact of immediate IPO trading in multiple markets.

The Commission stated at the time, however, that it would continue to monitor the trading of IPOs, and that it would be willing to consider revisiting the question of the appropriate waiting period for extending UTP to listed IPO securities after experience had been gained with the amended rules.[8]

B. The 1998 Study

In August 1998, the Chicago Stock Exchange (''CHX''), the Cincinnati Stock Exchange (''CSE''), and the Pacific Exchange (''PCX'') presented to the Commission for review a new study (''1998 Study'') examining the effects of immediate multiple trading of IPO securities.[9] The study was conducted at the request of the CHX in response to the Commission's 1995 indication that it would be open to reconsidering the issue when new data became available.

The study comprised two sets of inquiries. Each compared a group of newly issued securities that were permitted to trade immediately on more than one exchange, with a group of IPO securities that were similar in type but that were subject to the one-day trading delay. The study examined whether bid-ask spreads and intraday price volatility were greater for the IPOs that were dually or multiply traded than for the IPOs that were not, compiling data from the first five days of trading for each of the securities.

Specifically, the first analysis compared a group of nine dually listed IPOs and six spin-offs [10] that traded on more than one exchange [11] with a similar group of IPO securities and spin-offs that were not dually or multiply listed. The two groups of offerings were issued during the same general time period,[12] and were similar in terms of the industry of the issuer and the amount of proceeds from the offering. Because an IPO as defined under the Exchange Act includes both traditional IPOs and spin-offs, the study included both in its analysis. The sampling for comparison was small because IPOs are rarely listed on more than one exchange.

This first inquiry found that price volatility was higher on the first day of trading for both groups of IPOs and spin-offs than on any of the subsequent four days. However, the price volatility of IPOs and spin-offs traded on only one exchange was approximately 30% higher than that of the IPOs and spin-offs that were traded on at least two exchanges. In addition, in its comparison of bid-ask spreads, the study showed that there was no statistically significant difference between the two groups. Thus, the study concluded, neither an analysis of price volatility nor a survey of bid-ask spreads revealed any evidence of damage to market quality caused by immediate trading of IPOs on a second exchange.

The second analysis compared a group of securities issued by companies that underwent some type of restructuring and could be dually or multiply traded because they were not subject to the UTP prohibition, with a group of stocks that similarly were issued as a result of reorganizations but that were subject to the UTP prohibition. Although the latter group did not include securities of a private company going public for the first time, the reorganizations were considered ''technical IPOs'' because they met the Section 12(f) definition of an IPO for the purposes of the statutory one-day trading delay.[13] The analysis compared data between 1994 and 1997 for eleven companies that were not subject to the UTP prohibition with six companies that were.

This second inquiry found that the price volatility on the first day of trading in either group of securities was not exceptionally high. Moreover, the price volatility of new issuances that traded on more than one exchange the first day did not differ significantly from that of the technical IPOs trading on only one exchange. The study also found no significant differences in the bid-ask spreads between the technical IPOs and the comparison group that traded on more than one exchange the first day.[14]

The study concluded that there is no empirical basis for the contention that multiple exchange trading on the first day of an IPO adversely affects market quality, either by increasing price volatility or widening bid-ask spreads. In fact, the evidence indicated that listed IPOs that are not traded on more than one exchange can be more volatile than dually or multiply listed IPOs. The study further noted that the third market, which is not subject to the one-day delay, currently competes with the listing exchange in trading IPOs on the first day with no visible adverse effect.

In addition, the study contained data demonstrating that regional exchanges have been unable to attract a substantial share of first-day trading volume in IPOs even when not barred by the statute from participating. For example, in the case of the dually or multiply listed IPOs studied, the regional exchanges garnered an average of only 1.8% of the total trading volume on the first day. Although the proportion increased over the next four trading days, it still remained comparatively small. In the case of IPOs subject to the one-day trading delay, the regional exchanges accounted for no more than an average 5% of the total trading volume for days two through five. In view of the small amount of volume at issue, the study concluded that eliminating the one-day delay should not have a major impact on the market as a whole.

II. Proposed Rule Change

A. Description of Proposal

Under the proposed amendment to Rule 12f–2, a national securities exchange could extend UTP to an IPO security immediately after the first trade

[8] *Id.* at 20894.

[9] Jay Ritter, Joe B. Cordell Eminent Scholar, University of Florida, ''Unlisted Trading Privileges in Listed IPOs: Analysis of the One-Day Delay,'' June 1998, available in Public File No. S7–29–99.

[10] In the spin-offs, the shareholders of a parent company were issued IPO shares in a subsidiary company. Spin-offs are considered to be ''technical IPOs''—i.e., transactions that are not traditional initial issuances of shares to the general public in exchange for cash, but that are currently included within the definition of IPO in Section 12 of the Act.

[11] Spin-offs and IPOs that were not considered IPOs under Section 12 of the Act could be traded immediately on other exchanges.

[12] The dually or multiply listed IPOs and spin-offs examined in this section of the study began trading between 1993 and 1997. The comparison group of IPOs and spin-offs listed on only one exchange were selected from among IPOs and spin-offs that began trading between 1995 and 1997 because the one-day delay for UTP trading of such securities first went into effect in 1995. The comparison group was selected on the basis of similar industries and proceeds.

In terms of intraday price volatility (the daily standard deviation of returns), the sample group produced volatility of 5.3% while the control group had volatility of 6.89%. This difference suggests that non-dually listed IPOs tend to be 30% more volatile than dually listed IPOs. The study also showed that the bid-ask spreads for each group were similar. The bid-ask spreads for the dually listed group were a statistically insignificant 10% higher than the control group for the first day of trading and only 5% higher by the second day of trading.

[13] *See* note 4, *supra.*

[14] The second analysis compared eleven stocks of issuers that underwent some form of restructuring between May 1994 and October 1997 that were not deemed to be an IPO, with six stocks that underwent a restructuring between April 1997 and October 1997 but that were deemed to be an IPO. The sample group of technical IPOs was less volatile than the control group for four of the first five days of trading after the restructuring. The ratio of volatility of the sample group compared to the control group for the first five days of trading was: 0.96, 1.55, 0.59, 0.80 and 0.81. A ratio of 1 shows identical volatility. Likewise, the bid-ask spreads were closer for the sample group than the control group for the first five days of trading after the restructuring. The ratio of bid-ask spreads of the sample group compared to the control group for the first five days of trading was: 0.80, 0.88, 0.69, 0.81, and 0.93. Again, a ratio of 1 shows identical bid-ask spreads.

in the IPO security on the listing exchange is reported to the Consolidated Tape.

In the Proposing Release, the Commission stated that it preliminarily believed that there was little evidence that the one-day delay protects the markets and that, accordingly, there was no justification for retaining the one-day trading delay. In proposing the revision to Rule 12f–2, the Commission relied, in part, on the 1998 Study. The Commission noted that the 1998 Study, as well as the lack of any problems with reducing the waiting period from two days to one day during the preceding four years, provided support for amending the rule. The Commission also observed that the ban on first day trading puts regional exchanges at a competitive disadvantage vis-a-vis the third market, which is not subject to the one-day delay. The Proposing Release solicited comment on, among other things, the one-trade waiting period and asked commenters whether some other interval was appropriate.

B. Summary of Comments

The Commission received seven comment letters, all of which were favorable and supported the adoption of the proposed rule change.[15] Several regional exchanges commented that the one-day trading delay serves as a barrier to competition and has existed for five years with no justification.[16] These commenters all cited the 1998 Study's conclusion that dually listed IPOs were not more volatile on the first day of trading than non-dually listed IPOs as proof that the one-day waiting period is unnecessary and unjustified. In addition, the BSE noted that specialist obligations and the framework of the Intermarket Trading System work to ensure that securities are trading in a fair and orderly market.[17] The PHLX argued that no adverse effects were observed following the change from a two-day to a one-day delay, due in part to the automated execution systems used on most exchanges which provide guaranteed liquidity.[18] The regional exchanges also argued that the waiting period is unjustified because electronic communication networks (''ECNs'') and the third market are not subject to the delay and have traded IPO securities immediately with no evidence of harm to the market.[19]

One commenter submitted a study completed in 1998 that examines the effects on volatility of regional exchange participation in IPOs.[20] The study compared the volatility on the second and third trading days after an IPO with regional exchange participation to the second and third trading days after an IPO without regional exchange participation.[21] While the study did not directly examine the question of a one-*day* delay as compared to a one-*trade* delay, the study did provide some evidence regarding the more general question of the benefits of regional exchange participation in trading IPO securities. The study concluded that the decrease in volatility from the first day of trading in an IPO to the second and third day was greater in 1997 with regional exchange participation than in 1993 without regional exchange participation.[22] The study indicated that regional exchange participation does not negatively impact volatility and may, in fact, make the IPO market less volatile. Based on the findings, the commenter urged the Commission to amend Rule 12f–2 to allow competition by regional exchanges on the first day of trading in a listed IPO security. NASAA also supported the amendment, noting that it would enhance investor access to all securities markets without delay and boost investor confidence.[23]

Schwab also commented in support of the amendment. Schwab argued that the current delay is an impediment to free and open competition in the listed markets, noting that it insulates the primary market from competition and precludes valuable price discovery.[24] In this context, Schwab noted that, although the willingness of firms to route order flow has improved with just a one-day waiting period, the anticompetitive effects of the waiting period still remain. Schwab also noted that the delay will hamper ECNs that choose to register as exchanges, and provides an unfair advantage to ECNs that are not regulated as exchanges.

III. Discussion

The Commission has decided to adopt the amendment to Rule 12f–2(a) [25] as proposed to allow exchanges to extend UTP to IPO securities after the first trade on the listed market is reported to the Consolidated Tape. Specifically, as amended, Rule 12f–2(a) provides 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.[26]

The Commission believes that the current one-day trading delay provides no real benefits and actually inhibits competition among markets. The Commission's conclusions are based on recent experience, as well as the results of the 1998 Study. The 1998 Study showed no evidence that the one-day trading delay provides any tangible benefits to market quality. As discussed in the Proposing Release, the 1998 Study suggested that greater price volatility might actually exist on the first day of an IPO with the trading delay in place. The 1998 Study examined both bid-ask spreads and price volatility and was unable to determine that there was an adverse impact on market quality resulting from the trading of IPO securities in multiple markets.[27] We also note that no commenters submitted data to the contrary in response to the Commission's specific request for comments on this issue.[28]

Accordingly, the Commission sees no compelling reason to maintain a restriction that inhibits competition among the exchanges. Removing the

[15] The comment letters are in Public File No. S7–29–99, which is available for inspection in the Commission's Public Reference Room. The Commission received comment letters on behalf of the following: Universal Trading Technologies Corporation (''UTTC''), the PCX, the CHX, the Boston Stock Exchange, Inc. (''BSE''), the Philadelphia Stock Exchange, Inc. (''PHLX''), the North American Securities Administrators Association (''NASSA''), and Charles Schwab & Co., Inc. (''Schwab''). An additional comment letter, sent via e-mail, referenced File No. S7–29–99, but did not address any issues concerning the proposed rule.

[16] PCX Letter, CHX Letter, BSE Letter, PHLX Letter.

[17] BSE Letter. *See also* Schwab Letter.

[18] PHLX Letter.

[19] PCX Letter, CHX Letter, BSE Letter, PHLX Letter.

[20] UTTC Letter. A copy of the study is available in the Public Reference Room.

[21] The study examined all IPOs from 1993 (99 IPOs) and 1997 (54 IPOs) that traded greater than one million shares per day.

[22] As noted above, the notice and approval process for UTP prior to the UTP Act essentially precluded regional exchanges from trading such securities pursuant to UTP until the second or third day after an IPO.

[23] NASSA Letter.

[24] Schwab Letter.

[25] 17 CFR 240.12f–2(a).

[26] 17 CFR 240.11Aa3–1. The remaining paragraphs of Rule 12f–2, paragraphs (b) and (c), which currently define subject securities and require that the extension of UTP to an IPO security comply with all the other provisions in Section 12(f), and the rules thereunder, would remain unchanged.

[27] While the Commission recognizes that the number of IPOs studied was limited due to the low number of multiple IPO listings and the current restrictions, the Commission believes that the study's methodology is reasonable. For the definition of ''IPO,'' *see* note 5, *supra.*

[28] In the Proposing Release, the Commission requested that commenters submit data illustrating the need to retain the current one-day waiting period or support using a different interval, including data that might include any potential negative effects on the pricing of an IPO.

one-day trade delay will enhance competition among linked markets, consistent with Section 11A(a)(1)(D) of the Exchange Act.[29] As one commenter noted, the enhanced competition in an IPO should benefit investors by providing increased opportunities for order execution.[30] The amended rule should enhance the ability of exchanges to compete for order flow in IPO securities consistent with Section 11A(a)(1)(C)(ii),[31] especially in light of the fact that over-the-counter dealers and ECNs may already trade IPO securities immediately upon effective registration with the Commission. In view of the rapidly expanding choices that investors have for trade execution, placing unnecessary restrictions on some markets in favor of others tends to hamper competition. While the listing exchange should have the benefit of listing the IPO, other markets should be permitted to provide a place for investors to trade those securities. With no evidence to the contrary justifying the one-day waiting period, the Commission believes it is time to lift this regulatory restraint.

The final rule continues to require non-listing exchanges to wait for one trade before they begin trading an IPO. None of the commentators opposed the one trade delay. The Commission believes the one trade delay is justified because the first transaction in an IPO, as disseminated on the Consolidated Tape, conveys essential information to the public concerning the price of the security set by the underwriting process. In addition, the timing of the initial trade and commencement of trading in a new issue entail significant coordination among 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 traded on the listing exchange, it could be difficult to ensure that the preparation for the IPO had been completed before public trading in the security commenced.[32]

In the Proposing Release the Commission requested comment on whether changes to the consolidated quotation system would have to be made as a result of lifting the one-day waiting period, as well as whether any additional procedures would be necessary to ensure that a UTP market does not commence trading prior to the first trade. The commenters addressing these issues stated that no changes to the consolidated quotation system were necessary to comply with the one-trade delay.[33] These commenters also stated that existing procedures now in place on regional exchanges to identify IPOs will continue to be used to identify IPOs subject to the first trade restriction.

The Commission agrees that existing procedures should be adequate to identify those IPO securities subject to the one-trade delay. The Commission will continue to work with the regional exchanges to ensure that their procedures continue to appropriately identify IPO securities for purposes of the rule. Further, the Commission, at this time, has not identified any necessary changes to the consolidated quotation system that would be necessary to implement the rule.

In summary, the Commission believes it is appropriate to remove the one-day trading delay for extending UTP to IPO securities. The Commission has carefully considered all of the comments and issues. All of the data submitted supports the conclusion that the one-day trading delay is an unnecessary restraint on competition. The Commission believes that, consistent with Section 11A of the Exchange Act, reducing the trading delay will enhance competition among the markets to the benefit of all investors.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the amendment does not impose recordkeeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

V. Costs and Benefits of the Amendment

The Commission is sensitive to the costs and benefits of its regulations. To assist the Commission in its evaluation of the costs and benefits and the effect on competition, efficiency, and capital formation that may result from the amendment, commenters were requested to provide analysis and data, if possible, relating to the costs and benefits associated with the proposal. Commenters supported the proposed rule change, citing the benefits of reducing barriers to competition and opening the market for trading IPO securities to more market participants. Some commenters also said that investors would benefit from lower transaction costs caused by increased competition. None of the commenters suggested any potential costs to the proposed amendment.

The amended rule will benefit market participants by allowing UTP exchanges to compete with the listing exchange and the third market for order flow on the first day an IPO starts trading. Investors could benefit when more participants offer liquidity to the market. In addition, issuers could benefit from wider distribution of IPO securities and greater opportunities for price discovery.

In 1998 and 1999, total first day trading volume for IPOs on the NYSE that were not dually traded on the first day was about 454 million shares and 515 million shares, respectively.[34] Comparable figures for the American Stock Exchange (''Amex'') were 8.9 million first day shares in 1998 and 3.9 million first day shares in 1999. Under the rule change, the exchange where such shares are listed would now be subject to competition from other national securities exchanges on the first day of trading.

The above-cited 1998 Study [35] compared IPOs listed on one exchange with dual-listed IPOs and showed that the dual-listed IPOs did not have

[29] 15 U.S.C. 78k–1(a)(1)(D).

[30] PHLX Letter.

[31] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[32] On December 9, 1999, Commission staff issued a no-action letter to the regional exchanges clarifying the definition of IPO for purposes of Rule 12f–2. The no-action letter permits the regional exchanges to begin trading securities in certain ''technical IPO'' transactions on the same day those securities begin trading on another exchange on which they are listed. The no-action letter identifies six examples of offerings that meet the definition of IPO under Section 12(f) of the Act, but that are not traditional, first time capital raising efforts. These examples involve offering securities to an existing class of security holders in exchange for stock they already own that has been subject to Exchange Act reporting requirements, rather than an initial offering of shares to the general public in exchange for cash.

Specifically, the examples address the following instances in which new securities are issued and offered to existing shareholders: (1) a reporting company reforms itself as a new entity to change its state of incorporation; (2) a reporting company reorganizes into a single subsidiary holding company; (3) a reporting company incorporates one of its existing divisions as a separate public company; (4) two reporting companies consolidate to form a new corporate entity, thereby becoming wholly-owned subsidiaries of the new company; (5) a reporting company becomes a wholly-owned subsidiary of a non-reporting company; and (6) a reporting company and a non-reporting company consolidate to form a new corporation, thereby becoming wholly-owned subsidiaries of the new company. See letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Paul B. O'Kelly, Executive Vice President, Market Regulation & Legal, The CHX, dated December 9, 1999. The Commission notes that the adoption of the amendments to Rule 12f–2 has no impact on the no-action letter, and the relief granted for the transactions described in the no-action letter is still in effect.

[33] PCX Letter, CHX Letter.

[34] Sources for the NYSE and Amex figures were the Center for Research in Securities Prices and Securities Industry Automation Corp.

[35] *See supra*, note 8 and accompanying text.

statistically significant differences in bid-ask spreads in the first day of trading, and that price volatility, if anything, was higher for singly-listed IPOs. This indicates that increasing competition in IPO listings will not increase costs to investors.

The Commission recognizes that there are some potential costs associated with this amendment. Listing exchanges could be impacted because they will lose a one-day trading advantage over other exchanges, but they will probably retain a large percentage of the first day trading volume in any case. The 1998 Study showed that, in a sample of dually traded stocks, regional exchanges attracted about 1.8% of the first day trading volume. This result suggests that the elimination of the one-day trading advantage will affect only a small percentage of the first day trading volume.

The NYSE reported total trading fees of $138.4 million in 1999, which on the basis of 204 billion shares traded [36] is an average of less than .1 cents per share. Although the overall effect of the proposal cannot be determined with precision, assuming a first day migration of IPO share trading of 3 percent (higher than the 1.8 percent found in the 1998 Study) and a trading fee loss of 1 cent per share (more than 10 times higher than average calculated above [37]) the trading fee loss to the NYSE for the first day would have been, at most, $154,500 (= .03 × 515 million first day shares traded × $.01/share) in 1999; and $136,200 (=.03 × 454 million first day shares traded × $.01/share) in 1998.[38]

Specialists also will be affected by the rule. The NYSE reports that in 1999 the unweighted average spread was $.22 per share, and that specialists handled about 13.1% of the volume. [39] Using the previous assumption of 3 percent first day IPO trading volume migration to other exchanges, the revenue loss to NYSE specialists would be $445,269 (= .03 × 515 million first day shares traded × .131 specialists' share × $.22 spread/share) per year. These revenue losses would likely result in comparable revenue gains to specialists on regional exchanges.

Similar assumptions for the Amex—where first day trading in IPO shares was less than 2% of that on the NYSE in 1998, and less than 1% in 1999—would yield much smaller figures.

Finally, the Commission does not anticipate any direct or indirect costs to U.S. investors or other market participants because the rule imposes no recordkeeping or compliance burdens.

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

Section 23(a)(2) of the Exchange Act [40] requires the Commission, when adopting or amending rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and refrain from adopting a rule that would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Moreover, Section 3(f) of the Exchange Act,[41] as amended by the National Securities Markets Improvement Act of 1996,[42] provides that whenever the Commission is engaged in a rulemaking and is required to determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, the Commission solicited comment on the effects of the proposed amendment to Rule 12f–2 on competition, efficiency and capital formation as cited in Sections 3(f) and 23(a)(2). Six of the seven comment letters received directly argued in support of the amendment because, in part, it would remove a barrier to competition. The remaining comment letter asserted that reducing the trading delay would reduce volatility in IPO trading.

The Commission has considered the amendment to Rule 12f–2 in light of the comments received and the standards cited in Sections 3(f) [43] and 23(a)(2) [44] of the Exchange Act. The Commission believes that, by permitting all exchanges to compete for IPO order flow, the amendment removes an artificial barrier to competition. Accordingly, the Commission does not believe that the amendment would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, enhancing the environment for trading IPO securities will work to benefit issuers, remove a barrier to greater efficiency in the markets, and encourage capital formation.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') is being prepared in accordance with Section 4 of the Regulatory Flexibility Act (''RFA'').[45] It relates to an amendment to Rule 12f–2(a) [46] under the Exchange Act. The amendment will permit exchanges to extend UTP to an IPO security listed on another exchange after the first trade on the listing exchange is reported to the Consolidated Tape, rather than waiting one full trading day as currently required.

A. Reasons for and Objectives of the Proposed Actions

This amendment is intended to further the purposes of Section 11A(a)(1)(D) of the Exchange Act [47] by fostering efficiency, enhancing competition, increasing the amount of information available to brokers, dealers, and investors, facilitating the offsetting of investors' orders, and contributing to best execution of those orders. The amendment addresses a barrier to competition that currently operates as a restriction on trading activity. Under the current one-day trading delay, exchanges that do not list IPOs are unable to compete with ECNs and the third market for order flow. The rule change will facilitate competition among various markets for order flow consistent with Section 11A(a)(1)(C)(ii) [48] of the Exchange Act and enhance investor options for order execution.

B. Significant Issues Raised by Public Comments

No public comments were received in response to the IRFA and no comments specifically addressed that analysis. Commenters did, however, offer support for the amendment on the basis that the current one-day trading delay imposes a burden on competition. In response to the commenters and based in part on empirical evidence, the Commission has decided to adopt the rule amendment as proposed.

C. Small Entities Subject to the Rule

The amendment will directly affect the national securities exchanges, none

[36] Source: New York Stock Exchange 1999 Fact Book.

[37] Thus, the 1 cent per share figure should account for any other fees collected based on trading volume.

[38] It appears from the 1998 Study that when an IPO was dually traded on the first day, the market share of the regional exchanges on subsequent days was also higher. It is difficult to quantify this effect, however.

[39] New York Stock Exchange 1999 Fact Book.

[40] 15 U.S.C. 78w(a)(2).

[41] 15 U.S.C. 78c.

[42] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[43] 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78w(a)(2).

[45] 5 U.S.C. 604.

[46] 17 CFR 240.12f–2(a).

[47] 15 U.S.C. 78k–1(a)(1)(D).

[48] 15 U.S.C. 78k–1(a)(1)(C)(ii).

of which is a small entity. Paragraph (e) of the Rule 0–10 [49] states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of § 240.11Aa3–1. Because no exchange has been exempted from the reporting requirements of § 240.11Aa3–1, there will be no impact for purposes of the RFA on small businesses.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendment does not impose any new reporting, recordkeeping, or other compliance requirements on exchanges, or entities indirectly affected by the proposal.

E. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposal, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, or any part thereof, for small entities.

The Commission believes that none of the above alternatives is applicable to the amendment. The exchanges are directly subject to the requirements of Rule 12f–2(a) and are not ''small entities'' because they are all national securities exchanges that do not meet the definition of small entity. Therefore, the Commission does not believe the alternatives are applicable in the present amendment.

VIII. Statutory Authority

The rule amendments in this release are being adopted pursuant to 15 U.S.C. 78 *et seq.*, particularly Sections 11A(a)(1)(C)(ii), 11A(a)(1)(D), 12(f)(1)(C), 12(f)(1)(D), and 23(a) of the Exchange Act, 15 U.S.C. 78k–1, 78*l*(f)(1)(C), 78*l*(f)(1)(D), 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends 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, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

1. Section 240.12f–2 is amended by revising paragraph (a) 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.

* * * * *

Dated: August 29, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22591 Filed 9–1–00; 8:45 am]

BILLING CODE 8010–01–U

[49] 17 CFR 240.0–10(e).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172

[T.D. 00–57]

RIN 1515–AC01

Petitions for Relief: Seizures, Penalites, and Liquidated Damages

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document revises the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. Parts 171 and 172 of the Customs Regulations are recrafted in this rule to include petition processing in seizure and unsecured penalty cases under part 171 and liquidated damages and secured penalty petition processing under part 172. The document revises the regulations to allow more flexibility and useful contact with Government officials in an effort to make the administration of penalty, liquidated damages and seizure cases more efficient. These regulations eliminate needless or redundant provisions.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–927–2344.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of sections 618 and 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 and 1623), section 320 of title 46, United States Code App. (46 U.S.C. App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321), the Secretary of the Treasury is empowered to remit forfeitures, mitigate penalties, or cancel claims arising from violation of Customs bonds upon terms and conditions that he deems appropriate. Under sections 66 and 624 of the Tariff Act of 1930, as amended (19 U.S.C. 66 and 1624), the Secretary is authorized to issue regulations necessary to carry out the provisions of the Tariff Act. Consistent with that authority, Parts 171 (relating to seizures and penalties) and 172 (relating to liquidated damages) of the Customs Regulations (19 CFR Parts 171 and 172) were promulgated to provide for the petitioning process in order to allow for the orderly remission of forfeitures, mitigation of penalties, and cancellation of claims for liquidated damages.

In a Notice of Proposed Rulemaking published in the **Federal Register** (63 FR 5329) on February 2, 1998, Customs proposed to substantially revise Parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases to make the proposed regulations briefer and to allow more flexibility and useful contact with government officials in an effort to administer cases in the most efficient way possible. The amendments to the regulations were also proposed to eliminate needless or redundant provisions.

Summary of Proposal

Below is a summary of the Notice of Proposed Rulemaking:

1. The scope of Parts 171 and 172 was proposed to be changed. Part 171, as proposed, related to unsecured fines and penalties and all seizure and forfeiture cases. Inasmuch as the payment of certain penalties is