

SECURITIES AND EXCHANGE COMMISSION**Proposed Collection; Comment Request**

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Part 257, SEC File No. 270-252, OMB Control No. 3235-0306
Form U-1, SEC File No. 270-128, OMB Control No. 3235-0125
Rule 58, Form U-9C-3, SEC File No. 270-400, OMB Control No. 3235-0457
Rule 71, Form U-12(I)-A, & Form U-12(I)-B SEC File No. 270-161, OMB Control No. 3235-0173
Rules 93-94, Form U-13-60, SEC File No. 270-79, OMB Control No. 3235-0153

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The rules under 17 CFR Part 257 implement sections of the Public Utility Holding Company Act of 1935 ("Act") that require registered holding companies and their subsidiary service companies to preserve records for certain periods. The purpose of requiring the holding company to retain the records is to permit audit or verification by the Commission, or by state utility commissions, of transactions between the holding company or its otherwise unregulated subsidiaries, the subsidiary service companies, and the regulated utility subsidiaries which the holding company controls, or to establish investors' rights. The Commission estimates that the total annual reporting and recordkeeping burden is one hour (18 recordkeepers \times $\frac{1}{18}$ hour = one burden hour).

Form U-1, under rule 20(c) of the Act, must be used by any person filing or amending an application or declaration under sections 6(b), 7, 9(c)(3), 10, 12(b), (c), (d) or (f) of the Act. The form must also be used for filings under any rule under other sections of the Act, for which a form is not prescribed. The Commission estimates that the total annual reporting and recordkeeping burden is 27,225 hours (121 recordkeepers \times 225 hours = 27,225 burden hours). This represents an increase of 10,020 hours annually in the

paperwork burden from the prior estimate, which was caused by an increase in the number of respondents for the period and the fact that the filings have become generally more complex.

Rule 58 under the Act, allows registered holding companies and their subsidiaries to acquire energy-related and gas-related companies. Acquisitions are made without prior Commission approval under section 20 of the Act. However, within 60 days after the end of the first calendar quarter in which any exempt acquisition is made, and each calendar quarter thereafter, the registered holding company is required to file with the Commission a certificate of notification on Form U-9C-3 containing the information prescribed by that form. The Commission requests this information because rule 58 of the Act requires it. The Commission uses this information to determine the existence of detriment, regarding the acquisition of certain energy-related companies, to interests the Act is designed to protect. The 61 recordkeepers together incur about 976 annual burden hours to comply with these requirements (61 recordkeepers \times 16 hours = 976 burden hours.)

Rule 71 and Forms U-12(I)-A and U-12(I)-B implement subsection 12(i) of the Act, which makes it unlawful for an employee to prevent, advocate or oppose any matter affecting a registered holding company before Congress, the Commission or the FERC. The Commission estimates that the total annual reporting and recordkeeping burden is 167 hours (250 respondents \times $\frac{2}{3}$ hour = 167 burden hours). The purpose of collecting the information is to determine the existence of detriment to interests the Act is designed to protect. The Commission uses the information to enable it to enforce the provisions of section 12(i) of the Act.

Rule 93 imposes recordkeeping and record maintenance requirements on mutual and subsidiary service companies of registered holding companies. Under the rule, the service companies must keep their accounts and records according to the Uniform System of Accounts, as provided in 17 CFR 256. Further, the companies must maintain those records in the manner and for the periods provided in 17 CFR 257. Rule 94 requires service companies to file annual financial reports on Form U-13-60, as provided in 17 CFR 259.313. The purpose of requiring the holding company to retain the records is to permit audit or verification by the Commission, or by state utility commissions, of transactions between the holding company or its otherwise

unregulated subsidiaries, the subsidiary service companies and the regulated utility subsidiaries which the holding company controls or to establish investors' rights. The Commission estimates that the total annual reporting and recordkeeping burden is 580 hours (40 respondents \times 14.5 hours = 580 hours).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: June 15, 1998.

Maragaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-16436 Filed 6-19-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-40094; File No. SR-NYSE-97-36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Revise Exchange Policy for Entry of MOC/LOC Orders and Publication of Imbalances

June 15, 1998.

I. Introduction

On December 29, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4

¹ 15 U.S.C. 78s(b)(1).

thereunder;² a proposed rule change to revise the Exchange's policy for entry of market-on-close ("MOC") and limit-at-the-close ("LOC") orders and publication of order imbalances for both expiration and non-expiration days. On March 18, and June 4, 1998, respectively, the Exchange submitted Amendments No. 1³ and No. 2⁴ to the proposed rule change to the Commission.

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on March 26, 1998.⁵ One comment was received on the proposal.⁶ This order approves the proposal as amended.

II. Description of the Proposal

Special procedures regarding the entry of MOC and LOC orders⁷ have been in place on the Exchange for more than ten years.⁸ These procedures are designed to alleviate excess volatility at the close by providing MOC and LOC imbalance information to market participants in a timely manner to attract contra-side interest. The procedures have been refined over the years based on the Exchange's experience and input from constituents.⁹ The Exchange is now proposing additional refinements to the procedures to enhance their usefulness.

² 17 CFR 240.19b-4.

³ See Letter from Donald Siemer, Director, Market Surveillance, NYSE to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission dated March 13, 1998 ("Amendment No. 1").

⁴ See Letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE to David Sieradzki, Attorney, Division, Commission dated June 1, 1998 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarifies the proposal to indicate that, where a bona fide error has been made, causing the cancellation of an order, or an order was improperly entered when there was no imbalance, resulting in an imbalance of 50,000 shares or more at 3:50 p.m., the Exchange would publish the imbalance even though there had been no 3:40 p.m. publication.

⁵ Securities Exchange Act Release No. 39770 (Mar. 18, 1998), 63 FR 14747 (Mar. 26, 1998).

⁶ See Letter from Terry McCloskey, Vice President, BNP Securities, Inc. to Jonathan G. Katz, Secretary, Commission dated April 15, 1998 ("BNP Letter").

⁷ A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. A LOC order is a limit order entered for execution at the closing price, provided that the closing price is at or within the limit specified. See NYSE Rule 13.

⁸ The Exchange's pilot program for expiration day auxiliary closing procedures was permanently approved by the Commission on October 30, 1996. See Securities Exchange Act Release No. 37894 (Oct. 30, 1996), 61 FR 56987 (Nov. 5, 1996) (order approving SR-NYSE-96-31).

⁹ The Exchange's LOC pilot program will expire on July 31, 1998. The Exchange has requested that the Commission permanently approve the program (SR-NYSE-98-15).

Current Procedures

The current procedures require that MOC and LOC orders in any stock be entered by 3:40 p.m. on expiration days, and by 3:50 p.m. on non-expiration days.¹⁰ A member may not cancel or reduce a MOC or LOC order in any stock after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days, (except in a case of legitimate error or to comply with the provisions of Exchange Rule 80A). In addition, Floor brokers representing any MOC orders must indicate their MOC interest to the specialist by 3:40 p.m. or 3:50 p.m., for expiration and non-expiration days, respectively.

For the selected stocks identified by the Exchange (formerly known as "pilot stocks")¹¹ and published in its "special stock list," a single publication of imbalances of 50,000 shares or more must be made as soon as practicable after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days. On expiration days, stocks on the special stock list that do not have an imbalance of 50,000 shares or more at 3:40 p.m. must publish a "no imbalance" status. Imbalances of 50,000 shares or more must also be published for stocks going into or out of an index. For all other stocks (i.e., those that are not on the "special stock list" and those not going into or out of an index), an imbalance of 50,000 shares or more may be (but is not required to be) published at the request of the specialist, with Floor Official approval. After the 3:40 p.m. or 3:50 p.m. imbalance publication, MOC and LOC orders may be entered only to offset a published imbalance. No MOC and LOC orders may be entered if there is no imbalance publication. On expiration days, the entry of MOC or LOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted, even if such orders might offset published imbalances.

New Procedures

In July of 1997, the NYSE's Market Performance Committee appointed a subcommittee to review MOC procedures. The subcommittee recommended that the Exchange

¹⁰ The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

¹¹ The pilot stocks consisted of the 50 most highly capitalized Standard & Poor's ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included in the S&P stock group.

implement several changes to increase the effectiveness of the procedures.

These changes, which the Exchange is proposing to implement, are:

- The Exchange is proposing a 3:40 p.m. deadline for entry of MOC and LOC orders and indication of MOC interest to specialists by Floor brokers representing any MOC orders, every day. This earlier deadline (from 3:50 p.m. to 3:40 p.m.) on non-expiration days would provide additional time to attract contra-side interest.

- The Exchange is also proposing mandatory publication of all MOC/LOC imbalances of 50,000 shares or more in *all* stocks and *any* trading day as soon as practicable after 3:40 p.m.¹² Publication of an imbalance of *less than* 50,000 shares may be made at that time with the approval of a Floor Official. This proposed new provision would permit, but not require, the publication of an imbalance which, although less than 50,000 shares, may be significantly greater than average daily volume in a stock.

- The Exchange is also proposing to include both MOC and marketable LOC orders in the imbalance publication.¹³ The determination of whether an LOC order is "marketable" would be based upon the last sale price at 3:40 or 3:50 p.m., depending on the time of the order imbalance publication. This means that LOC orders to buy at a higher price would be included with the buy MOC orders; LOC orders to sell at a lower price would be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation.

- The Exchange is also proposing a new procedure to permit non-mandatory publication of MOC/LOC imbalances of *any* size between 3:00 and 3:40 p.m., with Floor Official approval; these publications would be informational only, with no effect on MOC/LOC order entry. Imbalance information would be required to be updated at 3:40 p.m. for all stocks on all days, regardless of size, to provide timely imbalance information to market participants.

- An additional imbalance publication on both expiration and non-expiration days, must be made at 3:50 p.m. for any stock that had an imbalance

¹² As discussed above, currently, the Exchange requires mandatory publication of imbalances of 50,000 shares or more only in stocks on the Exchange's special stock list and stocks being added to or dropped from an index on expiration days as soon as practicable after 3:40 p.m. (or 3:50 p.m. for non-expiration days).

¹³ Currently, imbalance publications indicate MOC interest but not LOC interest. See Amendment No. 1, *supra* note 3.

publication at 3:40 p.m.¹⁴ If the imbalance at 3:50 p.m. is less than 50,000 shares, a "no imbalance" status must be published, except that an imbalance of less than 50,000 shares may be published with Floor Official approval, provided there had been an imbalance publication at 3:40 p.m. Except under two limited circumstances,¹⁵ if there were no imbalance publication at 3:40 p.m., there would not be a publication at 3:50 p.m., since MOC and LOC orders could not be entered during the interim to change the imbalance. If the 3:50 p.m. imbalance publication reversed the first imbalance publication, only MOC and LOC orders which offset the 3:50 p.m. imbalance would be permitted to be entered thereafter.

- MOC/LOC order entry is precluded after 3:40 p.m. in all stocks on all days, unless an imbalance is published, in which case entry of MOC/LOC orders would be permitted only on the contra side of the published imbalance.

III. Comment Summary

As noted above, the Commission received one comment on the proposal.¹⁶ The commenter agreed that order imbalance dissemination reduces volatility at the close and favors expanding imbalance indications to all listed issues. In addition, the commenter noted that neither the NYSE nor the American Stock Exchange ("Amex") provide members with information regarding order imbalances at the close in electronic form. The commenter believes that if the NYSE and Amex were required to disseminate order imbalances through the Securities Industry Automation Corporation ("SIAC"),¹⁷ customers would receive better information and therefore, better executions.

IV. Discussion

The Commission finds that the proposed rule change is consistent with Section 6¹⁸ of the Act and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5)¹⁹ requirements that the rules of

an Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.²⁰

Over the past several years, the Exchange and other self-regulatory organizations have been developing procedures to minimize excess market volatility that may arise from the liquidation of stock positions on expiration days.²¹ Special procedures regarding the entry of MOC orders on Expiration Fridays were first used in 1986 for assisting in handling the order flow associated with the concurrent quarterly expiration of stock index futures, stock index options and options on stock index futures on Expiration Fridays.²² On April 10, 1995, the Commission approved a proposed rule change to institute similar auxiliary closing procedures on non-expiration days.²³ Finally, on March 3, 1994, the Exchange, as an additional means of attracting contra-side interest to help alleviate MOC order imbalances, initiated a pilot program relating to the entry of LOC orders on both expiration and non-expiration days.²⁴ These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC/LOC orders at the end of the day. If there is a substantial imbalance on one side of the market, the procedures provide the investing public with timely and reliable notice of that imbalance and with an opportunity to make appropriate investment decisions in response.

Generally, the NYSE auxiliary closing procedures have worked well and may have resulted in more orderly markets on both expiration and non-expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could create a situation in which member firms and

their customers would be unwilling to acquire significant positions.

In this regard, the Commission notes that the proposed rule change may increase public awareness of MOC/LOC order imbalances and provide the market participants with more of an opportunity to make appropriate investment decisions. Specifically, the proposal will impose a deadline of 3:40 p.m. for entry of all MOC/LOC orders on both expiration and non-expiration days. Floor brokers representing MOC orders also must indicate their MOC interest to the specialist by 3:40 p.m. every day. In conjunction with the prohibition on canceling or reducing any MOC/LOC order after 3:40 p.m., these requirements should allow the specialist to make a timely and reliable assessment, for every NYSE-listed stock, on expiration and non-expiration days alike, of MOC/LOC order flow and its potential impact on closing prices.

The proposal would also make several changes to imbalance publication procedures, which are designed to get more information to the public earlier in the day. First, the proposal would integrate marketable LOC orders into the current MOC order imbalance publication. Second, the proposal would require publication of MOC/LOC imbalances of 50,000 shares or more in all securities on any trading day as soon as practicable after 3:40 p.m. The proposal also requires an additional publication of MOC/LOC imbalances of 50,000 shares or more at 3:50 p.m. for stocks that reported an imbalance at 3:40 p.m. If the order imbalance for a stock publishing an imbalance at 3:40 p.m. has fallen below 50,000 shares by 3:50 p.m. then, a "no imbalance" message must be posted unless Floor Official approval is sought to publish an imbalance of less than 50,000 shares.

The Commission believes that the enhanced publication requirements described above are appropriate and consistent with the Act. Integrating marketable LOC orders into the order imbalance publication should serve to better reflect actual investor interest. Also, requiring an additional order imbalance publication at 3:50 p.m. for securities having a published imbalance as of 3:40 p.m. may help ease market volatility at the close by attracting additional offsetting MOC/LOC orders for stocks that have a significant order imbalance as of 3:50 p.m. With respect to changing the deadline for entering MOC/LOC orders on non-expiration days, the Commission believes that, by giving market participants more time to react to published MOC/LOC order imbalances, the proposal may contribute to reducing volatility at the close.

¹⁴ Currently, the Exchange requires only a single imbalance publication at 3:40 p.m. on expiration days and at 3:50 p.m. on non-expiration days. See Amendment No. 1, *supra* note 3.

¹⁵ See Amendment No. 2, *supra* note 4.

¹⁶ See BNP Letter, *supra* note 6.

¹⁷ SIAC processes last sale information and quotation information reported to it by its participants (eight national securities exchanges and the National Association of Securities Dealers, Inc.) for consolidation and dissemination to vendors and others.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b).

²¹ See *supra* note 8.

²² See *supra* note 10.

²³ See Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313 (April 17, 1995) (order approving SR-NYSE-94-44).

²⁴ See *supra* note 9.

Finally, the Exchange proposes to permit dissemination of MOC/LOC order imbalances of any size between 3:00 p.m. and 3:40 p.m. with Floor Official approval. These optional publications would be informational only and would be required to be updated at 3:40 p.m., regardless of size. The Commission believes that this optional publication of MOC/LOC order imbalances is consistent with the Act in that it should increase the amount of accurate market information available to the public.²⁵ The Commission believes that this dissemination of MOC/LOC order imbalances prior to 3:40 p.m. could help reduce volatility at the close by giving market participants more time to react to reported order imbalances.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies the proposal to indicate that, under certain circumstances, the Exchange may publish an order imbalance at 3:50 p.m. where an imbalance was not published at 3:40 p.m.²⁶ The Exchange has represented that, under certain limited circumstances described in Amendment No. 2 (i.e., where a bona fide error was made causing an order to be cancelled or an order was improperly entered when there was no imbalance, resulting in an imbalance of 50,000 shares or more at 3:50 p.m.) the Exchange would publish an order imbalance at 3:50 p.m. even if an imbalance had not been published at 3:40 p.m. As a result, the Commission does not believe that Amendment No. 2 raises any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period during which one comment, generally supporting the proposal, was received by the Commission. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5)

and 19(b)²⁷ of the Act, to approve Amendment No. 2 to the Exchange's proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether that amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-97-36 and should be submitted by July 13, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NYSE-97-36) is approved as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-16510 Filed 6-19-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the

requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 9, 1998 [63 FR 11472].

DATES: Comments on this notice must be received on or before July 22, 1998.

ADDRESSES: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: FAA Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC-100, 800 Independence Ave., SW., (202) 267-9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Report of Inspections Required by Airworthiness Directives, FAR part 39.

OMB Control Number: 2120-0056.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of the affected products.

Abstract: Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Records of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition.

²⁵ In approving this proposed rule change, the Commission is aware of the possibility that the publication of order imbalances on a more frequent basis may allow market participants to enter orders without the good faith intention that the order be executed, but instead with the intention of canceling the order and profiting in some way from a market reaction to the publication of the order. The Commission expects that the Exchange will be mindful of any potential formarket manipulation or other abuse that the amended procedures may create and that the Exchange will be vigilant in its surveillance efforts to ensure that the MOC/LOC procedures are executed in a manner consistent with the Act and the rules thereunder and the rules of the Exchange.

²⁶ See Amendment No. 2, *supra* note 4.

²⁷ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).