alphanumeric designation as a fastener insignia. * * *

25. Redesignated § 280.320 is amended by revising paragraphs (a) and (b) and paragraphs (c)(1) through (c)(5); redesignating existing paragraphs (c)(6) through (c)(8) as paragraphs (c)(7) through (c)(9), respectively; adding a new paragraph (c)(6); and revising redesignated paragraph (c)(7) to read as follows:

§ 280.320 Maintenance of the certificate of recordal.

(a) Certificates of recordal remain in an active status for five years and may be maintained in an active status for subsequent five-year periods running consecutively from the date of issuance of the certificate of recordal upon compliance with the requirements of paragraph (c) of this section.

(b) Maintenance applications shall be required only if the holder of the certificate of recordal is a manufacturer at the time the maintenance application is required.

(c) * * *

(1) The name of the manufacturer;

(2) The address of the manufacturer;

(3) The entity, domicile, and state of incorporation, if applicable, of the manufacturer;

(4) A copy of manufacturer's certificate of recordal;

(5) A statement that the manufacturer will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the applicant for recordal is a ''manufacturer'' as that term is defined in 15 U.S.C. 5402;

(7) A statement that the person signing the application on behalf of the manufacturer has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the manufacturer;

* * * * *

26. Redesignated § 280.321 is amended by revising the first sentence to read as follows:

§ 280.321 Notification of changes of address.

The applicant for recordal or the holder of a certificate of recordal shall notify the Commissioner of any change of address or change of name no later than six months after the change. * * *

27. Redesignated § 280.323 is amended by revising the second sentence of paragraph (a) and adding new paragraph (f) to read as follows:

§ 280.323 Transfer or assignment of the trademark registration or recorded insignia.

(a) * * * Any transfer or assignment of such an application or registration must be recorded in the Patent and Trademark Office within three months of the transfer or assignment.

* * * * *

(f) An alphanumeric designation that is reactivated after it has been transferred or assigned shall remain in active status until the expiration of the five year period that began upon the issuance of the alphanumeric designation to its original owner.

28. Redesignated § 280.324 is amended by revising paragraphs (a)(1) through (a)(3); redesignating existing paragraph (b) as paragraph (a)(4); revising the first two sentences of redesignated paragraph (a)(4); redesignating paragraph (c) as paragraph (b); and revising redesignated paragraph (b) to read as follows:

§ 280.324 Change in status of trademark registration or amendment of the trademark.

(a) * * *

(1) Issuance of a final decision on appeal which refuses registration of the application which formed the basis for the certificate of recordal;

(2) Abandonment of the application which formed the basis for the certificate of recordal;

(3) Cancellation or expiration of the trademark registration which formed the basis of the certificate of recordal; or

(4) An amendment of the mark in a trademark application or registration that forms the basis for a certificate of recordal. The certificate of recordal shall become inactive as of the date the amendment is filed. * * *

(b) Certificates of recordal designated inactive due to cancellation, expiration, or amendment of the trademark registration, or abandonment or amendment of the trademark application, cannot be reactivated.

29. Redesignated § 280.325 is revised to read as follows:

§ 280.325 Cumulative listing of recordal information.

The Commissioner shall maintain a record of the names, current addresses, and legal entities of all recorded manufacturers and their recorded insignia.

30. The reference to ''§ 280.710'' is revised to read ''§ 280.310'' in the following sections:

Redesignated § 280.311; redesignated § 280.312.

[FR Doc. 99–32240 Filed 12–14–99; 8:45 am]

BILLING CODE 3510–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–42209; File No. S7–29–99]

RIN 3235–AH85

Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a change to Rule 12f–2 under the Securities Exchange Act of 1934, which governs unlisted trading privileges (''UTP'') in listed initial public offerings (''IPOs''). Under the proposed rule change, a national securities exchange extending UTP privileges to an IPO security listed on another exchange would 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 would be permitted to begin trading in an IPO issue pursuant to UTP immediately after the first trade in the security is reported by the listing exchange to the Consolidated Tape.

DATES: Comments should be submitted on or before January 31, 2000.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Comments may also be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–29–99. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Electronically-submitted comments will be posted on the Commission's Internet website (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Kevin Ehrlich, Attorney, at (202) 942–0778 or 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 Act [1] governs when a national securities exchange (''exchange'') may extend UTP to a security, *i.e.*, allow trading in a security

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

that is not listed and registered on that exchange.[2] Section 12(f) was substantially amended by the UTP Act of 1994 (''UTP Act'').[3] Prior to that time, exchanges had to apply to the Commission for approval before extending UTP to a particular security. This process entailed notice of the application in the **Federal Register**, a period for interested parties to comment on the application, and formal Commission approval based on a finding that extension of UTP to the security would be consistent with the maintenance of fair and orderly markets and the protection of investors. The UTP Act, among other matters, 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, the UTP Act eliminated the extensive UTP approval process for all securities listed and registered on an exchange. Nevertheless, as discussed in detail below, the exchanges must wait one full day before they can extend UTP to a listed IPO security as defined in Section 12(f)(1)(G)(i) and (ii).[4]

A. The Waiting Period

In passing the UTP Act, Congress considered the question of whether a waiting period should be imposed on exchanges trading an IPO security pursuant to UTP. During the legislative process, conflicting views arose among interested parties concerning the appropriate waiting period, if any, for extending UTP to an IPO security.[5]

As a result, Congress temporarily permitted UTP exchanges to trade an IPO security only after two days of trading had occurred on the exchange on which the security was registered and listed. It also required the Commission to prescribe, by rule or regulation within 180 days of the legislation's enactment, the duration of the interval, if any, that UTP exchanges would be required to wait before trading in listed IPOs.[6] In a report to Congress on the UTP Act, the House Committee on Energy and Commerce described the interim waiting period as ''a temporary exception'' to the general authority it granted to exchanges to extend UTP immediately. In leaving the ultimate decision on the issue in the hands of the Commission, the Committee expressed the view that the rulemaking process would afford an opportunity for the conflicting concerns and suggestions to be examined and resolved.[7]

B. The Commission's Original Proposal: Elimination of the Waiting Period

Accordingly, on February 9, 1995, the Commission proposed for comment Rule 12f–2,[8] which would have virtually eliminated the waiting period.[9] Under the proposal, rather than continuing the temporary requirement to wait two days, UTP exchanges would have been permitted to begin trading in a listed IPO immediately after the first trade executed on the listing exchange was reported by that exchange to the Consolidated Tape. In proposing a one-trade interval for UTP in IPO securities, the Commission stated that:

> Shortening the interval for UTP in listed IPO securities should enhance the ability of exchanges to compete for order flow in the subject securities, especially in light of the fact that OTC dealers may trade IPO securities immediately upon effective registration with the Commission. Accordingly, in the absence of a compelling reason to impose a restriction that would inhibit competition among exchanges, the Commission initially believes that competing exchanges should be able to extend UTP to a listed IPO security after the first trade in the security on the listing exchange has been effected and reported.[10]

The Commission noted that testimony and evidence were presented during the legislative process preceding the UTP Act to show the negative impact that a mandatory waiting period has on competition. The Commission also pointed out that the third market traded listed IPO securities with no delay. The Commission solicited comment on the potential impact on markets and the distribution of securities, as well as the experience of the third market.

The Commission received eight letters in response to the original proposal, five of which supported the proposed rule, and three of which opposed it.[11] In addition, shortly before the proposed rules were published, the Commission received a study from the Philadelphia Stock Exchange (''Phlx''), submitted on behalf of itself, the Boston Stock Exchange, the Chicago Stock Exchange, and the Pacific Stock Exchange (now known as the Pacific Exchange).

The Phlx study showed high trading volume in IPOs during the early days of trading, particularly the first and second days of trading. Citing this data, the regional exchanges argued that a restriction on extending UTP to IPO securities created a substantial negative effect on competition, both in relation to the listing exchange and OTC dealers

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[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] At Congressional hearings, testimony and evidence were presented, on one hand, to show the negative impact that a mandatory waiting period for UTP would have on competition. An interested party in favor of a mandatory waiting period asserted, on the other hand, that listed IPO securities should trade in a central location for a ''short'' period of time to help ensure market efficiency immediately following an IPO, and that immediate UTP in listed IPO securities could increase the cost of raising capital for issuers.

[6] Amended Section 12(f)(1)(C) required exchanges (until the earlier of the effective date of a Commission rule, or 240 days after the enactment of the UTP Act) to wait until the third trading day in a listed IPO security before trading the security pursuant to UTP.

[7] The Committee stated that:

> The Committee expects that, in undertaking the IPO rulemaking authorized under the bill, the Commission will seek comments on the benefits associated with streamlining the regulatory process and enhancing competitive opportunities among market centers with respect to UTP in IPOs, and the identification of the negative effects if any that granting immediate UTP might have on the distribution of these securities. The Committee further expects the Commission to consider the experience of the third market trading in listed IPOs in the course of its examination of these questions. Finally, the Committee expects the markets to cooperate in providing the Commission with data regarding the nature and effect of trading activity (including, for example, any volatility effects on the security) in connection with IPO listings in order to enable the Commission to determine whether the benefits of confining early trading in IPOs to one marketplace are outweighed by the benefits of removing regulatory delays that inhibit competition among markets.

H.R. Rep. No. 626, 103d Cong., 2d Sess. (1994).

[8] 17 CFR 240.12f–2.

[9] Exchange Act Release No. 35323 (Feb. 2, 1995), 60 FR 7718 (Feb. 9, 1995).

[10] Exchange Act Release No. 35323 (Feb. 2, 1995), 60 FR 7718, 7720 (Feb. 9, 1995).

[11] Favoring the proposal were the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Pacific Stock Exchange, Inc. (one letter commenting directly on the proposal, and one letter responding to negative comments), and the Philadelphia Stock Exchange, Inc. (letter responding to negative comments). Opposing the proposal were the New York Stock Exchange, Inc., CS First Boston, and Lehman Brothers. For a summary of the comments, *see* Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (April 28, 1995).

trading listed securities (the ''third market'').[12]

On the other hand, the commenters opposing a reduced waiting period—the New York Stock Exchange (''NYSE'') and two underwriting firms—maintained that immediate regional exchange trading of IPOs would increase price volatility in the trading of IPO securities. With IPOs trading immediately on UTP exchanges, they argued, underwriters would not have sufficient time to ensure an orderly distribution of the securities.[13] A study produced by Lehman Brothers at the time showed higher volatility in some Nasdaq IPOs than in selected NYSE IPOs. Opponents of the proposal cited this data in asserting that dispersed initial trading of IPOs is more volatile than initial centralized trading.[14]

C. Adoption of a Revised Version

On April 21, 1995, the Commission adopted a revised version of its original proposal. Instead of allowing UTP exchanges to trade a listed IPO as soon as the first trade on the listing exchange was reported to the Consolidated Tape, the revised rule required them to wait until the opening of business on the day following the IPO. In other words, a one-day trading delay was established for UTP in listed IPOs.[15]

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 regional exchanges that early UTP in IPO securities would enhance the ability of multiple markets to compete for this volume. However, it also recognized a 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. The Commission noted particularly the concern raised by the underwriters that believed that IPO pricing could be at risk if there was no opportunity for early centralized trading. Finally, a 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 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.[16] The Commission believes that it is now appropriate to revisit the one-day waiting period based on its experience over the last four years, as well as results of a new study submitted to the Commission by several regional exchanges.

D. The 1998 Study

In August 1998, the Chicago Stock Exchange, the Cincinnati Stock Exchange, and the Pacific Exchange presented to the SEC for review a new study (''1998 Study''), examining the effects of immediate multiple trading of IPO securities.[17] The study was conducted at the request of the Chicago Stock Exchange 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[18] that traded on more than one exchange[19] with a similar group of IPO securities that were not dually or multiply listed. The two groups of offerings were issued during the same general time period,[20] 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 Act includes both traditional IPOs and spin-offs, the study attempted to include both in its analysis. Moreover, like IPOs, the spin-offs involve an issuance of shares where there is no previous basis to establish an opening price. 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

[12] The Chicago Stock Exchange also stated that it had listed IPOs simultaneously with the NYSE and had seen no adverse effect. Similarly, the Phlx study found, in the case of five IPOs that were dually or multiply listed on at least one regional exchange and the NYSE, that the regional trades on the first two days virtually always were within the NYSE daily trading range.

[13] Two commenters advocated at the time that Congress's temporary two-day delay should continue in place, while the third recommended the retention of, at the very least, a one-day trading delay.

[14] Supporters countered that any increase in price volatility in early trading of IPOs is limited to upward price movement. Supporters also argued that price volatility is generated by supply and demand, and, as a natural by-product of a free and open market, should never be used as a reason to exclude some equally-regulated competitors from the marketplace.

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

[16] *Id.* at 20894.

[17] 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.

[18] 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.

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

[20] 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. The sample group of dually-listed IPOs included the following companies: Dr. Pepper/Seven-Up, Dean Witter/Discover, Allstate, Urban Shopping Centers, Pac-Tel, Guidant Corp., PMI Group, Hambrecht & Quist, Dominick's Supermarkets, Western Atlas Inc., Lehman Bros. Holdings, Promus Hotel Corp., Host Marriott Services, 360° Communications, and Imation Corp. The control group of non-dually listed IPOs included: Fresh Del Monte Produce, Donaldson Lufkin Jenrette, American States Financial, Prentiss Properties Trust, Excel Communications, Global DirectMail, capMAC Holdings, Friedman Billings Ramsey, Circle K, Diamond Offshore Drilling, Contifinancial, Renaissance Hotel Group, Red Roof Inns, Berg Electronics, and Bell & Howell.

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.

revealed any evidence of damage to market quality caused by immediate trading of IPOs on non-listing exchanges.

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 this sampling did not include securities of a private company going public for the first time, the reorganizations are considered ''technical IPOs'' because they meet the Section 12(f) definition of an IPO for the purposes of the statutory one-day trading delay.[21] 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.[22]

The study concluded from these analyses 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. The study also observed that the current 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.

II. Discussion

A. Introduction

The Commission preliminarily believes that there is an absence of significant evidence that the delay protects the markets and that, accordingly, there is no justification for the continuance of the one-day trading delay. Recent experience appears to support changing the rule. The one-day trading delay appears to provide no real benefits to the market for IPOs and actually inhibits competition among markets. The lack of any problems over the last four years with reducing the waiting period from two days to one day supports this conclusion.[23] In addition, the 1998 study discussed above provides further evidence that the one-day trading delay should be eliminated or reduced.

As noted above, when the Commission first considered this issue in 1995, two commenters supported a two-day waiting period for IPOs, arguing that IPOs would not have an orderly distribution and that there would be increased price volatility on these two days. This, however, has not turned out to be a concern on the second trading day as evidenced by the successful trading since 1995 of IPO securities on the second trading day by multiple markets. Therefore, based on this experience and the 1998 Study, the Commission proposes to allow exchanges to extend UTP to IPO securities after the first trade on the listing market is reported to the Consolidated Tape.

B. Proposed Amendment

The Commission is proposing an amendment to Rule 12f–2(a)[24] to provide 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 Act.[25] The proposed rule would reduce the mandatory waiting period (or ''interval,'' as it is described in the Act) for extending UTP in listed securities from one trading day, as specified in the current Rule 12f–2(a), to the time that it takes to effect and report the initial trade in the security on the listing exchange.

The Commission believes that it is appropriate to minimize regulatory restraints on competition for trading listed IPO securities. The proposed rule change should enhance the ability of exchanges to compete for order flow in these securities, especially in light of the fact that OTC dealers and alternative trading systems may already trade IPO securities immediately upon effective registration with the Commission. The Commission sees no compelling reason to maintain a restriction that inhibits competition among the exchanges.

Moreover, the 1995 and 1998 studies show no evidence that the one-day trading delay provides any tangible benefits to market quality. In fact, the 1998 Study suggests that greater price volatility actually exists 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

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

[22] 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 control group of stocks that were not considered to be an IPO included: Illinova Corp., Rexel Corp., Burlington Northern Santa Fe, Walt Disney, Rockwell International, Tenneco, Enron Corp., Rough Industries, Texas Utilities Co., First Republic Bancorp, and Excel Communications. The sample group of stocks that were considered to be an IPO included: CTG Resources, New Century Energies, Pioneer Natural Resources, Fred Meyer Inc., Keyspan Energy, and U.S. Restaurant Properties.

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 a 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.

[23] While there have been frequent questions regarding which transactions qualify as IPOs under the rule, there have not been significant problems in terms of IPO pricing.

[24] 17 CFR 240.12f–2(a).

[25] 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.

was unable to determine that there was an adverse impact on market quality resulting from the trading of IPO securities in multiple markets.[26] Especially 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.

In 1995, the Commission expressed concern about maintaining the delay but decided that prudence dictated a cautious approach. After several years of experience with the one-day trading delay and analysis of the impact, the Commission preliminarily believes that it is now appropriate to lift the one-day trading delay for IPOs.

At the same time, the Commission preliminarily believes it necessary to retain a minimal, one trade waiting requirement before non-listing exchanges may begin trading. 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 involving 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 all the preparation for the IPO had been completed before public trading in the security commenced.[27]

[26] 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 still preliminarily believes that the study's methodology is reasonable. For the definition of ''IPO,'' *see* note 4, *supra.*

[27] 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 would permit 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 offerings of securities to an existing class of security holders rather than an initial offering of shares to the general public in exchange for cash. *See* letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, The Chicago Stock Exchange, dated December 9, 1999.

C. Solicitation of Comments

The Commission seeks comment on the one trade waiting period as proposed. To the extent that commenters believe that the current one day waiting period should remain unchanged, the Commission encourages commenters to submit specific data illustrating the need to retain the current waiting period. In addition, should a commenter believe that a different interval should be used, the commission encourages commenters to submit specific data supporting that belief. Relevant data might include the potential negative effects on the pricing of an IPO. The Commission also seeks comment on whether any changes to the consolidated quotation system or trade reporting systems should be made as a result of reducing the waiting interval from one day to the first trade on the listing exchange. In addition, the Commission solicits comment on the possible impact in trading and whether additional procedures or enhancements may be necessary to ensure that a UTP market does not commence trading prior to the first trade on the listing exchange.

III. Costs and Benefits of the Proposed Amendments

The Commission is considering the costs and benefits of the proposed amendment to the Rule. In terms of potential benefits to market participants should the proposal be adopted, the proposed amendment would allow UTP exchanges to compete with the listing exchange and the third market for order flow on the first day an IPO starts trading. Investors benefit when more participants offer liquidity to the market. The proposed amendment would also reduce compliance costs for UTP exchanges because they would not be required to analyze transactions to determine which ones are IPOs under the statutory definition and subject to the current one-day delay. As long as they wait for one trade on the listing exchange, UTP exchanges would be free to extend UTP to that security. In addition, issuers would benefit from wider distribution of IPO securities and greater opportunities for price discovery.

The proposed amendment could impact the listing exchanges because they would lose a one-day trading advantage over other exchanges. In addition, the members of the listing exchange could lose business because order flow might be lost to other exchanges. The Commission does not anticipate any other direct or indirect costs to U.S. investors or other market participants because the rule would impose no recordkeeping or compliance burdens.

The Commission requests comment on the costs and benefits of the proposed amendment to Rule 12f–2(a). In particular, the Commission asks commenters to address what, if any, effect the proposed rule amendment could have on exchanges and their members and whether the proposed amendment would generate the anticipated benefits or impose any costs on market participants. In addition, the Commission asks commenters to address what, if any, effect the proposed rule amendment could have on issuers and other market participants.

IV. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') is being prepared in accordance with Section 3(a) of the Regulatory Flexibility Act (''RFA'').[28] It relates to a proposed amendment to Rule 12f–2(a)[29] under the Exchange Act. The proposed amendment would 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 proposed to further the purposes of Section 11A(a)(1)(D) of the Exchange Act[30] 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 proposal would address 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 electronic trading systems and the third market for order flow. The proposed rule change would facilitate competition among various markets for order flow and enhance investor options for order execution. The one-day trading delay does not appear to provide any significant benefit to the marketplace, but rather appears to create a barrier to competition. The proposed rule amendment would improve competition and investor choice.

[28] 5 U.S.C. 603(a).

[29] 17 CFR 240.12f–2(a).

[30] 15 U.S.C. 78k–1(a)(1)(D).

B. Legal Basis

Sections 12(f)(1)(C) and 12(f)(1)(D) provide the Commission with rulemaking authority to prescribe procedures or requirements for extending UTP to any security. In addition, Section 11A(a)(1)(D) sets forth objectives for linked markets that the Commission should pursue. These include 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 changes to Rule 12f–2(a) are also proposed under the Commission's authority set forth in Section 23(a) of the Exchange Act.

C. Small Entities Subject to the Rule

The proposal would directly affect the national securities exchanges, none of which is a small entity. Paragraph (e) of the Rule 0–10 [31] 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. Thus there would be no impact for purposes of the RFA on small businesses.

D. Reporting, Recordkeeping, and Other Compliance Requirements

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

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rules.

F. 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 proposed 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 proposal.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, the Commission seeks comment on: (i) The number of small entities, if any, that would be affected by the proposed rule; and (ii) the impact that the proposed amendment would have, if any, on such entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendment is adopted, and will be placed in the same public file as comments on the proposed rules themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–29–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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.*

VI. Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act [32] requires the Commission, when promulgating rules under the Act, to consider the anti-competitive effects of such rules. Moreover, Section 3 of the Exchange Act,[33] as amended by the National Securities Markets Improvement Act of 1996,[34] 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. The Commission notes that the 1998 Study submitted by the regional exchanges in support of their rulemaking petition appears to indicate that the rule change would promote competition.

The Commission requests comment on any anti-competitive effects the proposed rule change may have on national securities exchanges, associations, third markets, order routing firms, investors, issuers, and other market participants. As stated above, the Commission also notes that it has received a study that appears to indicate that the proposed rule change would promote competition. The Commission requests comment on, and appropriate data regarding the impact of, the proposed rule change would promote efficiency, competition, and capital formation.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views.

VII. Statutory Authority

The rule amendments in this release are being proposed pursuant to 15 U.S.C. 78 *et seq.*, particularly Sections 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, 78l(f)(1)(C), 78l(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 proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations 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*,

[31] 17 CFR 240.0–10(e).

[32] 15 U.S.C. 78w(a)(2).

[33] 15 U.S.C. 78c.

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

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.

* * * * *

2. 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: December 9, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32472 Filed 12–14–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Family Member Dental Plan

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On Wednesday, November 24, 1999, (64 FR 66126), the Department of Defense published a proposed rule on TRICARE Family Member Dental Plan. This document is published to extend the public comment period.

DATES: Comment period has been extended until January 14, 2000.

ADDRESSES: Address comment concerning the proposed rule to TRICARE Management Activity/Special Contract Operations Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Col. Brian Grassi, 303–676–3496.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 99–32305 Filed 12–14–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 through 164

RIN 0991–AB08

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period on a proposed rule published in the **Federal Register** on November 3, 1999 (64 FR 59918). The original date that the comment period would end was January 3, 2000. That date will now be extended until February 17, 2000.

In that rule, we propose standards to protect the privacy of individually identifiable health information maintained or transmitted in connection with certain administrative and financial transactions. The proposed rules, which would apply to health plans, health care clearinghouses, and certain health care providers, proposed standards with respect to the rights individuals who are the subject of this information should have, procedures for the exercise of those rights, and the authorized and required uses and disclosures of this information.

The use of these standards would improve the efficiency and effectiveness of public and private health programs and health care services by providing enhanced protections for individually identifiable health information. These protections would begin to address growing public concerns that advances in electronic technology in the health care industry are resulting, or may result, in a substantial erosion of the privacy surrounding individually identifiable health information maintained by health care providers, health plans and their administrative contractors. This rule would implement the privacy requirement of the Administrative Simplification subtitle of the Heath Insurance Portability and Accountability Act of 1996.

DATES: The comment period is extended to no later than 5 p.m. on February 17, 2000.

ADDRESSES: Submit electronic comments at the following web site: http://aspe.hhs.gov/admnsimp/.

Mail comments (1 original, 3 copies, and, if possible, a floppy disk) to the following address: U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Attention: Privacy-P, Room G–322A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

If you prefer, you may deliver your written comments (1 original, 3 copies, and, if possible, a floppy disk) to the following address: Room 442E, 200 Independence Avenue, SW, Washington, DC 20201.

See the **SUPPLEMENTARY INFORMATION** section for further information on comment procedures, availability of copies of this document and electronic access to this document.

FOR FURTHER INFORMATION CONTACT: Roxanne Gibson (202) 260–5083.

SUPPLEMENTARY INFORMATION: Reason for extension, comment procedures, availability of copies, and electronic access.

Reason for extension: We originally proposed a 60-day period for public comment of this proposed rule. The original comment period would have closed on January 3, 2000. Because of the scope of the proposed rule, the significant implications for the health care system and the substantial public interest in the proposed rule, we believe that additional time would allow for more informative and thoughtful comments. Therefore, we are extending the comment period until February 15, 2000.

Comment procedures: All comments should include the full name, address and telephone number of the sender or a knowledgeable point of contact. Written comments should include 1 original and 3 copies. If possible, please send an electronic version of the comments on a 3½ inch DOS format floppy disk in Adobe Acrobat Portable Document Format (PDF) (preferred) HTML, ASCII text, or popular word processor format (Microsoft Word, Corel WordPerfect).

Because of staffing and resource limitations, we cannot accept comments by electronic mail or facsimile (FAX) transmission, and all comments and content are to be limited to the 8.5 wide by 11.0 high vertical (also referred to as ''portrait'') page orientation. Additionally, it is requested that if identical/duplicate comment submissions are submitted both electronically and in paper form that each submission clearly indicate that it is a duplicate submission. In each comment, please specify the section of this proposed rule to which the comment applies.

Comments received in a timely fashion will be available for public