pricing for IPOs, contrary to the concerns voiced by the opposing comment letters.³³ The commenter also believes that only upward price volatility risk exists for early IPO trading, particularly because underwriters may place stabilizing bids in IPOs to limit declines in the prices of the securities.

The second response letter reiterates these points, and also notes that regional exchange opening, high, low, and closing prices in IPOs that were dually-listed among one regional exchange and the NYSE were consistent with NYSE comparable prints.34 In addition to providing its reasons for believing that price volatility in early trading of IPOs is limited to upward movements in the price of the security, the commenter also concludes that price volatility is generated by supply and demand in securities and that, as a natural by-product of a free and open market, price volatility should never be used as a reason to exclude some equally-regulated competitors from the marketplace.35

C. Commission Response

The Commission is adopting a revised version of Rule 12f–2. Instead of requiring exchanges to wait until the listing exchange of an IPO reports the first trade in the security to the Consolidated Tape, as originally proposed, exchanges will be required to wait, before trading the security pursuant to a grant of UTP, until the opening of business on the day following the IPO. For the reasons discussed below, the Commission believes that this "one-trading-day" delay for UTP in listed IPOs is appropriate for the maintenance of fair and orderly markets, the protection of investors, and otherwise in furtherance of the purposes of the Exchange Act, as required by the UTP Act.

As a general matter, the Commission agrees with the regional exchanges that early UTP in IPO securities would enhance the ability of multiple markets to compete with the listing exchange for the substantial volume occurring on the initial trading days of IPOs. As discussed below, however, several commenters raise 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 immediately to the public. In light of these concerns, and in particular those raised by the underwriters who believe that IPO pricing may be at risk if there were no opportunity for early centralized trading, the Commission is adopting a rule to provide a one-trading-day delay for UTP in IPO securities.

The Commission believes that a onetrading-day delay to precede UTP in listed IPOs is appropriate at this time primarily because the Commission is concerned that the first day of trading in an IPO on an exchange presents special circumstances, including initial pricing, an attempt to effectuate an orderly distribution of securities, high trading volume, and the resulting potential for high price volatility in the securities, that could have a significant effect on pricing and distribution of IPOs. In light of the comments regarding the possible impact of immediate UTP for the IPO process, the Commission believes, therefore, that a one-trading-day delay is warranted in order to ensure the protection of investors as required by the UTP Act, and by the Exchange Act in general.

The Phlx Study and Phlx response discuss the five IPO securities that were dually-listed on one regional exchange and the NYSE, and state that regional trades virtually always occurred within the NYSE daily trading range on the first and second trading days of the IPO. The Commission considers this limited amount of data insufficient to show that immediate UTP will not increase price volatility across the markets. In addition to the limited number of occurrences reviewed, this information only addresses listings on one exchange competing with the listing exchange, rather than the effects of five markets trading the IPO simultaneously with the listing exchange.

The Commission also believes that there is insufficient evidence on the record to warrant a longer waiting period than the first trading day to precede UTP in listed IPOs. It appears that the risk of high price volatility for listed IPOs and the resultant impact on IPO distributions decreases after the first day of trading.

In light of the concerns raised and the limited nature of the trading data available, the Commission is adopting the one-trading-day delay for UTP in listed IPOs. The Commission currently believes that this one-day restriction is necessary and appropriate for the maintenance of fair and orderly markets and the protection of investors with respect to IPOs. This conclusion is premised on the importance of the initial trading of IPOs for the offering process, the concerns raised regarding orderly IPO distribution, and the limited data responding to those concerns.

The Commission is sympathetic to concerns that a one-trading-day delay for exchange extensions of UTP will restrict regional exchange trading, while OTC dealers will continue to be free to trade the securities upon effective registration. The evidence presented in the Phlx study, however, shows that in virtually all IPOs studied, OTC market makers trade the securities only in extremely small volume, if at all, on the first day of the IPO. The Commission believes, therefore, that any competitive advantage to OTC market makers is minimal, and is outweighed by the benefit to investors and the capital formation process that should be accrued by decreasing the risk of price volatility in the IPO securities.

The Commission will continue, of course, to monitor the experience with the trading of IPOs under the amended Rule. The Commission is willing to consider revisiting the question of the appropriate waiting period for UTP in listed IPOs after experience has been gained with the amended rules.

Two commenters who urged adoption of the proposed rule also responded to the Commission's solicitation of comments on any necessary enhancements to National Market Systems to facilitate operation of the UTP Act. One commenter suggested that all ITS Participants should be permitted to participate in the opening on the first day of trading on the listing exchange via the ITS.³⁶ Another commenter stated that the new UTP trading regimen necessitates more reactive procedures by the ITS Participants and the Securities Industry Automation Corporation ("SIAC"), the ITS facilities manager.³⁷ The commenter urged SIAC to make ITS automatically available for any UTP security on the day following a regional exchange's request that the security be available for ITS use.

The Commission urges the ITS Participants to enhance their procedures for ITS eligibility of securities. The Commission notes that the ITS Pre-Opening Application and the ITS Trade-Through Rule are designed, in part, to ensure orderly pricing of securities among the various Participant market centers. Thus, the Commission believes that the ITS Participants should move forward to ensure that the ITS is available for use by all interested

³³ PSE response, *supra* note 4.

³⁴ See Phlx response, supra note 4.

³⁵ As discussed in Section III.C., *infra*, the Phlx response and the Chx letter suggest enhancements to certain Intermarket Trading System ("ITS") procedures in order to facilitate the extension of unlisted trading privileges pursuant to the new streamlined requirements for UTP under the UTP Act.

³⁶See Chx letter, *supra* note 4.

³⁷See Phlx response, supra note 4.