Commission published an approval order in the **Federal Register**.

Section 12(f) gave interested parties an opportunity to comment and to participate in a hearing regarding the extension of UTP to any security. Pursuant to Section 12(f), the Commission processed hundreds of exchange applications for the extension of UTP each year, yet comments on the applications were extremely rare. Indeed, virtually no comments have been submitted to the Commission on a UTP application in over ten years.

As a consequence of the application, publication, and approval process, applicant exchanges had to wait several weeks before competing with listing exchanges that already were trading the securities. Moreover, while exchanges were required to await Commission approval before competing with the listing exchange, dealers trading off an exchange could trade any security immediately upon its effective registration with the Commission.²

As noted above, Section 12(f) also required the Commission to review each UTP application to ensure the maintenance of fair and orderly markets and the protection of investors with respect to the extension of UTP to the securities named in the application. Pursuant to this standard of review, the staff identified, over time, certain areas of particular concern as they relate to UTP. Accordingly, the staff reviewed each application to ensure, among other things, that the applicant exchange had proper trading rules in place to provide a fair and orderly market in each security named and had sufficient standards for regulatory oversight of each security to provide for the protection of investors. While Commission review of the applications led to occasional discoveries of material deficiencies and errors in the applications, the overwhelming majority of applications raised no substantive issues and over 99% of the applications were approved.

In response to the Concept Release that initiated the Market 2000 Study,³ resulting in the Division of Market Regulation's ("Division") report, *Market 2000: An Examination of Current Equity Market Developments*, some commenters noted that the regulatory

process for UTP could be a potential area for reform.⁴ Shortly after publication of the Concept Release, the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce ("Subcommittee") began working on draft legislation to amend Section 12(f).⁵ These efforts, along with the efforts and support of the various self-regulatory organizations, ultimately led to the UTP Act.

B. Statutory Changes Under Amended Section 12(f)

The UTP Act, among other matters, removes the application, notice, and Commission approval process from Section 12(f) of the Exchange Act, except in cases of Commission suspension of UTP in a particular security on an exchange. Thus, the amendment generally allows an exchange to extend UTP to any security when it becomes listed and registered on another exchange or included in Nasdaq,⁶ subject to certain limitations.

First, the UTP Act contains special provisions for the extension of UTP to any listed security that is the subject of an initial public offering ("listed IPO security"). The amendment includes a

temporary provision that requires exchanges to wait until the third day of trading in any listed IPO security on the listing exchange before they may allow their members to trade the security pursuant to UTP. This provision also requires the Commission to prescribe by rule or regulation, within 180 days of the enactment of the UTP Act (or before April 21, 1995), the mandatory delay (or, "duration of the interval"), if any, that should apply to UTP extensions to listed IPO securities.8

Second, Section 12(f)(1)(D) provides the Commission with rulemaking authority to prescribe, by rule or regulation, additional procedures or requirements for extending UTP to any security.

Third, new Section 12(f)(2) allows the Commission summarily to suspend UTP in a security at any time within 60 days of the commencement of trading on the relevant exchange pursuant to UTP. Upon suspension, the exchange must cease trading in the security. Pursuant to Section 12(f)(2)(A)(ii), an exchange seeking to reinstate its ability to extend UTP to the security, following a Commission suspension, must file an application with the Commission. The exchange must apply pursuant to procedures that the Commission may prescribe by rule or order 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

² As a technical matter, Section 12(a) limits the trading of securities on an exchange to those securities that are listed and registered on that exchange. Section 12(f), both prior to and following this amendment, makes an exemption from this requirement for securities traded pursuant to UTP. Over-the-counter ("OTC") dealers are not subject to the Section 12(a) listing requirement because they do not transact business on an exchange.

³ See Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 ("Concept Release").

⁴ See letter from William G. Morton, Jr., Boston Stock Exchange, John L. Fletcher, Midwest (currently Chicago) Stock Exchange, Leopold Korins, Pacific Stock Exchange, and Nicholas A. Giordano, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated December 11, 1992. See also, Division of Market Regulation, Securities and Exchange Commission, Market 2000: An Examination of Current Equity Market Developments (January 1994).

⁵The Subcommittee held a hearing on the UTP Act on June 22, 1994, at which a Division representative and representatives of several self-regulatory organizations appeared and submitted written comments on the legislation. The Unlisted Trading Privileges Act of 1994 and Review of the SEC's Market 2000 Study: Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 103d Cong., 2d Sess. (1994) ("UTP Hearing").

⁶Section 12(f), as amended, also removes the application and approval requirements for exchange UTP in securities that are registered under 12(g) of the Exchange Act (generally, "OTC securities"). Exchange extensions of UTP to OTC securities, and specifically to Nasdaq/National Market securities, are subject to limitations provided in Section 12(f) and provided in an on-going pilot program. See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103. While the UTP Act removed the relevant application procedures for Nasdaq stocks, UTP in OTC securities continues to be subject to the on-going pilot program and the limitations it provides. For that reason, the Commission will consider issues involved in UTP extensions to OTC securities as the Commission continues its on-going review of the operation of the pilot program.

⁷Section 12(f)(1)(B), read jointly with Section 12(f)(1)(A)(ii), as amended, provides this exception for listed IPO securities. In defining securities that fall within the exception, new 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.

¹⁵ U.S.C. 78 I(f)(1)(G).

 $^{^8}$ Specifically, amended Section 12(f)(1)(C) provides:

Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in this subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation, or 240 days after such date of enactment, such interval shall begin 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 and end at the conclusion of the next trading day.

In short, this provision requires 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