Exchange Act. New Section 12(f)(2) requires public notice and Commission review of applications to reinstate UTP that has been suspended summarily by the Commission. The procedures and Commission standard of review for approval of a reinstatement application are substantially similar to the application and review process that previously preceded an exchange's initial extension of UTP to a security under former Section 12(f) and the rules thereunder.

These amendments to Section 12(f) reduce the waiting period that previously delayed exchange extensions of UTP to securities listed on other exchanges, or to certain securities traded OTC. In addition, the amendments direct the Commission to prescribe rules for UTP in listed IPO securities, and otherwise empowers the Commission to establish rules for UTP generally as the Commission deems appropriate in furtherance of the purposes of the Exchange Act.

II. Proposed Rules and Amendments to Existing Rules Pursuant to Amended Section 12(f)

As described in more detail below, the Commission is proposing two new rules and amendments to and rescissions of existing rules. Specifically, the Commission is proposing new Rule 12f–2 concerning UTP in listed IPO securities, and is soliciting comment on alternatives to the proposed rule that would be consistent with the UTP Act. The Commission also is proposing and soliciting comment on new Rule 12f–5 regarding exchange rules to ensure the maintenance of fair and orderly markets and the protection of investors for all securities traded pursuant to UTP. To provide consistency between the amendments to Section 12(f) and the rules thereunder, the Commission also is proposing to amend existing Rules 12f–1 and 12f–3 and to rescind existing Rules 12f–2 and 12f–6. Finally, the Commission is soliciting comment on whether other Commission action concerning intermarket linkages, as they affect UTP in listed securities, is necessary to facilitate the operation of the UTP Act.

A. Listed Securities That Are the Subject of an Initial Public Offering (Proposed Rule 12f–2)

As discussed above, the UTP Act generally allows exchanges to extend UTP to securities when they become listed and registered on another exchange or included in Nasdaq, except in the case of listed IPO securities. In this regard, the UTP Act establishes a temporary provision that requires exchanges to wait until the third day of trading in the security on the listing exchange before extending UTP to the security. Before April 21, 1995, the Commission must prescribe by rule or regulation the appropriate waiting period, if any, that would apply before an exchange may extend UTP to any listed IPO security following the commencement of its IPO.

The Commission is proposing new Rule 12f–2 under the Exchange Act to establish the waiting period that would govern the extension of UTP to a security that is the subject of an IPO. Proposed Rule 12f–2 would 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 Exchange Act.[9] The proposed rule, therefore, would shorten the mandatory waiting period (or ''interval,'' as it is described in the UTP Act) for UTP in listed IPO securities from two trading days, as temporarily specified by amended Section 12(f), to the time that it takes to effect and report the initial trade in the security on a listing exchange.

Rule 12f–2 would define the term ''subject security'' to mean a security that is the subject of an initial public offering, as that term is defined in Section 12(f)(1)(G) of the Exchange Act. To ensure that the proposed rule would not provide any means to circumvent other Section 12(f) objectives and requirements, the proposed rule also would provide that the extension of UTP pursuant to the rule would be subject to all the provisions set forth in Section 12(f) of the Exchange Act, as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

The Commission preliminarily believes that it is appropriate to minimize regulatory restraints on competition for trading listed IPO securities. 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.

The Commission is proposing a one-trade interval before exchanges may extend UTP to a listed IPO security because the Commission preliminarily believes that the first transaction in an IPO, as disseminated on the consolidated tape, conveys essential information to the public concerning the pre-evaluated offering price of the security. 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 trades on the listing exchange, it may be difficult to ensure that all the preparation for the IPO had been completed before public trading in the security commenced.

During the legislative process preceding the UTP Act, conflicting views arose among interested parties concerning the appropriate waiting period, if any, for UTP in listed IPO securities. At the UTP Hearing, testimony and evidence were presented to show the negative impact that a mandatory waiting period for UTP has on competition.[10] At the same time, however, one interested party asserted 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.[11]

In a report to Congress on the UTP Act, the House Committee on Energy and Commerce provided guidance concerning specific matters it considered relevant to the present Commission rulemaking and resolution of the above concerns:

> 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

[9] 17 CFR 240.11Aa3–1 (1991).

[10] See prepared testimony of Nicholas A. Giordano, President and Chief Executive Officer, Philadelphia Stock Exchange, UTP Hearing, supra note 5.

[11] See prepared testimony of Edward A. Kwalwasser, Executive Vice President, Regulation, New York Stock Exchange, UTP Hearing, id.