

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 market.¹²

The Commission seeks comment on each of these matters. The Commission believes that identification and analysis of the potential harms and benefits that would result from either no waiting period, or from a longer waiting period than that proposed by the Commission, would be particularly useful in its review.

The Commission also seeks comment on the one-trade waiting period as proposed. To the extent that commenters believe a waiting period is appropriate, the Commission requests that they provide data to illustrate the potential negative effects on the pricing of an IPO. Commenters also may wish to provide an analysis of the effects of the current two-day waiting period. Finally, the Commission would be interested in receiving alternative proposed rules from commenters who believe that either no waiting period or a longer waiting period is appropriate.

B. Exchange Rules for Securities to Which Unlisted Trading Privileges are Extended (Proposed Rule 12f-5)

Section 12(f)(1)(D), as amended, authorizes the Commission to prescribe, by rule or regulation, such additional procedures or requirements for extending UTP to any security as the Commission deems necessary or appropriate 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 Exchange Act. Pursuant to this authority, the Commission is proposing Rule 12f-5, which would prohibit an exchange from extending UTP to any security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP.

This rule is intended to preserve a benefit of Commission review of UTP applications prior to the UTP Act. Previously, the Commission reviewed each UTP application to ensure that the

applicant exchange had rules in place to cover the trading of the product class of the security for which the exchange applied. In general, applicant exchanges had listing rules in place that provided for transactions for most product classes of securities. Occasionally, however, an exchange would submit a UTP application to the Commission to trade a new or unusual product class of securities that had been approved for trading on the listing exchange, but had not been approved for trading on the applicant exchange.¹³

For example, the Commission would approve a proposed rule change to the Commission, pursuant to Section 19(b) of the Exchange Act, by an exchange to list and trade a new type of security. The proposed rule change established exchange rules to ensure the maintenance of fair and orderly markets in the securities and sufficient mechanisms for regulatory oversight of the named securities to provide for the protection of investors. A regional stock exchange occasionally filed a UTP application for the security without submitting a similar proposed rule change pursuant to Section 19(b) of the Exchange Act. The Commission's review procedures for UTP applications identified those instances so that necessary rules would be in place on the applicant exchange in order to ensure the maintenance of fair and orderly markets and the protection of investors.

The Commission is proposing Rule 12f-5 to require exchanges to ensure that these rules and oversight mechanisms exist on their exchanges for the relevant securities before extending UTP to the securities. The proposed rule reconfirms to exchanges their obligation to evaluate their extensions of UTP before allowing their members to trade the securities.

In soliciting comment on the proposed rule, the Commission is particularly interested in the views of market participants and other commenters concerning the need for the rule and whether it would, in practice, help ensure that an exchange has all the necessary rules in place to provide for fair and orderly markets in all securities to which the exchange extends UTP.

¹³ Prior to the UTP Act, exchanges were not permitted to apply to the Commission for UTP in any security for which the applicant exchange had not adopted listing standards and proper trading rules, pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder. Proposed Rule 12f-5 would make explicit the obligation to have the necessary rules in place before extending UTP to a specific type of security.

C. Proposed Amendments to Existing Rules 12f-1 and 12f-3, and Proposed Rescission of Existing Rules 12f-2 and 12f-6

Several of the rules prescribed under former Section 12(f) concerned the application process for extensions of UTP. The Commission is proposing to amend or rescind these rules to reflect statutory changes, and is soliciting comment on whether these proposed changes are appropriate.

First, the Commission is proposing to amend Rule 12f-1,¹⁴ to limit its operation to an exchange's application to reinstate UTP after a Commission suspension. Section 12(f), as amended, requires an exchange to apply to the Commission for UTP if the Commission has suspended the exchange's extension of UTP to the security. The proposed amendment would require essentially the same format for applications to reinstate UTP as was required by the rule under former Section 12(f) for applications to extend UTP.

Second, the Commission is proposing to rescind existing Rule 12f-2 and remove Form 27 referred to in the rule.¹⁵ This rule and form dealt with instances where an exchange might have been required to cease extending UTP, and to reapply for UTP, in a security that was "changed" immaterially for those purposes. The rule and form provide an exemption from reapplication for UTP in these cases. The Commission is proposing to rescind the rule because the application procedures, from which the rule provided an exemption, no longer exist.

Third, the Commission is proposing to rescind the last sentence of paragraph (b) of Rule 12f-3.¹⁶ Rule 12f-3 allows the issuer of a security that is traded pursuant to UTP, or any broker or dealer who makes a market in the security, or any other person having a bona fide interest in the question of termination or suspension of UTP in the security, to apply to the Commission for the termination or suspension of UTP in the security. The Rule also identifies the categories of information that should be provided in the application, which includes the applicant's statement that it has sent a copy of the application to the exchange from which the suspension or termination is sought. Thereafter, the Rule provides that the exchange may terminate or suspend UTP in the security in accordance with its rules. Finally, the Rule requires the exchange, upon suspension or

¹⁴ 17 CFR 240.12f-1 (1991).

¹⁵ 17 CFR 240.12f-2 (1991).

¹⁶ 17 CFR 240.12f-3 (1991).

¹² H.R. Rep. No. 626, 103d Cong., 2d Sess. (1994).