

termination, promptly to file Form 28 with the Commission.

The Commission believes this final requirement no longer is necessary because exchanges are no longer required to apply to the Commission to extend UTP to a security. Thus, notifying the Commission of termination or suspension of UTP serves no purpose. The Commission, therefore, is proposing to rescind that last requirement from the Rule concerning Form 28, and to remove Form 28, in order to conform further with efforts to streamline the regulatory process concerning UTP.

Finally, the Commission is proposing to rescind Rule 12f-6.<sup>17</sup> This rule exempts a merged exchange from the UTP application process in certain circumstances. The exemption no longer is necessary because the waiting period that restrained exchanges from extending UTP to most securities has been eliminated by the UTP Act.

The Commission is soliciting comment on each of these proposed Commission rule changes. The Commission is interested in comments on whether the proposed amendments and rescissions accomplish the Commission's goals with respect to the amendments or rescissions. The Commission also is interested in receiving comments concerning the continued necessity of other provisions of the rules, given the recent amendment to Section 12(f) of the Exchange Act.

#### *D. Solicitation of Comment on Structural Implications of Immediate UTP*

The Commission is seeking comment on whether any Commission action is necessary under Section 12(f), in order to carry out the congressional objectives of linked markets as required by Section 11A(a)(1)(D),<sup>18</sup> to make changes to the consolidated quotation, trade reporting, and routing of customer and principal interest in securities that are traded pursuant to UTP, now that exchanges and linking facilities will have less time to prepare for multiple exchange market trading in the securities. The Commission is particularly interested in comments concerning any existing procedural delays that should be

corrected by Commission action in order to ensure that the operation of amended Section 12(f) is not impeded.

### **III. Initial Regulatory Flexibility Analysis**

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. § 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small businesses" adopted by the Commission for purposes of the Regulatory Flexibility Act ("RFA"). As described in Section II, above, the Commission is proposing rules and changes to existing rules under Section 12(f) to comply with the UTP Act directives and to further the objectives of this recent amendment. Proposed Rule 12f-2 would require exchanges to wait, before extending UTP to such a security, until the listing exchange effects and reports the first transaction in the security.

Proposed Rule 12f-2 primarily has an impact on competitive initiatives of the self-regulatory organizations, which are not small businesses for the purposes of the RFA.<sup>19</sup> The proposed rules also may have some economic effect on some businesses that may be, from time to time, small businesses for the purposes of the RFA. Specifically, the proposed rule may affect the order-routing choices available to broker-dealer firms and would designate the moment at which regional exchange specialist firms may compete for order flow in any listed IPO security. Some broker-dealers and some regional specialist firms may be small businesses. The Commission believes, however, that the economic impact of the rule may not be "significant" and the number of "small businesses" that would be affected by the rule may not be "substantial," as contemplated by the RFA. In this regard, the Commission notes, among other things, that listed IPO securities comprise only a fraction of the overall number of securities available for order-routing by broker-dealers and for trading by regional specialist firms, and only a small number of those firms are "small businesses." Furthermore, neither small nor large businesses would be subject to

reporting, recordkeeping, or other compliance requirements under the proposal.

The other proposals would restate existing standards for exchange extensions of UTP, and would amend existing rules under Section 12(f) to conform to the UTP Act and, therefore, should have no economic impact for the purposes of the RFA.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Betsy Prout, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 942-0170.

### **IV. Effects on Competition**

Section 23(a)(2) of the Exchange Act<sup>20</sup> requires the Commission, in adopting rules under the Exchange Act, to consider any anti-competitive effects of the rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Act. As discussed in more detail above, the extension of unlisted trading privileges allows exchanges to compete with the listing exchange, other exchanges, and with dealers for order flow in the relevant securities. The rules promulgated under Section 12(f), therefore, may directly affect competition among market centers and their members. In addition, firms sending orders to the market centers for execution may also be affected by limitations that the proposed rules may place on their order-routing practices. The Commission is soliciting comment on the effect the proposed rules, and the proposed changes to existing rules, may have on exchanges, associations, their members, and order-routing firms.

### **List of Subjects in 17 CFR Parts 240 and 249**

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* to read 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, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-

<sup>20</sup> 15 U.S.C. 78w(a)(2).

<sup>17</sup> 17 CFR 240.12f-6 (1991).

<sup>18</sup> Section 11A(a)(1)(D) of the Exchange Act provides:

The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

<sup>19</sup> The relevant rule under the Act, 17 CFR 240.0-10, provides that, for the purposes of the RFA, "small business" (when referring to a broker or dealer) shall mean a broker or dealer that had total capital of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, or if not required to be prepared, on the last business day of the preceding fiscal year. Also, "small business" does not include any entity that is affiliated with another entity that is not a small business.