Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amdt. No. 3 to S.O. No. 1238]

PART 1033—CAR SERVICE

Certain Railroads Directed To Operate Portions of Lines Formerly Operated by Railroads in Bankruptcy

MAY 28, 1976.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of May 1976.

Upon further consideration of Service Order No. 1238 (41 F.R. 14520, 15848, 18850 and 19223), and good cause appearing therefor:

It is ordered, That:

§ 1033.1238 Certain railroads directed to operate portions of lines formerly by railroads in bankruptcy.

Third Revised Appendix A to Service Order No. 1238 be, and it is hereby, substituted for Corrected Second Revised Appendix A thereof; and

It is further ordered, That Service Order No. 1238 be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* The provisions of this order shall expire at 12:01 a.m., July 29, 1976, or upon notification to the Commission of the entry of a rail service continuation payment operating agreement, whichever occurs first, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective 12:01 a.m., May 31, 1976.

It is further ordered, That a copy of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

(Interprets and applies Sec. 304 of Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 744); Public Laws 93-236 and 94-210.)

By the Commission, Railroad Service Board, Members Lewis R. Teeple, Thomas J. Byrne, and William J. Love. Member William J. Love not participating.

[SEAL] ROBERT L. OSWALD,
Secretary.

Service Order No. 1238

[3d Revised App. A. Revised May 31, 1976]

Line description USRA No.	From—	To—	Designated operator	Former operator	Person offering rail service continuation payment
*	*	*	*	*	*
533/534/534a	Celina, Ohio, M.P. 127.3. Effective 12:01 a.m., Apr. 15, 1976.	Celina, Ohio, M.P. 125.8.	Norfolk and Western RR. Co.	PC	State of Ohio.
*	*	*	*	*	*

NOTES

Definition PC=Penn Central Transportation Co., Robert W. Blanchette, Richard C. Bond, and John H. Mc. Arthur, trustees.

USRA line No. 442 deleted—see Service Order No. 1244.

USRA line No. 924 deleted.

[FR Doc.76-16420 Filed 6-4-76;8:45 am]

[S.O. No. 1244]

PART 1033—CAR SERVICE

Soo Line Railroad Co.

MAY 28, 1976.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held at its office in Washington, D.C., on the 28th day of May 1976.

It appearing, That by telegram dated May 27, 1976, the Michigan Department of State Highways and Transportation has requested a 60 day extension of the Commission's order requiring the Soo Line Railroad Company (Soo Line) as designated operator of the State of Michigan to continue operation of the Mackinac Ferry to permit the State to finalize arrangements for the continued provision of such service by another operator and has offered to compensate Soo Line for such service in accordance with regulations promulgated by the Rail Services Planning Office in Ex Parte No. 293 (Sub-No. 2), Standards for Determining Rail Service Continuation Subsidies upon entry into an agreement by Soo Line to provide interim service in consideration of the payment of such compensation;

It further appearing, That the State alleges that the failure to extend the service order as requested would result in a disruption of the subject ferry service and might impair its ability to provide for the continuation of such service by an alternate operator, thereby resulting in the ultimate loss of such service;

It further appearing, That the continuation of such service is contemplated by the State's Rail Services Plan filed with the United States Department of Transportation (DOT) pursuant to regulations issued by DOT under Section 402 of the Regional Rail Reorganization Act of 1973, as amended (the Rail Act).

It further appearing, That Soo Line by telegram of May 27, 1976, opposes such extension on the grounds that: (1) the State is not a responsible person as that term is used in Section 304(c) of the Rail Act because of its refusal to assume responsibility for employee protection expenses; (2) no disruption or loss of rail service would result if the ferry were discontinued because of the small amount of traffic involved and its willingness to handle the traffic involved over an alternate all rail route via Chicago, and (3) the public interest does not justify the expense of continuing the operation.

It further appearing, That a State offering to pay a rail service continuation payment in accordance with RSPO's Subsidy Regulation and having the unquestioned authority to do so, subject only to the requirement that the designated operator enter into an agreement to provide the service in question in consideration of the State's agreement to pay, cannot be found not to be "a responsible person" as contended by Soo Line;

It further appearing, That a disruption of service over the rail route utilizing the Mackinac Ferry will occur unless the order is extended by the State and that no provision of the Rail Act empowers the Commission to determine that the public interest will permit the disruption of a service for which a rail service continuation subsidy has been offered by a responsible person or that an alternate route will provide a satisfactory substitute for the service for which a rail service continuation subsidy has been offered as contended by Soo Line; and

It further appearing, That Soo Line does not contend that entry into an agreement as required by the State to permit it to disburse funds to Soo Line pursuant to the RSPO Subsidy Regulations would substantially impair Soo Line's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations, which affords the only statutory basis upon which the Commission would be empowered to relieve it of the obligation for doing so.

It is ordered, That:

§ 1033.1244 Soo Line Railroad Company directed to operate USRA Line No. 442 between St. Ignace, Michigan, and Mackinaw City, Michigan.

(a) The Soo Line Railroad Company be, and it is hereby, directed to operate at the service level indicated in the operating agreement or rail service continuation payment proffered by the State of Michigan, the railroad car ferry formerly operated by the Mackinac Transportation Company (Mackinac), an affiliate of the Soo Line Railroad Company and of the Penn Central Transportation Company, Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees (Penndel Company and Michigan Central Railroad Company (Lessors)), (PC) and identified as USRA Line No. 442, between St. Ignace, Michigan, and Mackinaw City, Michigan.

(b) *It is further ordered*, That Mackinac and the Trustees of PC described in Section 304(a) of the Regional Rail Reorganization Act of 1973, as amended, shall permit entry onto such properties to allow continuation of service, free of all interference by the Trustees.

(c) *Rates applicable*. Inasmuch as this operation by the designated operators on behalf of the financially responsible persons offering rail service continuation payments over tracks formerly operated by Mackinac and the Trustees is deemed to be due to carrier disability, the rates applicable to traffic routed to, from, or via these lines shall be the rates which were formerly in effect on such traffic when routed via the Trustees, until tariffs naming rates and routes specifically applicable to the lines of the designated operators become effective.

(d) *Divisions of rates*. In transporting traffic over these lines formerly operated by Mackinac and the Trustees, the designated operators and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the financially responsible persons and said carriers; or upon failure of the parties to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(e) *It is further ordered*, That this order shall be effective upon the date of service and the operations which the designated operators are herein directed to perform shall commence at 12:01 a.m., May 31, 1976, and shall remain in effect until 12:01 a.m., June 30, 1976, provided that the State of Michigan has filed with the Commission on or before June 8, 1976, an agreement unconditionally offering to compensate Soo Line in accordance with RSPO Subsidy Regulations for services provided and to be provided pursuant to orders of this Commission under Section 304(d)(3) of the Rail Act.

It is further ordered, That a copy of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C. and by filing it with the Director, Office of the Federal Register.

(Interprets and applies Sec. 304 of Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 744); Public Laws 93-236 and 94-210.)

By the Commission, Railroad Service Board, members Lewis R. Teeple and Thomas J. Byrne. Member William J. Love not participating.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.76-16419 Filed 6-4-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release 34-12468]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Regulation of Municipal Securities Professionals and Transactions in Municipal Securities

On November 26, 1975, the Securities and Exchange Commission announced the adoption of Securities Exchange Act temporary Rule 23a-1(T)[1] relating to the regulation of the activities of certain municipal securities professionals and published proposals concerning the regulation of municipal securities brokers, municipal securities dealers and transactions in municipal securities.[2] The Commission has considered the comments and suggestions it has received concerning the proposals and has amended Securities Exchange Act Rules 10b-3, 15b8-1, 15b8-2, 15b9-1, 15b9-2, 15c1-1, 15c1-3, 15c1-4, 15c1-5, 15c1-6, 15c1-7, 15c1-8, 15c2-4, 15c2-5, 15c2-7 and 15c2-11[3] and adopted Securities Exchange Act Rule 15b10-12,[4] effective July 5, 1976. The Commission has also amended Securities Exchange Act temporary Rule 23a-1(T) to extend the exemptions provided by that rule until July 5, 1976.[5] The purpose of the amendments and newly adopted rule is to provide for appropriate application of the rules established for brokers and dealers to transactions in municipal securities by brokers, dealers, and municipal securities dealers and to provide exemptions where such regulation of municipal securities transactions or certain municipal securities professionals would be inappropriate or inadvisable at this time. The Commission has also withdrawn proposed amendments to Securities Exchange Act Rule 10b-16.[6]

RULES UNDER SECTION 15(c)(1) OF THE SECURITIES EXCHANGE ACT OF 1934[7] (THE "ACT") AND RULE 10b-3

Rules adopted under section 15(c)(1) and Rule 10b-3 define practices which are manipulative, deceptive, or fraudulent and are, therefore, prohibited if engaged in by a broker or dealer who makes use of the mails or any means or instrumentality of interstate commerce ("the jurisdictional means") to effect transactions in securities otherwise than on a national securities exchange of which it is a member, or by a municipal securities dealer who makes use of the jurisdictional means to effect transactions in municipal securities. These rules have been applicable since their adoption to transactions by brokers and dealers, including those who confined their dealings to transactions in municipal securities or exempted securities.[8]

In Release No. 11876 the Commission proposed to amend the rules under section 15(c)(1) that specifically refer to brokers and dealers (Rules 15c1-1, 15c1-3, 15c1-4, 15c1-5, 15c1-6, 15c1-7 and 15c1-8) and Rule 10b-3 (which also specifically refers to brokers and dealers) to include municipal securities dealers.[9] The effect of the proposed amendments would be to prohibit municipal securities dealers from engaging in manipulative acts and practices defined as such by the rules under section 15(c)(1) of the Act with respect to their business in municipal securities. Section 15(c)(1) of the Act provides that, with respect to municipal securities dealers, unlike brokers and dealers, the rules

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[1] 17 CFR 240.23a-1(T).

[2] Securities Exchange Act Release No. 11876 (November 26, 1975), 40 FR 57357 and 60084 (1975) ("Release No. 11876").

[3] 17 CFR 240.10b-3, 240.15b8-1, 240.15b8-2, 240.15b9-1, 240.15b9-2, 240.15c1-1, 240.15c1-3, 240.15c1-4, 240.15c1-5, 240.15c1-6, 240.15c1-7, 240.15c1-8, 240-15c2-4, 240.15c2-5, 240.15c2-7 and 240.15c2-11.

[4] 17 CFR 240.15b10-12.

[5] The Commission is currently studying proposed amendments to Rule 15b1-3 (17 CFR 240.15b1-3) and proposed Rules 15Ba2-4, 15Ba2-5, 15Bc3-1 and 17a-21 (17 CFR 240.15Ba2-4, 240.15Ba2-5, 240.15Bc3-1 and 240.17a-21) which were also announced in Release No. 11876.

[6] 17 CFR 240.10b-16. See, separate document published in this issue.

[7] 15 U.S.C. 78o(c)(1).

[8] See, Securities Exchange Act Release No. 1330 (August 4, 1937), 2 FR 1389 (1937).

[9] Rule 15c1-1 defines the terms "customer" and "completion of the transaction" for purposes of the Section 15(c)(1) series of rules; Rule 15c1-3 prohibits misrepresentation by brokers and dealers as to registration pursuant to Section 15(b) of the Act (15 U.S.C. 78o(b)); Rule 15c1-4 prohibits the effecting of transactions without written confirmations thereof; Rule 15c1-5 prohibits a broker or dealer from effecting a securities transaction for the account of a customer in a security, where the issuer is in a control relationship with the broker or dealer, unless the broker or dealer discloses to the customer the existence of that relationship; Rule 15c1-6 requires disclosure of participation or interest in a distribution; Rule 15c1-7 prohibits "churning"; Rule 15c1-8 prohibits a broker or dealer from representing that a distribution is being made "at the market" unless the broker or dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by him; and Rule 10b-3 prohibits a broker or dealer from using any act, practice or course of business which has been defined by the Commission as within the term "manipulative, deceptive, or other fraudulent device or contrivance" as such term is used in Section 15(c)(1).

adopted thereunder would apply only to their business in municipal securities rather than in all securities (except commercial paper, banker's acceptances or commercial bills). Rules 10b–3 and 15c1–1, as adopted, contain language, which differs from that in the proposed amendments, designed to clarify the scope of the rules in this respect.

Rules adopted under section 15(c)(1), as amended to apply to municipal securities dealers, apply to any transaction in municipal securities engaged in by such persons regardless of the capacity in which they acted (i.e., as fiduciary or agent). Therefore, if a municipal securities dealer is a bank rather than a separately identifiable department or division of a bank, Rule 15c1–6, under the circumstances stated in the rule, would apply to a transaction between the bank and a customer for whom the bank performed fiduciary duties and from whom the bank collected a fee for advising such customer with respect to securities. Similarly, Rule 15c1–4 as amended requires that a bank municipal securities dealer which acts as agent with respect to a transaction in municipal securities, give or send to a customer, at or before the completion of each such transaction, written notice disclosing whether he is acting as an agent for such customer, an agent for some other person, or as agent for both the customer and some other person.[10]

Amendments to Rules 15c1–3, 15c1–5, 15c1–6, 15c1–7 and 15c1–8 were adopted without change, thereby extending the application of those rules to transactions in municipal securities. In its comments on the proposals contained in Release No. 11876, the Municipal Securities Rulemaking Board ("MSRB"), which is required under section 15B(b)(2) of the Act[11] to promulgate rules concerning transactions in municipal securities by brokers, dealers and municipal securities dealers, stated that municipal securities dealers presently represent that securities are being offered "at the market" when they mean "that the price at which the securities are offered relates to the price at which municipal securities of comparable quality and similar characteristics are being traded."[12] Rule 15c1–8, which has applied to transactions in municipal securities since its adoption in 1937,[13] permits a broker or dealer to represent that a security is being offered "at the market" or at a price related to the market price if "such broker or dealer knows *or has reasonable grounds to believe* that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution. * * *" (emphasis supplied). Many investment grade debt securities, which includes certain municipal securities, are not considered unique by investors, and, therefore, trade on the basis of such factors as money market conditions generally, coupon, maturity, yield to maturity and call or redemption provisions. In the case of such securities, the fact that there is an independent market for other classes of securities of the same issuer and for securities of other issuers which have comparable quality and yields, may, under appropriate circumstances, provide reasonable grounds for believing that an independent market exists at the offer for the particular security offered, if offered in blocks of comparable size. Based on that understanding of Rule 15c1–8, the Commission does not believe that its continued application to brokers and dealers, or its extension to municipal securities dealers, should present undue problems to the municipal securities market.[14]

RULES UNDER SECTION 15(c)(2) OF THE ACT[15]

Prior to the Securities Acts Amendments of 1975 ("1975 Amendments"),[16] municipal securities were "exempted securities" under the Act, and section 15(c)(2) of the Act, which by its terms does not apply to "exempted securities," and rules promulgated thereunder were inapplicable to brokers and dealers effecting transactions in municipal securities. As a result of changes in the Act effected by the 1975 Amendments, Rules 15c2–4, 15c2–5, 15c2–7 and 15c2–11 would have become applicable to transactions in municipal securities by brokers and dealers.[17] To preserve the status quo pending careful examination of those rules, the Commission announced the adoption of temporary Rule 23a–1(T) in Release No. 11876.

(1) RULE 15C2–4

The Commission has adopted amendments to Rule 15c2–4, as proposed in Release No. 11876, to extend the application of the rule to bank municipal securities dealers, and, upon the expiration of Rule 23(a)(1)(T) on July 5, 1976, the rule will be applicable for the first time to transactions in municipal securities effected by brokers and dealers. Rule 15c2–4 provides important protections to issuers and purchasers in "best-efforts" and "all-or-none" offerings. The Senate Report on S. 249 states in discussing the amendment of sections 15(c) (1) and (2) and the application of those sections of the Act to transactions in municipal securities:

> This power, which the SEC arguably already has under section 10(b) of the Exchange Act, is included in the bill to make clear that the Commission's responsibility extends beyond sanctioning those who have engaged in manipulative or deceptive practices with respect to municipal securities and includes the promulgation of prophylactic rules.[18]

Rule 15c2–4 is a necessary "prophylactic rule" which should apply to underwritings, other than firm commitment

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[10] Amendments to Rule 15c1–4, as adopted, clarify the proposed amendments. The rule, as amended, does not apply the phrase "acting as broker" to transactions in which a bank municipal securities dealer acts as agent. By definition, a bank is not a broker. Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)). 17 CFR 240.0–1(b) provides: "Unless otherwise specifically stated the terms used in this part [which includes Rule 15c1–4] shall have the meaning defined in the Act."

[11] 15 U.S.C. 78o–4(b)(2).

[12] Letter from the Municipal Securities Rulemaking Board to the Securities and Exchange Commission, Feb. 13, 1976. File No. S7–604.

[13] Securities Exchange Act Release No. 1330 (Aug. 4, 1937).

[14] The Commission has held, under Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and Section 10(b) (15 U.S.C. 78j(b)) and Rules 10b–5 (17 CFR 240.10b–5) and 15c1–2 under the Act, that "a dealer, in quoting prices to customers and selling at such prices, impliedly represents that the sale price bears some relation to a price prevailing in a free and open market." Norris & Hirshberg, Inc., 21 SEC 865, 881 (1946), aff'd 177 F. 2d (D.C. Cir. 1949). The Commission recognizes nevertheless that, as a result of the 1975 Amendments, those concerned with municipal securities have recently given substantial and detailed attention to Commission rules, including rules which have always been applicable to transactions by brokers and dealers in municipal securities. In that connection the Commission understands that the MSRB has taken the lead in exploring whether there are currently conditions or practices in the municipal securities market, or even in the market for other types of debt securities, which would make appropriate any reformulation or further interpretation of Rule 15c1–8 (or other similar rules) with a view to distinguishing more clearly between types of securities or types of customers. The Commission appreciates the efforts of the MSRB and will review carefully any evidence developed as a consequence of that or any other inquiry.

[15] 15 U.S.C. 78o(c)(2).

[16] Pub. L. 94–29 (June 4, 1975).

[17] Rule 15c2–4 requires prompt transmission, or maintenance in escrow, of payments received in connection with distributions which are made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made until some future event or contingency occurs; Rule 15c2–5 prohibits a broker or dealer from arranging a loan for a customer to whom a security is sold (other than a loan in compliance with Regulation T) unless, before the transaction was entered into, the broker or dealer reasonably determined that the transaction, including the loan arrangement, is suitable for the customer and delivers to him a written statement setting forth certain material information as to the nature and extent of a customer's obligations; Rule 15c2–7 requires the identification of quotations furnished in an interdealer quotation system; and Rule 15c2–11 requires that certain information concerning an issuer be available if a broker disseminates any quotation for a security.

[18] S. Rep. No. 94–75, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, 94th Cong., 1st Sess. 50 (1975).

underwritings, of municipal securities as well as corporate securities.[19]

(2) RULE 15C2-5

After considering comments received concerning proposals in Release No. 11876 to apply the disclosure provisions of subparagraph (a)(1) of Rule 15c2-5 to all municipal securities professionals while providing an exemption for all municipal securities transactions from the suitability requirements contained in subparagraph (a)(2) of the rule, the Commission has adopted an exemption for municipal securities transactions from all the provisions of the rule. Thus, Rule 15c2-5 which has never applied to transactions in municipal securities will continue to be inapplicable to such transactions. Rule 15c2-5 is inapplicable to most transactions in securities, and the Commission has determined that it is not necessary, at this time, to impose special requirements with respect to extensions of credit in connection with transactions in municipal securities. Brokers and dealers extending credit in connection with transactions in municipal securities will be subject to Rule 10b-16 and other applicable provisions. Municipal securities dealers will be regulated by the general anti-fraud provisions under the federal securities laws, as well as regulations administered by bank regulatory agencies such as the Truth-in-Lending Act.[20]

[19] Rule 15c2-4 regulates the use which can be made, by brokers, of payments made in respect to securities being offered in underwritings other than firm commitment underwritings. Persons concerned with regulation of municipal securities transactions also draw attention to Rule 10b-9 (17 CFR 240.10b-9), which prohibits certain representations in connection with underwritings and which has been applicable to municipal securities since its adoption in 1962. Rule 10b-9 is intended to protect investors whose decisions to purchase a security in an underwriting are made in the expectation that an investment presents an acceptable risk if, but only if, the issuer received proceeds from the offering to the extent represented ("all or none" or "part or none"). Thus, "[t]he representation is intended to assure subscribers that, if the offering should prove unsuccessful in that less than all or less than the specified minimum number of securities are sold, their funds, or an indicated part of their funds, will promptly be returned." Securities Exchange Act Release No. 11532 (July 11, 1975). Accordingly, Rule 10b-9 would not specifically apply to secondary market transactions where potential purchasers would not be relying on an "all or none" or similar representation in terms of the proceeds to be received by an issuer. Nevertheless, material misrepresentations of any kind, whether in connection with primary or secondary transactions, would violate Rule 10b-5. The Commission understands that the MSRB is investigating the practice of using the term "all or none" in secondary market transactions in municipal securities with a view to determining whether any clarification would be appropriate.

[20] (15 U.S.C. 1601 et seq.).

(3) RULE 15C2-7

In Release No. 11876 the Commission proposed to amend Rule 15c2-7 and to make it applicable to quotations in municipal securities entered in an interdealer quotation system by a broker, dealer, or bank municipal securities dealer. After considering comments received, the Commission has concluded that the need for rules regulating quotations for municipal securities may be different than that for equity securities and has adopted an exemption to Rule 15c2-7 so that the rule will, for the time being, remain inapplicable to transactions in municipal securities. The MSRB is required by section 15B(b)(2)(F) of the Act to propose and adopt rules governing the form and content of quotations for municipal securities and, therefore, adoption of the exemption will allow the MSRB to complete its review of the need for regulation of quotations in municipal securities and, as appropriate, to require implementation of modifications in municipal interdealer quotation systems in an orderly manner.

(4) RULE 15C2-11

The Commission proposed, and has adopted, a complete exemption from the operation of Rule 15c2-11 for quotations in municipal securities. Rule 15c2-11 provides that it shall be a fraudulent, manipulative or deceptive practice within the meaning of section 15(c)(2) of the Act for any broker to disseminate any quotation for a security unless certain information concerning the issuer is available—either in a filing with the Commission or in the broker's own files.

Generally, the type of information required by the rule is that which would be disclosed in a registration statement filed under the Securities Act of 1933 or in the periodic reports filed under the Securities Exchange Act. Since municipal securities and their issuers are currently exempt from federal registration and reporting requirements, the Senate Committee pointed out, in reporting on S. 249, that "Rule 15c2-11 type of information is * * * generally not available for municipal securities and their issuers."[21] The Committee then stated that applying Rule 15c2-11 to municipal securities would "preclude brokers and dealers from submitting quotations on most issues of municipal securities," a development which "would have very serious adverse consequences."[22] The Committee concluded by stating that:

> [I]t expects, therefore, that immediately upon enactment of S. 249, the Commission will exempt municipal securities from Rule 15c2-11.[23]

Accordingly, the Commission has amended Rule 15c2-11 to exempt quotations for municipal securities for the time being.

[21] S. Rep. No. 94-75, Report of the Senate Committee on Banking Housing and Urban Affairs to Accompany S. 249, 94th Cong., 1st Sess. 48 (1975).

[22] Id.

[23] Id.

Qualification Rules

Both the MSRB and the Commission have rulemaking authority with respect to establishing qualification standards for municipal securities professionals. Under section 15B(b)(2)(A) of the Act, the MSRB is required to adopt rules which provide that:

> No municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

The Commission's authority in this area is more circumscribed in one respect. Under section 15(b)(7) the Commission may adopt rules establishing standards of operational capability, training, experience and competence, with respect only to registered brokers and dealers—but not banks or separately identifiable departments or divisions of banks.[24]

The Commission currently has two rules dealing with qualifications for brokers and dealers. These two rules were adopted by the Commission under old section 15(b)(8). Rule 15b8-1, which applies only to brokers and dealers registered under section 15 of the Act who are not members of a registered national securities association (i.e., the NASD), provides that nonmember brokers and dealers may not effect over-the-counter transactions in securities unless: (1) each associated person of such nonmember broker or dealer who is engaged directly or indirectly in securities activities any part of which is in (a) sales, (b) trading, (c) research or investment advice, (d) advertising, (e) public relations, (f) hiring or recruitment of salesmen, (g) training of salesmen, or (h) underwriting, and every associated person who supervises others engaged in any of such activities, has successfully completed a general securities examination, and (2) such nonmember broker or

[24] The Commission's authority with respect to establishing qualifications for securities professionals was, however, expanded by the Act. Prior to the 1975 Amendments, old section 15(b)(8) of the Act provided the Commission's authority to set qualifications, but limited such authority to SECO broker/dealers (i.e., those registered brokers and dealers who effected transactions over-the-counter and who were not members of the NASD). The 1975 Amendments renumbered old section 15(b)(8) as 15(b)(7) and expanded its coverage to include all brokers and dealers registered pursuant to section 15 of the Act (15 U.S.C. 78o).

dealer shall have filed with the Commission a Form U–4[25] for each associated person engaged directly or indirectly in securities activities.

Rule 15b8–2, as recently amended,[26] provides that no registered broker or dealer or associated person of a registered broker or dealer shall be deemed qualified if, by action of a registered national securities association or exchange, such registered broker or dealer or associated person has been and is expelled or suspended from such association or exchange or has been and is barred or suspended from being associated with all members of such association or exchange for violation of any such association or exchange rule which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade. The rule also provides for a procedure for reinstatement upon application to the Commission.

At this time, the Commission continues to believe that the MSRB should, in the first instance, determine which associated persons should be required to take examinations, and what the content of those examinations should be,[27] even though the Commission's explicit authority has now been expanded to include qualifications for all brokers and dealers. On the other hand, the Commission is of the view that municipal securities professionals (other than banks) who are not members of the NASD should be required to file Form U–4 for their associated persons. Inasmuch as the NASD has the authority to require (and is requiring) that brokers and dealers applying for membership in that organization file Form U–4 for their associated persons for the principal purpose of determining whether any such person is subject to a "statutory disqualification," within the meaning of the Act, the Commission has concluded that SECO brokers and dealers should be subject to the same requirement.[28]

Accordingly, the Commission has amended Rule 15b8–1 to require only that nonmember brokers and dealers file Form U–4 on behalf of their associated persons who engage in municipal securities activities, and keep those forms accurate and complete. The Commission believes that requiring Form U–4 for associated persons is necessary to provide information to the Commission concerning the identity and background of associated persons, and that imposing such a requirement will not in any way interfere with the MSRB's function in establishing qualification standards for municipal securities professionals. The Commission also has amended the definition of "nonmember," for purposes of Rule 15b8–1, to include nonbank municipal securities dealers whose business is exclusively intrastate and who register pursuant to section 15B of the Act rather than section 15(b) ("intrastate dealers").

The Commission also has adopted an amendment to Rule 15b8–2. The amendment provides, in addition to the current disqualification, that a registered broker or dealer or associated person is not qualified if suspended or expelled by the NASD for violating a rule of the MSRB which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade. The appeal and reinstatement provisions of the rule remain unchanged, so that the Commission could remove a disqualification under appropriate circumstances.[29]

SECO Fees

Rules 15b9–1 and 15b9–2 under the Act provide for payment of fees and assessments by SECO brokers and dealers and require the filing of forms in connection therewith. Such fees are intended to defray the additional costs associated with regulating persons who are not members of a national securities association. The Commission has amended the definition of the term "nonmember" as used in those rules to make it applicable to intrastate dealers. Since the effective date of the amendment of Rule 15b9–2 is July 5, 1976, intrastate dealers will not be required to pay the annual assessment required by that rule until 1977.

Rules of Fair Practice

Nonmember brokers and dealers are subject to the so-called "SECO program" of the Commission adopted pursuant to sections 15(b) (8), (9) and (10) of the Act.[30] Enacted in 1964 as amendments to the Act, these provisions empowered the Commission to establish for such nonmember broker-dealers and their associated persons supplementary regulatory procedures and rules comparable to those adopted by the NASD for its members and their associated persons. In various rules adopted under the statutory provisions, the Commission has set up specific procedures and norms of conduct closely paralleling those of the NASD in areas such as qualifications of associated persons of broker-dealers (including written examination), fees and assessments, standards for supervision of securities employees, discretionary accounts and suitability of recommendations.

Section 15A(f)[31] of the Act, as redesignated by the 1975 Amendments, provides that section 15A,[32] which deals with the authority of the NASD, is inapplicable to transactions by a broker or dealer in any "exempted security," and, since municipal securities continue to be "exempted securities" for certain purposes under section 15A, including section 15A(b)(6), the NASD has no power to adopt rules prescribing just and equitable principles of trade for municipal securities professionals or to discipline members for violation of existing NASD rules regarding just and equitable principles of trade in connection with municipal securities transactions. Until the MSRB acts pursuant to its authority under section 15B(b)(2)(C) to enact rules applicable to all municipal securities professionals, both muncipal securities brokers and dealers which are members of the NASD, and municipal securities dealers which are banks or departments or divisions of banks, will not be subject to any specific rules dealing with just and equitable principles of trade. In light of the foregoing and in anticipation of the adoption of appropriate MSRB rules covering all municipal securities professionals, the Commission has adopted Rule 15b10–12 exempting from its existing SECO rules persons who are required to register as brokers and dealers solely by reason of acting as municipal

[25] Form U–4 is the new uniform registration form for associated persons. See Securities Exchange Act Release No. 11424 (May 15, 1975), 40 FR 30634 (1975).

[26] Securities Exchange Act Release No. 12160 (March 3, 1976), 41 FR 10599 (1976).

[27] The MSRB has filed, pursuant to section 19(b) of the Act (15 U.S.C. 78s), proposed rules which would establish professional qualification standards. File No. SR–MSRB–76–3. Securities Exchange Act Release No. 12177 (March 8, 1976), 41 FR 10686 (1976).

[28] On May 19, 1976, the MSRB filed, pursuant to Section 19(b) of the Act, a proposed rule which, subject to certain minor variations, would impose substantially similar requirements on all municipal securities professionals, including banks. File No. SR–MSRB–76–5. It currently appears that there would not be any conflict or unnecessary duplication as a result of the amendment of Rule 15b8–1 and the proposed MSRB rule.

[29] The MSRB has filed, pursuant to section 19(b) of the Act, proposed rules which provide that securities professionals who have been disciplined by, or barred or expelled from, an exchange or association for violation of rules governing just and equitable principles of trade in connection with corporate securities activities shall be disqualified from acting as a municipal securities broker or municipal securities dealer, or from acting as an associated person of a municipal securities broker or dealer (unless the Commission removes the disqualification). File No. SR–MSRB–76–3. Securities Exchange Act Release No. 12177 (March 8, 1976), 41 FR 10686 (1976).

[30] These sections were amended and redesignated as Sections 15(b) (7), (8) and (9) by the 1975 Amendments.

[31] 15 U.S.C. 78o–3(f).

[32] 15 U.S.C. 78o–3.

securities brokers or municipal securities dealers.[33]

Extension of Temporary Exemption

The amendments and rule adopted herein become effective July 5, 1976. In order to maintain the regulatory scheme for municipal securities professionals which existed prior to the effectiveness of the 1975 Amendments until such time as the amendments and rule become effective, the Commission has amended, effective May 15, 1976, Securities Exchange Act Temporary Rule 23a–1(T) to extend the exemptions provided in that rule.

Statutory Basis

The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94–29 (June 4, 1975), and particularly sections 2, 3, 10, 15, 15B, 17 and 23 thereof (15 U.S.C. 78b, 78c, 78j, 78o, 78o–4, 78q, and 78w), hereby amends Securities Exchange Act Rule 23a–1(T), effective May 15, 1976; adopts Securities Exchange Act Rule 15b10–12, effective July 5, 1976; and amends Securities Exchange Act Rules 10b–3, 15b8–1, 15b8–2, 15b9–1, 15b9–2, 15c1–1, 15c1–3, 15c1–4, 15c1–5, 15c1–6, 15c1–7, 15c1–8, 15c2–4, 15c2–7 and 15c2–11 effective July 5, 1976.

The Commission, for good cause, finds that notice, public procedures on, and prior publication, pursuant to 5 U.S.C. 553, of the amendments to Rule 15c1–1, 15c1–4, 15c2–5, 15c2–7 and Rule 23a–1 (T) are unnecessary because of the notice afforded by Securities Exchange Act Release No. 11876 and because the amendment to Rule 23a–1(T) extends existing exemptions. The Commission finds that amendments to Securities Exchange Act Rules 10b–3, 15b8–1, 15b8–2, 15b9–1, 15b9–2, 15c1–1, 15c1–3, 15c1–4, 15c1–5, 15c1–6, 15c1–7, 15c1–8, 15c2–4, 15c2–5, 15c2–7, 15c2–11 and 23a–1(T) and adoption of Rule 15b10–12 impose burdens on competition in that, among other things, they impose fees and filing requirements on, and provide restrictions on the conduct of, persons subject to the rules and in that, pending action by the MSRB, a complete regulatory system will not be in place in the case of those rules for which exemptions have been provided; the Commission further finds, however, that such burdens are appropriate in furtherance of the purposes of the Act because similar fees are paid by other municipal securities professionals (other than banks for which the Act did not contemplate the payment of such fees) and because the restrictions imposed will protect investors from practices, on the part of municipal securities professionals subject to such restrictions, which normally are detrimental to investors.

(Secs. 2, 3, 15, 17, 23, 48 Stat. 881, 882, 895, 897, 901, as amended by secs. 2, 3, 11, 14, 18, 89 Stat. 97, 97–104, 121–127, 137–141, 155–156; sec. 10, 48 Stat. 891; sec. 13, 89 Stat. 131–137 (15 U.S.C. 78b, 78c, 78o, 78q, 78w, as amended by Pub. L. 94–29); (15 U.S.C. 78j; 15 U.S.C. 78o–4), as added by Pub. L. 94–29.)

By the Commission.

Dated: May 20, 1976.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

The first paragraph of § 240.10b–3 is designated paragraph (a) and a new paragraph (b) is added as follows, effective July 5, 1976:

§ 240.10b–3 Employment of manipulative and deceptive devices, by brokers or dealers.

* * * * *

(b) It shall be unlawful for any municipal securities dealer directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any muncipal security, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive, or other fraudulent device or contrivance," as such term is used in Section 15(c)(1) of the Act.

Rule 15b8–1, 17 CFR 240.15b8–1, is amended by revising paragraph (c)(1) and adding paragraph (d) to read as follows, effective July 5, 1976:

§ 240.15b8–1 Qualifications and fees relating to brokers and dealers who are not members of a national securities association.

* * * * *

(c) * * *

(1) The term "nonmember broker or dealer" shall mean any broker or dealer, including a sole proprietor, registered under sections 15 and 15B of the Act who is not a member of a registered national securities association.

* * * * *

(d) (1) Except as hereinafter provided, the provisions of Rule 15b8–1 shall not apply to any person who is required to register as a broker or dealer solely by reason of acting as a municipal securities broker or municipal securities dealer, or to any other broker, or dealer insofar as such broker or dealer acts as a municipal securities broker or municipal securities dealer.

(2) No nonmember broker or dealer who is required to register as a broker or dealer solely by reason of acting as a municipal securities broker or municipal securities dealer, and no other nonmember broker or dealer, insofar as such broker or dealer acts as a municipal securities broker or municipal securities dealer, shall effect any transaction in, or induce the purchase or sale of, any municipal security unless such nonmember broker or dealer meets all the following conditions:

(i) Such a nonmember broker or dealer shall have filed with the Commission a Form U–4 with respect to each associated person engaged directly or indirectly in municipal securities activities, before such person engages in any such activities on behalf of such nonmember broker or dealer;

(ii) Such nonmember broker or dealer shall file promptly, in writing, information making accurate or complete a Form U–4 on behalf of any associated person whenever the information filed previously on behalf of such associated person is or becomes inaccurate or incomplete for any reason. This information may be in letter form and must be signed by a principal officer, partner, sole proprietor, managing agent, or any person occupying a similar status or performing similar functions; and

(iii) Such nonmember broker or dealer shall have filed with the Commission on or before July 31 of each year a list of associated persons with respect to whom Form U–4 has been filed with the Commission and who have ceased to be associated persons during the preceding year ending June 30.

Rule 15b8–2, 17 CFR 240.15b8–2, is amended by changing the heading and revising paragraph (a) to read as follows, effective July 5, 1976:

§ 240.15b8–2 Disqualification of registered brokers and dealers and their associated persons—association or exchange disciplinary actions.

(a) No registered broker or dealer or associated person of a registered broker or dealer shall be deemed qualified pursuant to Section 15(b)(7) of the Act, if, by action of a registered national securities association or exchange, such registered broker or dealer or associated person has been and is expelled or suspended from such association or exchange or has been and is barred or suspended from being associated with all members of such association or exchange for violation of any such association or exchange rule or rule of the Municipal

[33] Rules which are affected by this exemption are Rule 15b10–1 (17 CFR 240.15b10–1), which defines the terms "nonmember broker or dealer," "associated person," and "complaint;" Rule 15b10–2 (17 CFR 240.15b10–2), which requires nonmember brokers and dealers to observe high standards of commercial honor and just and equitable principles of trade; Rule 15b10–3 (17 CFR 240.15b10–3), which prohibits unsuitable recommendations; Rule 15b10–4 (17 CFR 240.15b10–4), which requires that nonmember brokers and dealers exercise diligent supervision over associated persons; Rule 15b10–5 (17 CFR 240.15b10–5), regulating the use of discretionary accounts;! Rule 15b10–6 (17 CFR 240.15b10–6), which requires certain records be maintained with respect to customers; Rule 15b10–7 (17 CFR 240.15b10–7), which provides an exception for brokers and dealers who have no customer accounts and have gross income from over-the-counter activities not greater than $1,000; Rule 15b10–8 and 15b10–9 (17 CFR 240.15b10–8 and 240.15b10–9), which regulate the offering of escurities of nonmember brokers or dealers, including the conditions under which such brokers or dealers may underwrite their own securities or the securities of an affiliate; Rule 15b10–10 (17 CFR 240.15b10–10), which prohibits favoring or disfavoring the distribution of shares of openend investment companies on the basis of brokerage commissions received from any source; and Rule 15b10–11 (17 CFR 240.15b10–11), which requires fidelity bonds.

Securities Rulemaking Board which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade or requires any act the omission of which constitutes duct inconsistent with just and equitable principles of trade.

* * * * *

Rule 15b9-1, 17 CFR 240.15b9-1, is amended by revising paragraph (e) to read as follows, effective July 5, 1976:

§ 240.15b9-1 Initial fees for registered brokers or dealers not members of a registered national securities association and their associated persons.

* * * * *

(e) For purposes of this rule:

(1) The term "nonmember broker or dealer" shall mean any broker or dealer, including a sole proprietor, registered under Sections 15 or 15B of the Act who is not a member of a registered national securities association.

Rule 15b9-2, 17 CFR 240.15b9-2, is amended by revising paragraph (g) to read as follows, effective July 5, 1976:

§ 240.15b9-2 Annual fees for registered brokers and dealers not members of a registered national securities association.

* * * * *

(g) *Definitions*. For the purpose of this rule:

(1) * * *

(2) The term "nonmember broker or dealer" shall mean any broker or dealer, including a sole proprietor, registered under Sections 15 or 15B of the Act who is not a member of a registered national securities association.

* * * * *

Rule 15b10-12, 17 CFR 240.15b10-12, is added as follows, effective July 5, 1976:

§ 240.15b10-12 Exemption for certain municipal securities brokers and municipal securities dealers.

The following rules of the Commission adopted pursuant to section 15(b) of the Act shall not apply to any person who is required to register as a broker or dealer solely by reason of acting as a municipal securities broker or municipal securities dealer:

Rule 15b10-1	Rule 15b10-7
Rule 15b10-2	Rule 15b10-8
Rule 15b10-3	Rule 15b10-9
Rule 15b10-4	Rule 15b10-10
Rule 15b10-5	Rule 15b10-11
Rule 15b10-6	

Rule 15c1-1, 17 CFR 240.15c1-1, is revised to read as follows, effective July 5, 1976:

§ 240.15c1-1 Definitions.

As used in any rule adopted pursuant to section 15(c) (1) of the Act:

(a) The term "customer" shall not include a broker or dealer or a municipal securities dealer; provided, however, that the term "customer" shall include a municipal securities dealer (other than a broker or dealer) with respect to transactions in securities other than municipal securities.

(b) The term "the completion of the transaction" means:

(1) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer, except as provided in subparagraph (2) of this paragraph, the time when such customer pays the broker, dealer or municipal securities dealer any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker, dealer or municipal securities dealer for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker, dealer or municipal securities dealer delivers the security to or into the account of such customer;

(3) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer except as provided in subparagraph (4) of this paragraph, if the security is not in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the security is delivered to the broker, dealer or municipal securities dealer, and if the security is in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the broker, dealer or municipal securities dealer transfers the security from the account of such customer;

(4) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer and who delivers such security to such broker, dealer or municipal securities dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker, dealer or municipal securities dealer makes payment to or into the account of such customer.

Rule 15c1-3, 17 CFR 240.15c1-3, is amended by revising the heading and the text to read as follows, effective July 5, 1976:

§ 240.15c1-3 Misrepresentation by brokers, dealers and municipal securities dealers as to registration.

The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c) (1) of the Act, is hereby defined to include any representation by a broker, dealer or municipal securities dealer that the registration of a broker or dealer, pursuant to section 15(b) of the Act, or the registration of a municipal securities dealer pursuant to section 15B(a) of the Act, or the failure of the Commission to deny or revoke such registration, indicates in any way that the Commission has passed upon or approved the financial standing, business, or conduct of such registered broker, dealer or municipal securities dealer or the merits of any security or any transaction or transactions therein.

Rule 15c1-4, 17 CFR 240.15c1-4, is amended by revising paragraph (a) to read as follows, effective July 5, 1976:

§ 240.15c1-4 Confirmation of transactions.

(a) The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c) (1) of the Act is hereby defined to include any act of any broker, dealer or municipal securities dealer designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of any security (other than U.S. Tax Savings Notes, U.S. Defense Savings Stamps, or U.S. Defense Savings Bonds, Series E, F and G) unless such broker, dealer or municipal securities dealer at or before the completion of each such transaction, gives or sends to such customer written notification disclosing (1) whether such broker or dealer is acting as a broker for such customer, as a dealer for his own account, as a broker for some other person, or as a broker for both such customer and some other person; (2) in any case in which such broker or dealer is acting as a broker for such customer or for such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker or dealer in connection with the transaction; and (3) whether such municipal securities dealer, which is not a broker or dealer, is acting as a municipal securities dealer, as an agent for such customer, as agent for some other person, or as agent for both such customer and some other person.

* * * * *

Rule 15c1-5, 17 CFR 240.15c1-5, is revised to read as follows, effective July 5, 1976:

§ 240.15c1-5 Disclosure of control.

The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c) (1) of the Act, is hereby defined to include any act of any broker, dealer or municipal securities dealer controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such security unless such broker, dealer or municipal securities dealer, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

Rule 15c1-6, 17 CFR 240.15c1-6, is revised to read as follows, effective July 5, 1976:

§ 240.15c1-6 Disclosure of interest in distribution.

The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c)(1) of the Act, is hereby defined to include any act of any broker who is acting for a customer or for both such customer and some other person, or of any dealer or municipal securities dealer who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker, dealer or municipal securities dealer is participating or is otherwise financially interested unless such broker, dealer or municipal securities dealer, at or before the completion of each such transaction gives or sends to such customer written notification of the existence of such participation or interest.

Rule 15c1-7, 17 CFR 240.15c1-7, is amended by revising paragraphs (a) and (b) to read as follows, effective July 5, 1976:

§ 240.15c1-7 Discretionary accounts.

(a) The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c) of the Act, is hereby defined to include any act of any broker, dealer or municipal securities dealer designed to effect with or for any customer's account in respect to which such broker, dealer or municipal securities dealer or his agent or employee is vested with any discretionary power any transactions or purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(b) The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c)(1) of the Act, is hereby defined to include any act of any broker, dealer or municipal securities dealer designed to effect with or for any customer's account in respect to which such broker, dealer or municipal securities dealer or his agent or employee is vested with any discretionary power any transaction of purchase or sale unless immediately after effecting such transaction such broker, dealer or municipal securities dealer makes a record of such transaction which record includes the name of such customer, the name, amount and price of the security, and the date and time when such transaction took place.

Rule 15c1-8, 17 CFR 240.15c1-8, is revised to read as follows, effective July 5, 1976:

§ 240.15c1-8 Sales at the market.

The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15(c)(1) of the Act, is hereby defined to include any representation made to a customer by a broker, dealer or municipal securities dealer who is participating or otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange that such security is being offered to such customer "at the market" or at a price related to the market price unless such broker, dealer or municipal securities dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with him.

Rule 15c2-4, 17 CFR 240.15c2-4, is revised to read as follows, effective July 5, 1976:

§ 240.15c2-4 Transmission or maintenance of payments received in connection with underwritings.

It shall constitute a "fraudulent, deceptive, or manipulative act or practice" as used in section 15(c)(2) of the Act, for any broker, dealer or municipal securities dealer participating in any distribution of securities, other than a firm-commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(a) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(b) If the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

Rule 15c2-5, 17 CFR 240.15c2-5, is amended by adding paragraph (c) to read as follows, effective July 5, 1976:

§ 240.15c2-5 Disclosure and other requirements when extending credit in certain transactions.

* * * * *

(c) This section shall not apply to any offer to extend credit or arrange any loan, or to any credit extended or loan arranged, in connection with any offer or sale, or attempt to induce the purchase, of any municipal security.

Rule 15c2-7, 17 CFR 240.15c2-7, is amended by revising paragraph (a) to read as follows, effective July 5, 1976:

§ 240.15c2-7 Identification of quotations.

(a) It shall constitute an attempt to induce the purchase or sale of a security by making a "fictitious quotation" within the meaning of section 15(c)(2) of the Act, for any broker or dealer to furnish or submit, directly or indirectly, any quotation for a security (other than a municipal security) to an inter-dealer quotation system unless:

* * * * *

Rule 15c2-11, 17 CFR 240.15c2-11, is amended by adding paragraph (f)(4) effective July 5, 1976, as follows:

§ 240.15c2-11 Initiation or resumption of quotations without specific information.

(f) * * *

(4) The publication or submission of a quotation respecting a municipal security.

* * * * *

Rule 23a-1(T), 17 CFR 240.23a-1(T), is amended by revising paragraph (e) to read as follows, effective May 15, 1976:

§ 240.23a-1(T) Temporary exemption for certain municipal securities brokers and municipal securities dealers.

* * * * *

(e) This temporary rule shall expire on July 5, 1976.

[FR Doc.76-16127 Filed 6-4-76;8:45 am]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

PART 26—GRAIN STANDARDS

United States Standards for Barley; Correction

FR Doc. 75-20584, § 26.202(x), third line, appearing on page 33429 in the issue of Friday, August 8, 1975, is corrected by changing the words "original sample" to read "dockage-free sample."

Dated: June 2, 1976.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.76-16313 Filed 6-4-76;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Regulation 42]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

PREAMBLE

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period June 6-12, 1976. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.342 **Lemon regulation 42.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is only fair this week as cool weather prevails over much of the U.S. Average f.o.b. price was $6.15 per carton the week ended May 29, 1976, compared to $6.29 per carton the previous week. Track and rolling supplies totaled 191 cars as of May 22.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regupermitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulaation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on June 1, 1976.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period June 6, 1970, through June 12, 1976, is hereby fixed at 290,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: June 3, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-16578 Filed 6-3-76;4:14 p.m.]

[Lime Regulation 1]

PART 911—LIMES GROWN IN FLORIDA

Limitation of Handling

PREAMBLE

This regulation fixes the quantity of Florida limes that may be shipped to fresh market during the weekly regulation period June 6–12, 1976. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 911. The quantity of limes so fixed was arrived at after consideration of the total available supply of Florida limes, the quantity currently available for market, lime prices, and the relationship of season average returns to the parity price for Florida limes.

§ 911.301 **Lime regulation 1.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 37 F.R. 10497), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Florida Lime Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of limes that may be marketed during the ensuing week stems from the production and marketing situation confronting the Florida lime industry.

(i) The committee has submitted its recommendation with respect to the quantity of limes which it deems advisable to be handled during the succeeding week. Such recommendation results from consideration of the factors enumerated in the order. The committee further reports the fresh market demand for limes continues slow. Fresh shipments for the weeks ended May 29, 1976, and May 22, 1976, were 28,826 bushels and 24,591 bushels, respectively.

(ii) Having considered the recommendation and information submitted by the committee, and other available information the Secretary finds that the quantity of limes which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Florida limes, and the need for regulation; interested persons were afforded lation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such limes; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on June 1, 1976.

(b) *Order.* (1) The quantity of limes grown in Florida which may be handled during the period June 6, 1976, through June 12, 1976, is hereby fixed at 30,000 bushels.

(2) As used in this section, "handled" and "limes" have the same meaning as when used in said amended marketing agreement and order, and "bushel" means 55 pounds of limes.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: June 2, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

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