be addressed to Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, Washington, D.C. 20216, Attention: Proposed Additional Condition to Prohibited Transaction Exemption 77–9. All such comments will be made part of the record, and will be available for public inspection at the Public Document Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20210 and at the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue NW., Washington, D.C. 20224.

The proposal to adopt additional conditions to Prohibited Transaction Exemption 77–9, by inserting section V (d) in the appropriate place, is made under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75–26, 1975–1 C.B. 72.

* * * * *

PROHIBITED TRANSACTION EXEMPTION 77–9
SECTION V

(d) In the case of any purchase made after December 31, 1978, the insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter:

(1) Effects such purchase on behalf of a plan which, at the time of such purchase, has less than 100 active participants; and

(2) Provides to the fiduciary referred to in paragraph (b) of this section, prior to the approval described in that paragraph, written disclosure of all the information set forth below (in addition to the information required by paragraph (c) of this section):

(i) With respect to the first 20 years of the recommended insurance or annuity contract, a tabulation (or illustration) showing, by year, the following:

(A) The guaranteed cash surrender value for a contract with a gross annual premium of $1000 as compared to (B) the cumulative total of annual payments of $1000 with interest of 6 percent, compounded annually;

(ii) If the insurance or annuity contract includes a guaranteed rate or rates of return, the following information:

(A) The rate or rates of return and the period for which each rate is applicable,

(B) The percentage of the gross annual premium to which such rate or rates would be applied, and

(C) Any event which would alter such guaranteed rate or rates of return, and the effect of such alteration;

(iii) A description of any charges, fees, discounts, penalties, or adjustments which may be imposed under the recommended contract or securities in connection with the purchase, holding, exchange, termination or sale of such contract or securities.

The disclosures required by this paragraph (d)(2) shall be made in a manner and form calculated to be understood by a plan fiduciary who has no special expertise in insurance and investment matters.

* * * * *

Signed at Washington, D.C., this 16th day of June 1977.

IAN D. LANOFF,
Administrator Pension and Welfare Benefit Programs, Department of Labor.

ALVIN D. LURIE,
Assistant Commissioner (Employee Plans and Exempt Organizations) Internal Revenue Service.

[FR Doc.77-17987 Filed 6-21-77;8:45 am]

federal register

FRIDAY, JUNE 24, 1977

PART IV



SECURITIES AND EXCHANGE COMMISSION

■

REGULATION OF TRANSFER AGENTS

General Rules

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13636]

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

Regulation of Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission, in order to facilitate the establishment of a national system for the clearance and settlement of transactions in securities under section 17A of the Securities Exchange Act of 1934, is adopting rules applicable to transfer agents. The rules are intended: (1) to assure that registered transfer agents perform their functions in a prompt and accurate manner; (2) to provide early warning of inadequate transfer agent performance; (3) to apply limitations on the expansion of transfer agent activities when transfer agents are unable to meet the performance time standards; (4) to assure prompt response to inquiries concerning the status of items presented for transfer; and (5) to require the maintenance and preservation of certain records necessary to monitor compliance with the proposed rules.

EFFECTIVE DATES: Sections 240.17Ad-1; 240.17Ad-2 (c), (d), (f), (g), and (h); and 17Ad-4: October 3, 1977. Sections 240.17Ad-2 (a), (b) and (e); 17Ad-3; and 17Ad-5 through 7: January 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry F. Day, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-472-4515 or 202-755-8834.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Securities and Exchange Commission (the "Commission") has amended Title 17, Chapter II, Part 240 of the Code of Federal Regulations to add §§ 240.17Ad-1, 240.17Ad-2, 240.17Ad-3, 240.17Ad-4, 240.17Ad-5, 240.17Ad-6 and 240.17Ad-7 (hereinafter "adopted rules") under the Securities Exchange Act of 1934 (the "Act"), in particular Sections 2, 17, 17A and 23(a) of that Act, 15 U.S.C. 78b, 78q, 78q-1 and 78w(a). In accordance with Section 17A(d)(3)(A)(i) of the Act, 15 U.S.C. 78q-1(d)(3)(A)(i), the Commission consulted and requested the views of the Federal bank regulatory agencies at least fifteen days prior to this announcement.

I. Introduction

A. Background

On May 12, 1976, the Commission published notice of proposed rules ("draft rules") prescribing performance standards for registered transfer agents.[1] The Commission received approximately 150 letters of comment on the draft rules, and those letters were carefully considered in drafting revised rules.

On February 24, 1977, the Commission published revised rules for comment ("proposed rules").[2] The comment period ended April 13, 1977, and the Commission received 45 letters of comment. The rules adopted herein include a number of revisions (discussed below) made to the proposed rules in response to the suggestions of the commentors.

B. The Purpose of the Adopted Rules

The adopted rules are designed to protect investors and persons facilitating transactions by and on behalf of investors and to contribute to the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities by: (1) assuring that the transfer agent community performs its functions in a prompt, accurate and more predictable manner; (2) providing an early warning system to alert the transfer agent regulatory agencies[3] that a transfer agent is not meeting the performance standards, thereby enabling those agencies to take timely preventive and remedial measures to protect the public interest and investors; (3) precluding a transfer agent from expanding its transfer agent activities when it has been unable to comply with performance standards and, in the event of continued substantial performance failures, requiring such transfer agent to alert issuers of securities serviced by it of its performance failures; (4) assuring prompt response to inquiries concerning the status of items presented for transfer and to certain other inquiries, in order to better meet the needs of investors who deal with transfer agents, to promote more prompt identification of lost securities and to assist broker-dealers undergoing examination and seeking to comply with requirements relating to control of customer securities; and (5) prescribing recordkeeping and record retention requirements to better enable transfer agents to monitor their own activities and to permit regulatory authorities to monitor transfer agent compliance with the adopted rules.

C. Effect on Rules of Self-Regulatory Organizations

Several commenters questioned whether the Commission's turnaround rules supersede similar rules imposed by self-regulatory organizations which require, among other things, that transfer agents acting for certain listed issues effect turnaround within 48 hours. The adopted rules are not intended to and do not supersede any rules of self-regulatory organizations which impose more stringent performance standards.[4]

D. Exemptions

Under § 240.17Ad-4 transfers of certain securities and transfer agents in certain circumstances are exempt from parts of these rules. Under paragraph (a) of that section certain transfers are exempt from §§ 240.17Ad-2, 240.17Ad-3 and § 240.17Ad-6(a) (1) through (7) and (11), but remain subject to §§ 240.17Ad-1, 240.17Ad-4, 240.17Ad-5, 240.17Ad-6 (a) (8), (9) and (10), (b) and (c) and § 240.17Ad-7. Transfer agents who qualify for exemption under paragraph (b) of § 240.17Ad-4 are exempt from §§ 240.17Ad-2 (a), (b), (c), (d) and (h), 240.17Ad-3 and 240.17Ad-6(a) (2) through (7) and (11), but remain subject to §§ 240.17Ad-1, 240.17Ad-2 (e), (f) and (g), §§ 240.17Ad-4, 240.17Ad-5, 240.17Ad-6(a) (1), (8), (9) and (10), (b) and (c) and § 240.17Ad-7.

II. Discussion of the Adopted Turnaround Rules in Light of Comments Received

A. Section-by-Section Discussion of the Adopted Rules

Section 240.17Ad-1 Definitions

Section 240.17Ad-1 defines salient terms used throughout the rules; familiarity with these definitions is essential to understanding the rules.

The basic unit for which turnaround times and other requirements are prescribed is an "item." Section 240.17Ad-1 defines "item" to mean the certificates of a single issue of securities presented under one ticket, or, if there is no ticket (as is often the case with mail items from individuals), presented at one time by one presentor. Several commentors noted that in the past a single submission by a depository (shipment control list) might include a very large number of individual transfer instructions. These commentors recommended that the term "item" be defined to mean each individual transfer instruction for cer-

[1] See Securities Exchange Act Release No. 34-12440 (May 12, 1976); 9 SEC Docket 627 (May 25, 1976); 41 FR 22595 (June 4, 1976). Comments were requested to be submitted by July 2, 1976, and that deadline was extended to July 19, 1976 in Securities Exchange Act Release No. 34-12594 (July 2, 1976); 9 SEC Docket 1029 (July 21, 1976); 41 FR 28798 (July 13, 1976).

[2] Securities Exchange Act Release No. 34-13293 (Feb. 24, 1977); 11 SEC Docket 1818 (March 8, 1977); 42 FR 12191 (March 3, 1977).

[3] The appropriate regulatory agencies for transfer agents, which are set forth in Section 3(a)(34)(B) of the Act, 15 U.S.C. 78c(a)(34)(B), are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposits Insurance Corporation and the Securities and Exchange Commission.

[4] The rules usually mentioned in this connection are the New York Stock Exchange's Rule 496 and the American Stock Exchange's Rule 891. See 2 NYSE Guide (CCH) para. 2496 and 2 Am. Stock Ex. Guide (CCH) para. 9681. Those rules and similar rules of other self-regulatory organizations were identified for review by the Commission pursuant to Section 31(b) of the Securities Acts Amendments of 1975 and currently are being examined in accordance with the procedures provided in that section. Securities Exchange Act Release No. 13027 (December 1, 1976); 11 SEC Docket 1066 (December 14, 1976); 41 FR 53473 (December 7, 1976).

tificates of a single issue of securities included within a single ticket. It appears that the depository concerned has recently implemented changes in its procedures, and that, as a result, each ticket (shipment control list) shall on the average contain 20 lines requiring the issuance of a total of 24 certificates. Although many of the shipment control lists will exceed this average, we have been assured that the upward variation in size will not be of a magnitude to create difficulties. Accordingly, the definition of "item" has not been changed. The definition also extends to items presented under a transfer agent custodian arrangement. Finally, the definition provides that, for an outside registrar, each certificate to be countersigned is an item.

Section 17Ad-1(c) provides that an item is, in various circumstances described therein, "made available" when it is dispatched or mailed. An item is considered dispatched when it leaves the premises at which transfer agent functions are performed and is sent to the receiving party or to a location from which it is to be picked up by the receiving party. For example, an outside registrar that received before noon an item subject to the processing requirement of § 240.17Ad-2(b)(1) would make the item available when, on or before the opening of business the next business day, the item is being taken by a messenger to a clearing house for delivery to the transfer agent. An item is considered mailed either when it is delivered to the location from which it is collected by the U.S. Postal Service or when it is being delivered to the U.S. Postal Service. The term "made available" has been amended to include the transfer agent's forwarding to a presentor, or other proper party, an item which has been returned to the transfer agent by an outside registrar.

The term "transfer" is defined as the accomplishment of all acts necessary to cancel certificates presented and to issue new certificates, including performance of the registrar function, and to make the item available to the presentor. One commentor asked whether original issues are excluded from the definition of "transfer." Public distributions, whether initial or secondary offerings, are not excluded from the term "transfer." Nevertheless, the Commission recognizes that an unusual volume of transfers is often associated with public offerings, and a provision for offerings is included in subsection (i)(8).[5] The second part of the definition of "transfer" refers to the manner in which a transfer may be accomplished when a transfer agent maintains custody of securities under a transfer agent custodian program. The language "or complete registration of change in ownership of all or a portion of these securities" refers not to the function performed by the registrar but to the transfer and registration of ownership by book entry on the security-holder records when no certificates are issued.

"Turnaround" of an item is accomplished, in the case of a transfer agent that acts in the dual capacity of transfer agent and registrar with respect to that item, when the item is transferred. For other transfer agents, turnaround occurs when the item is made available to the outside registrar.

Consideration was given to establishing a minimum time period within which items received from an outside registrar must be made available to the presentor. In the absence of any indication that this matter has been a source of delay, the Commission has required in § 240.17Ad-2(f) that a transfer agent make such items available "promptly" to the presentor. In most circumstances, "promptly" would mean that any item received by a transfer agent from an outside registrar in mid-afternoon would be made available to the presentor by the close of business the same day. The Commission will monitor the time taken by transfer agents to make such items available to presentors and will propose a specific time requirement for this step should experience indicate that such a requirement is needed.

For the purpose of measuring the performance of an outside registrar, the term "turnaround" does not apply; instead, the term "process" is used. An outside registrar is considered to have processed an item either when all acts necessary to perform the registrar function are completed and the item is made available to the presenting transfer agent or when the presenting transfer agent is advised why the registrar function for the item is delayed or may not be completed.

The time period for turnaround or processing of an item begins when the item is received by the registered transfer agent. Several commentors suggested that the time of "receipt" of an item be postponed until it arrives in the very room in which transfer agent functions are performed. Most commentors, however, did not foresee a problem with the proposed definition. Accordingly, no change has been made, and "receipt" occurs when an item arrives at the premises at which the transfer agent performs transfer agent functions. It will, therefore, be in the transfer agent's interest to see that a received item is promptly forwarded from the mail room to the transfer department.

Items received at a "window" or mail room at the premises at which the transfer agent performs transfer agent functions shall also be deemed to have been received by the transfer agent. However, items received at a "drop" or "window" maintained at a significant distance from the premises where the transfer agent performs its transfer agent functions usually would not be considered received for the purposes of § 240.17Ad-2 upon arrival at such "drop" or "window"; such items would be considered received upon delivery to the premises where the transfer agent performs transfer agent functions.[6] Additionally, items presented for transfer but rejected at a "drop" or "window" are not deemed to be received.

Section 240.17Ad-1(h) defines the term "business day." The second sentence of the proposed subparagraph has been moved to Section 17Ad-2(a). (See discussion infra.)

The performance time standards of the turnaround rules apply to items that are considered "routine," as defined by § 240.17Ad-1(i). It should be noted that distinctions between "routine" and "non-routine" do not depend on whether an item is received through the mail. Transfer agents are, in effect, required to examine uniformly all items received, regardless of the manner in which presented, to determine whether they are routine or non-routine.

The first exclusion from "routine" in paragraph (i) refers to issues for which the transfer agent does not maintain a working supply of unissued certificates but requisitions them as needed from another source, such as the issuer; this practice is often required by municipalities with respect to issues of municipal bonds. Some commentors recommended that the exclusion should be available to a transfer agent that has exhausted the supply of certificates it customarily retains in inventory, provided the transfer agent made a timely request for more certificates from the issuer. The availability of certificates cannot be controlled completely by the transfer agent. Nevertheless, the absence of an exclusion for such items from the definition of a routine item encourages the implementation of effective inventory control and efficient re-order procedures to insure the timely initiation of requests for new certificates. Diligent follow-up of these requests appears effective in most instances to insure the timely arrival of new certificates. When, however, these measures fail and a transfer agent's performance is adversely affected by a delayed arrival of new certificates, that factor may be asserted as a basis for exemptive relief from § 240.17Ad-3. Moreover, transfer agents requisitioning new certificates may remind issuers and others of the obligations imposed upon transfer agents by these rules.

Under the adopted rule, legal items are not necessarily "non-routine." Several commentors recommended that all items accompanied by certified corporate resolutions be deleted from the definition of "routine." Since it appears that most certified corporate resolutions follow standard forms and are found acceptable for transfer, no change has been made in § 240.17Ad-1(i)(4). As a result, if a legal item requires no more than a review of the supporting documentation listed in

[5] See the discussion of Section 240.17Ad-1(i)(8) concerning the definition of "routine item" infra.

[6] In this connection, it should be noted that § 240.17Ad-2(e) requires a transfer agent that receives items at a location other than the premises at which it performs transfer agent functions to have appropriate procedures to assure that the items are forwarded "promptly" to the premises at which receipt will be deemed to occur.

subsection (i)(4) (that is, "assignments, endorsements or stock powers, certified corporate resolutions, * * *"), the item would be considered routine. If that review, however, raised the need to obtain additional documentation, an opinion of counsel or other matter listed in subsection (i)(3), the item would be considered "non-routine."

In response to comments, subsection (6) has been amended to exclude from coverage as a routine item any warrant, right or convertible security presented for transfer of record ownership within five (increased from two) business days before exercise or conversion privileges either lapse or change. The word "change" was added to bring within the scope of subsection (6) securities which have multiple or step-down conversion dates. A new subsection (7) has been added to exclude from coverage as a routine item any warrant, right, or convertible security presented for exercise or conversion.

Proposed subsection (i)(7), which excluded from the definition of routine item a security of an issue whose outstading amount was increased by 25 percent or more within the previous 15 business days in a public offering of securities registered under the Securities Act of 1933, was intended to provide temporary relief from the 90 percent-three day turnaround requirement in light of the acute volume of transfers which occur immediately after a public offering of a substantial amount of securities. Since the amounts of outstanding securities vary so widely among issuers, the determination of a percentage breakpoint for the size of an offering that would qualify the issue for temporary nonroutine treatment has not proved feasible. Instead, subsection (i)(8) as adopted permits temporary non-routine treatment provided the registered offering is "not of a continuing nature." To the extent the offering is made in the form of employee stock option purchases, or is otherwise an offering which continues over a period of time, items containing securities of the issue are routine under subsection (i)(8).

Nevertheless, although such items are temporarily deemed non-routine, transfer agents are reminded that § 240.17 Ad-2(e) requires that non-routine items be given diligent and continuous attention and turned around as soon as possible.

Some commentors suggested that the definition of "routine item" exclude securities of an issue for which the transfer agent recently assumed the responsibility for performance of transfer agent functions from another transfer agent. These commentors believed that in such circumstances the records may be in disarray and require an extensive period before they are properly arranged. Because the turnaround rules do not address the updating of securityholder records (except in the circumstance in which a transfer agent acts as custodian of the securities), and since changes in transfer agents are carefully timed to avoid any delay in effecting transfers, the suggested addition to the definition of routine item has not been made.

SECTION 240.17Ad-2 TURNAROUND, PROCESSING AND FORWARDING OF ITEMS

Paragraph (a) of § 240.17Ad-2 sets forth the basic requirement that transfer agents (except when acting as outside registrars), with regard to at least 90 percent of routine items received during any month, must perform their functions "turnaround" such items) within three business days of the items' receipt. Paragraph (a), as proposed, has been amended by adding the second sentence from proposed Section 17Ad-1(h) (the definition of business day) which establishes a noon-to-noon cutoff for items received that are subject to paragraph (a).[7]

As proposed, paragraph (b), which pertains to a transfer agent when acting as an outside registrar, required that at least 90% of all items received during any month at or before noon on any business day be processed by the close of business that day. That paragraph, as adopted, requires the processing to be completed by the opening of the next business day. This change was made in recognition of the geographical distances that must be traversed in some parts of the nation in order to deliver completed registrar items to the transfer agent. Although the Commission is aware that a number of outside registrars both process and deliver most of their items in two to five hours and encourages them to continue to do so, geographic considerations make such a standard unrealistic for much of the nation. The provision requiring that at least 90% of all items received after noon on any business day be processed by noon of the next business day has not been changed. Certain items are excluded from the term "items received" in paragraph (b) in order to remove items which may present special difficulties from the processing time requirements.

Several commentors recommended that the turnaround standard which is three business days when an outside registrar is utilized should be increased to four business days when the transfer agent is acting in a dual capacity to allow additional time for performance of the registrar function. Because there has been a widespread acceptance of the proposal that the maximum time a transfer agent acting in a dual capacity should take to turnaround and process items is three business days, no adjustment to the three business day standard in § 240.17Ad-2(a) has been made in the adopted rule. Transfer agents are encouraged to do better than this standard when possible. The Commission intends to monitor carefully the performance of transfer agents in a single capacity with a view to determining whether the turnaround standard for items sent to an outside registrar should be reduced to two business days.

Commentors suggested that in the case of debt securities for which the bond registrar is not also the trustee or the authenticating agent and the authenticating agent maintains and updates securityholder records (such as, for example, when the authenticating agent registers the payment of interest), the turnaround standard should be increased to one business day. In such circumstances, the authenticating agent is not acting solely as a processor of items but is also performing "transfer" functions (in the equity sense), and the adopted rules adequately provide for this situation. In the above example, the authenticating agent would be permitted three business days to accomplish the transfer and registration of the ownership of the interest coupons.

Paragraph (c), as proposed, has been restated as paragraphs (c) and (d). Paragraphs (c) and (d), as adopted, prescribe a notice requirement for transfer agents which, during any month, fail to comply with the performance standards of paragraphs (a) and (b) respectively.[8] The information required in such notice is intended to inform the regulatory authorities of the extent to which the reporting transfer agent has failed to meet the turnaround requirements and to alert those authorities of the need for monitoring the transfer agent's performance and of the possible need for supplementing the limitations under § 240.17Ad-3 with remedial action.[9] In

[7] The sentence in question provides that items received at or before noon on a business day shall be deemed to have been received at noon on that day, and that items received after noon on a business day, on a weekend or on a holiday shall be considered as received at noon on the next business day. For example, this provision, operates as follows: An item received at 11:00 a.m. on a Monday that is not a holiday would be considered as received at noon on that day and, assuming none of the intervening days are holidays, would have to be turned around by noon on Thursday. Assuming either one of the intervening days or Thursday is a holiday, the item would have to be turned around by noon of the following business day (Friday). An item received on a Friday afternoon, or received on a weekend, would be considered as received at noon on Monday and, assuming the intervening weekdays are business days, would have to be turned around by noon of the following Thursday. An item received on a Tuesday that is a holiday would be considered as received at noon on Wednesday (provided that Wednesday is not a holiday) and, assuming the intervening weekdays are business days, would have to be turned around by noon on Monday. Again, if the day for receipt or accomplishment of turnaround is not a business day, then the time of receipt or the deadline for turnaround would be noon of the next business day.

[8] Section 240.17Ad-3, discussed infra, prescribes certain limitations that are applied to transfer agents which, because of continued failure to meet the performance standards, are required to file notices repeatedly.

[9] Repeated failure to perform at the level prescribed by Section 240.17Ad-2 (a) and (b) requires filing notices with the regulatory authorities and, if continued, application of limitations on the expanson of the transfer agent's business until the agent can demonstrate an ability to meet the standards. During this time, the regulatory authorities can monitor the transfer agent's performance to determine whether to initiate, under Sec-

order to better facilitate prompt responses by the appropriate regulatory agencies to requests for exemption from § 240.17Ad–3, the adopted rule requires that the notice pursuant to § 240.17Ad–2(c) include a statement of the number of routine items, aged in increments of one business day, which on the last business day of the month have been in the transfer agent's possession for more than four business days. A similar provision for unprocessed registrar items has been incorporated into paragraph (d) as adopted.

The written notice under proposed § 240.17Ad–2(c) has been changed in adopted § 240.17Ad–2 (c) and (d) to require that notices be filed with the Commission and the appropriate regulatory agency, if it is not the Commission, within ten business days after the end of the month instead of sent to regulatory agencies within six business days after the end of the month. Some commentors had suggested that more time be allowed for transfer agents to compute their performance for a given month (the disposition of items received on the last business day of a month will not be known until three business days following the end of that month). In addition, a requirement that notices be filed with an agency would be consistent with requirements imposed in other areas when reports or other materials are required. The date on which the notice is actually received by a regulatory agency is considered the date of filing thereof.[9]

Section 240.17Ad–2(e) (formerly paragraph (d)) provides that the 10% of routine items not required to be turned around or processed within the time periods established by § 240.17Ad–2 (a) and (b) must be turned around or processed "promptly"; in the case of transfer items, under usual circumstances, "promptly" would be within one additional business day and, in the case of registrar items, by the end of the business day following the day of receipt. Paragraph (e) also requires that all non-routine items must receive diligent and continuous attention and must be turned around as soon as possible.

Section 240.17Ad–3—Limitations on Expansion

This rule sets forth the consequences which automatically attach to a transfer agent's failure on a continuing basis to meet the prescribed performance standards. The limitations are designed to maintain the status quo so that a transfer agent can bring its performance into compliance with the rules. The limitations are not intended to be a penalty for failure to meet the turnaround standards. In addition, it should be noted that the application of limitations does not preclude the institution of administrative, civil or criminal (if the violation is willful) proceedings if necessary to protect investors and persons facilitating transactions by and acting on behalf of investors. Paragraph (a) applies limitations to transfer agents who fail for each of three consecutive months to meet the 90% turnaround or processing standards of paragraphs (a) or (b) of § 240.17Ad–2 (and who therefore are required to file monthly notices under paragraphs (c) or (d) of that section). The limitations attach on the fifth business day following the end of the third consecutive month in which a notice was required by § 240.17Ad–2(c) or (d) and remain in effect for at least three consecutive months thereafter. The rule as proposed provided that limitations would apply for six consecutive months, but upon further consideration it appears that a term of three consecutive months will provide a sufficient period of time for a transfer agent to demonstrate its ability to meet the performance standards.

It should be noted that paragraphs (a) and (b) § 240.17Ad–3 would apply to a transfer agent which, for example, failed for two consecutive months to turnaround within three business days 90% or more of routine items received (as required by § 240.17Ad–2(a)) and then in the third consecutive month failed to process within the specified time frames 90% or more of items received as outside registrar (as required by § 240.17Ad–2(b)). Similarly, if a transfer agent during a month failed to turnaround within three business days 75% or more of its routine transfer items and in the next month failed to process timely 75% or more of its outside registrar items, paragraph (b) of § 240.17Ad–3 would attach on the fifth business day following the end of the second month.

During the three month limitations period, a transfer agent may not begin to perform a transfer agent activity for issues for which it does not perform, or is not under agreement to perform, transfer agent activities before the fifth business day (the "limitations date"). Similarly, after the limitations date, a transfer agent may not begin to perform for issues for which it performs a transfer agent function prior to the limitations date any new transfer agent function or activity which the transfer agent does not perform, or is not under agreement to perform, prior to the limitations date. Section 240.17Ad–3 does not preclude a transfer agent who has agreed to act in a new capacity prior to the attachment of the limitations provision from carrying out the terms of the agreement.[11]

Once the limitations are applied, whether because of failure to comply with § 240.17Ad–2(a) or § 240.17Ad–2(b) or both, they remain effective until the transfer agent's performance has met the standards of both paragraphs (a) and (b) of that section for three consecutive months, i.e., 90% or more of accountable transfer agent and registrar items are each turned around or processed within the prescribed periods of time for each of three consecutive months.

A few persons commented that limitations on new transfer agent business should not attach to transfer agent activities which, in their view, the Commission does not regulate, such as dividend disbursements. Adopted § 240.17Ad–3(a) does not reflect this view. The rationale for the limitations provision is that it is not in the public interest or consistent with the protection of investors for a transfer agent which is unable to perform its current obligations in a timely manner to take on additional responsibilities. Moreover, the Commission's rulemaking authority (Section 17A (d)(1) of the Act) is not circumscribed by the functions which are provided elsewhere as the precedents for registration. Indeed, an unnecessarily restrictive view of the Commission's rulemaking authority could well impede the Commission's efforts to provide necessary or appropriate regulations for transfer agents in the broader context of the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. For example, a transfer agent that is unable to meet the performance time requirements for transfers but which nevertheless was permitted to begin a new activity such as dividend disbursing could necessarily be diverting resources to that new activity at the time the performance standards for transfers were not being met.

Some commentors recommended that the limitations under § 240.17Ad–3 should not attach until after a reasonable "appeal" period. Since the limitations period does not commence after a single month of failure to perform but rather after several months of operating below the minimum standard, the Commission believes that a transfer agent will have sufficient advance notice before the application of limitations becomes effective to begin preparing an exemption request for submission to the appropriate regulatory agency.

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tions 17A(c)(3)(A), 17A(d) and 21(d) of the Act, 15 U.S.C. 78q–1(c)(3)(A), 78q–1(d) and 78u(d), administrative or civil action which may lead to the imposition of a remedial sanction upon, or the enjoining of, the transfer agent. Of course, an intentional failure to comply with the requirements of any of the rules may constitute a criminal violation of the Federal Securities laws (Section 32(a) of the Act, 15 U.S.C. 78ff(a)).

[9] 17 CFR 240.0–3. Transfer agents that are banks should note that the notices pursuant to § 240.17Ad–2 (c) and (d) must be filed with both their appropriate Federal bank regulator and the Commission.

[11] Thus, a transfer agent who, prior to the application of limitations, is under agreement to act as a dividend disbursing agent for an issue (even though the dividend disbursing activity does not begin until after the limitations are applied) would be permitted by subparagraphs (a) (1) and (2) to act as dividend disbursing agent for that issue. In contrast, if the agreement to perform a new activity for an issue, such as disbursing dividends, were not signed until the fifth business day after the end of the month, i.e., after the limitations become effective, the transfer agent would be prohibited from initiating that, or any other, new function or activity for that issue.

The attachment of limitations would not prevent a transfer agent from acting for new series of bonds (of an open-end indenture) issued after the limitations date, provided the transfer agent acted in the same capacity for the bonds before the limitations date.

Paragraph (b) describes limitations which attach to a transfer agent that is unable for each of two consecutive months to process at least 75% of the accountable items under § 240.17Ad-2 (a) or (b). Paragraph (b) applies to the limitations of paragraph (a), discussed above, and also requires the transfer agent to notify the chief executive officer of each issuer of each issue serviced by the transfer agent (including the chief executive officer of an issuer that acts as its own transfer agent) that performance has fallen below the 75% standard.

Transfer agents are allowed 20 business days before notice must be made to issuers; the additional 15 business days beyond the day limitations are applied may be used by the transfer agent to apply to its appropriate regulatory agency for relief upon grounds that the failure to perform was caused, in significant part, by circumstances beyond the transfer agent's control.[12] Applications for relief should be well-documented and contain a thorough presentation as to why and how circumstances beyond the transfer agent's control caused its performance to fall below the standards each month. Ordinarily, the presentation should show that the transfer agent's performance would have satisfied the minimum standard but for the circumstances beyond its control. When an exemption is sought because of a failure to meet the turnaround standards of § 240.17Ad-2(a), the transfer agent should include with its request for an exemption information as to the age of routine items not turned around timely.

The filing of a request for an exemption, however, does not toll the effective date of the application of limitations, but the appropriate regulatory agency will make every effort to act promptly on the request for exemption. The appropriate offices to contact are as follows: (A) For a transfer agent registered with the Comptroller of the Currency, the Deputy Comptroller for Trust Operations, Office of the Comptroller of the Currency, Washington, D.C. 20219; (B) for a transfer agent registered with the Board of Governors of the Federal Reserve System, the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; (C) for a transfer agent registered with the Federal Deposit Insurance Corporation, the Director, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429; and (D) for a transfer agent registered with the Securities and Exchange Commission, the Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

The application of limitations under paragraphs (a) and (b) may operate cumulatively so that, for example, a transfer agent that performs at the 80% level for two months, and then at the 70% level for the next two months, would become subject to the application of paragraph (a) at the end of the third month and would become subject to the additional requirement of paragraph (b) (notices to issuers) at the end of the fourth month.

SECTION 230.17Ad-4—APPLICABILITY OF SECTIONS 240.17Ad-2, 240.17Ad-3 AND 240.17Ad-6(a) (1) THROUGH (7) AND (11)

In response to comments received on the initial and the revised proposed rules, the Commission has determined that the turnaround rules shall not apply to redeemable securities of investment companies registered under Section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8. It appears that the transfer agent activities performed for those securities involve for the most part the redemption of fund shares and that the redemption of shares is significantly different from the transfer of ownership of stocks and bonds on issuer's records.[13] Moreover, that activity is subject to Section 22(e) of the Investment Company Act of 1940, 15 U.S.C. 80a-22(e). Therefore, paragraph (a) provides that §§ 240.-17Ad-2, 240.17Ad-3 and 240.-17Ad-6(a) (1) through (7) and (11) do not apply to the issuance, redemption or transfer of redeemable securities issued by investment companies registered under Section 8 of the Investment Company Act of 1940.[14] The exemption was amended to include also redeemable securities of registered unit investment trusts.

Lastly, the exemptions of paragraph (a) have been expanded to include the transfers and withdrawals of shares from dividend reinvestment plans, which also require procedures significantly different from the procedures required to transfer ownership of stocks and bonds.

Approximately 2,400 transfer agents have registered with either the Commission or one of the bank regulatory authorities. Information on Forms TA-1 received at the time of those registrations indicates that the level of transfer activity varies widely among registered transfer agents. In view of the fact that the number of transfers performed by many transfer agents is relatively small and involves issues which are not traded actively, the Commission has determined that it is not necessary or appropriate at this time to require those transfer agents to comply with the minimum performance standards and certain recordkeeping provisions. Accordingly, paragraph (b) of § 240.17Ad-4 exempts from § 240.17Ad-2 (a), (b), (c), (d) and (h), 240.17Ad-3 and 240.17Ad-6(a) (2) through (7) and (11) any registered transfer agent that receives within any six consecutive months with respect to all issues serviced fewer than 500 items for transfer and fewer than 500 items for processing, provided the transfer agent files with its appropriate regulatory agency within ten business days of the close of the sixth such month the notice described in that paragraph.[15] Additionally, the notice is required to be filed only with the transfer agent's appropriate regulatory agency.[16]

The transfer and processing time standards of § 240.17Ad-2 (a) and (b) always apply together to a transfer agent not qualifying for an exemption under § 240.17Ad-4(b). Conversely, neither paragraph 2(a) nor 2(b) applies to a transfer agent which does qualify for the exemption. Thus, to qualify for the exemption, the number of items received for transfer in a six month period must be fewer than 500, and the number of items received for processing in a six month period must be fewer than 500.

The operation of § 240.17Ad-4(b) may be illustrated as follows. If a transfer agent receives 500 or more items for transfer in a six month period and in the same period receives less than 500 items for processing, the transfer agent is not eligible for the exemption provided by § 240.17Ad-4(b). Similarly, if a transfer agent receives for processing 500 or more items in a six month period and receives for transfer less than 500 items in that period, the transfer agent remains subject to § 240.17Ad-1 through 7.

Paragraph (c) sets forth the condition under which a transfer agent loses its exemption under paragraph (b). The last sentence of paragraph (c) requires that a transfer agent, which previously was exempt and thereafter has a volume of activity that removes the exemption, remain subject to the performance standards for six consecutive months before again qualifying for an exemption. This provision is intended to relieve both

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[12] Section 17A(c)(1) of the Act, 15 U.S.C. 78q-1(c)(1), in relevant part, empowers the appropriate regulatory agency to exempt under certain circumstances transfer agents registered with it from any rule or regulation imposed pursuant to Section 17A of the Act.

[13] The amount of certificated fund shares is relatively small, and the amount of transfer agent activity in connection with transferring ownership of certificated shares represents a very small part of a transfer agent's activity with regard to an open-end investment company.

[14] The turnaround rules do apply to registered transfer agents performing transfer agent functions for securities issued by closed-end investment companies.

[15] For example, a transfer agent which received during the previous six months 499 items for transfer and 499 items for processing (in its capacity as an outside registrar) would, upon timely filing of the required notice with its appropriate regulatory agency, be exempt from the enumerated sections.

[16] Section 17(c)(1) of the Act, 15 U.S.C. 78q(c)(1), among other things, requires every transfer agent which files a notice with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation to file a copy of such notice with the Securities and Exchange Commission. The Securities and Exchange Commission and the Federal bank regulatory agencies have developed procedures pursuant to which the Federal bank regulatory agencies will transmit a copy of any notice under Section 240.17Ad-4(b) filed with them to the Securities and Exchange Commission. Accordingly, such filings with the appropriate regulatory agency by transfer agents for which the Securities and Exchange Commission is not the appropriate regulatory agency will constitute filings with the Securities and Exchange Commission for purposes of Section 17(c)(1) of the Act.

a transfer agent and the appropriate regulatory authority from the administrative burden that would be imposed when a transfer agent's volume of activity fluctuates around the exemption breakpoint.

One commentor asked whether § 240.17Ad–4 applies to transfer agents that do not issue and cancel, or act as registrar for, certificates but which only update and maintain the securityholder records (Section 3(a)(25)(C), 15 U.S.C. 78c(a)(25)(C)). Section 240.17Ad–2 is not intended to apply to a transfer agent in those circumstances and, accordingly, the notice requirement of § 240.17Ad–4 is also inapplicable.

Transfer agents which qualify for an exemption under § 240.17Ad–4 are not required thereafter to file additional notices for subsequent six month periods. The exemption remains effective until such transfer agent receives during a six month period 500 or more items for transfer or processing.

It should be noted that transfers of securities exempted under § 240.17Ad–4 (a) from certain provisions of these rules remain subject to §§ 240.17Ad–1; 240.17Ad–4; 240.17Ad–5; 240.17Ad–6(a) (8), (9) and (10), (b) and (c); and § 240.17Ad–7. In addition, transfer agents exempt under § 240.17Ad–4(b) from certain provisions of these rules remain subject to the sections listed above, as well as to § 240.17Ad–2 (e), (f) and (g) and § 240.17Ad–6(a)(1).

SECTION 240.17Ad–5 WRITTEN INQUIRIES

This rule sets forth the obligation of transfer agents to respond within prescribed time frames to inquiries which fall within the rules. Paragraphs (a) through (d) of the section are intended to cover four separate circumstances in which various persons make written inquiry about the transfer agent's performance of the transfer function. The information which the inquirer must present is the type of information that in practice is given to a transfer agent and is found sufficient to enable the agent to identify the account involved and the item presented. Nevertheless, a transfer agent that is able to respond within the requisite time frames to an inquiry even though it falls outside of the parameters of § 240.17Ad–5 is encouraged to make every effort to do so, particularly when the inquirer is not a professional in the securities business.

Paragraph (a) is written for "any person" who inquires in writing about the "status of * * * [his] item presented for transfer within the preceding six months." The status of the time on the transfer agent's books does not determine whether the inquiry falls under this paragraph of the rule; the status of the item on the presentor's books is the determinative factor. A transfer agent is required to respond, orally or in writing, within five business days after receiving the inquiry. For example, a written inquiry received on a Monday which is a business day must, assuming the intervening weekdays are business days, be responded to by close of business the following Monday. Paragraph (a) of the rule also indicates that if a new certificate is dispatched or mailed to the presentor within five business days following receipt of the inquiry, a response is not required. However, if the item is made available to the presentor by other means (i.e., it is awaiting pick-up), the transfer agent is required to notify the presentor that the item is available.

Paragraph (b) is written to complement existing § 240.15c3–3(c)(3) (17 CFR 240.15c3–3(c)(3) (regarding a broker-dealer's control of customer securities) and § 240.17a–13(b)(3) (17 CFR Section 240.17a–13(b)(3) (regarding quarterly security counts by broker-dealers). Paragraph (b) applies when a broker-dealer requests in writing that a registered transfer agent either confirm the agent's possession of a security previously presented for transfer by the broker-dealer or revalidate a window ticket for the security. The transfer agent is required to respond in writing within five business days, giving the required information. No written response is required if the transfer agent, within five business days following receipt of the inquiry, dispatches or mails the new certificate to the presentor or notifies the presentor that it is available for pick-up. One commentor requested that the phrase "revalidate a window ticket" be defined. The Commission understands the phrase to have a generally accepted meaning in the industry [17] and accordingly believes that the phrase need not be defined in the rule.

Transfer agents whose response to an inquiry made under paragraphs (a) or (b) is that the security either was never received or was returned previously to the presentor should be aware of the requirements for reporting of lost, missing or stolen securities pursuant to § 240.17f–1 (17 CFR 240.17f–1). Similarly, other persons who are reporting institutions under that section should be aware of their reporting responsibility upon receipt of such information from a transfer agent.

Paragraph (c), although applicable to "any person," is designed primarily for a broker-dealer which is performing or undergoing a securities positions examination. Accordingly, this paragraph refers to a written request that a transfer agent "confirm possession of a certificate as of a given date." Several commenters recommended that the paragraph should require that the date specified for confirmation be within thirty days of the date the inquiry is received, because an open-ended "as of" date could in some cases impose a substantial burden upon a transfer agent. The paragraph has been modified to limit its application to an inquiry that was received not more than thirty days after the date specified for confirmation. In addition, to insure that the person inquiring about the account has proper authority to do so, the paragraph has been modified to provide that it applies only to inquiries from a person or someone acting on behalf of the person whose account is involved. Moreover, the alternative of making available the certificate in question is not provided since, in most cases, the paragraph applies to confirmation activities by auditors of broker-dealers and will usually relate to a certificate already transferred.

Reference to a fee in paragraphs (c) and (d) was made in recognition of the current practice of some transfer agents of charging a fee for supplying the specific historical data described in those paragraphs and to confirm that those paragraphs are not intended to affect that established practice. Neither paragraph affirmatively requires the charging of a fee nor conditions the response to a request made thereunder on the time any such fee is paid, although a transfer agent may require assurance that payment will be received. Several commentors suggested that § 240.17Ad–5 (c) and (d) be modified to allow a transfer agent either to charge fees in advance of responding to written inquiries or to delay responding thereto until payment has been received. As the rule is adopted, a transfer agent may follow a practice of seeking written assurance of payment if he wishes. In this case, the time periods in paragraphs (c) and (d) would run from the date assurance of payment is received.

Several commentors recommended that rather than require the transfer agent to provide historical data arranged to show the status of an account as of a particular date, the transfer agent should be permitted to provide the inquirer with sufficient historical information about the activity in the account to enable the inquirer to reconstruct the certificates outstanding in his account as of the date specified in the request. Since the latter was the intention of paragraph (c), the language of § 240.17Ad–5(d) has been amended accordingly.

No provision was made in the proposed rules for an inquiry or request which does not meet the requirements of § 240.17Ad–5 (a) through (d). The Commission has, therefore, proposed Section 240.17Ad–5(e) in a release published today.

SECTION 240.17Ad–6 RECORDKEEPING PROVISIONS

The recordkeeping (§ 240.17Ad–6) and record retention (§ 240.17Ad–7) requirements are intended to serve a dual purpose: (1) to assure that all registered transfer agents are maintaining the minimum records necessary to monitor and keep adequate control over their own performance; and (2) to permit the appropriate regulatory authorities to examine registered transfer agents on an historical basis for compliance with applicable rules.

The recordkeeping rules are flexible with respect to the form in which most

[17] A transfer agent is requested to "revalidate a window ticket" when the presentor desires acknowledgement in some appropriate fashion (e.g., by time-stamping again a copy of the window ticket) that the item is in the transfer agent's possession pursuant to the presentor's transfer instructions.

records must be kept. Paragraph (a)(1) requires that "a receipt, ticket, schedule, log or other record" be kept showing the business day (that is, the year, month and day as determined under § 240.17Ad-1(h)) on which each routine and non-routine item is received from a presentor or outside registrar and is made available to such persons. For example, many transfer agents preserve the tickets accompanying items, and such tickets, if stamped with the required information, would comply with this rule. A transfer agent that uses a batch method for handling transfer items would use an "other record" referred to in the paragraph by recording the required information for each batch of items.

Paragraph (a)(2)(i)(B) as proposed has been restated as paragraphs (a)(2)(ii) and (iii) to clarify the requirement that the records showing turnaround of routine items for each month distinguish clearly between routine items turned around within three business days of receipt and routine items turned around after three business days of receipt.

Some commentors suggested deleting the portions of paragraphs (a)(2)(vi) and (vii) (proposed paragraphs (a)(2)(ii) and (iii)) which require a transfer agent to maintain, as of the last business day of each month, a record of aged routine and non-routine items. As previously stated, the Commission believes that such logs are desirable controls for every registered transfer agent which turns around, transfers or processes securities and, hence, has determined to retain the provisions, with two changes. Paragraph (a)(2)(vi) has been modified to require that the log of routine items set forth the number of routine items in the transfer agent's possession which, as of the close of business on the last business day of each month, have been in its possession for more than four business days (not three as previously proposed). Since 90 percent of routine items must be turned around in three business days, and since the balance should be turned around by the fourth business day, a transfer agent normally should not have on the last business day of a month five-day old routine items to enter on the log. If the agent does, however, the necessity to make entries on this log will alert the transfer agent to its inadequate performance, as well as assist the regulatory agencies to gauge better the degree of the difficulties being experienced by transfer agents who apply for an exemption from the limitations provisions of § 240.17Ad-3. It should be noted that the log of aged routine items is required without regard to whether a transfer agent turned around more or less than 90 percent of routine items received during the month.

Paragraph (a)(2)(vii) has been modified from the form in which it was proposed previously to eliminate the requirement that the record of non-routine items in a transfer agent's possession as of the last business day of each month contain the age of each non-routine item; as modified, the paragraph requires only that the number (and not the age) of such items be recorded.[18]

Paragraph (a)(3) (previously proposed § 240.17Ad-6(a)(7)) does not require an outside registrar to track each item individually, but rather requires an outside registrar to keep a record showing for each month the total number of items which were received for processing, the number which were processed within the time frame specified in § 240.17Ad-2(b) and the number which required more than the specified time for processing.

Paragraph (a)(3)(ii)(B) has been modified to clarify the requirement that the number of items processed within the time frames of § 240.17Ad-2(b) must be stated separately from the number of items that required more than the time frames for processing specified by that section.

Paragraph (a)(4) requires a record of the calculations made in connection with performance monitoring to determine compliance with § 240.17Ad-2. This provision does not require any specific form of calculation; nevertheless, transfer agents seeking to comply with the 90 percent performance standards of § 240.17Ad-2 necessarily will perform monthly calculations to determine compliance. For example, at the close of the third business day following the end of a month, a transfer agent would know the total number of routine items received during the preceding month (§ 240.17Ad-6(a)(2)(i)) and the total number of those items turned around within three business days (§ 240.17Ad-6(a)(2)(ii)). Dividing the former into the latter will provide the percentage of routine items turned around within the time limits prescribed by § 240.17Ad-2.

[18] Both of the logs required by paragraphs (a)(2)(ii) and (iii) are cumulative; that is, any item reflected on the previous month's log which is still in the registered transfer agent's possession as of the last business day of the next month must be shown on the current month's log. It is expected, however, that no transfer agent will have any routine item in its possession for such a length of time.

In response to comments received, paragraph (a)(7) (previously proposed § 240.17Ad-6(a)(6)) has been revised to require recordation of exceptions only. Paragraph (a)(7) requires only a log identifying the number of inquiries subject to § 240.17Ad-5 received but not responded to within the time frames and the number of those inquiries still pending as of the last business day of the month covered by the report.

Paragraph (a)(11) (previously proposed § 240.17Ad-6(b)(3)) has been revised, in response to comments, to clarify the requirement that a registered transfer agent keep the document upon which it bases its determination that a particular item was received in connection with a special event and is therefore not routine under § 240.17Ad-1(i) (5) or (7). Of course, since only transfer agents which cancel and issue certificates would have an occasion to make such a determination, the section effectively applies only to those transfer agents.

The scope of paragraph (b), previously designated § 240.17Ad-6(b)(1), has been clarified. As adopted, transfer agents need not keep any documents concerning the matters covered by that paragraph. Instead, paragraph (b) requires a record setting forth, with respect to each issue, the total authorized and the total issued and outstanding.

In response to comments received, paragraph (c) (previously proposed § 240.17Ad-6(b)(2)) has been revised to apply only to registered evidences of ownership which have been cancelled.

Section 240.17Ad-7 Record Retention Requirements

The record retention periods specified in § 240.17Ad-7 are not intended to replace longer retention periods that might be required by state law or other Federal laws. The retention periods are those considered necessary for the appropriate regulatory agency to monitor compliance with the turnaround rules.

The record retention provisions apply both to records described in § 240.17Ad-6 that are being kept at the time the retention provisions become effective and to records that are maintained thereafter in compliance with § 240.17Ad-6.

The following is a chart relating to the records required in § 240.17Ad-6 to the retention periods of § 240.17Ad-7:

Sec:	Maximum retention period	Period to be easily accessible	Relevant paragraph of sec. 240.17Ad-7
240.17Ad-6(a)(1)	2 yr.	6 mo.	(a)
240.17Ad-6(a)(2)	2 yr.	1 yr.	(b)
240.17Ad-6(a)(3)(i)	2 yr.	6 mo.	(a)
240.17Ad-6(a)(3)(ii)	2 yr.	1 yr.	(b)
240.17Ad-6(a)(4)	2 yr.	1 yr.	(b)
240.17Ad-6(a)(5)	2 yr.	1 yr.	(b)
240.17Ad-6(a)(6)	2 yr.	6 mo.	(a)
240.17Ad-6(a)(7)	2 yr.	1 yr.	(b)
240.17Ad-6(a)(8)	(1)	Termination	(c)
240.17Ad-6(a)(9)	(1)	do	(c)
240.17Ad-6(a)(10)	(1)	do	(c)
240.17Ad-6(a)(11)	2 yr.	6 mo.	(a)
240.17Ad-6(b)	(1)	Termination	(c)
240.17Ad-6(c)	6 yr.	6 mo.	(d)

[1] Termination plus 1 yr.

Paragraph (f) is intended to assure that records in the possession of service agents who act under contract with transfer agents are available for examination by regulatory authorities.[18]

The question was asked whether the phrase "easily accessible place" would permit records to be kept in "low-storage-cost" record centers from which the records could be retrieved within twenty-four hours. The purpose of requiring that records be kept in an "easily accessible place" is to insure that regulatory authorities may examine them as necessary or appropriate in discharging regulatory responsibilities. Inasmuch as the length of time for which records must be kept in an "easily accessible place" has, in most cases, been shortened, it is expected that records subject to that requirement will be made available either immediately or on the same day as the request to examine them is made.

In response to comments, the Commission has added § 240.17Ad–7(h) to relieve a registered transfer agent, which ceases to perform transfer agent functions for an issue, of the responsibility of retaining records required to be made and kept under § 240.17Ad–6(a) (1), (6), (9), (10), and (11), (b) and (c) once the records are delivered to the successor transfer agent.

III. Statutory Basis and Competitive Considerations

Sections 240. 17Ad–1 through 17Ad–7 are adopted pursuant to the Securities Exchange Act of 1934, in particular Sections 2, 17, 17A, and 23(a) thereof, 15 U.S.C. 78b, 78q, 78q–1, and 78w(a). Certain editorial changes have been made to the rules as proposed. Other amendments that appear in the adopted rules were made to clarify the Commission's intent in light of comments received, and such amendments either grant exemptions in addition to those proposed or relieve restrictions that were contained in the proposed rules. Accordingly, the Commission has determined that further notice and public procedures on these rules are unnecessary.

The Commission finds that any burden upon competition imposed by these rules is necessary and appropriate in the public interest, for the protection of investors and to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.

IV. Effective Dates

Section 240.17Ad–1 (definitions), § 240.17Ad–2(c) (notice of failure to comply with the turnaround requirement of § 240.17Ad–2(a)), (d) (notice of failure to comply with the processing requirement of § 240.17Ad–2(b)), (f) (procedures assuring that items received at locations other than the premises at which the transfer agent performs transfer agent functions will be forwarded to such premises promptly), (g) (procedures assuring that processed items received by a transfer agent are made available promptly to the presentor), (h) (where to file notices) and § 240.17Ad–4 (exemptions) are effective as of October 3, 1977. The remaining provisions, including the time requirements for turnaround or processing of items and automatic imposition of limitations, are effective January 2, 1978.

Under this arrangement of phased implementation dates, transfer agents will have three months to implement a monitoring system and to develop operating procedures and three additional months to complete whatever changes are necessary to comply with the adopted rules. During the second three month period, between October 3, 1977, and January 2, 1978, transfer agents will be required to report if they are not meeting the turnaround and processing requirements of § 240.17Ad–2 (a) and (b), even though these two paragraphs do not themselves become effective until January 2, 1978. This will enable the appropriate regulatory agencies to monitor the transfer agent industry's progress in making any adjustments necessary to comply with the rules.

VI. Text of §§ 240.17Ad–1 Through 17Ad–7

§ 240.17Ad–1 Definitions.

As used in this section and §§ 240.17 Ad–2, 240.17Ad–3, 240.17Ad–4, 240.17Ad–5, 240.17Ad–6, and 240.17Ad–7:

(a) The term "item" means a certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presentor) presented for transfer, or an instruction to a transfer agent which holds securities registered in the name of the presentor to transfer or to make available all or a portion of those securities. In the case of an outside registrar each certificate to be countersigned is an item.

(b) The term "outside registrar" with respect to a transfer item means a transfer agent which performs only the registrar function for the certificate or certificates presented for transfer and includes the persons performing similar functions with respect to debt issues.

(c) An item is "made available" when

(1) In the case of an item for which the services of an outside registrar are not required, or which has been received from an outside registrar after processing, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the presentor or a person designated by the presentor, or

(2) In the case of an item for which the services of an outside registrar are required, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the outside registrar, or

(3) In the case of an item for which an outside registrar has completed processing, the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent.

(d) The "transfer" of an item is accomplished when, in accordance with the presentor's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presentor by the transfer agent, or when, in accordance with the presentor's instructions, a transfer agent which holds securities registered in the name of the presentor completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the new certificate or certificates to the presentor or a person designated by the presentor or, with respect to those transfers of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities.

(e) The "turnaround" of an item is completed when transfer is accomplished or, when an outside registrar is involved, the transfer agent in accordance with the presentor's instructions completes all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.

(f) The term "process" means the accomplishing by an outside registrar of all acts necessary to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed.

(g) The "receipt" of an item or a written inquiry or request occurs when the item or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions, as defined in Section 3(a)(25) of the Act.

(h) A "business day" is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays, and legal holidays, or other holidays normally observed by the transfer agent.

(i) An item is "routine" if it does not (1) require requisitioning certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates; (2) include a certificate as to which the transfer agent has received notice of a stop order, adverse claim, or any other restriction on transfer; (3) require any additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations, or opinions of counsel before transfer may be effected; (4) require review of supporting documentation other than assignments, endorsements or stock powers, certified corporate resolutions, signature, or other common and ordinary guarantees, or appropriate tax, or tax waivers; (5) involve a transfer in connection with a reorganization, tender offer, exchange, redemption, or liquidation; (6) include a warrant, right, or convertible security pre-

[18] Paragraph (f) permits registered transfer agents who currently return all cancelled certificates and other records to the issuer to continue to do so provided the issuer agrees to make the certificates and records available for examination by, and to furnish copies upon request to, the transfer agent regulatory agencies.

sented for transfer of record ownership within five business days before any day upon which exercise or conversion privileges lapse or change; (7) include a warrant, right, or convertible security presented for exercise or conversion; or (8) include a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature.

§ 240.17Ad–2 Turnaround, processing, and forwarding of items.

(a) Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt of at least 90 percent of all routine items received for transfer during a month. For the purposes of this paragraph, items received at or before noon on a business day shall be deemed to have been received at noon on that day, and items received after noon on a business day or received on a day not a business day shall be deemed to have been received at noon on the next business day.

(b) Every registered transfer agent acting as an outside registrar shall process at least 90 percent of all items received during a month (1) by the opening of business on the next business day, in the case of items received at or before noon on a business day, and (2) by noon of the next business day, in the case of items received after noon on a business day. For the purposes of paragraphs (b) and (d) of this section, "items received" shall not include any item enumerated in § 240.17Ad–1(i) (5), (6), (7), or (8) or any item which is not accompanied by a debit or cancelled certificate. For the purposes of this paragraph, items received on a day not a business day shall be deemed to have been received before noon on the next business day.

(c) Any registered transfer agent which fails to comply with paragraph (a) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of this section. Such notice shall state the number of routine items and the number of non-routine items received for transfer during the month, the number of routine items which the registered transfer agent failed to turnaround in accordance with the requirements of paragraph (a) of this section, the percentage that such routine items represent of all routine items received during the month, the reasons for such failure, the steps which have been taken, are being taken or will be taken to prevent a future failure and the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around.

(d) Any registered transfer agent which fails to comply with paragraph (b) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of this section. Such notice shall state the number of items received for processing during the month, the number of items which the registered transfer agent failed to process in accordance with the requirements of paragraph (b) of this section, the percentage that such items represent of all items received during the month, the reasons for such failure and the steps which have been taken, are being taken or will be taken to prevent a future failure, and the number of items which as of the close of business on the last business day of the month have been in the transfer agent's possession for more than the time allowed for processing and have not been processed.

(e) All routine items not turned around within three business days of receipt and all items not processed within the periods prescribed by paragraph (b) of this section shall be turned around or processed promptly, and all non-routine items shall receive diligent and continuous attention and shall be turned around as soon as possible.

(f) A registered transfer agent which receives items at locations other than the premises at which it performs transfer agent functions shall have appropriate procedures to assure, and shall assure, that items are forwarded to such premises promptly.

(g) A registered transfer agent which receives processed items from an outside registrar shall have appropriate procedures to assure, and shall assure, that such items are made available promptly to the presentor.

(h) Any notice required by this section or § 240.17Ad–4 shall be filed as follows:

(1) Any notice required to be filed with the Commission shall be filed in triplicate with the principal office of the Commission in Washington, D.C. 20549 and, in the case of a registered transfer agent for which the Commission is the appropriate regulatory agency, an additional copy shall be filed with the Regional Office of the Commission for the region in which the registered transfer agent has its principal office for transfer agent activities.

(2) Any notice required to be filed with the Comptroller of the Currency shall be filed with the Office of the Comptroller of the Currency, Administrator of National Banks, Washington, D.C. 20219.

(3) Any notice required to be filed with the Board of Governors of the Federal Reserve System shall be filed with the Board of Governors of the Federal Reserve System, Washington, D.C. 20251 and with the Federal Reserve Bank of the district in which the registered transfer agent's principal banking operations are conducted.

(4) Any notice required to be filed with the Federal Deposit Insurance Corporation shall be filed with the Federal Deposit Insurance Corporation Washington, D.C. 20429.

§ 240.17Ad–3 Limitations on expansion.

(a) Any registered transfer agent which is required to file any notice pursuant to § 240.17Ad–2 (c) or (d) for each of three consecutive months shall not, from the fifth business day after the end of the third such month until the end of the next following period of three successive months during which no such notices have been required:

(1) Initiate the performance of any transfer agent function or activity for an issue for which the transfer agent does not perform, or is not under agreement to perform, transfer agent functions prior to such fifth business day; and

(2) With respect to an issue for which transfer agent functions are being performed on such fifth business day, initiate for that issue the performance of an additional transfer agent function or activity which the transfer agent does not perform, or is not under agreement to perform, prior to such fifth business day.

(b) Any registered transfer agent which for each of two consecutive months fails to turn around at least 75% of all routine items in accordance with the requirements of § 240.17Ad–2(a) or to process at least 75% of all items in accordance with the requirements of § 240.17Ad–2(b) shall be subject to the limitations imposed by paragraph (a) of this section and further shall, within twenty business days after the close of the second such month, send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice filed pursuant to § 240.17Ad–2 (c) or (d) with respect to the second such month.

§ 240.17Ad–4 Applicability of §§ 240.17Ad–2, 240.17Ad–3 and 240.17Ad–6(a) (1) through (7) and (11).

(a) Sections 240.17Ad–2, 240.17Ad–3 and 240.17Ad–6(a) (1) through (7) and (11) shall not apply to interests in limited partnerships, to redeemable securities of investment companies registered under Section 8 of the Investment Company Act of 1940, or to interests in dividend reinvestment programs.

(b) Except as provided in paragraph (c) of this section, §§ 240.17Ad–2 (a), (b), (c), (d) and (h), 240.17Ad–3 and 240.17Ad–6(a) (2) through (7) and (11) shall not apply to any registered transfer agent which during any six consecutive months shall have received fewer than 500 items for transfer and fewer than 500 items for processing and which, within ten business days following the close of the sixth such consecutive month, shall have filed with its appropriate regulatory agency a notice certifying to that effect (hereinafter an "exempt transfer agent").

(c) Within five business days following the close of each month, every exempt transfer agent shall calculate the number of items which it received during the preceding six months. Whenever any exempt transfer agent receives 500 or more items for transfer or 500 or more

items for processing during any six consecutive months, it shall, within ten business days after the end of such month, file with its appropriate regulatory agency notice to that effect. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the registered transfer agent shall no longer be exempt under paragraph (b) of this section from the requirements of §§ 240.17Ad–2 (a), (b), (c), (d) and (h), 240.17Ad–3 and 240.17Ad–6(a) (2) through (7) and (11). Any registered transfer agent which has ceased to be an exempt transfer agent shall not qualify again for exemption until it has conducted its transfer agent operations pursuant to the foregoing sections for six consecutive months following the month in which it filed the notice required by this paragraph.

§ 240.17Ad–5 Written inquiries and requests.

(a) When any person makes a written inquiry to a registered transfer agent concerning the status of an item presented for transfer during the preceding six months by such person or anyone acting on his behalf, which inquiry identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security) presented, the approximate date of presentment and the name in which it is registered, the registered transfer agent shall, within five business days following receipt of the inquiry, respond, stating whether the item has been received; if received, whether it has been transferred; if received and not transferred, the reason for the delay and what additional matter, if any, is necessary before transfer may be effected; and, if received and transferred, the date and manner in which the completed item was made available, the addressee and address to which it was made available and the number of any new certificate which was registered and the name in which it was registered. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of an inquiry pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(b) When any broker-dealer requests in writing that a registered transfer agent acknowledge the transfer instructions and the possession of a security presented for transfer by such broker-dealer or revalidate a window ticket with respect to such security and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which it is registered, every registered transfer agent shall, within five business days following receipt of the request, in writing, confirm or deny possession of the security, and, if the registered transfer agent has possession, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of a request pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(c) When any person, or anyone acting under his authority, requests in writing that a transfer agent confirm possession as of a given date of a certificate presented by such person during the 30 days before the date the inquiry is received and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which the certificate was registered, every registered transfer agent shall, within ten business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available a written response to such person, or anyone acting under his authority, confirming or denying possession of such security as of such given date.

(d) When any person requests in writing a transcript of such person's account with respect to a particular issue, either as the account appears currently or as it appeared on a specific date not more than six months prior to the date the registered transfer agent receives the request, every registered transfer agent shall, within twenty business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available to such person a transcript, ledger or statement of account in sufficient detail to permit reconstruction of such account as of the date for which the transcript was requested.

§ 240.17Ad–6 Recordkeeping.

(a) Every registered transfer agent shall make and keep current the following:

(1) A receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is (i) received from the presentor and, if applicable, from the outside registrar and (ii) made available to the presentor and, if applicable, to the outside registrar;

(2) A log, tally, journal, schedule or other record showing for each month:

(i) The number of routine items received;

(ii) The number of routine items received during the month that were turned around within three business days of receipt;

(iii) The number of routine items received during the month that were not turned around within three business days of receipt;

(iv) The number of non-routine items received during the month;

(v) The number of non-routine items received during the months that were turned around;

(vi) The number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day); and

(vii) The number of non-routine items in such registered transfer agent's possession as of the close of business on the last business day of each month;

(3) With respect to items for which the registered transfer agent acts as an outside registrar:

(i) A receipt, ticket, schedule, log or other record showing the date and time:

(A) Each item is (*1*) received from the presenting transfer agent and (2) made available to the presenting transfer agent;

(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice); and

(ii) A log, tally, journal, schedule or other record showing for each month:

(A) The number of items received;

(B) The number of items processed within the time required by § 240.17Ad–2(b); and

(C) The number of items not processed within the time required by § 240.17Ad–2(b);

(4) A record of calculations demonstrating the registered transfer agent's monitoring of its performance under § 240.17Ad–2 (a) and (b);

(5) A copy of any written notice filed pursuant to § 240.17Ad–2;

(6) Any written inquiry or request, including those not subject to the requirements of § 240.17Ad–5, concerning an item, showing the date received; a copy of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request under § 240.17Ad–5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry;

(7) A log, journal, schedule or other record showing the number of inquiries subject to § 240.17Ad–5 (a), (b), (c) and (d) received during each month but not responded to within the required time frames and the number of such inquiries pending as of the close of business on the last business day of each month;

(8) Any document, resolution, contract, appointment or other writing, and any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer;

(9) Any record of an active (i.e., unreleased) stop order, notice of adverse claim or any other restriction on transfer;

(10) A copy of any transfer journal and registrar journal prepared by such registered transfer agent; and

(11) Any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under § 240.17Ad-1(i)(5) or (8).

(b) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and the total issued and outstanding pursuant to issuer authorization.

(c) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and all accompanying documentation, except legal papers returned to the presentor.

§ 240.17Ad-7 Record retention.

(a) The records required by § 240.17Ad-6(a), (1), (3)(i), (6) or (11) shall be maintained for a period of not less than two years, the first six months in an easily accessible place.

(b) The records required by § 240.17Ad-6(a) (2), (3)(ii), (4), (5) or (7) shall be maintained for a period of not less than two years, the first year in an easily accessible place.

(c) The records required by § 240.17Ad-6(a) (8), (9) and (10) and (b) shall be maintained in an easily accessible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

(d) The records required by §240.17Ad-6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(e) Every registered transfer agent shall maintain in an easily accessible place:

(1) All records required under § 240.17f-2(d) until at least three years after the termination of employment of those persons required by § 240.17f-2 to be fingerprinted; and

(2) All records required pursuant to § 240.17f-2(e) for three years.

(f) The records required to be maintained pursuant to § 240.17Ad-6 may be produced or reproduced on microfilm and be preserved in that form for the time required by § 240.17Ad-7. If such microfilm substitution for hard copy is made by a registered transfer agent, it shall:

(1) At all times have available for examination by the Commission and the appropriate regulatory agency for such transfer agent, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record;

(3) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission and the appropriate regulatory agency by their examiners or other respresentatives may request; and

(4) For the period for which the microfilmed records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(g) If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of §§ 240.17Ad-6 and 240.17Ad-7 are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent, if it is not the Commission; and

(2) The outside service bureau, recordkeeping service, or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(h) When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under § 240.17Ad-7 to retain the records required to be made and kept current under § 240.17Ad-6(a)(1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

Accordingly, the Commission hereby adopts §§ 240.17Ad-1, 240.17Ad-2, 240.17Ad-3, 140.17Ad-4, 240.17Ad-5, 240.17Ad-6 and 240.17Ad-7.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JUNE 16, 1977.

[FR Doc.77-17766 Filed 6-23-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-13637; File No. S7-707]

REGULATION OF TRANSFER AGENTS

Notice of Proposed Rulemaking

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its rule on written inquiries and requests to require that transfer agents acknowledge promptly and respond as soon as possible to certain communications which do not meet the requirements of the rule.

DATES: Comments must be received on or before August 15, 1977.

ADDRESS: Written comments, in triplicate, should be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and refer to file No. S7-707.

FOR FURTHER INFORMATION CONTACT:

Harry F. Day, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202-472-4515 or 202-755-8834).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Securities and Exchange Commission (the "Commission") has under consideration a proposal to amend Title 17, Chapter II, Part 240 of the Code of Federal Regulations to add § 240.17Ad-5(e) under the Securities Exchange Act of 1934 (the "Act"), in particular Sections 2, 17, 17A and 23(a) of that Act, 15 U.S.C. 78b, 78q, 78q-1 and 78w(a). In accordance with Section 17A(d)(3)(A)(i) of the Act, 15 U.S.C. 78q-1(d)(3)(A)(i), the Commission consulted and requested the views of the Federal bank regulatory agencies at least fifteen days prior to this announcement.

PROPOSED § 240.17Ad-5(e)

Simultaneously with the publication of this release, the Commission has published notice of the adoption of rules prescribing performance standards for registered transfer agents. Section 240.-17Ad-5 of those rules is designed to assure prompt response to inquiries concerning the status of items presented for transfer and to certain other inquiries, in order to better meet the needs of investors who deal with transfer agents, to promote more prompt identification of lost securities and to assist broker-dealers undergoing examination and seeking to comply with requirements relating to control of customer securities.

The applicability of § 240.17Ad-5 to certain inquiries and requests depends upon the transfer agent's receipt of information described in that section. It is possible, however, that through inadvertence the person making the inquiry or request will omit some of the information described in the rule. In such circumstance, it nevertheless is desirable that an appropriate response be made promptly by the transfer agent. Proposed paragraph (e) would apply when an inquiry fails to provide all of the information specified in the rule, or request information in excess of the time periods specified therein. In those circumstances, proposed paragraph (e) requires the transfer agent to confirm promptly his receipt of the inquiry and to respond as soon as possible. If insufficient information was provided in the inquiry to enable the transfer agent to research the question, the transfer agent should request the necessary additional information in its confirmation.

The Text of Proposed Rule 17Ad-5(e) follows:

§ 240.17Ad-5 Written inquiries and requests.

* * * * *

(e) When any person makes a written inquiry or request which would qualify under paragraphs (a), (b), (c), or (d) of this section except that it fails to provide all of the information specified in those paragraphs, or requests information in excess of the time periods specified therein, a registered transfer agent shall confirm promptly receipt of the inquiry or request and shall respond to it as soon as possible.

* * * * *

All interested persons are invited to submit their views upon proposed § 240.-17Ad-5(e) in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, no later than August 15, 1977. Reference should be made to file No. S7-707. All comments received will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JUNE 16, 1977.

[FR Doc.77-17767 Filed 6-23-77;8:45 am]

federal register

FRIDAY, JUNE 24, 1977
PART V



SECURITIES AND EXCHANGE COMMISSION

■

DISSEMINATION OF QUOTATIONS FOR REPORTED SECURITIES

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-13626; File No. S7-648]

DISSEMINATION OF QUOTATIONS FOR REPORTED SECURITIES

Notice of Proposed Rulemaking

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission has published for comment a revised version of a proposed rule governing the dissemination of quotations for reported securities. The proposal, if adopted, would require all national securities exchanges and associations to establish procedures for collecting from their members bids, offers, and quotation sizes with respect to reported securities and making such bids, offers, and sizes available to quotation vendors. It would also require that bids and offers made available to vendors be "firm" subject to certain exceptions.

The proposal is intended to improve the quality of quotation information disseminated by the various market centers, and thereby facilitate the development of a viable composite quotation system. The Commission believes that the lack of reliable quotation information from the various markets is hampering private and self-regulatory efforts to establish such a system, and, in turn, is impeding development of a national market system.

DATE: Comments should be submitted on or before August 1, 1977.

ADDRESSES: Persons wishing to submit written views, data, and arguments should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-648 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mark D. Fitterman, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-1388.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today that it has published for comment a revised version of proposed Rule 11Ac1-1 (17 CFR 240.-11Ac1-1) under the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)), governing dissemination of quotation information with respect to equity securities as to which last sale information is reported in the consolidated transaction reporting system (the "consolidated system") contemplated by Rule 17a-15 under the Act (17 CFR 240.17a-15) ("reported securities"). The proposal is intended to improve the quality of quotation information disseminated by the various market centers, and thereby facilitate the development of a viable composite quotation system—an important element of a national market system.

I. Background

Proposed Rule 11Ac1-1 was originally published for comment on July 29, 1976.[1] The Rule, as originally published for comment (the "July Proposal"), would have required every national securities exchange ("exchange") and national securities association ("association" to establish and maintain procedures and mechanisms for collecting quotatitons in eligible securities[2] (and, if provided, quotation sizes) from its specialists[3] and third market makers[4] and making such quotations and sizes (if provided) available to quotation vendors.[5] Specialists and third market makers would have been obliged to communicate their quotations promptly to their respective exchange or association in accordance with such exchange's or association's pocedures to permit timely dissemination of that data to quotation vendors.[6]

The July Proposal also would have required that, subject to certain exceptions, quotations covered by Rule 11Ac1-1 be "firm." In particular, the Rule would have provided that any specialist or third market maker who is presented with an order for the purchase or sale of any eligible security (other than for the purchase or sale of an odd-lot) must stand ready to execute a transaction in that security in any amount up to such specialist's or third market maker's published quotation size (or, in the event he has disseminated no quotation size, a normal unit of trading) at a price at least as favorable to the buyer or seller as the bid or asked price comprising part of that specialist's or third market maker's published quotation (i.e., the most recent quotation of such specialist or third market maker made available to quotation vendors pursuant to the Rule which is displayed by quotation vendors on a terminal or other display device at the time the order is presented).[7]

Two exceptions to the general rule on "firmness" were provided in the July Proposal. First, a specialist or third market maker would have been relieved of his obligation to effect transactions in eligible securities at his published quotation if, after the dissemination of a published quotation and before the presentation of an order, that specialist or third market maker communicated a quotation to the relevant exchange or association superseding his published quotation.[8] In addition, specialist and third market maker quotations would not have been required to be "firm" with respect to a particular eligible security for a period of three minutes following the execution of a transaction in that security on the floor of the particular specialist's exchange or by the particular third market maker (as the case may be), or following the report of a transaction in that security in the consolidated system.[9] In the event a specialist or third market who had been relieved of his obligation to effect transactions in eligible securities as the result of an intervening transaction or last sale report did not communicate to his exchange or association a quotation superseding his published quotation within this three-minute "grace period," the Rule would have provided that such specialist or third market maker would again be required to be firm with respect to his published quotation.[10]

In response to the publication of proposed Rule 11Ac1-1, the Commission received comments from the three principal vendors of market information, seven national securities exchanges or associations, the Securities Industry Association, and the Council on Wage and Price Stability. Virtually all commentators were in favor of the general thrust of the proposal—improvement in the quality of quotation information disseminated from the various market centers. Commentators, however, expressed concern about various aspects of the proposal, and pointed out various technical and practical problems with the Rule as proposed. After considering the comments received, the Commission has determined to modify the proposal in certain respects—particularly in the collection procedures and firmness requirements for quotations originating on exchanges and in the assignment of responsibility for published quotations—and to republish the proposed Rule for public comment.

II. The Revised Proposal

Under the revised proposal, the basic regulatory approach of the July Proposal would be retained. Thus, the revised version of proposed Rule 11Ac1-1 would retain the requirement that exchanges and associations establish and maintain procedures for collecting, processing and making available to quotation vendors quotation information (including size) relating to equity securities reported in the consolidated transaction reporting system. Similarly, the proposed Rule

[1] Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 (1976).

[2] In the July Proposal, the term "eligible security" was defined as any security as to which last sale information is reported in the consolidated transaction reporting system.

[3] In the July Proposal, the term "specialist" was defined as any member of a national securities exchange who is registered as a specialist pursuant to the rules and regulations of such exchange and any other member of an exchange who also performs, on the floor of that exchange, either the market making or limit order representation function of a registered specialist.

[4] In the July Proposal, the term "third market maker" was defined as a "market maker" as defined in Rule 15c3-1(c)(8) under the Act who makes markets over-the-counter in eligible securities.

[5] Proposed Rule 11Ac1-1(b)(1).

[6] Proposed Rule 11Ac1-1(c)(1).

[7] Proposed Rule 11Ac1-1(c)(2).

[8] Proposed Rule 11Ac1-1(c)(3)(ii).

[9] Proposed Rule 11Ac1-1(c)(3)(i); (c)(5).

[10] Proposed Rule 11Ac1-1(c)(5).

would continue to require that brokers and dealers subject to its provisions supply quotations to their exchange or association for dissemination to quotation vendors (although dissemination of size greater than a normal unit of trading would continue to be optional). Finally, the Rule would retain the requirement that quotations made available to and displayed by vendors be "firm" up to the size displayed, subject to the same exceptions contained in the July Proposal (i.e., for revised quotations, intervening transactions and trade reports) and a new exception intended to accommodate unusual or active market conditions.

A. Collection of Exchange Quotations

The major alteration to Rule 11Ac1–1 proposed herein relates to the manner of collecting quotation information from exchanges. Rather than limiting the persons from whom quotations are collected to specialists, the revised proposal would require each exchange, at all times such exchange is open for trading, to collect, process, and make available to quotation vendors the highest bid and lowest offer communicated at the location (or locations) designated for trading on the floor of that exchange by a responsible broker or dealer with respect to each reported security [11] listed or admitted to unlisted trading privileges on that exchange. An exception would be provided for any such bid or offer which is executed immediately after communication and any such bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication.[12] The term "responsible broker or dealer" would be defined to include any member who communicates to another member on the floor of that exchange a bid or offer for a particular reported security at the location (or locations) designated by the exchange for trading in that security. However, in the event two or more members of that exchange have communicated on the floor of such exchange bids or offers for any security at the same price, each such member would be deemd a "responsible broker or dealer" with respect to that bid or offer (subject to the rules of priority and precedence then in effect on that exchange).[13]

Thus, under the revised proposal, an exchange would be responsible for making available a single quotation for each reported security reflecting the market for that security on the floor of that exchange. That quotation, however, would not necessarily be the quotation of any single market participant, such as a specialist, but would reflect the highest bid and lowest offer of all brokers and dealers willing to trade in that particular security who have expressed their interest in terms of bids and offers. Thus, the revised proposal contemplates inclusion of buying and selling interest other than that of the specialist or his book, so that, for example, the best bid could be that of a specialist acting as agent for an order on his book and the lowest offer that of a broker in the "crowd." In that event, the exchange would still make available a single quotation, but responsibility for that quotation (in terms of the firmness requirements of the Rule) would be shared—the specialist would be responsible for execution of orders to sell at his bid price, and the broker in the "crowd" would be responsible for orders to purchase at his offer price.[14]

Under the revised proposal, each bid or offer made available by an exchange to quotation vendors would have to be accompanied by a quotation size, which would be either (i) the number of shares (or units of trading) which the broker or dealer responsible for that bid or offer had specified, for purposes of dissemination to quotation vendors, that he would be willing to buy at the bid price or sell at the offer price comprising his bid or offer, or (ii) a normal unit of trading (in the event the responsible broker or dealer failed to specify a size to his exchange or association). However, in the event the bid or offer made available by an exchange represented the bids or offers of more than one responsible broker or dealer, the quotation size made available by that exchange for such bid or offer would be required to be an aggregate quotation size (i.e., the sum of the quotation sizes of all responsible brokers or dealers willing to buy or sell at that bid or offer). Thus, for example, in the event there were four brokers and dealers each making an identical bid, and one of those brokers or dealers was willing to disseminate a size of 200 shares, a second was willing to disseminate 300 shares, and the other two were unwilling to specify a size for dissemination to vendors then the exchange involved would be obligated to disseminate in connection with that bid an aggregate quotation size of 700 shares (including 100 shares for each of the brokers or dealers who were unwilling to specify a size for dissemination).[15]

The firmness provisions of the revised proposal would be similar in concept to those contained in the July Proposal. Under the revised proposal, each responsible broker or dealer, subject to certain exceptions, would be obligated to execute any order to buy or sell a reported security, other than an odd-lot order, presented to him by another broker or dealer, or any other person with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as such responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with any such order) in any amount up to his published quotation size.[16] However, if, prior to the presentation of any such order to a responsible broker or dealer, such responsible broker or dealer communicated to his exchange a revised quotation size, he would not be obligated to purchase or sell reported securities in an amount greater than that revised quotation size.

The firmness requirements of the Rule would also not apply after the responsible broker or dealer had communicated a bid or offer superseding his published bid or published offer or for a three-minute period after a transaction is effected on such responsible broker's or dealer's exchange or a transaction effected otherwise than on such responsible broker's or dealer's exchange is reported in the consolidated system.[17] In addition,

[11] The term "reported security" used in the revised proposal would differ from the term "eligible security" used in the July Proposal in that it would make the Rule applicable only to equity securities.

[12] Rule 11Ac1–1(b)(1)(i) as revised.

[13] Rule 11Ac1–1(a)(2)(i) as revised. The Rule, as revised, also would provide that, with respect to a bid or offer represented by an order to buy or sell a reported security which is transmitted from one member of that exchange to another such member who undertakes to represent such bid or offer as agent, only the last such member who undertakes to represent such bid or offer as agent would be considered the "responsible broker or dealer" with respect to that bid or offer.

[14] Under the revised proposal, each exchange would also be responsible for establishing and maintaining procedures and mechanisms for ascertaining, at all times the exchange is required to collect, process and make available to quotation vendors bids and offers for reported securities, the identity of the responsible brokers and dealers with respect to each bid and offer collected, processed and made available, and would be required, upon request of any member seeking to execute a transaction in reliance on the firmness requirements of the Rule, to disclose the identity of such responsible brokers and dealers to such member. (Rule 11Ac1–1(b)(2) as revised). The revised proposal would not, however, require exchanges to make such identifying information available to quotation vendors.

[15] The exchange involved would also be responsible for keeping track of the quotation sizes of each responsible broker or dealer and making that information available to a member seeking to effect a transaction in reliance on the firmness requirements of the Rule. (See Rule 11Ac1–1(b)(2) as revised.)

[16] The Commission is particularly interested in receiving comment on the appropriateness of imposing a firmness requirement conferring upon both institutional and retail buyers and sellers of reported securities a right to compel a responsible broker or dealer to effect a transaction under the circumstances described above, particularly in light of concepts of suitability (see Article III, Sec. 2 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.) and diligence as to customer accounts (see Rule 405 of the New York Stock Exchange, Inc.). Variants of the requirements would be to confine the firmness requirements to orders presented by other brokers and dealers or to orders presented by persons other than retail customers. If the Commission determines to retain the firmness requirement in the form described in the text (e.g., because it would be unfair to establish rights of brokers and dealers to rely upon quotations while denying such rights to others), that requirement, of course, would not be intended to supersede or contravene obligations with respect to dealings with customers imposed by other Commission or self-regulatory organization rules.

[17] For purposes of this provision of the Rule, each such transaction or trade report would trigger a new three-minute period.

in the event an order to purchase or sell a particular reported security is presented to a responsible broker or dealer on the floor of an exchange at a time when such responsible broker's or dealer's published bid or published offer is at the same price as the published bid or published offer for that security of any other responsible broker or dealer on the floor of such exchange, no such other broker or dealer would be relieved of his execution responsibilities under the Rule until (i) if the order is for an amount of reported securities which is equal to or less than the published aggregate quotation size, the member seeking to effect the order in reliance on the Rule has completed his order, or (ii) if the order is for an amount greater than the published aggregate quotation size, that member has purchased or sold an amount of such security equal to such published aggregate quotation size, regardless of any intervening trade report or revised bid or offer for the particular reported security involved or the fact that satisfaction of the order may involve more than one individual transaction in that security on that exchange.

Finally, the Commission recognizes that, under certain unusual or active market conditions, an exchange market's quotation collection procedures may not be adequate to keep up with the flow of quotation information in a particular reported security or a specialist may not be able to update his quotations in that security on a timely basis. Accordingly, the Commission proposes an additional exception from the general firmness requirements of the Rule applicable during any period an exchange determines, pursuant to rules and regulations approved by the Commission pursuant to Section 19(b)(2) of the Act, that the level of trading activity is, or that there exist unusual market conditions, such that the exchange is incapable of collecting, processing and making available to quotation vendors the data required by the Rule in a manner which accurately reflects the current state of the market on the floor of such exchange in a particular reported security.

Under this exception, the obligation of responsible brokers and dealers to effect transactions in that security at their published bid or published offer, as well as the obligation of the exchange involved to ascertain the identity and quotation size of each responsible broker and dealer and make such information available to members, would be suspended upon notification by the exchange to certain designated persons (including the Commission and the various quotation vendors). Suspension of such obligations would continue until the exchange determined that the unusual market activity or conditions had terminated and renotified the persons designated in the Rule. However, during any period during which obligations are suspended pursuant to this exception, the exchange involved would still be required to continue, to the maximum extent practicable under the circumstances, to collect, process and make available to quotation vendors bids, offers and quotation sizes of its members.

B. COLLECTION OF THIRD MARKET QUOTATIONS

The Commission believes that no major change in the Rule's requirements as to collection procedures and firmness with respect to third market makers is necessary. Under the revised proposal, each third market maker would be deemed a "responsible broker or dealer" with respect to his bids and offers, and would be obligated to effect transactions in reported securities at a price at least as favorable as his published bid or published offer, subject to the exceptions for intervening transactions effected by him, intervening trades from other markets reported in the consolidated system, and revised quotations.

Each national securities association would be required, at all times last sale information with respect to reported securities is reported in the consolidated system, to collect, process, and make available to quotation vendors the highest bid and lowest offer communicated otherwise than on the floor of an exchange by each member of such association acting in the capacity of a third market maker for a reported security. An exception from that requirement would be provided for any such bid or offer communicated by a third market maker which is executed immediately after communication or is cancelled or withdrawn if not so executed.

C. TECHNICAL CHANGES

In addition to the changes to proposed Rule 11Ac1-1 discussed above, several technical changes to the Rule were made as discussed below.

1. The definition of the term "third market maker" has been altered to make clear that (a) a market maker may also represent a customer's order as agent as part of a bid or offer made available pursuant to the Rule, and (b) a market maker shall not include any person who does not make markets for reported securities in amounts of less than block size.[18]

2. The quotation information collection provisions of the Rule have been amended to relieve an exchange of responsibility for collecting, processing and making available bids, offers and quotation sizes not only during periods when trading has been suspended, but also when trading has been halted on the particular exchange for whatever reason, as well as prior to the opening transaction on that exchange.[19]

3. The proposed Rule has been revised to permit exchanges and associations required to make quotation information available pursuant to its provisions to do so at a common location determined by mutual agreement of the exchanges and associations.[20]

4. The proposed Rule has been revised to explicitly permit the collection and dissemination of quotation information with respect to reported securities (including indications of interest as well as bids and offers) to vendors by exchanges and associations either prior to the commencement or after the termination of trading in a particular market center.[21]

5. The anticipated effective date of the Rule has been revised to January 1, 1978.[22] The Commission believes that this date will provide adequate lead time for exchanges and associations to make whatever modifications to their quotation collection and dissemination systems as are necessary to ensure compliance with the Rule, and for vendors to modify their information systems to accommodate the display of quotation information (including sizes) from the various market centers.

6. In order to avoid confusion concerning the intended neutrality of proposed Rule 11Ac1-1 in the area of charges by exchanges and associations in connection with the dissemination of quotation information, the Commission has deleted the section of the July Proposal which provided that "[n]othing in [the proposed Rule] shall preclude any exchange or association from imposing fair and reasonable charges for the dissemination of quotations."[23]

III. ADDITIONAL ISSUES

A. VENDOR REQUIREMENTS AND BEST EXECUTION

Several commentators suggested that, in conjunction with the proposed Rule, the Commission impose obligations on vendors to display quotations made available pursuant to its provisions and on brokers to route customer orders to the market center displaying the most favorable quotation at the time the order is received. The Commission believes, however, that neither of these suggestions should be incorporated in the Rule at this time.

With respect to vendor obligations, although the Commission believes that widespread dissemination of quotation information—including size—is necessary to promote effective competition among market centers and is essential to the achievement of the purposes of the Rule, it appears that adequate dissemination will be achieved without any such

[18] Rule 11Ac1-1(a)(1) as revised.

[19] Rule 11Ac1-1(b)(1)(i) as revised. An association would continue to be responsible for collecting, processing and making available quotation information except during periods when trading in a particular reported security has been suspended.

[20] Rule 11Ac1-1(a)(6) as revised.

[21] Rule 11Ac1-1(b)(4) as revised. The revised proposal, however, would not require any exchange of association to collect, process, and make available quotation information outside of normal trading hours.

[22] Rule 11Ac1-1(b)(1) as revised.

[23] Proposed Rule 11Ac1-1(b)(3). In so doing, however, the Commission notes that, under Section 11A(c)(1)(C) of the Act [15 U.S.C. 78k-1(c)(1)(C)], it continues to have authority to adopt rules and regulations designed to assure that all securities information processors may obtain quotation information from any exchange or association (or any other exclusive processor) on fair and reasonable terms.

requirements. The Commission intends, however, to monitor closely developments in this area and, should vendors fail to provide widespread and complete dissemination of quotation information—including size—to brokers, dealers and investors within a reasonable time, we will reconsider the need for regulations imposing display requirements directly on quotation vendors.

Although the Commission is not proposing at this time any requirement that brokers direct order flow on the basis of machine-displayed quotation information, the Commission believes that adoption of proposed Rule 11Ac1–1 should aid brokers in obtaining better execution of customer orders. The proposal, if adopted, should, in our view, significantly improve the quality of quotation information, and we would expect brokers to take this improvement in market information into consideration in their order routing decisions.

B. THE THREE-MINUTE PROVISION

Several commentators noted practical problems with the three-minute provision of the proposed Rule, which would operate to relieve responsible brokers or dealers of their execution obligations under the Rule for a three-minute period following either a transaction in the particular market center involved or the reporting of a transaction in the consolidated system. Several exchanges argued that exchange specialists may not always be aware of transactions in different market centers (particularly if those transactions are effected in markets other than the primary exchange market), and therefore would have difficulty in updating their quotations within the requisite three-minute period.

The Commission believes, however, that the three-minute provision of the Rule is workable and will not create major operational problems for the exchange markets. Insofar as the proposed Rule creates a need on the part of market professionals on the floors of the various exchanges to be more aware of transactions occurring elsewhere, the Commission believes it is a simple task to develop and install systems capable of notifying specialists of all transactions in their specialty stocks (regardless of the market center in which the transaction was effected).[24]

Nonetheless, the Commission requests commentators to focus on this aspect of the Rule and to advise the Commission of any other potential problems resulting from the three-minute provision which would impact on either exchange markets or on third market makers. In addition, commentators should consider, as an alternative to the three-minute provision of the Rule, the feasibility of requiring bids and offers made available pursuant to the Rule to be firm under all circumstances (unless a revised bid or offer had been communicated to the relevant exchange or association prior to receipt of an order).

C. MEASUREMENT OF THREE-MINUTE PERIOD

One commentator complained that the Rule did not define the terms that would be used to measure the three-minute "grace period" provided for responsible brokers and dealers after intervening transactions and trade reports. That commentator argued that there "may be serious confusion and continued disputes" unless the Rule clearly defines (i) the time a transaction is considered to have been effected in a particular market center, (ii) the time a quotation is considered to have been communicated to a market center for dissemination to quotation vendors, and (iii) the time a transaction is considered to have been reported in the consolidated system.

The Commission is of the view that determination of the time a transaction is considered to have been effected and the time a bid or offer is considered to have been communicated to a market center for dissemination to quotation vendors be left to the various self-regulatory organization.[25] With respect to the reporting of transactions in the consolidated system, the Commission is of the view that, for purposes of proposed Rule 11Ac1–1, as well as all other rules and regulations under the Act which refer to the consolidated system (e.g., the Commission's primary short sale rule, Rule 10a–1 (17 CFR 240.10a–1)), a transaction is considered to have been reported in the consolidated system when it is made available by the processor thereof by means of the high-speed data transmission line developed as part of the joint industry plan for the development and operation of the system.

D. ERRORS

A number of commentators expressed concern about the possibility of errors in the collection and dissemination of quotation information and were uncertain as to whether the Rule required a specialist or third market maker to effect a transaction at a price displayed on a vendor interrogation device if that price were not, in fact, the correct one. The Commission does not believe persons subject to execution responsibilities under the Rule based on machine-displayed quotation information should be responsible for transmission or display errors on the part of any exchange, association or vendor and has made some minor changes in the Rule to make clear that the Rule does not require execution based on erroneous displays or transmissions.

Under the revised proposal, if a bid or offer displayed on a vendor terminal or display device is not the actual bid or offer communicated by a responsible broker or dealer to his exchange or association, or if the quotation size (or aggregate quotation size) displayed is not the size determined pursuant to the Rule, that bid, offer or size would not be within the definition of "published bid," "published offer," "published quotation size," or "published aggregate quotation size" (as the case may be) and, therefore, no responsible broker or dealer would be required to execute a transaction based on that erroneous bid, offer or size.[26]

E. COST/BENEFIT ANALYSIS

The Commission has considered the anticipated costs and benefits associated with proposed Rule 11Ac1–1 and has concluded that the projected benefits of the proposal, although difficult to quantify, outweigh the anticipated costs to exchanges, associations and market professionals of compliance with the Rule. These projected benefits include facilitating a broker's ability to use reasonable diligence to obtain best execution of each order entrusted to him,[27] as well as the possible narrowing of spreads in certain exchange-traded issues.

Moreover, notwithstanding any specific benefit which may be derived from adoption of proposed Rule 11Ac1–1, affirmative Commission regulatory action in this area is, in our view, justified by the overriding public interest in the widespread dissemination of quotation information and by the provisions of the Act mandating Commission action to facilitate the development of a national market system. In this regard, the Commission notes that Section 11A of the Act (15 U.S.C. 78k–1), added by the Securities Acts Amendments of 1975,[28] contains a Congressional finding that it is in "the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers and investors of information with respect to quotations * * *."[29]

In addition, the legislative history of the 1975 Amendments indicates a clear Congressional determination that a composite quotation system is an essential element of the emerging national market system and that Congress contemplated an active Commission role in its development. For example, the Senate Committee on Banking, Housing and Urban Affairs in its report accompanying

[24] For example, consolidated last sale information, including the time of the most recent transaction, is available on most standard vendor interrogation devices.

[25] The method employed by each self-regulatory organization for determining when a transaction has taken place and when a bid or offer has been communicated to it for dissemination should be part of that self-regulatory organization's procedures and mechanisms for collecting, processing and making available quotation information required by paragraph (b)(1) of the Rule.

[26] Of course, if a bid, offer or quotation size of a responsible broker or dealer is displayed correctly on one vendor's interrogation device and incorrectly on another vendor's device, that responsible broker or dealer would still be required to be firm with respect to the correct price or size (although he could not be held to the incorrect price or size).

[27] See SEC, Policy Statement on the Structure of a Central Market System, 7–8 (1973).

[28] Pub. L. 94–29 (June 4, 1975).

[29] Section 11A(a)(C)(iii) of the Act (15 U.S.C. 78k–1(a)(1)(C)(iii)).

S. 249, the bill which became the 1975 Amendments, stated as follows:

In the securities markets, as in most other active markets, it is critical for those who trade to have access to accurate, up-to-the-second information as to the prices at which transactions in particular securities are taking place (i.e., last sale reports) and the prices at which other traders have expressed their willingness to buy or sell (i.e., quotations). For this reason, communications systems designed to provide automated dissemination of last sale and quotation information with respect to securities will form the heart of the national market system.[30]

And, as to the role of the Commission in the development of a composite quotation system, the conference report on S. 249 stated that:

(I)t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed. The conferees expect, however, in those situations where competition may not be sufficient, such as the creation of a composite quotation system * * *, the Commission will use the powers granted to it in this bill to act promptly and effectively to ensure that the essential mechanisms of an integrated secondary trading system are put into place as rapidly as possible.[31]

IV. Request for Public Comment

The Securities and Exchange Commission hereby proposes Rule 11Ac1–1 (17 CFR 240.11Ac1–1) pursuant to its authority under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)), and particularly Sections 2, 3, 6, 11A, 15, 15A, 17 and 23 thereof (15 U.S.C. 78b, 78c, 78f, 78k–1, 78o, 78o–3, 78q and 78w). The text of the proposed rule is as follows (changes from the prior version of proposed Rule 11Ac1–1 are indicated as follows: additions are indicated by arrows ►and◄, and deletions by brackets [and]):

§ 240.11Ac1–1 Dissemination of quotation for ►reported◄ [eligible] securities.

(a) ►*Definitions.*◄ For purposes of this section, (1) The term "third market maker" shall mean ►any person who holds himself out as being willing to buy and sell a reported security for his own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size (including any such person who also represents, as agent, orders to buy or sell reported securities on behalf of any other person and communicates bids and offers to a national securities association ("association") pursuant to this section on behalf of such other persons as well as for his own account).◄ [a "market maker" as defined in § 240.-15c3–1(c)(8) (Rule 15c3–1(c)(8) under the Act) who makes markets over-the-counter in eligible securities;]

(2) The term ►"exchange market maker"◄ ["specialist"] shall mean any member of a national securities exchange ("exchange") who is registered as a specialist ►or market maker◄ pursuant to the rules and regulations of such exchange ►.◄ [, and any other member of an exchange who also performs on the floor of that exchange, either the market making or limit order representation function of a registered specialist;]

►(3) The term "responsible broker or dealer" shall mean

(i) When used with respect to bids or offers communicated on the floor of an exchange, any member of such exchange who communicates to another member on the floor of such exchange, at the location (or locations) designated by such exchange for trading in a reported security, a bid or offer for such reported security, as either principal or agent; *Provided, however,* That in the event two or more members of an exchange have communicated on the floor of such exchange bids or offers for a reported security at the same price, each such member shall be considered a "responsible broker or dealer" with respect to that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; *And further provided,* That, with respect to a bid or offer which is transmitted from one member of an exchange to another such member who undertakes to represent such bid or offer as agent, only the last such member who undertakes to represent such bid or offer as agent shall be considered the "responsible broker or dealer" with respect to that bid or offer; and

(ii) When used with respect to bids and offers communicated by a third market maker to another broker or dealer or to a customer otherwise than on an exchange, the third market maker communicating the bid or offer (regardless of whether such bid or offer is for his own account or on behalf of another person).

(4)◄ [(3)] The term "quotation vendor" shall mean any securities information processor engaged in the business of disseminating to brokers and dealers, on a real-time or current and continuing basis, ►bids and offers made available pursuant to this section◄ [quotations for eligible securities], whether distributed through an electronic communications network or displayed on a terminal or other ►display◄ device ►.◄ [or otherwise;]

(5) The term "consolidated system" shall mean the consolidated transaction reporting system contemplated by § 240.-17a–15 (Rule 17a–15 under the Act) ►.◄ [;]

►(6)◄ [(4)] The term ►"reported security"◄ ["eligible security"] shall mean any ►equity◄ security as to which last sale information is reported in the consolidated system ►.◄ [;]

►(7)◄ [(6)] The term "make available," when used with respect to ►bids, offers, quotation sizes and aggregate quotation sizes◄ [quotations] supplied to quotation vendors by an exchange or [a national securities] association ["association"], shall mean to provide circuit connections at the premises of the exchange or association supplying ►such data,◄ [those quotations] ►or at a common location determined by mutual agreement of the exchanges and associations,◄ for the delivery of such ►data◄ [quotations] to ►quotation◄ [such] vendors ►.◄ [;]

►(8)◄ [(7)] The term ►s "bid" and "offer◄ ["quotation," when used with respect to bids and offers of a specialist or market maker,] shall mean the [highest current] bid price ►or◄ [and] the [lowest current] offer price most recently communicated by ►a responsible broker or dealer◄ [that specialist or market maker] to any ►other◄ broker ►or◄ [,] dealer ►,◄ or ►to any◄ customer, at which he is willing to buy or sell a particular amount of ►a reported security◄ [eligible securities], as either principal or agent, but shall not include [(i)] indications of interest ►.◄ [or (ii) any bid or offer by that specialist or third market maker made in response to any inquiry by a broker, dealer or customer with respect to that specialist's or third market maker's willingness to buy or sell eligible securities in an amount greater than that bid for or offered by that specialist or third market maker in communicating his quotation;]

►(9)◄ [(8)] the term ►s "published bid" and "published offer"◄ ["published quotation," when used in conection with an order to buy or sell eligible securities presented to a specialist or market maker,] shall mean the ►bid or offer (as the case may be) of a responsible broker or dealer for that reported security communicated by him to his exchange or association◄ [most recent quotation of such specialist or market maker made available to quotation vendors] pursuant to this section ►and◄ displayed by ►a◄ quotation vendor[s] on a terminal or other display device at the time ►an◄ [the] order is presented ►for execution to such responsible broker or dealer.◄ [;]

►(10)◄ [(9)] The term "quotation size," when used with respect to a ►responsible broker's or dealer's bid or offer for a reported security◄ [specialist's or market maker's quotation], shall mean ►(i)◄ the number of shares (or units of trading) of ►that reported◄ [an eligible] security which ►such responsible broker or dealer has specified, for purposes of dissemination to quotation vendors, that◄ [the specialist or market maker has stated] he is willing to buy at the bid price or sell at the offer price comprising his ►bid or offer, as◄ [quotation,] either [as] principal or agent ►, or, in the event such responsible broker or dealer has not so specified, (ii) a normal unit of trading for that reported security.◄ [;]

►(11)◄ [(10)] The term "published quotation size [,]" [when used in connection with an order to buy or sell

[30] S. Rep. No. 94–75, Report to Accompany S. 249, 94th Cong., 1st Sess. 9 (1975). See Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, Securities Industry Study, H.R. Rep. No. 92–1519, 92d Cong., 2d Sess. 123–25 (1972); Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Securities Industry Study, S. Doc. No. 93–13, 93d Cong., 1st Sess. 101–104 (1973).

[31] Committee on Conference, Conference Report to Accompany S. 249, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 92 (1975).

eligible securities presented to a specialist or market maker,] shall mean the [most recent] quotation size [(if any)] of ►a responsible broker or dealer communicated by him to his exchange or association◄ [that specialist or market maker made available to quotation vendors] pursuant to this section and displayed by ►a◄ quotation vendor[s] on a terminal or other display device at the time ►an◄ [the] order is presented ►for execution to such responsible broker or dealer.◄ [;]

►(12) The term "aggregate quotation size" shall mean the sum of the quotation sizes of all responsible brokers or dealers who have communicated on the floor of an exchange bids or offers for a reported security at the same price.

(13) The term "published aggregate quotation size" shall mean the aggregate quotation size calculated by an exchange and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

(14)◄ [(11)] The term "odd-lot" shall mean an order for the purchase or sale of ►a reported◄ [an eligible] security in an amount less than a normal unit of trading.

►(15) The term "specified persons," when used in connection with any notification required to be provided pursuant to paragraphs (b)(3)(i) and (b)(3)(ii) of this section, shall mean

(i) The Securities and Exchange Commission;

(ii) Each quotation vendor;

(iii) The Consolidated Tape Association; and

(iv) The Options Price Reporting Authority (in the case of a notification with respect to a reported security which is a class of securities underlying options admitted to trading on any exchange).◄

(b) ►*Dissemination requirements for exchanges and associations.*◄ (1) On and after ►January 1, 1978,◄ [November 1, 1976,] every exchange and association shall have established and shall maintain procedures and mechanisms for collecting ►bids, offers,◄ [quotations and, if provided,] quotation sizes ►and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association (as the case may be)◄ [from specialists and market makers], processing such ►bids, offers◄ [quotations] and sizes, and making such ►bids, offers◄ [quotations] and sizes available to quotation vendors, ►as follows:◄ [in accordance with subparagraph (2) of this paragraph (b).

(2) Every exchange and every association shall collect, process and make available to quotation vendors quotations and quotation sizes of its specialists and market makers as follows:]

(i) Every exchange shall, at all times such exchange is open for trading, collect, process and make available to quotation vendors ►the highest bid and the lowest offer communicated on the floor of that exchange (or, in the event such exchange maintains more than one trading floor, communicated on any of such floors) by any responsible broker or dealer (excluding any such bid or offer which is executed immediately after communication and any such bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication)◄ [quotations of its specialists] for each ►reported◄ [eligible] security ►listed◄ [registered] or admitted to unlisted trading privileges on that exchange ►except◄ [*Provided, however*, That no quotation for an eligible security shall be required to be collected, processed and made available by an exchange] during any period when trading in that security [on that exchange] has been suspended ►or halted, or prior to the commencement of trading in that security on any trading day, on that exchange◄;

(ii) Every association shall, at all times last sale information with respect to ►reported◄ [eligible] securities is reported in the consolidated system, collect, process and make available to quotation vendors ►the highest bid and lowest offer communicated otherwise than on the floor of an exchange by each member of such association acting in the capacity of a third market maker for a reported security (excluding any such bid or offer which is executed immediately after communication or is cancelled or withdrawn if not so executed) except◄ [quotations of third market makers who are members of such association for each eligible security for which one or more members act as a third market maker, *Provided, however*, That no quotation for an eligible security shall be required to be collected, processed and made available by an association] during any period when over-the-counter trading in that security has been suspended; ►and◄

(iii) Every ►bid and offer◄ [quotation for an eligible security] made available to quotation vendors ►by an exchange or association◄ pursuant to this section shall be accompanied by the quotation size ►or the aggregate quotation size (as the case may be) associated with it◄ [if the specialist or third market maker communicating that quotation elects to provide such size to the exchange or association for the purpose of disseminating such size to quotation vendors].

►(2) Each exchange shall, with respect to each published bid and published offer for any reported security representing a bid or offer of a member, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (c)(2) of this section, the identity of each responsible broker or dealer who made such bid or offer and the quotation size associated with it.

(3)(i) If, at any time an exchange is open for trading, such exchange determines, pursuant to rules and regulations approved by the Securities and Exchange Commission pursuant to Section 19(b)(2) of the Act, that the level of trading activity is, or that unusual market conditions exist, such that the exchange is incapable of collecting, processing and making available to quotation vendors the data with respect to a reported security required to be made available by subparagraph (1) of this paragraph (b) in a manner which accurately reflects the current state of the market on the floor of such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers who are members of that exchange shall be relieved of their obligation under paragraph (c)(2) of this section and such exchange shall be relieved of its obligation under subparagraph (2) of this paragraph (b) with respect to that security; *Provided, however*, That such exchange shall continue, to the maximum extent practicable under the circumstances, to collect, process and make available to quotation vendors such data for that security in accordance with subparagraph (1) of this paragraph (b).

(ii) During any period an exchange, or any responsible broker or dealer who is a member of that exchange, is relieved of any obligation imposed by this section with respect to any reported security by virtue of a notification made pursuant to subparagraph (3)(i) of this paragraph (b), such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing and making available to quotation vendors the data with respect to that security required to be made available by paragraph (1) of this paragraph (b) in a manner which accurately reflects the current state of the market on the floor of such exchange. Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the prior notification shall again be subject to such obligation.◄

[(3) Nothing in this section shall preclude any exchange or association from imposing fair and reasonable charges for the dissemination of quotations.]

►(4) Nothing in this section shall preclude any exchange or association from making available to quotation vendors indications of interest or bids and offers with respect to a reported security at any time such exchange or association is not required to do so pursuant to subparagraph (1) of this paragraph (b).◄

(c) ►*Obligations of responsible brokers and dealers.*◄ (1) Every ►responsible broker or dealer◄ [specialist and third market maker] shall promptly communicate to his exchange or association (as the case may be), pursuant to the procedures established by that exchange or association, his ►bids, offers and quotation sizes◄ [quotations in eligible securites (and, if such specialist or third market maker so elects, his quotation sizes)].

(2) Subject to the provisions of ►subparagraphs (3) and (4) of this paragraph (c)◄ [paragraphs (c)(3) and

(c)(4) of this section], every ►responsible broker or dealer◄ [specialist and market maker] shall be obligated to execute any order ►to buy or sell a reported security◄, other than an odd-lot order, [to buy or sell eligible securities] presented to him by ►another◄ [a] broker or dealer, or any other ►person belonging to a◄ category of person►s◄ with whom such ►responsible broker or dealer◄ [specialist or market maker] customarily deals, at a price at least as favorable to such buyer or seller as the bid ►price◄ or offer ►price◄ comprising such ►responsible broker's or dealer's◄ [specialist's or market maker's] published ►bid or published offer◄ [quotation] ►(exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order)◄ in any amount up to ►his◄ [the] published quotation size [(or, in the event no quotation size has been disseminated in connection with such published quotation, a normal unit of trading)]►; *provided, however,* That if, prior to the presentation of such an order, a responsible broker or dealer has communicated to his exchange or association (as the case may be), a quotation size superseding his published quotation size (a "revised quotation size") pursuant to subparagraph (1) of this paragraph (c), such responsible broker or dealer shall not be obligated by this section to purchase or sell a reported security in an amount greater than his revised quotation size◄

(3) Subject to the provisions of paragraph ►(b)◄ [(c)] (3) of this section ►and subparagraphs (4) and (5) of this paragraph (c)◄, no ►responsible broker or dealer◄ [specialist or market maker] shall be obligated to execute a transaction ►for any reported security◄ as provided in ►subparagraph (2) of this paragraph (c)◄ [paragraph (c)(2) of this section] if, after ►communication◄ [dissemination] of such ►responsible broker's or dealer's◄ published ►bid or published offer◄ [quotation] and before the order sought to be executed is presented, (i) a transaction in the ►reported◄ [eligible] security sought to be bought or sold has been effected on the floor of such ►responsible broker's or dealer's◄ [specialist's] exchange or with such ►responsible broker or dealer◄ [market maker], or ►a transaction in such security effected otherwise than on the floor of such responsible broker's or dealer's exchange or with such responsible broker or dealer◄ has been reported in the consolidated system, or (ii) such ►responsible broker or dealer◄ [specialist or market maker] has communicated to his exchange or association (as the case may be), pursuant to ►subparagraph (1) of this paragraph (c)◄ [paragraph (c)(1) of this section], a ►bid or offer◄ [quotation] superseding his published ►bid or published offer◄ [quotation].

►(4) Notwithstanding the provisions of subparagraph (3) of this paragraph (c), if, at the time an order to buy or sell a reported security, other than an odd-lot order, is presented to a responsible broker or dealer on the floor of an exchange, such responsible broker's or dealer's published bid or published offer (as the case may be) for that security is at the same price as the published bid or published offer for that security of any other responsible broker or dealer on the floor of that exchange, no such responsible broker or dealer shall be relieved of his obligation under subparagraph (2) of this paragraph (c) to effect a transaction in that security until the person presenting such order either has (i) completed that order (if the order is for an amount of such reported security which is equal to or less than the published aggregate quotation size), or (ii) purchased or sold an amount of such reported security equal to the published aggregate quotation size (if the order is for an amount of such reported security greater than such published aggregate quotation size).◄

[(4) Notwithstanding paragraph (c)(2) of this section, if, prior to the presentation of an order to buy or sell eligible securities, a specialist or third market maker has communicated to his exchange or association (as the case may be), pursuant to paragraph (c)(1) of this section, a quotation size superseding his published quotation size (a "revised quotation size"), he shall not be obligated by this section to purchase or sell eligible securities in an amount greater than his revised quotation size.]

(5) If a ►responsible broker or dealer◄ [specialist or market maker] does not communicate a ►bid or offer◄ [quotation] superseding his published ►bid or published offer for a reported◄ [quotations in an eligible] security within ►three (◄ 3 ►)◄ minutes after the occurrence of a transaction in that security [effected] on such ►responsible broker's or dealer's◄ [specialist's] exchange or with such ►responsible broker or dealer◄ [market maker], or within ►three (◄ 3 ►)◄ minutes of the reporting of a transaction in that security in the consolidated system ►effected otherwise than on the floor of such responsible broker's or dealer's exchange or with such responsible broker or dealer◄, such ►responsible broker or dealer◄ [specialist or market maker] shall, upon presentation of an order, be obligated to execute a transaction in accordance with the provisions of ►subparagraph (2) of this paragraph (c) of this section◄ [paragraph (c)(2) of this section] notwithstanding ►subparagraph (3)(i) of this paragraph (c)◄ [paragraph (a)(3) of this section].

(d) ►*Exemptions.*◄ The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any ►responsible broker or dealer,◄ [specialist or market maker, national securities] exchange, or [national securities] association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

(Secs. 2, 3, 6, 15, 17, 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 895, 897, 901, as amended by Secs. 2, 3, 4, 11, 14, 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, 155 (15 U.S.C. 78b, 78c, 78f, 78k-1, 78o, 78q, 78w, as amended by Pub. L. 94-29 (June 4, 1975)); Sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by Sec. 12, Pub. L. 94-29, 89 Stat. 127-131 (15 U.S.C. 78o-3, as amended by Pub. L. 94-29 (June 4, 1975)); Sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).)

All interested persons are invited to submit written views, data and arguments with respect to proposed Rule 11Ac1-1. Persons wishing to make such submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, not later than August 1, 1977. All submissions should refer to File No. S7-648, and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JUNE 14, 1977.

[FR Doc.77-17886 Filed 6-23-77;8:45 am]

federal register

FRIDAY, JUNE 24, 1977

PART VI



ENVIRONMENTAL PROTECTION AGENCY

■

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Petroleum Refinery Fluid Catalytic Cracking Unit Catalyst Regenerators

Title 40—Protection of Environment

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY

[FRL 742-5]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Petroleum Refinery Fluid Catalytic Cracking Unit Catalyst Regenerators

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule revises the standard which limits the opacity of omissions from new, modified, or reconstructed petroleum refinery fluid catalytic cracking unit catalyst regenerators to 30 percent, except for one six-minute period in any one hour. The revision is being made to make the standard consistent with a revision to the test method for opacity. The standard implements the Clean Air Act and is intended to require the proper operation and maintenance of fluid catalytic cracking unit catalyst regenerators.

EFFECTIVE DATE: June 24, 1976.

ADDRESSES: Copies of the comment letters and a report which contains a summary of the issues and EPA's responses are available for public inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit (EPA Library), Room 2922, 401 M Street SW., Washington, D.C. Copies of the report also may be obtained upon written request from the EPA Public Information Center (PM-215), Washington, D.C. 20460 (specify Comment Summary—Petroleum Refinery Fluid Catalytic Cracking Units).

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919-688-8146, extension 271.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1973, the U.S. Court of Appeals for the District of Columbia Circuit remanded to EPA the standards of performance for Portland cement plants (*Portland Cement Association* v. *Ruckelshaus*, 486 F. 2d 375). One of the issues remanded was the use of opacity standards. On November 12, 1974, EPA responded to the remand (39 FR 39872) and on May 22, 1975, the Court affirmed the use of opacity standards (513 F. 2d 506).

In the remand response, EPA reconsidered the use of opacity standards and concluded that they are a reliable, inexpensive, and useful means of ensuring that control equipment is properly maintained and operated at all times. EPA also made revisions to the general provisions of 40 CFR Part 60 and to the Reference Method 9.

EPA reevaluated the opacity standard for petroleum refinery fluid catalytic cracking unit catalyst regenerators in light of the revisions to Reference Method 9, and proposed a revision to this standard on August 30, 1976 (41 FR 36600). The revision is not the result of a reevaluation of the technical, economic and environmental basis for the standard. Consequently, the revised opacity standard will be neither more nor less stringent than the previous standard, and will be consistent with the mass emission standard (1.0 kg/1000 kg of coke burnoff).

Summary of Comments and EPA's Responses

EPA received six letters commenting on the proposed revision (three from industry and three from State and local governments). Two commenters pointed out that the basis for the original opacity standard assumed new fluid catalytic cracking units would be of 65,000 barrels per day capacity, but the proposed revision assumed new fluid catalytic cracking units would be of less than 50,000 barrels per day capacity. Two other commenters pointed out that the original standard allowed one three-minute exception from the opacity standard of performance to accommodate soot-blowing in the carbon monoxide boiler and that the proposed change to six-minute averages did not justify adding an additional exception.

A review of the basis for the original opacity standard indicates the commenters are correct. Large, new or modified fluid catalytic cracking units will more likely be in the range of 65,000 barrels per day capacity, and one exception per hour more accurately reflects the one three-minute exception allowed under the previous test method. The effect of increased capacity on the opacity of particulate mass emissions was discussed both in the Federal Register notice proposing revision of the opacity standard and in the background information document supporting the revision. Considering the effect on opacity of the greater capacity of a 65,000-barrel-per-day fluid catalytic cracking unit compared to a 50,000-barrel-per-day unit leads to the conclusion that the opacity standard should not be revised to 25 percent, but should remain at 30 percent opacity. Accordingly, the revised opacity standard is promulgated as 30 percent opacity with one six-minute exception period per hour.

One comment concerned § 60.11(e) of the General Provisions and questioned whether in its present form it adequately accounts for the problems of petroleum refinery fluid catalytic cracking units. Section 60.11(e) provides relief for those individual sources where, because of operating variables, opacity readings are abnormally high and cause it to exceed the standard, even though it is in compliance with the mass emission standard. The mechanism for relief is that opacity readings may be taken during initial start-up mass emission testing and a special opacity standard assigned to the source.

Petroleum refinery fluid catalytic cracking units operate continuously for periods of two years or more; and over such long periods, mass and opacity emissions gradually increase. For this reason, the mass and opacity standards were set on the basis of levels achievable at the end of the run. It is to be expected, therefore, that at the beginning of the run, both mass and opacity emissions from such units will be well below the standard, even in some cases where opacity readings are abnormally high given the mass emissions. In such cases, an individualized opacity standard based on beginning-of-run readings would not necessarily prevent the facility which still meets the mass emissions standard at the end of the run from failing an end-of-run opacity test. To alleviate this problem, EPA is adding a new § 60.106 (e) to the petroleum refinery standard which, in conjunction with §§ 60.11 (e) (2), (e) (3), and (e) (4) of the General Provisions, will permit determination of an individualized opacity standard for a fluid catalytic cracking unit during any performance test and not just the initial performance test. This will ensure that a properly operated and maintained source will not be found in violation of the opacity standard, while in compliance with the applicable mass emission standard.

The proposed amendment to § 60.102 (a) (2) specified that opacity readings of portions of plumes which contain condensed, uncombined water vapor are not to be used for determining compliance with opacity standards. Since this provision has been added to § 60.11(b) of the General Provisions, it is not necessary to repeat it in Subpart J for petroleum refineries.

Miscellaneous

The opacity standard, as modified, applies to all affected facilities for which construction or modification was commenced after June 11, 1973, the date the standard was proposed.

This revision is promulgated under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended by Public Law 91-604, 84 Statute 1683, 1687 (42 U.S.C. 1857c-6, 1857c-9) and Public Law 90-148, 81 Statute 504 (42 U.S.C. 1857g(a)).

Note.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949, and OMB Circular A-107.

Dated: June 20, 1977.

Douglas M. Costle,
Administrator.

Part 60, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 60.102(a)(2) is revised to read as follows:

§ 60.102 Standard for particulate matter.

(a) * * *

(2) Gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour.

* * * * *

(Sec. 111, Pub. L. 91-604, 84 Stat. 1683 (42 U.S.C. 1857c-6); sec. 301(a), Pub. L. 90-148, 81 Stat. 504 (42 U.S.C. 1857g(a)).)

2. Section 60.105(e)(1) is revised to read as follows:

§ 60.105 Emission monitoring.

* * * * *

(e) * * *

(1) Opacity. All hourly periods which contain two or more six-minute periods during which the average opacity as measured by the continuous monitoring system exceeds 30 percent.

* * * * *

3. Section 60.106(e) is added to read as follows:

§ 60.106 Test methods and procedures.

* * * * *

(e) An owner or operator of an affected facility may request the Administrator to determine opacity of emissions from the affected facility during any performance test covered under § 60.8. In such event the provisions of §§ 60.11 (e)(2), (e)(3), and (e)(4) shall apply.

(Sec. 111, 114, Pub. L. 91-604, 84 Stat. 1683, 1687 (42 U.S.C. 1857c-6, 1857c-9); sec. 301(a), Pub. L. 90-148, 81 Stat. 504 (42 U.S.C. 1857g(a)).)

[FR Doc.77-18129 Filed 6-23-77;8:45 am]

federal register

FRIDAY, JUNE 24, 1977
PART VII

THE PRESIDENT
and
OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

■

NON-RUBBER FOOTWEAR IMPORTS

Presidential Proclamation 4510 and Notice of Orderly Marketing Agreements Between the United States and the Republics of China and Korea

Title 3—The President

Proclamation 4510 • June 22, 1977

Implementation of Orderly Marketing Agreements -- and the Temporary Quantitative Limitation On the Importation Into the United States of Certain Footwear

By the President of the United States

A PROCLAMATION

1. On February 8, 1977, the United States International Trade Commission (USITC) reported to the President (USITC Publication 799) the results of its investigation under section 201(b) of the Trade Act (19 U.S.C. 2251(b)) (the Trade Act). The USITC determined that footwear provided for in items 700.05 through 700.85, inclusive (except items 700.51, 700.52, 700.53, 700.54, and 700.60, and disposable footwear designed for one-time use provided for in item 700.85) of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles. The USITC recommended the imposition of certain tariff rate quotas on imports of the above specified articles.

2. On April 1, 1977, pursuant to section 202(b)(1) of the Trade Act (19 U.S.C. 2252(b)(1)), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to remedy the injury found to exist by the USITC through the negotiation of orderly marketing agreements with appropriate suppliers of footwear, as authorized by section 203(a)(4) of the Trade Act (19 U.S.C. 2253(a)(4)); and announced my intention to negotiate such agreements calling for limits on the export from certain foreign countries, and the import into the

United States, of certain footwear. On April 1, 1977, in accordance with section 203(b)(1) of the Trade Act (19 U.S.C. 2253(b)(1)), I transmitted a report to the Congress setting forth my determination and intention to negotiate orderly marketing agreements and stating the reasons why my decision differed from the action recommended by the USITC.

3. Section 203(e)(1) of the Trade Act (19 U.S.C. 2253(e)(1)) requires that import relief be proclaimed and take effect within 90 days after a Presidential determination to negotiate orderly marketing agreements.

4. Pursuant to the authority vested in the President by the Constitution and the statutes of the United States, including section 203(a)(4) of the Trade Act (19 U.S.C. 2253(a)(4)), orderly marketing agreements were concluded on June 14, 1977, between the Government of the United States of America and the Government of the Republic of China, and on June 21, 1977, between the Government of the United States of America and the Government of the Republic of Korea, limiting the export from the Republics of China and Korea, respectively, and the import into the United States, of footwear provided for in items 700.05 through 700.85, inclusive (except items 700.51, 700.52, 700.53, 700.54, 700.60, 700.75, and disposable footwear designed for one-time use provided for in item 700.85) of the TSUS.

5. Pursuant to section 203(k)(1) of the Trade Act (19 U.S.C. 2253(k)(1)), I have considered the relation of such actions to the international obligations of the United States.

6. In accordance with section 203(d)(2) of the Trade Act (19 U.S.C. 2253(d)(2)), I have determined that the level of import relief hereinafter proclaimed permits the importation into the United States of a quantity or value of articles which is not less than the average annual quantity or value of such articles imported into the United States from the

Republic of Korea, and from the Republic of China, in the 1974-1976 period, which I have determined to be the most recent representative period for imports of such articles.

NOW, THEREFORE, I, Jimmy Carter, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including section 203 of the Trade Act (19 U.S.C. 2253), and section 301 of title 3, United States code, do hereby proclaim:

(1) Orderly marketing agreements were entered into on June 14, 1977, and June 21, 1977, between the Government of the United States of America and the Government of the Republic of China and the Government of the Republic of Korea, respectively, with respect to trade in certain footwear, effective June 28, 1977. The orderly marketing agreements account for a major part of the United States imports of the articles covered by the agreements. Said orderly marketing agreements are to be implemented according to their terms and as directed in this proclamation, including the Annex thereto.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this proclamation.

(3) The President's authority under section 203(e)(2) of the Trade Act (19 U.S.C. 2253(e)(2)), to negotiate orderly marketing agreements with other foreign suppliers after import relief goes into effect is hereby delegated to the Special Representative for Trade Negotiations (hereinafter referred to as the "Special Representative"). The President's authority under section 203(e)(3) of the Trade Act (19 U.S.C. 2253 (e)(3)) to determine that any agreement negotiated pursuant to section 203 (a)(4) or 203 (e)(2) of the Trade Act (19 U.S.C. 2253 (a)(4) and (e)(2)) is no longer effective is hereby delegated to the Special Representative, to be exercised in conformity with paragraph (4)(a) below. In the

event of such a determination, the Special Representative shall prepare any proclamations that may be appropriate to implement import relief authorized by section 203(e)(3) of the Trade Act (19 U.S.C. 2253(e)(3)). The President's authority in section 203(g)(1) and (2) of the Trade Act (19 U.S.C. 2253(g)(1) and (2)) to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of articles covered by the orderly marketing agreements and to issue rules and regulations governing the entry, or withdrawal from warehouse, for consumption of like articles which are the product of countries not parties to such agreements, has been delegated to the Secretary of the Treasury pursuant to section 5(b) of Executive Order No. 11846. Such authority shall be exercised by the Secretary of the Treasury, upon direction by the Special Representative in consultation with representatives of member agencies of the Trade Policy Staff Committee.

(4) In exercising the authority delegated in paragraph (3) above, the Special Representative shall, in addition to other necessary actions, institute the following actions:

(a) Should the export restraint levels specified in the orderly marketing agreements described in paragraph (1) above, and in the Annex to this proclamation be exceeded, or should imports from countries not parties to such agreements increase in such quantities as to disrupt the effectiveness of the orderly marketing agreements, the Special Representative, after consultation with representatives of member agencies of the Trade Policy Staff Committee, may make a determination that for the purposes of section 203(e)(3) of the Trade Act the orderly marketing agreements do not continue to be effective.

(b) Beginning on June 28, 1977, if during any restraint period the quantity of imports of footwear of the types covered by the agreements, from countries other than the Republic of China and the Republic of Korea, appear likely to disrupt the effectiveness of the provisions of the orderly marketing agreements described in paragraph (1) above, the Special Representative may initiate consultations with those countries responsible for such disruptions and may prevent further entry of such articles for the remainder of that restraint period or may otherwise moderate or restrict imports of such articles from such countries pursuant to section 203(g)(2) of the Trade Act. Before exercising this authority, the Special Representative shall consult with representatives of the member agencies of the Trade Policy Staff Committee.

(c) Should the Special Representative determine, pursuant to this proclamation, to institute import restrictions on articles entered, or withdrawn from warehouse, for consumption from countries other than the Republic of China or the Republic of Korea pursuant to this proclamation, such action shall become effective not less than eight days after such determination and any necessary changes in the TSUS have been published in the Federal Register.

(5) The Special Representative shall take such actions and perform such functions for the United States as may be necessary concerning the administration, implementation, modification, amendment or termination of the agreements described in paragraph (1) of this proclamation, and any actions and functions necessary to implement paragraphs (3) and (4) of this proclamation. In carrying out his responsibilities

under this paragraph the Special Representative is authorized to delegate to appropriate officials or agencies of the United States authority to perform any functions necessary for the administration and implementation of the agreements or actions. The Special Representative is authorized to make any changes in Part 2 of the Appendix to the TSUS which may be necessary to carry out the agreements or actions. Any such changes in the agreements shall be effective on or after their publication in the Federal Register.

(6) The Commissioner of Customs shall take such actions as the Special Representative shall determine are necessary to carry out the agreements described in paragraph (1) of this proclamation, and to implement any import relief implemented pursuant to paragraphs (3) and (4) of this proclamation, or any modification thereof, with respect to the entry, or withdrawal from warehouse, for consumption into the United States of products covered by such agreements or by such other import relief.

(7) This proclamation shall be effective as of June 28, 1977, and shall continue in force through June 30, 1981, unless the period of its effectiveness is earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June in the year of our Lord, nineteen hundred and seventy seven, and of the Independence of the United States of America the two hundred and first.

Jimmy Carter

ANNEX

Subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified--

(a) by adding the following new headnote:

"3. Quantitative limitation on certain footwear.--The provisions of this headnote apply to items 923.90 through 923.94, inclusive, of this subpart. The quantitative import limitations imposed are in addition to the duties provided for the restrained articles in schedule 7, part 1A. The import restrictions provided for in this subpart do not apply to footwear with an aggregate value not over $100 in any shipment, if imported for the personal use of the importer.

(a) Definitions.--For the purposes of this subpart--

(i) the term "footwear" means all the footwear provided for in schedule 7, part 1A, except the following: footwear provided for in items 700.51 through 700.54, item 700.60, item 700.75, and disposable footwear, designed for one-time use, provided for in item 700.85;

(ii) the term "athletic footwear" means footwear of special construction for baseball, football, soccer, track, skating, skiing, and other athletic games, or sports; and

(iii) the term "restraint period" refers to the period beginning June 28, 1977, and ending June 30, 1978, and thereafter to the three subsequent 12-month periods beginning July 1 in one year and ending at the close of June 30 of the following year.

(b) Export visa.--None of the footwear provided for herein exported on or after June 28, 1977, from the foreign countries involved may be entered unless such footwear is accompanied by an appropriate export visa issued by the government of the exporting country.

(c) Footwear in bonded warehouse.--All footwear exported from the Republic of China that is in bonded warehouse as of May 14, 1977, and all footwear exported from the Republic of Korea that is in bonded warehouse as of May 16, 1977, may be withdrawn for consumption without an export visa on or before the 20th day following the date of publication in the Federal Register of the orderly marketing agreements concerning footwear negotiated with such countries. Thereafter such footwear may be withdrawn for consumption only if it is accompanied by an appropriate export visa issued by the government of the exporting country.

(d) Footwear exported prior to June 28, 1977.--All footwear not covered by paragraph (c), which was exported from the foreign country involved prior to June 28, 1977, may be entered prior to September 1, 1977, without the requirement of export visas, provided that all such footwear entered on or after June 1, 1977, in excess of 33 million pairs from the Republic of China and 9 million pairs from the Republic of Korea shall be counted against the respective restraint levels for the first restraint period by pro-rating such imports among the respective TSUS items for each country as follows: For the Republic of China, item 923.90, 8 percent, item 923.91, 86 percent, and item 923.92, 6 percent; and for the Republic of Korea, item 923.93, 35 percent, and item 923.94, 65 percent. No such footwear may be entered on or after September 1, 1977, unless accompanied by an appropriate export visa issued by the exporting country and such footwear shall be counted against the applicable restraint levels.

(e) Footwear exported and entered in different restraint periods.--Footwear which is exported from the foreign country during one restraint period, but is entered more than 90 days following the beginning of the subsequent restraint period, shall be counted against the restraint levels for that subsequent restraint period. Footwear, which is exported from the foreign country during one restraint period in excess of the restraint level for such item for such period, may be entered after the beginning of the next restraint period and shall be counted against the restraint level for such item for such subsequent restraint period.

(f) Carryover.--Except as provided for in paragraph (h), if the restraint level for any item has not been filled for a restraint period, upon appropriate request of the foreign government involved, the shortfall may be entered under the same item during the following restraint period provided that the amount of shortfall so entered does not exceed 11 percent of the restraint level for the restraint period during which the shortfall occurred. If, in accordance with the provisions of paragraph (ij), all or part of a restraint level of any item has been reallocated to the restraint level of one or more of the other items, such amount will not be considered a shortfall, and therefore is not available for carryover.

(g) Exceeding restraint levels.--Upon appropriate request of the foreign government involved, restraint levels for each item may be exceeded by not more than 6 percent during any one restraint period, except as provided for in paragraph (h). If a restraint level is exceeded during a restraint period, the Special Representative for Trade Negotiations shall make a downward adjustment of the restraint level for the next succeeding restraint period in the absolute amount the preceding restraint level was exceeded.

(h) Limitation on paragraphs (f) and (g).--Paragraphs (f) and (g) may not be used in combination to increase the restraint level applicable to any item in any restraint period by more than 11 percent.

(ij) Adjustments.--Upon appropriate request of the foreign government involved for an adjustment of the restraint levels between items as provided for herein, the Special Representative for Trade Negotiations shall adjust the restraint level accordingly, such adjustments to be effective on and after the date of their publication in the Federal Register. Except as provided for later in this paragraph, an upward adjustment in a restraint level for exports from a foreign country shall not exceed the percentage of the respective base limit shown below and must be accompanied by a downward adjustment in the same absolute amount of the restraint level applicable to one or more of the other items set forth in the table below for exports during the same restraint period from the foreign country involved. The Special Representative for Trade Negotiations may, in his discretion, permit an upward adjustment of not over 50 percent of any restraint level applicable to item 923.92 in any restraint period provided that the restraint levels applicable to items 923.90 or 923.91 in the same restraint period are reduced by the same absolute amount.

Item	Restraint periods							
	June 28, 1977-June 30, 1978		July 1, 1978-June 30, 1979		July 1, 1979-June 30, 1980		July 1, 1980-June 30, 1981	
	Base limit	Maximum increase	Base limit	Maximum increase	Base limit	Maximum increase	Base limit	Maximum increase
	1,000 pairs	Percent	1,000 pairs	Percent	1,000 pairs	Percent	1,000 pairs	Percent
923.90	9,760	10	10,000	10	10,240	10	10,480	10
923.91	104,680	10	107,250	10	109,820	10	112,400	10
923.92	7,560	15	7,750	15	7,940	15	8,120	15
923.93	11,520	10	12,740	10	13,090	10	13,260	10
923.94	21,480	15	23,760	15	24,410	15	24,740	15"

(k) United States International Trade Commission (USITC) reports and surveys.--The USITC shall issue reports and conduct surveys with respect to footwear as follows:

(i) Quarterly.--Reports by calendar quarter showing monthly data on U.S. production, imports for consumption, apparent U.S. consumption, employment and prices. The initial report shall cover 1975, 1976 and the first two quarters of 1977; the last such report shall cover the quarter which ends not less than 60 days prior to the termination of the import relief. The reports shall be published within 60 days of the end of a quarter.

(ii) Annually.--Annual surveys to obtain from domestic producers data on profits, orders, capacity, inventories, prices, capital expenditures, and research and development expenditures; and to obtain from importers data on prices, orders, and inventories. The initial survey shall cover the calendar year 1976 and the calendar year 1977, and the results shall be published by May 31, 1978. The results of subsequent surveys shall be published by May 31 of each year thereafter so long as the import relief is in effect.

(b) by inserting in numerical sequence the following new provisions:

"Item	Articles	Quota Quantity (in 1,000 pairs)			
		Exported on or after--			
		June 28, 1977	July 1, 1978	July 1, 1979	July 1, 1980
	Whenever the respective aggregate quantity of footwear specified below for items 923.90 through 923.94, inclusive, the product of a specified foreign country, has been exported in any restraint period from that country and has been entered, no article in such item the product of such country exported during such restraint period may be entered, except as provided in headnote 5:				
	Republic of China:				
923.90	Footwear provided for in items 700.05 through 700.45	9,760	10,000	10,240	10,480
923.91	Footwear provided for in item 700.58	104,680	107,250	109,820	112,400
923.92	Footwear provided for in items 700.66 through 700.85 (except item 700.75 and disposable footwear, designed for one-time use provided for in item 700.85)	7,560	7,750	7,940	8,120
	Republic of Korea:				
923.93	Footwear (except athletic footwear) provided for in items 700.05 through 700.45	11,520	12,740	13,090	13,260
923.94	Athletic footwear provided for in items 700.05 through 700.45, and footwear provided for in item 700.56 and items 700.66 through 700.85 (except item 700.75 and disposable footwear, designed for one-time use provided for in item 700.85)	21,480	23,760	24,410	24,740".

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