

concert under § 574.4(d) has been rebutted;

(3) With regard to notices filed under § 574.3(b), to acquire control of insured institutions which cannot be approved under paragraph (a) of this section:

(i) All actions regarding publication required or permitted by § 574.6(d).

(ii) Any other action which would otherwise be delegated to the Principal Supervisory Agent pursuant to paragraph (a) of this section.

(c) *Sole authority in the Corporation.* The Corporation alone may:

(1) Approve or deny any applications or notices which are not delegated;

(2) In addition to any other remedies available to the Corporation, assess a civil penalty under paragraph (16) of the Control Act for any person who willfully violates any provision of the Control Act, or any regulation or order issued by the Corporation pursuant thereto, of not more than \$10,000 per day for each day during which the violation continues:

(i) By giving written notice of the basis for the violation, the amount of the proposed civil penalty, and an opportunity for the person to submit data, views, and arguments within 20 days; and

(ii) By giving due consideration to the appropriateness of the penalty with respect to each of the factors specified in paragraph (16) of the Control Act, 12 U.S.C. 1730(q)(16), and issuing to the person, within 30 days of the expiration of the period provided to make a submission, a written notice of the Corporation's order of assessment which must be paid within 10 days, unless otherwise agreed to, or the Corporation may bring an action to collect the assessed penalty.

(3) In addition to any other remedies available to the Corporation, assess a civil penalty of not more than \$1,000 per day for each day during which the violation continues under section 408(j) of the Holding Company Act, 12 U.S.C. 1730a(j), for any company that violates or any person who participates in a violation of the Holding Company Act or any regulation or order issued pursuant thereto. As used in this paragraph, the term "violates" includes, without limitation, any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding and abetting a violation.

SUBCHAPTER F—SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

4. Revise § 584.4 as follows:

§ 584.4 Prohibited acquisitions.

No savings and loan holding company, directly or indirectly, or through one or more transactions, shall:

(a) Acquire by purchase or otherwise any of the voting shares of an insured institution not a subsidiary, or of a savings and loan holding company not a subsidiary, or, in the case of a multiple savings and loan holding company, so acquire or retain more than five percent of the voting shares of any company that is not a subsidiary and that is engaged in any business activity other than those specified in paragraphs (b) of § 584.2 or § 584.2-1; or

(b) Acquire control of an uninsured institution or retain, for more than one year after the date any insured institution becomes uninsured, control of such institution.

§ 584.4-1 [Removed]

5. Remove § 584.4-1.

§ 584.10 [Amended]

6. Revise § 584.10 by removing paragraph (d) thereof and redesignating paragraph (e) as (d).

PART 589—BOARD RULINGS

§ 589.1 [Removed]

7. Remove § 589.1.

(Change in Savings and Loan Control Act, 12 U.S.C. 1730(a); Savings and Loan Holding Company Act, 12 U.S.C. 1730a; Section 17(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1437(a); Reorg. Plan No. 3 of 1947, 3 CFR 1071 (1943-48 Comp.))

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-9869 Filed 4-24-85; 8:45 am]

BILLING CODE 6720-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21958; File No. S7-16-85]

Request for Comments on Issues Concerning Internationalization of the World Securities Markets

AGENCY: Securities and Exchange Commission.

ACTION: Request for Comments.

SUMMARY: The Commission solicits comment on issues concerning the increasing internationalization of the world's securities markets. In light of the accelerating movement towards global trading markets for certain securities and the increasing flow of investments across national borders, the Commission

believes that it now is appropriate to review these developments and to consider ways of attaining the fairest and most efficient global markets possible.

DATES: Comments to be received by June 30, 1985.

ADDRESS: Persons wishing to submit comments should file three copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comments should refer to File No. S7-16-85 and will be available for inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272-2388, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Commission is requesting comment on a number of issues concerning the growing internationalization of the securities trading markets.¹ In recent years there has been an increasing tendency for major securities to be traded not only in the capital market of their country of origin, but also in other financial centers around the world. The future direction of this international trading and its implications for existing markets, however, remains largely unknown.

The Commission is publishing this request for comment with the aim of providing a forum for consideration of the issues raised by internationalization and for discussion of the manner in which global trading markets should develop. The Commission believes that forethought and cooperation between the securities industry and national regulatory bodies can help make the evolving global markets more fair, efficient, and accessible.

B. Market Developments

There has been an increasing tendency for securities to become traded internationally. The emergence of the Eurobond market in 1963 was the vanguard of this internationalization process, and debt has continued to be the most prominent element in the

¹ The Commission recently also requested comment on issues regarding the internationalization of the process of public offering of securities. Securities Act Release No. 8508 (March 1, 1985), 50 FR 9281 ("Multinational Offerings Release").

international markets. In recent years, the growth in this market has accelerated markedly. Total new issues of Eurobonds rose from \$45 billion in 1983 to \$180.3 billion in the first 11 months of 1984.² United States issuers raised \$6.2 billion in Eurobonds in 1983 and \$6.8 billion in the first half of 1984.³ In addition, the United States government⁴ and several quasi-governmental entities⁵ have made direct offerings to foreign investors totaling over \$14.35 billion since the repeal of the withholding tax on interest paid to foreign holders of such debt securities.

At the same time, foreign issuers and investors have increasingly tapped United States capital markets. Nineteen foreign private issuers raised \$2.3 billion through debt offerings in the United States in 1983,⁶ and foreign government issuers offered \$3.1 billion in debt in the United States in 1984.⁷

Although the growth of the Eurobond market and cross-national issuances of debt in recent years have tended to overshadow development in the equities markets, global currents also have begun to touch the equities markets. Eighteen foreign companies (excluding Canadian issuers) raised approximately \$1 billion in equity in the United States in 1983.⁸ In addition, foreign purchases of United States stocks have increased year by year. Net foreign purchases of United States equities increased from \$3.9 billion in 1982 to \$5.2 billion in 1983;⁹ total transactions by foreign

investors in United States equities totaled \$134.3 billion in 1983.¹⁰ United States investment in foreign equities has also increased through the years.¹¹ It has been estimated that United States institutions now hold \$10-\$13 billion¹² in foreign stocks, compared to \$1-2 billion five to ten years ago.¹³ Surveys indicate that 19% of United States pension funds invested overseas in 1983, and another 9% were expected to begin in 1984.¹⁴ Many foreign institutions also are investing substantial amounts in other countries.¹⁵

Several factors have been instrumental in fostering this global investment in equities.¹⁶ In particular, investors have sought to diversify investments across national lines to take advantage of periods in which foreign markets have experienced rates of growth unmatched by domestic markets. This tendency was particularly pronounced during 1984, when the European, Australia, Far East ("EAFE") Index substantially outperformed the United States markets whether measured in local currencies or dollars.¹⁷

Increased familiarity with multinational companies and a desire to diversify investments globally also has generated interest in international investment among individual investors. Individuals invest both directly in foreign stocks¹⁸ and through

internationally-oriented investment companies.¹⁹ Direct investment in foreign stocks has been made considerably simpler for United States investors as a result of the increased listing and trading of foreign stocks (or American Depository Receipts ("ADRs") on foreign stocks) on United States markets. As of the beginning of 1984, 46 foreign securities or ADRs were listed on the New York Stock Exchange ("NYSE"), 52 were listed on the American Stock Exchange ("Amex"), and 294 were quoted in NASDAQ.²⁰ In 1984, the trading volume of foreign securities and ADRs exceeded 817 million shares on the NYSE, 197 million shares on the Amex, and 906 million shares on NASDAQ.²¹

United States stocks also increasingly are being traded overseas, either through official listings on foreign exchanges or in over-the-counter ("OTC") trading by securities firms. As of January 1, 1985, approximately 200 domestic NYSE-listed companies were listed also on the London Stock Exchange ("LSE"), 43 on the Paris Bourse, and 6 on the Tokyo Stock Exchange.²² A company may seek a listing on an overseas exchange to obtain greater exposure in that country in the hope of eventually raising capital there.

In addition, OTC trading has been initiated overseas in major stocks to accommodate trading interest in multinational companies among dealers and foreign institutions. An element of this OTC trading has been the development of the ability for broker-dealers to trade continuously around-the-clock by passing their trading positions on to traders located in branch offices in later time zones.

The desire to accommodate international trading interest has motivated the securities markets to

² *Id.*

³ The pace of foreign investment slowed somewhat in 1984, however. See *U.S. Investors Slash Foreign Portfolios as Domestic Vigor Lures Back Dollars*, Wall Street Journal, February 25, 1985, at 58.

⁴ Kristoff, *supra* note 2, at 1: *The Great Deregulation Explosion*, Euromoney, October 1984, at 61.

⁵ Kristoff, *supra* note 2, at 1.

⁶ *The Rise of the International Explosion*, Euromoney, May 1984, at 64.

⁷ *The Great Deregulation Explosion*, Euromoney, October 1984, at 61.

⁸ These factors include the recent peace and prosperity of the developed countries, new transportation and communications technology, the advent of floating exchange rates, and the relaxation of foreign exchange controls. See *Multinational Offerings Release*, *supra* note 1, at 9281.

⁹ DuBois, *The Year Eight Foreign Markets Outpaced Wall Street*, Barrons January 7, 1985, at 63 (based on Capital International S.A. data). Eight individual foreign markets outperformed the U.S. last year as measured in dollars, while 13 markets outpaced the U.S. as measured in local currencies.

¹⁰ Foreign markets increasingly are being made more accessible to facilitate investment in the securities of such countries. For instance, Sweden and Finland recently established free share registers to allow foreigners to trade more freely in domestic equities.

¹¹ The number of international and global-oriented investment companies has increased in recent years. By April 1984 there were 16 globally oriented mutual funds (funds that invest both in the United States and overseas), with \$4.5 billion in assets. Chesser, *American Money Managers Learn a Lesson*, Institutional Investor (Int. Ed.), April 1984, at 173.

¹² NYSE 1984 Fact Book, 40; Amex 1983 Fact Book, 10; NASDAQ 1983 Fact Book, 90.

¹³ Based on information obtained from the NYSE, Amex, and NASD. These figures represent 3.5%, 12.8% and 5.9% respectively of the overall trading volume on these markets.

¹⁴ Based on information obtained from the NYSE. Approximately 900 companies, including both U.S. and foreign companies, have officially listed on overseas stock exchanges. Of these, it has been estimated that 236 multinational companies are actively traded in international markets on a daily basis, of which 84 are United States corporations. *The Corporate List*, Euromoney, May 1984, at 71.

² Kristoff, *World Financial Curbs Eased by Technology and Ideology*, New York Times, January 26, 1985, at 1 ("Kristoff").

³ *The One World Capital Market*, Euromoney, October 1984, at 106. In recent months a Euroyen market also has begun to emerge.

⁴ The Treasury has made a \$1 billion offering of foreign targeted debt. Based on information obtained from the Treasury.

⁵ The Federal National Mortgage Association ("Fannie Mae") and the Student Loan Marketing Association ("Sallie Mae") have made foreign offerings totaling approximately \$13.25 billion and \$100 million respectively. Based on information obtained from Fannie Mae and Sallie Mae.

⁶ Soloman, *An SEC Survival Kit*, Institutional Investor, May 1984, at 119.

⁷ SEC Monthly Statistical Review, v. 44 No. 2, February 1985, at 14.

⁸ *Investors in the United States are Putting a Damper on Stocks Offerings by Foreign Concerns*, Wall Street Journal, November 11, 1984, at 2. Major foreign offerings in the United States in 1983 included offerings by Ericsson, Alcan Aluminum, and Bell Canada. In 1984, Reuters Ltd. offered \$310 million and British Telecom offered approximately \$4.7 billion in equity simultaneously in the United States and other countries.

⁹ SIA Securities Industry Yearbook 1984-85 594 (1984).

consider ways of extending their trading hours, as well as ways of cooperating with other markets through linkages and coordination of market information.²³ For instance, the Boston Stock Exchange ("BSE") and the Montreal Exchange ("ME") currently operate a link between their markets. In the first phase of the linkage, now operational, ME specialists can send orders in a small number of Canadian national issues also listed in the United States for execution by BSE specialists. This provides a means for ME specialists to offer additional markets to Canadian customers and provides the BSE access to an additional source of possible order flow. In subsequent phases, the two markets will connect BSE specialists to the ME's automated small order execution system ("MORRE")²⁴ and may provide access for United States broker-dealers and investors to the MORRE system.²⁵ In addition to linkage has been proposed between the Toronto Stock Exchange and the Amex.²⁶

²³ Formal links with foreign markets also have been developed or proposed by a number of United States futures exchanges. The most sophisticated linkage to date involves the Chicago Mercantile Exchange and the Singapore International Monetary Exchange. These two markets have implemented a linkage in which fungible Eurodollar and Deutsche mark futures contracts are traded on both exchanges. An international mechanism allows a futures position established on one exchange to be offset on the other exchange. See Memorandum from the Division of Trading and Markets and the Division of Economic Analysis to the Commodity Futures Trading Commission, Re Proposed Rules and Rule Amendments of the Chicago Mercantile Exchange Relating to the Establishment of a Proposed Mutual Offset System with the Singapore International Monetary Exchange, Ltd. (August 22, 1985) ("CPTC CME-Simex Memorandum"). A similar link has been proposed by the Commodities Exchange and the Sydney Futures Exchange. *Wall Street Letter*, December 10, 1984, at 4. A number of United States and foreign exchanges also have discussed the possibility of introducing futures on foreign stock indices in the United States. *Wall Street Letter*, February 18, 1985, at 1, 9. In addition, various European exchanges have developed a pilot system to link their market information systems together. *Trading Across Frontiers*, Euromoney, May 1984, at 110.

²⁴ Securities Exchange Act Release No. 21925 (April 8, 1985). On April 8, 1985, the Commission approved the implementation of Phase II of the linkage, which will, in the summer of 1985, expand the list of securities eligible to trade through the linkage to include approximately 200 limited United States-listed securities available for trading through the Intermarket Trading System ("ITS"). *Id.*

²⁵ See Letter from Michael R. Lindburg, Vice President and General Counsel, BSE, to Richard Chase, Assistant Director, Division of Market Regulation (July 30, 1984).

²⁶ SR-Amex-85-8. The proposed linkage initially would be limited to trading on a one-way basis between the Toronto Stock Exchange and Amex in a limited number of dually listed stocks, and subsequently would be expanded to a two-way linkage in all dually listed stocks. *Id.*

In addition, the NYSE recently has explored the idea of developing some form of twenty-four hour trading mechanism, and it appears to be considering an incremental extension of trading hours in the near future.²⁷ It also has engaged in discussions concerning a possible merger with the Pacific Stock Exchange ("PSE"), reportedly designed in part to take advantage of the PSE's location in a later time zone.²⁸ Informal discussions are also reported to have taken place between the NYSE and the LSE concerning coordinated trade reporting systems for dually listed stocks.²⁹

Broker-dealers and banks from various countries also have expanded their international securities activities. This has been facilitated by initial steps taken by foreign regulators and markets to reduce restrictions on the involvement of foreign broker-dealers in their markets.³⁰ For example, as restrictions on foreign ownership of LSE members have been reduced, a number of banks and investment bankers have purchased interests in London brokerage firms with the intent of expanding these interests when greater foreign ownership of LSE member firms is allowed.³¹ Foreign banks and investment bankers also have increased their activity in Japan, and one firm recently sought unsuccessfully to become the first foreign member of the Tokyo Stock Exchange.³² In addition, certain Canadian regulators have signalled a willingness to loosen restrictions on the ability of foreign brokerage firms to register.³³

²⁷ *Around the Clock Trading in Securities Ahead?* Interview with John Phelan, Chairman, New York Stock Exchange, U.S. News & World Report, January 14, 1985, at 73.

²⁸ *Big Board Hours Would Be Extended Under a Merger With Pacific Exchange*, Wall Street Journal, February 25, 1985, at 17.

²⁹ *Big Board, London Exchange Discuss Trading, Data Reporting Joint Ventures*, Wall Street Journal, January 7, 1985, at 3.

³⁰ The United States does not limit access by foreign broker-dealers to its securities markets. Foreign broker-dealers, moreover, can be members of United States exchanges. In many foreign countries, however, United States securities firms are restricted from selling and underwriting securities by regulations which do not apply to domestic firms. Although some of these restrictions have been reduced, restrictions still remain. See *infra* notes 61-63 and accompanying text.

³¹ See, e.g., *United States Financial Firms Grab Growing Share of European Markets*, Wall Street Journal, February 25, 1985 at 1; *Citicorp to Buy London Dealer*, Wall Street Journal, February 23, 1985, at 32; *British Deal by Shearson*, New York Times, July 27, 1984, at D6.

³² *Rebuff to Merrill in Tokyo Criticized*, New York Times, December 28, 1984, at D5.

³³ *A Regulatory Framework for Entry Into and Ownership Of The Ontario Securities Industry* (February 1985). A Report of the Ontario Securities

Moreover, in the area of securities processing, United States clearing agencies since 1980 have been developing links with foreign clearing agencies to more efficiently and safely process international securities transactions.³⁴ Typically, the links involve a foreign clearing agency becoming a member of a United States clearing agency and participating on behalf of the foreign clearing agency's members. The foreign clearing agency is liable as principal for the transactions of its members and is subject to the United States clearing agency's rules. For example, the Canadian Depository for Securities Limited, a Canadian clearing agency operating in Montreal and Toronto, has become a member of the National Securities Clearing Corporation in New York City.³⁵ That link processes over-the-counter transactions between United States and Canadian broker-dealers and transactions that occur on the BSE/ME trading floor link. Similarly, the Vancouver Stock Exchange Service Corporation has become a member of the Midwest Clearing Corporation. That link also processes over-the-counter trades between United States and Canadian broker-dealers. Other processing links not involving foreign clearing agency membership in a United States clearing agency have been developed between the Amsterdam Stock Exchange and the Depository Trust Company in New York City,³⁶ between Trans Canada Options, Inc. and the Options Clearing Corporation in Chicago,³⁷ and between Trans Canada Options, Inc. and the National Securities Clearing Corporation.³⁸ Only those links

Commission to the Minister of Consumer and Commercial Relations.

³⁴ The Commission's staff has analyzed the safety and efficiency of these proposed links and issued "no-action" letters under Section 17A of the Exchange Act. Those letters advise that, under the terms and conditions set forth in the private agreement between the United States and foreign clearing agencies, the Commission staff will not recommend that the Commission take enforcement action if the foreign clearing agencies do not register as clearing agencies in the United States on account of their activities.

³⁵ See Letters from Dan W. Schneider, Deputy Associate Director, Division of Market Regulation, to Karen L. Saperstein, Assistant General Counsel, National Securities Clearing Corporation (October 24 and November 26, 1984).

³⁶ See Letter from Jerry R. Marlatt, Staff Attorney, Division of Market Regulation, to Alan H. Paley, Debevoise, Plimpton, Lyons and Gates (July 25, 1980).

³⁷ See Letter from Dan W. Schneider, Assistant Director, Division of Market Regulation, to Andrew M. Klein, Schiff, Hardin and Waite (March 25, 1982).

³⁸ See Letter from Richard C. Ketchum, Associate Director, Division of Market Regulation, to Robert Woldow, Vice President and General Counsel, National Securities Clearing Corporation (August 18, 1982).

in which the foreign clearing agency has become a member of a United States clearing agency, however, have enjoyed significant use to date.

These actions by broker-dealers, banks, securities markets, clearing agencies, and regulators represent initial steps to respond to the emergence of international trading and to anticipate further developments. In many respects, however, the dimensions of this increased international trading remain unclear. As a result, industry participants, securities markets, and regulatory bodies find it difficult to prepare for future developments in this area. This is a result in part of the absence of a central forum for discussion of these trends, and the issues raised by global trading of securities. By issuing this request for comment, the Commission hopes to provide that central forum to promote better coordination as international markets continue to develop.

II. Issues

While the speed and growth of international trading is difficult to predict, the trend towards increased trading before or after NYSE trading hours in United States securities does appear to be clear. However, this trading, involving primarily market professionals and institutional firms, may not raise substantial investor protection or market efficiency concerns for the United States securities markets. Simultaneous trading on an international basis raises substantially more complex questions. Similarly, more coordinated trading involving passing public investor orders from marketplace to marketplace throughout the twenty-four hour day raises a number of difficult issues. While it is far less clear that the amount of simultaneous or coordinated trading of shares of stock on an international basis will increase substantially, domestic exchanges and the NASD have indicated an increasing interest in exploring such arrangements with foreign markets.

Nevertheless, the Commission believes that it is important for the United States and foreign securities industries, markets, and regulators to consider ways of ensuring that where a global marketplace does develop, it is fair, efficient, and accessible to investors.³⁹ Accordingly, the

Commission is soliciting comment on a number of significant issues raised by the growing internationalization of the securities trading markets. The Commission is also interested in receiving comment on any additional investor protection, competitive, or market efficiency concerns raised by the internationalization of secondary market trading.⁴⁰ Comments received will enable the Commission to consider what, if any, international negotiations or regulatory initiatives may be necessary to facilitate the increasing internationalization of the markets. In addition, the Commission anticipates that the comments will contribute to the consideration of these issues by the self-regulatory organizations, the securities industry, and investors, and will provide a forum for further discussion of these matters.

A. International Trading

As stocks increasingly are held outside of their country of origin, a number of initial steps have been taken to provide international trading opportunities for these stocks.⁴¹ Yet the demand for this extended trading is unclear. Accordingly, the Commission, as a preliminary matter, requests comment generally on the need for actions to facilitate international trading. Specifically, the Commission requests comment on the extent to which extended trading opportunities are sought and used by investors at present. To what extent is this trading institutional, proprietary, or retail, and how does that effect the need for regulators to take actions to accommodate such trading? In addition, what use of these services is expected in the future? Is the demand for extended trading opportunities primarily based on a desire for liquidity during crisis conditions or during a rapidly moving market, or for ease in executing routine transactions? Finally, will extending trading opportunities result in spreading out existing trading over longer hours, or will greater trading volume result?

Assuming that conditions support increased international trading, the Commission requests comment on what conditions and structures should characterize international trading markets. Areas of discussion include market structure, clearance and settlement arrangements, and broker-dealer access to markets.

³⁹ The Commission recently requested comment on the steps that it should take to accommodate disclosure requirements for secondary trading subsequent to the public offering of securities in the United States by a foreign issuer. Multi-national Offerings Release, *supra* note 1, at 9284.

⁴¹ See *supra* text accompanying notes 23-29.

1. Market Structure

Several types of extended trading arrangements have been suggested as ways in which the international markets might develop. One possibility is that simultaneous trading in stocks by markets located in different countries could develop for at least part of the trading day.⁴² As stocks increasingly list on exchanges in more than one country, these exchange markets may seek to attract order flow from foreign investors by extending their trading hours. As a result, trading of these stocks in markets in different countries could increasingly overlap.

Another possibility is increased coordination between domestic and foreign markets in the trading of multiply-traded stocks. This could occur through exchanges arranging for consecutive trading in stocks rather than simultaneous trading, possibly involving the passing of positions or open orders from exchange to exchange when trading ends in the earlier time zone. A further possibility is the rise of around-the-clock in-house trading by securities firms, as they expand their in-house trading capacity in foreign countries to accommodate the interest of foreign or United States clients that wish to trade outside normal business hours.⁴³ This could involve shifting their market making function and trading positions from office to office as working hours end in earlier time zones.

The use of these differing approaches would appear to have a number of consequences. For example, expansion of firm in-house trading capabilities to international dimensions would appear to require less time and capital to establish; indeed, a number of United States broker-dealers already have a substantial international presence.⁴⁴ At the same time, such an expanded upstairs trading capability, while useful in facilitating around-the-clock trading by institutional investors, probably would not provide opportunities for the same degree of retail market participation as exchange linkages. In addition, such upstairs trading would be much more difficult to monitor than expanded exchange activity.

⁴² See *big Board Pacific Tie Progresses*, New York Times, February 25, 1985, at D1. See also *supra* text accompanying notes 23-29.

⁴³ Third market makers such as Jefferies & Co., Inc. already provide their customers with the ability to execute trades in listed securities when United States stock exchanges are closed or have halted trading in a particular security. See *Jefferies' Third-Market Trading often Steals Show from Exchanges*, Wall Street Journal, July 14, 1984, at 79.

⁴⁴ See *supra* text accompanying notes 31-32.

³⁹ See Commissioner Aulana L. Peters, "The Securities Industry in 1985: Excellence Amidst Challenges," Address to the Securities Industry Association 1985 Annual Convention (November 29, 1984).

The Commission requests comment on the advantages and disadvantages of each approach. To the extent that commentators prefer one arrangement, the Commission requests commentators to discuss how such arrangements would operate, especially with reference to the handling of customer market and limit orders, and what structures are necessary for these arrangements to function effectively. In addition, the Commission requests commentators to address the specific market structure areas discussed below.

a. *Consolidated Reporting.* In the United States securities markets, member firms executing transactions in reported securities⁴⁵ during normal trading hours are required to report the trade price and size of transactions to a consolidated reporting system. These last sale reports from exchange and over-the-counter markets nationwide are collected in a central repository, updated continuously during regular trading hours, and publicly disseminated. The United States consolidated transaction reporting systems currently capture on a real-time basis the vast majority of the trading volume in reported securities.⁴⁶

If the trading of reported securities becomes more international, the volume of transactions not captured in a consolidated system could increase. The Commission, therefore, solicits comment on whether transaction reporting requirements for participants in the United States securities markets should be expanded. In this connection, commentators are requested to discuss the volume of international trading currently occurring in United States stocks and the usefulness of making last sale information available for those transactions. Should member firms be required to report such trades to a consolidated system? If so, should they do so on a real-time basis even if those

trades occurred outside of United States trading hours?

The Commission understands that, at this time, a substantial portion of foreign trading in United States stocks continues to occur in the OTC market and involves United States broker-dealers. In the future, however, more activity may occur in United States stocks either on foreign exchanges or in OTC transactions involving only foreign participants. The Commission requests comment on the desirability and practicability of developing an international consolidated reporting system for stocks traded globally on an active basis. The Commission recognizes that perhaps the principal obstacle to international transaction reporting is the lack of uniformity in reporting requirements. The Commission notes that, while some securities markets (e.g., the NYSE) require that transactions be reported on a real-time basis, other (e.g., the LSE) compile neither transaction nor volume reports for individual stocks.⁴⁷ Accordingly, the Commission solicits comments on whether uniform reporting requirements for securities traded internationally could be devised.⁴⁸ Comment is also requested on what level of international trading activity would be necessary before the cost of such a system is justified.⁴⁹

b. *Consolidated Quotations.* In the United States securities markets, quotations in reported securities are collected during trading hours from exchanges and OTC market makers in reported stocks. These quotations are consolidated into a single quotation stream and disseminated to market participants. By referring to these consolidated quotations, market

participants are able to direct their customer orders to the best market for execution.

The Commission requests comment on whether a consolidated quotation system is or will be needed internationally. The need for a consolidated quotation system is directly related to the amount of simultaneous trading occurring on an international basis. How active would simultaneous trading have to be for the consolidated quotations to be justified? How could the differing requirements concerning display of quotations be accommodated in a consolidated quotations system?

The Commission notes that major United States broker-dealers are presently disseminating quotations through foreign vendor systems before or after United States trading hours. In the future, United States information vendors may wish to disseminate those quotations in the United States. Comment is requested on whether domestic dissemination of foreign quotations will increase international after-hours trading by United States institutional or public investors. Comment is also requested on whether present quotation and vendor display regulatory requirements should be applicable to such dissemination.

The Commission also notes that the quotation reporting systems established for debt securities are considerably less developed than for reported equity securities. For the most part, information with respect to government and corporate debt securities in the United States is available only through privately sponsored wire or other communications systems. The principal information displayed is indications of interest (as opposed to firm bids or offers or reports of actual transactions), although some "brokers' brokers" disseminate firm quotations anonymously on behalf of dealers in debt securities.⁵⁰ Given that much of the expansion of activity in the international securities markets has involved the trading of debt securities,⁵¹ comment is requested on whether the market information presently available in the international markets for debt is sufficient to ensure efficient pricing.

⁴⁵ The term "reported security" means any listed or OTC equity security subject to an effective transaction reporting plan filed with the Commission pursuant to Rule 11Aa3-1 under the Securities Exchange Act of 1934 ("Exchange Act"). In the market for securities listed on an exchange, this central reporting is effected through the facilities of the exchange. In the market for securities traded solely OTC, this reporting takes place through NASDAQ terminals or by communicating with the NASDAQ headquarters.

⁴⁶ The Commission believes that National Association of Securities Dealers, Inc. ("NASD") rules require that OTC transactions in reported securities executed overseas during normal trading hours by NASD members be reported on a real-time basis. See NASD By-Laws, Article XVI, Schedule D, XIV, Section 2(a)(4); NASD By-Laws, Article XVIII, Schedule G, Section 2(a)(4). OTC trades executed outside of normal trading hours by member firms are required to be reported weekly rather than on a real-time basis. *Id.*

⁴⁷ *Big Board, London Exchange Discuss Trading, Data Reporting Joint Ventures*, Wall Street Journal, January 7, 1985, at 3.

⁴⁸ The Commission also requests commentators to address the application of the Commission's short sale rule, Rule 10a-1 under the Exchange Act. The rule places certain restrictions on short sales in securities which are traded on a national securities exchange if transactions in such securities are reported pursuant to an "effective transaction reporting plan" under Rule 11Aa3-1 under the Act and information on such trades is made available on a real-time basis to vendors of securities information. The rule is intended to prevent the use of short sales to depress, or accelerate the depression of, a market for a security. Rule 10a-1 does not contain any exemption for short sales effected in international markets. The Commission requests commentators to address whether and under what circumstances an exemption would be appropriate.

⁴⁹ As an interim measure, the Commission solicits comment on whether it would be feasible to have an international consolidated reporting system that disseminates real-time last sale information for those markets that provide such data, while also compiling periodic volume data from markets lacking real-time last sale reporting.

⁵⁰ The NYSE and Amex maintain an odd-lot market for corporate and zero coupon government debt securities, and disseminate both quotation and transaction information on those securities. The transactions effected on the NYSE and Amex, however, constitute only a small portion of the overall market in debt securities and the quotes and sales reported are not necessarily reflective of the market as a whole.

⁵¹ See *supra* text accompanying notes 1-7.

c. Intermarket Linkages. United States securities exchanges have developed an electronic system called ITS that links the participating exchange floors and the OTC market for multiply-traded listed securities.⁵² Before ITS was developed in 1978, multiply-traded securities often were traded on different exchanges at disparate prices; these disparities often were not corrected by arbitrage activity. The establishment of ITS, coupled with consolidated last sale and quotation reporting, allowed orders to be routed from one market center to another so that transactions could be executed in the market that provided the best price.

With respect to the international marketplace, a number of securities already are being traded simultaneously in the securities markets of more than one country. For example, the securities of the issuers listed on both the NYSE and the LSE trade simultaneously during their overlapping trading hours. Presently, this trading presents few issues because activity in NYSE listed securities on the LSE is slight. As the international capital markets continue to develop, however, simultaneous international trading may become more commonplace, possibly giving rise to disparities in prices in different markets, particularly if the same securities are traded in different currencies in each of those markets.

Assuming that this trading environment does develop, the Commission requests comment on whether pricing disparities are likely to result from this international multiple trading, and if so, whether arbitrage activity will bring the markets into line.⁵³ If commentators do not believe arbitrage will be sufficient, they are asked to address whether there should be mechanisms such as intermarket linkages to permit orders to be routed to the market with the best price.⁵⁴

⁵² Rule 19c-3 securities, i.e., listed securities not subject to exchange off-board trading restrictions, are the only securities in which the OTC market is linked to ITS.

⁵³ A number of securities are inter-listed on the major Canadian exchanges and in the United States on NASDAQ. For many of these inter-listed securities, it is our understanding that active markets exist in both the United States and Canada. The Commission would appreciate comments on trading experience in these inter-listed securities and, in particular, on whether arbitrage has been successful in preventing serious pricing disparities between the various markets for these securities.

⁵⁴ In this connection, commentators are requested to discuss whether use of such a linkage by public investors is feasible or desirable in light of the added currency risk and conversion expense generally involved in trading in a foreign market.

Moreover, if public orders were routed through any such linkage, should there be more detailed dispute resolution systems in place and greater scrutiny of the investor protections provided by the rules of foreign markets?⁵⁵

The Commission notes that much of the activity in United States securities now appears to occur away from foreign exchanges in the OTC market.⁵⁶ Commentators may wish to discuss the feasibility or desirability of any links between this foreign OTC trading and trading in United States securities market. Commentators are also requested to discuss whether any linkages developed are likely to involve exclusive agreements between a national securities exchange and a foreign market, and if so, whether that exclusivity would impose a burden on competition inconsistent with the provisions of the Exchange Act.

2. Securities Processing

In the United States, most securities transactions between broker-dealers are compared, cleared, and settled through systems operated by clearing agencies registered with the Commission under section 17A of the Exchange Act. The registered clearing agencies are the central components of the National Clearance and Settlement System. Generally, clearing agencies use automated systems to match trade data, compute net money and securities settlement obligations, and move securities between members' book-entry accounts to settle trades. In addition, clearing corporations, a type of clearing agency, guarantee their members' trade settlement obligations after securities netting. To ensure the financial integrity of the clearing agencies and to support clearing corporation guarantees, each clearing agency, among other safeguards, maintains a reserve fund of contributions from its members.

In foreign securities markets, securities clearance and settlement operations vary in function and efficiency. Some foreign securities markets have developed entities that are

⁵⁵ The Commission understands that prior to implementing a linkage, the Chicago Mercantile Exchange and the Singapore International Monetary Exchange, Ltd. established procedures for the arbitration of disputes between customers and clearing members, between clearing members, and between the two exchanges. See CFTC CME-Simex Memorandum, *supra* note 23, at 44-48.

⁵⁶ This trend may not continue if the United States and foreign exchanges that are currently negotiating or contemplating links are successful in establishing these connections. On the other hand, this trend may increase as a result of the greater emphasis on OTC trading which appears to be anticipated by the British Government's white paper on the securities markets. See The [London] Stock Exchange, *A Discussion Paper (April 1984)*.

similar in function and regulatory authority to the United States clearing agency model, e.g., the Canadian Depository for Securities Limited. Other foreign securities markets are in the process of developing modern, automated clearing agency facilities. In those cases, foreign securities market participants, and even foreign governments, depending on the country's securities regulatory scheme, will need to expend considerable time and capital to develop those facilities. Nevertheless, as the trend toward international trading increases, it will become increasingly important for foreign trading markets to establish efficient, safe, and accurate comparison, clearance, and settlement systems especially if they seek to link with United States securities markets and their respective clearing agencies.

The Commission requests comment on whether international links between United States and foreign clearing agencies are necessary for further expansion of international trading markets, and if so, what form future clearing links should take. For example, should these links be developed on an incremental basis, or should all concerned parties consider the creation of a centralized, internationally-governed clearing or depository entity for international trades? The Commission also requests comment on whether specific standards should be developed, as more international clearing links are proposed, to determine whether foreign clearing agencies should be permitted to participate in a link with a United States clearing agency or required to register as a clearing agency in the United States under Section 17A of the Exchange Act. This question could become crucial when a foreign clearing agency is not registered with the Commission and participates in the clearance and settlement of a high volume of transactions.⁵⁷

Commentators should consider whether United States clearing agencies' normal safeguarding mechanisms will adequately protect the financial integrity of United States clearing agencies that accept such foreign clearing agencies as members.⁵⁸

⁵⁷ The Commission also requests comment on the extent of the conditions required by the Division of Market Regulation in its existing no-action letters. See *supra* text accompanying notes 35-38. Are these conditions too extensive or not extensive enough to ensure prompt, accurate, efficient, and safe securities processing?

⁵⁸ These mechanisms protect the clearing agencies from financial loss by, among other things, requiring

Continued

Similarly, comment is requested on whether United States clearing agencies should develop special admission standards for foreign clearing agencies that seek to link with United States clearing agencies through membership.

The Commission finally requests comment on the issues that arise when a United States clearing agency and a foreign clearing agency create a two-way link, *i.e.*, an interface. Although all approved links to date have been one-way,⁵⁹ the Commission believes that development of two-way interfaces reasonably can be anticipated. How can the Commission and United States clearing agencies ensure both the safeguarding of securities and funds in the United States National Clearance and Settlement System, and ultimately the protection of United States investors, when one or more United States clearing agencies is exposed to regulatory requirements and financial risks that could be very different from those encountered in this country?

3. Barriers to Entry

As the world capital markets become internationalized, securities trading and distributions increasingly are transcending national barriers. As discussed previously, the spread of trading in domestic stocks in other countries has led securities firms of many nations to establish branch offices or affiliates overseas. This international expansion is not limited to United States firms; foreign securities firms also are expanding both into the United States and into other countries as well. The Commission notes that, while foreign broker-dealers can easily register with the Commission as broker-dealers, and the United States securities exchanges and the NASD generally provide foreign firms with ready access to their markets, other nations and securities markets have erected explicit barriers to entry that prevent or restrict foreign firms from trading directly. Barriers of this nature, for example, are found in

Canada,⁶⁰ Switzerland,⁶¹ Great Britain,⁶² and Japan.⁶³ The Commission requests comment on the effect of these barriers to international trading of securities and what actions, if any, should be taken to reduce these barriers.

The Commission also recognizes that, to the extent that national schemes for broker-dealer regulation differ substantially, they could constitute *de facto* barriers to entry by making it difficult for one nation's broker-dealers to qualify to trade in another country.⁶⁴

⁵⁹In Canada, any foreign broker-dealer wishing to do business must register with the relevant provincial securities regulator unless it is doing business in exempted securities. In Ontario, for example, new broker-dealer registrations are limited to applicants that are no more than twenty-five percent owned by non-residents with no single non-resident having more than a ten percent interest. The Ontario Securities Commission, however, has proposed a new, limited category of registration for firms with more than thirty percent ownership by non-residents. See *supra* note 33 and accompanying text. In Quebec, foreign broker-dealers may register without meeting similar requirements.

⁶⁰In Switzerland, United States brokerage firms are precluded from becoming members of the Zurich Stock Exchange. United States firms, however, are allowed a fifty percent discount on commissions paid to a member firm of the Zurich Exchange. In addition, there is an informal understanding between the Swiss Banking Association and the foreign brokerage community restricting the solicitation of Swiss residents other than through Swiss banking intermediaries. The United States firms are understood to be able to service the accounts of United States citizens residing in Switzerland.

⁶¹Branches of United States firms are permitted to trade and underwrite securities in Great Britain. To date, however, no foreign brokerage firms have been admitted to membership on the LSE. Foreign entities currently are also precluded from owning an interest larger than 29.9% in an LSE member firm. These restrictions on foreign brokerage firms require them to trade British securities listed on the LSE through a member firm, thereby increasing their costs of doing business in Great Britain.

The LSE is preparing for two major deregulatory changes that will occur in 1986. As part of these developments, it is expected that foreign firms will be allowed to join the LSE. These changes will involve the elimination of fixed brokerage commissions and the termination of the "single capacity" system whereby an LSE member firm is prohibited from engaging in more than one line of securities business.

⁶²In Japan, although the Tokyo Stock Exchange has amended its rules to permit membership by foreign firms, no foreign firm has been able to acquire an exchange seat. See *supra* note 32 and accompanying text. On listed business, therefore, the foreign branches of United States securities firms must go through exchange members. As a partial accommodation, however, the foreign branches get a seventy-three percent discount from the standard commission. Nonetheless, foreign securities firms' participation in local markets is limited largely to the over-the-counter bond market, since by law all trades in listed securities must be "exchange transactions."

⁶³The Commission also notes that continuous disclosure requirements for issuers under a country's securities laws may constitute a barrier to entry in that the cost of compliance may dissuade foreign companies from having their securities traded in another country's market. In this regard,

Accordingly, the Commission solicits comment on what barriers, if any, result from the broker-dealer regulation of various countries and whether this regulation significantly limits broker-dealers from one country from entering the markets of another.

B. Multinational Distributions of Securities

A recent release discussed various issues and concerns related to the distribution of securities in the context of the Securities Act.⁶⁵ A multinational distribution of securities also raises a number of issues under the Exchange Act, which regulates certain activities on the part of persons engaged in a distribution of securities.

For example, Rule 10b-6 under the Exchange Act is an antimanipulative provision that, subject to certain exceptions, prohibits persons who are engaged in a distribution⁶⁶ of securities from bidding for or purchasing, or inducing others to bid for or purchase, such securities (or certain related securities) until they have completed their participation in the distribution. The purpose of the rule is to prevent participants in a distribution from artificially conditioning the market for the securities in order to facilitate the distribution. The rule is designed to protect the integrity of the auction market as an independent pricing mechanism and thereby enhance investor confidence in the marketplace. Where the activities of non-United States distribution participants, or foreign affiliates of United States distribution participants, may have an impact on the United States securities markets, the Commission has taken the position that Rule 10b-6 applies to all of

section 12(b) of the Exchange Act requires foreign issuers traded on a national securities exchange to register with the Commission and file periodic reports similar to those filed by registered domestic companies. In addition, section 12(g) of the Exchange Act and Rules 12g-1 and 12g-2 thereunder together require certain foreign issuers whose securities are traded on NASDAQ and who have over \$3 million in assets and 300 United States shareholders to register with the Commission and file periodic reports. The Commission solicits comment on the effects, if any, which these requirements, and any other comparable requirements in foreign markets, have on the development of international trading markets.

⁶⁵See Multinational Offerings Release, *supra* note 1.

⁶⁶The term "distribution" is flexibly defined in Rule 10b-6 to distinguish transactions covered by the rule from ordinary trading transactions on the basis of the magnitude of the offering and the presence of special selling efforts and selling methods. The rule applies to primary and secondary distributions whether they are registered under the Securities Act or not.

contributions to reserve funds, monitoring member activity, and requiring mark-to-the-market payments.

⁵⁹That is, only the foreign clearing agencies have become members in the United States clearing agency; the United States clearing agency has not become a member of the foreign clearing agency.

the distribution participants and their affiliates.⁶⁷

The Commission believes that the maintenance of investor confidence is critical to the continued strength of the securities markets, both in the United States and globally. Commentators are asked to address the extent to which the investor protections afforded by the Exchange Act can be maintained and coordinated with those of other countries, particularly in the context of distribution of securities on a multinational basis.⁶⁸

C. International Enforcement Problems

The Commission and United States securities market regulators, such as the self-regulatory organizations and state regulators, are responsible for ensuring the fairness and safety of the United States capital markets. To fulfill their responsibilities, the Commission and market regulators have implemented comprehensive surveillance mechanisms, and have worked together to enforce the securities laws. Through their combined efforts, the Commission and market regulators generally have been able to exercise effective oversight over trading in the United States securities markets by United States registered broker-dealers.

The Commission notes that the growing internationalization of the United States capital markets has made market surveillance and enforcement more difficult. Because the Commission's investigative subpoena authority is limited to United States citizens and persons within the United States, it cannot compel testimony from non-United States citizens located abroad. Further, because foreign law often does not allow for any investigative or pretrial discovery, Commission efforts to develop facts necessary to file a case where suspicious circumstances exist are often frustrated. Finally, the Commission has

been required to engage in lengthy proceedings and negotiations to obtain information regarding transactions effected through banks or securities firms located in countries with secrecy or blocking laws.⁶⁹

There are few surveillance or enforcement mechanisms in place to safeguard the integrity of securities trading conducted simultaneously in multiple international markets. This is a matter of concern to the Commission; as the global market becomes more developed, fraud or manipulation in multiply-listed securities may affect adversely the markets for those securities in the United States as well as other nations. Moreover, the efficacy of trading halts imposed by the Commission or a securities market could be impaired as more trading in United States stocks occurs abroad. The Commission seeks comment regarding the surveillance mechanisms which could be developed to scrutinize trading in multiple international markets as well as measures which could be taken to address the possible erosion of trading halts that could affect the integrity of the United States securities markets.

The Commission solicits public comment on the steps that should be taken to assure that both the United States capital markets and the developing global securities market operate fairly and safely. Specifically, the Commission asks commentators to address how systems to monitor international trading might be developed. In approving the BSE/ME linkage, the Commission noted that the exchanges had agreed to "cooperate fully" in the investigation of any questioned trade, including requiring member firms to provide information about the circumstances of such trades.⁷⁰ It also noted that the ME has rules that are comparable to those of the United States securities exchanges in a variety of areas, including manipulative trading practices, sales practices, and firm financial responsibility.

As other markets consider additional linkage, the Commission seeks comment on whether similar agreements to share

exchange market surveillance data will be feasible, particularly if the regulatory environments of these markets have less in common than the United States and Canadian securities markets. The Commission also seeks comment on whether such informal written undertakings are or will continue to be sufficient to ensure meaningful cooperation on surveillance matters.

The Commission also asks commentators to address more generally how nations and securities markets might cooperate to ensure equivalent regulatory treatment and expedite enforcement of fraudulent or illegal securities transactions of an international scope. In particular, would it be practicable to reach bilateral or multinational agreements on securities law enforcement, possibly through the aegis of a coordinating body of national regulatory entities?⁷¹

C. Conclusion

In view of the increasing internationalization of the securities trading markets, the Commission is seeking comment on the future direction of those markets and a variety of issues relating to the operation of those trading markets on an international basis. The Commission solicits comment on the extent of international trading that is expected to develop, the need for structures such as consolidated reporting and quotation systems and order routing devices, clearance and settlement requirements, rules regulating multinational distributions of securities, and ways of improving international surveillance and regulatory mechanisms. The Commission also solicits comment on any other issues not addressed directly in the release that could be of importance in the developing world equity markets.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Dated: April 18, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-9972 Filed 4-24-85; 8:45 am]

BILLING CODE 8010-01-M

⁶⁷ See, e.g., Louis Vuitton S.A. (June 21, 1984) (French bank affiliate of U.S. underwriter of American Depository Receipts); British Petroleum Company Limited (October 31, 1979) (secondary offering by United Kingdom distribution participants).

⁶⁸ Commentators may wish to focus, for example, on the extent to which to Commission's prior approach to international stabilization should be continued or refined. In this regard, underwriting syndicates in multinational firm commitment offerings have been permitted to adjust their stabilizing bids in compliance with Rule 10b-7 under the Exchange Act to account for fluctuations in the currencies of other countries in relation to the dollar during the period of the distribution. See, e.g., Tricentrol Limited (July 2, 1980) (simultaneous offering in the United States, Great Britain and Canada).

⁶⁹ The Commission's recent waiver by conduct proposal was intended to stimulate discussion on how this enforcement problem might be addressed. See Securities Exchange Act Release No. 21186 (July 30, 1984). See also Multinational Offerings Release, *supra* note 1, at 9284.

⁷⁰ See Securities Exchange Act Release No. 21449 (November 1, 1984). In making this commitment, the ME noted that its rules allow it to furnish investigatory information to any other exchange regarding the activities of any of its members, a provision the ME indicated it deemed to encompass exchanging information with the BSE.

⁷¹ See Commissioner Charles L. Marinaccio, "Public Policy Issues Concerning the Subject of Tender Offers and the Developing International Equities Market," Address to the Chicago Regional Group of the American Society of Corporate Securities (January 9, 1985).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 83C-0130]

[Phthalocyaninato(2-)]Copper; Migration From Nonabsorbable Sutures

AGENCY: Food and Drug Administration.
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the color additive regulations by removing the restriction that prohibits the migration of [phthalocyaninato(2-)]copper from nonabsorbable sutures to the surrounding tissues when the sutures are used for the purposes specified in their labeling. FDA is taking this action because the restriction is impractical and is not necessary to assure the safety or suitability of the use of [phthalocyaninato(2-)]copper in nonabsorbable sutures. Elsewhere in this issue of the Federal Register, FDA is issuing a final rule that lists [phthalocyaninato(2-)]copper for use in coloring polybutester nonabsorbable sutures.

DATE: Comments by June 24, 1985.

ADDRESS: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: The color additive [phthalocyaninato(2-)]copper is permanently listed under § 74.3045 (21 CFR 74.3045) for use in coloring contact lenses and for use in coloring polypropylene sutures (nonabsorbable sutures) for use in general and ophthalmic surgery. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending § 74.3045(c) to provide for the safe use of [phthalocyaninato(2-)]copper in coloring polybutester nonabsorbable sutures for use in general and ophthalmic surgery.

At the time the color additive was listed for use in coloring contact lenses, FDA recodified the regulation for this color additive by removing § 74.1045, where the additive has been listed for use in coloring sutures, and by adding § 74.3045, which is codified in a subpart

that the agency established for color additives used in or on medical devices (48 FR 34946; August 2, 1983).

Based on the original regulation, § 74.3045 contains, in paragraph (c)(1)(iii), a restriction on the use of [phthalocyaninato(2-)]copper: "When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissue." FDA is proposing to remove § 74.3045(c)(1)(iii) because this restriction is not practical and is not necessary to assure the suitability or safety of the use of [phthalocyaninato(2-)]copper in coloring nonabsorbable sutures.

As the agency explained in a similar proposal recently published pertaining to the use of D&C Blue No. 6 for coloring sutures (49 FR 29970; July 25, 1984), color additives are added to sutures to facilitate their visibility both during surgery and, depending on the application, during removal of the suture after the sutured area has healed. Under section 706(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376(b)), FDA imposes restrictions on the use of color additives that are necessary to assure their safety and suitability for the proposed use.

The agency originally imposed the restriction on migration to the surrounding tissue as a suitability requirement for polypropylene nonabsorbable sutures containing [phthalocyaninato(2-)]copper, to ensure that the sutures would retain enough of their color to be visible for removal after the sutured area has healed. At that time, FDA believed that no migration of the color additive from the nonabsorbable suture to tissue took place. However, because analytical methods have become more sensitive over the last decade, FDA now recognizes that low levels of migration may occur that have no bearing on the suitability of the use of color additives in nonabsorbable sutures. Such is the case when [phthalocyaninato(2-)]copper is used to color polypropylene and polybutester nonabsorbable sutures.

On the basis of evidence presented in the petition submitted in 1966 (CAP 6C0045) and in the current petition (CAP 4C0181), FDA finds that the use of [phthalocyaninato(2-)]copper in polypropylene and polybutester nonabsorbable sutures meets the suitability criteria. This evidence shows that sutures to which [phthalocyaninato(2-)]copper is added will retain enough color to remain visible.

FDA further finds that the restriction against migration of the color additive is not necessary to assure the safety of the

use of [phthalocyaninato(2-)]copper in the listed sutures. The agency's evaluation of the safety of these uses was not based on an assumption of no migration. The agency recognized that there would be low levels of migration of the color additive but still found on the basis of the extensive data on [phthalocyaninato(2-)]copper, developed in appropriate testing, that these uses would be safe. Thus, the safety of the use of this color additive in polypropylene and polybutester sutures is not dependent on the requirement that none of the color additive migrate.

Therefore, for the reasons above, the agency tentatively concludes that the restriction on migration is no longer necessary to assure the safety or suitability of [phthalocyaninato(2-)]copper for use in nonabsorbable sutures. FDA consequently is proposing to remove 21 CFR 74.3045(c)(1)(iii).

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal results in no cost associated with the change. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION**§ 74.3045 [Amended]**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), (376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 74 be amended in § 74.3045 [Phthalocyaninato(2-)]copper by removing paragraph (c)(1)(iii).

Interested persons may, on or before June 24, 1985, submit to the Dockets

Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 18, 1985.

Joseph P. Hile,
Associate Commissioner for Regulatory
Affairs.

[FR Doc. 85-9955 Filed 4-22-85; 12:22 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 736, 740, 746, 750, and 772

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Application Fee for Permit to Conduct Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for Processing Mining Plan; Fee for Mid-Term Review of Surface Coal Mining and Reclamation Permit

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Change of location of public hearing on proposed rule concerning permit fees.

SUMMARY: The Office of Surface Mining (OSM) is changing the location of the public hearing on the proposed permit fee rule that was announced in the Federal Register on February 22, 1985 (50 FR 7522). The new location for the hearing in Denver, Colorado is listed under ADDRESSES BELOW.

DATES: Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on May 3, 1985.

Public Hearings: OSM will hold public hearings on the proposed rule in Washington, D.C., Denver, Colorado; and Olympia, Washington, at 9:30 a.m. local time on April 26, 1985.

ADDRESSES: Written Comments: Hand-deliver to the Office of Surface Mining Administration Record, Room 5313, 1100 L Street, NW., Washington, D.C. 20240.

Public Hearings: Department of the Interior Auditorium, 18th & C Streets NW., Washington, D.C.; Executive Tower Inn Building, 28th Floor Conference Room, 1405 Curtis Street,

Denver, Colorado; and Capitol Complex, Office Building No. 2, 12th and Franklin, Room 47, Olympia, Washington.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5866.

Dated: April 19, 1985.

Richard G. Bryson,
Assistant Director, Program Operations.
[FR Doc. 85-9964 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 906

Public Comment and Opportunity for Public Hearing on Proposed Modifications of the Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule. Notice of receipt of permanent program modifications; Public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the adequacy of proposed amendments to the Colorado Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which were submitted to OSM by Colorado for the Director's approval on March 12, 1985. The amendments pertain to definitions; permit application requirements; performance standards pertaining to roads, revegetation, postmining land use, and fish and wildlife; declaratory orders; inspections; cessations orders and notices of violation; and penalty assessments.

This notice sets forth the times and locations that the Colorado program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments from members of the public not received by 4:30 p.m., on May 28, 1985, will not necessarily be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

A public hearing on the proposed amendments has been scheduled for May 20, 1985. Any person interested in

making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the address and telephone number listed below by May 15, 1985. If no person has contacted Mr. Hagen by this date to express an interest to participate in this hearing, the hearing will not be held.

ADDRESSES: The public hearing will be held between 9:00 a.m. and 12:00 noon in room 2010, Technical Center West, Brooks Towers, 1020 15th Street, Denver, Colorado. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Albuquerque, New Mexico 87102.

Copies of the Colorado program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSM Field Office above and the OSM Headquarters office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge one single copy of the amendments by contacting the OSM Albuquerque Field Office listed above.

Colorado Mined Land Reclamation Division, Department of Natural Resources, 1313 Sherman Street, Denver, Colorado 80203

Office of Surface Mining, 1100 L Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343-4855.

SUPPLEMENTARY INFORMATION: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: On February 29, 1980, OSM received a proposed regulatory program from the State of Colorado. On December 15, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1980 Federal Register (45 FR 82173-82214).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed