PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Cameron, MO [New]

That airspace extending upwards from 700 ft. above the surface within a 5-mile radius of the Cameron Memorial Airport (lat. 39°43'36", long. 94°16'30"), and within 3 miles each side of the 187°T, 183°M bearing from the Cameron Memorial Airport, extending from the 5-mile radius to 8.5 miles south of the airport.

Issued in Kansas City, Missouri, on August 30, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89–22555 Filed 9–22–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89-ANM-13]

Proposed Establishment of Jet Route J-589; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Jet Route J–589 between Roseburg, OR, and Victoria, BC, Canada. This action would establish a route by which an aircraft could avoid the arrival paths for airports in the Seattle, WA, area. This action would also enhance traffic management, decrease controller workload, and provide pilots with a direct routing.

DATES: Comments must be received on or before November 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 89–ANM–13, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ANM–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish Jet Route J–589 between Roseburg, OR and Victoria, BC, Canada. This action would provide aircraft traversing west of the Seattle-Tacoma International Airport a route to avoid the arrival paths for airports in the Seattle, WA, area. This action would enhance traffic management, decrease controller workload, and provide pilots with a direct routing. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–589 [New]

From Roseburg, OR; Corvalis, OR; to Victoria, BC, Canada. The airspace within Canada is excluded.

Issued in Washington, DC, on September 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22554 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89-ANM-11]

Proposed Realignment of J-90; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign J-90 to enhance procedures for aircraft arriving and departing airports in the Seattle, WA, area. This action would reduce controller workload and aid flight planning.

DATES: Comments must be received on or before November 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 89-ANM-11, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANM-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personal concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to realign J-90 between Moses Lake, WA, and Helena, MT. Realigning J-90 would create an outbound route for aircraft departing the Seattle, WA, area. Arrival flights would utilize J-70. This action would enhance traffic management, reduce controller workload, and aid flight planning. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-90 [Amended]

By removing the words "via Ephrata, WA; Mullan Pass, ID; Lewistown, MT;" and by substituting the words "via Moses Lake, WA; Helena, MT;"

Issued in Washington, DC on September 13, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-22553 Filed 9-22-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-27247; File No. S7-27-89]

RIN 3235-AA48

Initiation or Resumption of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment amendments to Rule 15c2-11 under the Securities Exchange Act of 1934 ("Exchange Act"). Rule 15c2-11 governs the submission and publication of quotations by brokers or dealers for certain over-the-counter securities. The

proposals would revise that Rule by requiring a broker-dealer to review the Rule's specified information before initiating or resuming a quotation in a quotation medium, and to have a reasonable basis to believe that the information is true and accurate and obtained from reliable sources. The proposed amendments also would require a broker-dealer initiating or resuming quotations in an issuer's securities to have in its records a copy of any trading suspension order, or Exchange Act release announcing a trading suspension, issued by the Commission with respect to any of the issuer's securities during the preceding year and to review the other required information in its records in light of the information contained in that order or release.

If the issuer of the security is a reporting company that has not filed its first annual report, the proposals would require a broker-dealer to have in its records a copy of the effective registration statement subjecting the issuer to reporting obligations under the Exchange Act, together with any subsequent reports filed thereunder. The broker-dealer also would be required to obtain a copy of any current report filed by the reporting company with the Commission after its latest annual report. Additionally, the Commission is proposing amendments regarding the time period for which broker-dealers must retain the required information, and the time by which broker-dealers must furnish information to the interdealer quotation system to commence quotations. Another proposed amendment would clarify the exception for NASDAQ securities.

Finally, the Commission is soliciting comment on whether to modify or eliminate the Rule's "piggyback" provisions that allow broker-dealers under certain conditions to enter quotations without having the information specified by the Rule.

DATE: Comments must be received on or before December 1, 1989.

ADDRESS: Interested persons should submit three copies of their written data, views, and arguments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and refer to File No. S7-27-89. All submissions will be available for public inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow or Michael T. Dorsey, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, telephone (202) 272-2848.

SUPPLEMENTARY INFORMATION:

I. Introduction and Overview of Rule 15c2-11

A. Recent Commission Actions

The Commission recently established the Penny Stock Fraud Task Force ("Task Force") in response to increasing reports of fraud and manipulation in the penny stock market.[1] Penny stocks are low-priced securities that often are quoted in the "pink sheets." [2] The Commission's efforts to combat abuses in the penny stock market have included regulatory initiatives,[3] enforcement actions,[4] and trading suspensions.[5]

With the recent proliferation of fraudulent and manipulative schemes typically involving companies with few or no assets, earnings, or operations ("shell companies"),[6] and the significant increase in the number of trading suspensions,[7] the Commission believes that it is appropriate to strengthen and clarify a broker-dealer's responsibilities when publishing quotations for pink sheet securities.[8] As the Commission has stated:

> The importance of a broker-dealer's responsibility to use diligence where there are any unusual factors is highlighted by the fact that violations of the antifraud and other provisions of the securities laws frequently depend for their consummation, as here, on the activities of broker-dealers who fail to make diligent inquiry to obtain sufficient information to justify their activity in the security.[9]

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[1] *See* Remarks of Chairman David S. Ruder before the Twenty-First Annual Rocky Mountain-State-Federal-Provincial Securities Conference (October 21, 1988) ("Chairman's Remarks"), at 14. *See also The Penny Stock Scandal*, Bus. Wk. (January 23, 1989) (Cover Story); *Never but Never Give a Sucker an even Break*, Forbes (January 9, 1989) at 46, col. 1.

[2] *See Beware of Penny Stock Fraud!*, Information For Investors, U.S. Securities and Exchange Commission (November 1988).

The National Quotation Service, also known as the "pink sheets," is published and distributed nationally by the National Quotation Bureau, Inc. ("NQB), and is the principal interdealer quotation system for equity securities that are not listed on an exchange or quoted on the NASDAQ system. Other quotation media are distributed in limited geographical areas, *e.g.*, the Regional Inter-Dealer Over-the-Counter Stock Quotations prepared by Metro Data Company in Minneapolis, Minnesota (known as the "white sheets"). The "pink sheets" and these other quotation media reflect loosely organized markets for securities of lesser-known issuers, generally characterized by low levels of trading activity and dealer competition. Information concerning these issuers often is not readily available to the marketplace, and few analysts regularly follow their stocks. In this Release, the securities quoted in these quotation media are referred to as "pink sheet securities," and the markets in which these types of securities are traded are referred to as the "pink sheet market."

The National Association of Securities Dealers, Inc. ("NASD") has submitted a proposed rule change, File No. SR-NASD-88-19, pursuant to Rule 19b-4 under the Exchange Act, 17 CFR 240.19b-4, in which it seeks to establish a new service called the OTC Bulletin Board Display Service. The OTC Bulletin Board Display Service would permit eligible NASD member firms to enter, update, and retrieve quotation information, including unpriced indications of interest, on a real-time basis in non-NASDAQ and non-listed securities (*i.e.*, pink sheet securities). The Commission has published this rule proposal for public comment. *See* Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096.

[3] For example, the Commission recently adopted Rule 15c2-6, 17 CFR 240.15c2-6, under the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78a *et seq.*, which imposes certain requirements on broker-dealers who recommend purchases of pink sheets securities by persons who are not accredited investors or established customers of the firm. Securities Exchange Act Release No. 27160 (August 22, 1989).

[4] *See, e.g., Rooney, Pace, Inc.*, Securities Exchange Act Release No. 25125 (November 16, 1987), 48 S.E.C. 891; *SEC* v. *Stoneridge Securities, Inc.*, (Civ. No. 5-89-096) (D. Nev.), L.R. No. 11995 (February 3, 1989), 42 SEC Docket (CCH) 1260; *SEC* v. *Hughes Capital Corp.*, (Civ. No. 88-5238) (D.N.J.), L.R. No. 11939 (December 13, 1988), 42 SEC Docket (CCH) 630; *SEC* v. *Colonial International Import, Ltd.*, (Civ. No. 85-510-JLQ) (E.D. Wash.) L.R. No. 11896 (October 17, 1988), 42 SEC Docket (CCH) 71; *SEC* v. *Goldcor, Inc.*, (Civ. No. 88-612-CIV-orl-18) (M.D. Fla.), L.R. No. 11847 (August 24, 1988), 41 SEC Docket (CCH) 960.

[5] Within a six-month period in 1988, the Commission suspended trading in the common stock of more than 100 pink sheet issuers. *See, e.g.*, Securities Exchange Act Release No. 25550 (April 5, 1988), 40 SEC Docket (CCH) 841; Securities Exchange Release No. 25813 (June 21, 1988), 41 SEC Docket (CCH) 276; Securities Exchange Act Release No. 26064 (September 7, 1988), 41 SEC Docket (CCH) 1021.

The Commission is authorized under Section 12(k) of the Exchange Act, 15 U.S.C. 78l(k), to suspend summarily trading in any security (other than an exempted security) for a period not exceeding ten days. The Commission may issue such an order if in its opinion the public interest and the protection of investors so require. *See SEC* v. *Sloan*, 436 U.S. 103, 112 (1978). For example, the Commission has issued such orders when an issuer had failed to satisfy its statutory disclosure obligations or appeared to have disseminated information that was materially false or misleading. *See, e.g.*, Securities Exchange Act Release No. 25737 (May 24, 1988), 40 SEC Docket (CCH) 1307 ("Release 34-25737") (suspending trading in securities of AMX International for a 10 day period).

[6] *See* Chairman's Remarks, n.1 *supra*.

[7] *See* n.5 *supra*.

[8] Of approximately 100 securities in the Denver, Colorado region in which trading was suspended in 1988, approximately 50 percent reappeared in the pink sheets. It appears that quotations may have

Continued

Because fraudulent and manipulative schemes can rarely succeed witout the participation of broker-dealers,[10] it is essential that a broker-dealer considering submitting quotations for a security be alert to unusual circumstances that may be present,[11] such as the issuance of a trading suspension.

Rule 15c2–11 ("Rule 15c2–11" or "Rule") under the Exchange Act [12] governs the publication and submission of quotations for securities traded in the "pink sheet market," and requires that brokers and dealers have certain information about the issuer and its securities before publishing quotations. The Commission is concerned that broker-dealers may not be complying with the requirements of Rule 15c2–11 when submitting a quotation for a security following the expiration of a trading suspension. Indeed, many broker-dealers apparently initiate or resume quotations without knowing the basis for the trading suspension, or in some cases, that there even had been a trading suspension.

Accordingly, the Commission is providing its interpretive views on the steps that a broker-dealer must take in order to comply with the current Rule following a trading suspension in a security. Moreover, the Commission is proposing an amendment to the Rule that would require broker-dealers to review the Rule's specified information before initiating or resuming a quotation, whether or not there has been a trading suspension, and to have a reasonable basis to believe that the information is true and correct and obtained from reliable sources. The Commission also is proposing amendments that clarify a broker-dealer's obligation when submitting quotations following a trading suspension; modify the information maintenance requirements regarding reporting issuers; clarify the time period that the broker-dealer must maintain the information; revise the time period by which a broker-dealer must furnish the form to an interdealer quotation system; and clarify the exception for NASDAQ securities. Finally, the release seeks comment on the Rule's "piggyback" provision.

B. Operation of Current Rule 15c2–11

Rule 15c2–11 regulates the initiation or resumption of quotations in a quotation medium by a broker or dealer for certain over-the-counter securities. Adopted in 1971,[13] the Rule was designed primarily to prevent certain manipulative and fraudulent trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by shell companies,[14] or other companies having outstanding but infrequently-traded securities. The Rule was intended to prevent brokers and dealers from furnishing initial quotations in the absence of any information about the issuer, an activity that was critical to the success of many of the unlawful schemes.[15] The Rule focuses on the fraudulent and manipulative potential of quotations.[16] A violation of the Rule may occur regardless of whether the broker-dealer also is engaged in retail activity in the security,[17] or whether any interdealer transactions have occurred.[18]

Subject to certain exceptions, [19] the Rule prohibits a broker or dealer from submitting a quotation[20] for a security in a quotation medium [21] unless it has in its records specified information concerning the security and the issuer and, in certain circumstances, furnishes the information to the interdealer quotation system two days before the publication of such quotation.[22] Specifically, a broker or dealer that initiates or resumes a quotation for the securities of an issuer must have in its records: (1) In the case of an issuer that has conducted a recent public offering registered under the Securities Act of 1933 ("Securities Act") [23] or effected

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been resumed or initiated in a significant number of these securities on the basis of inadequate information. *See, e.g., Richfield Securities, Inc.*, Securities exchange Act Release No. 26129 (September 29, 1988), 41 SEC Docket (CCH) 1235.

[9] *Alessandrini & Co., Inc.*, 45 S.E.C. 399, 406 (1973), *aff'd without opinion sub. nom. Budin* v. *SEC*, 508 F.2d 836 (2d Cir. 1974). *See also SEC* v. *Management Dynamics, Inc.*, 515 F.2d 801, 810–811 (2d Cir. 1975).

[10] *See, e.g.*, Securities Exchange Act Release 4982 (July 2, 1969), 34 FR 11581; *Alessandrini*, 45 S.E.C. at 406.

[11] *See, e.g., Butcher & Singer Inc.*, 48 S.E.C. 640, 641–643, *aff'd without opinion*, 833 F.2d 303 (3d Cir. 1987). *See also* Securities Act Release No. 4445 (February 2, 1962).

[B]rokers and dealers should be aware that the submission or publication of a quotation at a price which does not bear a reasonable relationship to the nature and scope of the issuer's business or its financial status or experience, may constitute a part of a fraudulent or manipulative scheme.

[12] 17 CFR 240.15c2–11.

[13] *See* Release 34–9310, 36 FR at 18641. Rule 15c2–11 was adopted under section 15(c)(2) of the Exchange Act, 15 U.S.C. 78*o*(c)(2), among other sections. Section 15(c)(2) gives the Commission broad authority to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the over-the-counter securities market.

[14] Rule 15c2–11 was intended to address a variety of questionable practices involving a "spin-off" or other distribution to the public of the securities of a shell corporation and the subsequent active trading of those shares at increasingly higher prices that bore no relation to the value of the securities. *See* Release 34–9310, 36 FR at 18641.

[15] Release 34–9310, 36 FR at 18641; *see also* Securities Exchange Act Release No. 21470 (November 15, 1984), 49 FR 45117 ("Release 34–21470") (adopting amendments to Rule 15c2–11). The Rule "seeks to guard against 'the fraudulent and manipulative potential inherent * * * when a * * * dealer submits quotations concerning any infrequently-traded security in the absence of certain information.'" *Gotham Securities Corporation*, 46 S.E.C. 723, 725 (1976), *citing* Release 34–9310.

[16] In 1985, the Commission published a release seeking comment on the costs and benefits of the Rule. Securities Exchange Act Release No. 21914 (April 1, 1985), 50 FR 14111 ("Release 34–21914"). A summary of the comments has been prepared by the staff and is available in File S7–14–85. Although commentators expressed some concerns with the Rule and suggested various modifications, the majority of commentators supported the Rule and/or its goal of preventing fraudulent and manipulative activity.

[17] *See Alessandrini*, 45 S.E.C. at 401. The objective in having quotations published for a security may not be to trade the security, but to establish an apparent value for the security. Apparent value is important, for example, where the pink sheet security is serving as collateral for loans. *See, e.g., id.* at 400.

See Richfield Securities, Inc., Securities Exchange Act Release No. 26129 (September 29, 1988), 41 SEC Docket (CCH) 1235.

[19] The Rule excepts from its coverage publication or submission of a quotation in the over-the-counter market for a security admitted to trading on a national securities exchange (if traded on that exchange on the same day or on the day before submission or publication of the quotation), or a security authorized for quotation in an interdealer quotation system operated by a registered securities association (the only such system currently existing is the NASDAQ system operated by the National Association of Securities Dealers, Inc.). *See* paragraphs (f)(1) and (f)(5) of Rule 15c2–11, respectively, 17 CFR 240.15c2–11(f)(1) and (f)(5). *See also* section II.F. *infra*. As a result, the Rule's focus is the residual over-the-counter market, principally reflected in the pink sheets. *See* n.2 *supra*.

[20] "Quotation" is defined in paragraph (e)(3) of the Rule, 17 CFR 240.15c2–11(e)(3), to include any advertisement by a broker or dealer that he wishes to buy or sell a particular security at a specified price or otherwise. In 1984, the Commission expanded the definition of quotation to include the publication by broker-dealers of trading interest in a security without specifying the prices at which the broker-dealer would engage in those transactions ("name-only entries"). Release 34–21470, 49 FR at 45119. A few commentators predicted that the extension of the informational requirements to the publication of name-only entries would cause market makers to withdraw quotations, but the number of quotations in the NQB's "pink sheets" has remained relatively constant.

[21] The term "quotation medium" is defined broadly in paragraph (e)(1) of the Rule, 17 CFR 240.15c2–11(e)(1), to include any interdealer quotation system or any publication or electronic communications network or other device used by broker-dealers to make known their interest in transactions in any security. The term "interdealer quotation system" is defined in paragraph (e)(2) of the Rule, 17 CFR 240.15c2–11(e)(2), to mean "any system of general circulation to brokers or dealers which regularly disseminates quotations or identified brokers or dealers."

[22] *See* 17 CFR 240.15c2–11(d).

[23] 15 U.S.C. 77a *et seq.*

pursuant to Regulation A under the Securities Act,[24] a copy of the prospectus [25] or offering circular; [26] or (2) in the case of an issuer that must file with the Commission reports pursuant to sections 13 [27] or 15(d) [28] of the Exchange Act or is an insurance company of the kind specified in section 12(g)(2)(G) of the Exchange Act,[29] the issuer's most recent annual report and any reports required to be filed at regular intervals thereafter; [30] or (3) in the case of foreign issuers exempt from section 12(g) of the Exchange Act, the information furnished to the Commission pursuant to Rule 12g3–2(b) [31] under the Exchange Act.[32] In order to submit a quotation for the security of an issuer that falls into none of the above categories, the broker or dealer must have in its records the sixteen items of information, including certain financial information, specified in paragraph (a)(5) of the Rule.[33] This information must be reasonably current [34] in relation to the day the quotation is submitted, the broker or dealer must have no reasonable basis for believing that the information is not true and correct or reasonably current, and such information must be obtained from sources that the broker or dealer has a reasonable basis for believing are reliable. In addition, paragraph (c) of the Rule requires a broker or dealer to maintain in its records any other information (including adverse information) regarding the issuer that comes to its knowledge or possession before the publication or submission of the quotation.[35]

Under paragraph (f)(3),[36] the so-called "piggyback" provision, the Rule's information maintenance requirements are inapplicable when a broker or dealer enters in an interdealer quotation system,[37] a quotation for a security that has been the subject of quotations on at least 12 business days during the previous 30 calendar days, with no more than four consecutive business days elapsing without any quotations. As a result, until 30 calendar days have elapsed from the date of publication of the initial broker-dealer's quotation, no broker-dealer may publish a quotation unless it has satisfied the Rule's information gathering requirements.[38] After the 30 day period, a broker-dealer may publish a quotation without having the required information if the 12 and four day tests also are satisified (*i.e.*, the broker-dealer may "piggyback" on the published quotations). Moreover, unless the interdealer quotation system specifically identifies quotations that represent unsolicited customer indications of interest, a broker-dealer may piggyback only where a security has been the subject of both bid and ask quotations at specified prices for the time periods enumerated in the Rule.[39] The piggyback provision presumes that the quotation of a security subject to regular and frequent two-sided market making will reflect independent supply and demand forces.[40]

Consequently, the information gathering requirement of the Rule applies only upon initiation or resumption of a quotation in a quotation medium for a security that has not been quoted with the required frequency during the previous 30 days. Rule 15c2–11 contains no requirement that a broker-dealer obtain updated information about the issuer or its securities if the piggyback exception applies to the quotation. Of course, many market makers update their information routinely to keep abreast of developments affecting the issuer, to satisfy other obligations under the securities laws (*e.g.*, the need to have a reasonable basis when recommending securities to customers),[41] and to satisfy suitability requirements.[42]

C. Impact of a Trading Suspension on the Operation of the Rule

Following the expiration of any trading suspension in a security lasting more than four business days, the piggyback provision of the Rule is unavailable.[43] Therefore, following the expiration of a trading suspension, the broker-dealer must satisfy the Rule's information requirements before the initiation or resumption of quotations for the security in a quotation medium.[44] Because of the Commission's concern that a number of broker-dealers have not complied with the Rule's requirements following trading suspensions, the Commission is providing its interpretative views on the responsibilities of broker-dealers initiating or resuming quotations in such circumstances.

A trading suspension is a material event affecting the market for an issuer's securities. In determining whether to submit quotations after the termination of a trading suspension, the broker-dealer should understand the basis upon which the Commission imposed the suspension. The reasons stated by the

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[24] 17 CFR 230.251 *et seq.*

[25] 17 CFR 240.15c2–11(a)(1) (registration statement must have become effective within the preceding 90 calendar days).

[26] 17 CFR 240.15c2–11(a)(2) (notification regarding the offering must have become effective within the preceding 40 calendar days).

[27] 15 U.S.C. 78m.

[28] 15 U.S.C. 78*o*(d).

[29] 15 U.S.C. 78*l*(g)(2)(G).

[30] 17 CFR 240.15c2–11(a)(3).

[31] 17 CFR 240.12g3–2(b).

[32] 17 CFR 240.15c2–11(a)(4).

[33] 17 CFR 240.15c2–11(a)(5). Paragraph (a)(5) also provides: "This paragraph (a)(5) shall not apply to any security of an issuer included in paragraph (a)(3) of this section unless a report is not reasonably available to the broker or dealer. A report or statement of an issuer described in paragraph (a)(3) of this section shall be 'reasonably available' when such report or statement is filed with the Commission."

[34] *See* Rule 15c2–11(g), 17 CFR 240.15c2–11(g), which provides a presumption for determining whether information is "reasonably current."

[35] 17 CFR 240.15c2–11(c).

[36] 17 CFR 240.15c2–11(f)(3).

[37] *See* n. 21 *supra.*

[38] *See* Release 34–9310, 36 FR at 18641 n.2.

[39] *Compare* subparagraph (f)(3)(i) with subparagraph (f)(3)(ii) of the Rule.

[40] *See* Release 34–21470, 49 FR at 45121.

[41] *See, e.g., Hanly* v. *SEC*, 415 F.2d 589 (2d Cir. 1969), *affirming Richard J. Buck & Co.*, 43 S.E.C. 998 (1968); *see also* Securities Exchange Act Release No. 26100 (September 22, 1988), 53 FR 37778, 37787, and cases cited therein. The Commission has stated that the Rule "is not intended to, and does not, excuse brokers and dealers from their duty to comply with applicable registration and other anti-fraud provisions of the federal securities laws and Commission rules." Release 34–9310, 36 FR at 18641.

[42] *See, e.g.*, New York Stock Exchange Rule 405, NYSE Guide (CCH) ¶2405; NASD Rules of Fair Practice, Art. III, Sec. 2, NASD Manual (CCH) ¶2152.

[43] *See* discussion of the piggyback exception in text at nn. 36–40 *supra.*

[44] *See* Securities Exchange Act Release No. 19673 (April 14, 1983), 48 FR 17111, 17114 ("Release 34–19673"); *Letter regarding Rothchild Securities Corporation*, [1973–1974 Decisions] Fed. Sec. L. Rep. (CCH) ¶79,693 (December 27, 1973).

The release announcing a trading suspension invariably includes the following cautionary language specifically addressed to broker-dealers:

Furthermore, broker and dealers should be aware of the fact that pursuant to Rule 15c2–11 under the Exchange Act, at the termination may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation, but immediately contact the staff of the Securities and Exchange Commission * * * If any broker or dealer is uncertain as to what is required by Rule 15c2–11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

See, e.g., Release 34–25737, *supra* n.5.

Commission can indicate that the broker-dealer may not have a reasonable basis to believe that the information about the issuer in the broker-dealer's knowledge or possession is true and correct. The trading suspension order also may alert the broker-dealer to the possibility that fraudulent and manipulative activities may be occurring in the market for the securities of the subject issuer. The factors cited by the Commission in its order as the basis for the trading suspension, however, do not constitute an adjudication of fact or law with respect to those matters.[45] Therefore, if a broker-dealer reasonably believes after appropriate inquiry, as discussed below, that the Commission's concerns expressed in the trading suspension order were unfounded or have been remedied, the broker-dealer will be able to satisfy the requirements of Rule 15c2–11 and initiate or resume quotations for the security.

In order to understand accurately the basis for the trading suspension, the broker-dealer should obtain a copy of the trading suspension order, or a copy of the Commission release announcing the trading suspension.[46] Before initiating or resuming a quotation for pink sheet securities that have been the subject of a trading suspension, the broker-dealer must conduct a careful review in a professional manner of the basis for the trading suspension to determine whether there is a reasonable basis for the broker-dealer to believe that the information about the issuer in the broker-dealer's knowledge or possession is true and correct.[47] The broker-dealer may need to obtain additional information to cure deficiencies in that information.

Before submitting a quotation for a security following a trading suspension, the broker-dealer also must reasonably believe that the information is obtained from a reliable source.[48] In many cases, the information required by the Rule had been provided to the broker-dealer by the issuer or a promoter before the trading suspension. Following a trading suspension, the broker-dealer may need to inquire into the reliability of the source, particularly when the same source is providing new or updated information. At a minimum, the inquiry should consist of receiving assurances or additional information from the source (in most cases, the issuer) with respect to the matters cited in the order. If the broker-dealer then has a reasonable basis to believe that the information is true and correct, and reasonably believes that the source is reliable, the requirements of the Rule will be satisfied. Reliance on statements or assurances from the issuer or promoter in these circumstances, however, requires great caution.[49]

In conducting its inquiry, the broker-dealer may have to obtain support for the accuracy of the information or the source's reliability by conducting an independent review or obtaining verification of information provided by the issuer or promoter.[50] For example, an opinion of an independent accountant or attorney may be warranted.

A broker-dealer may have difficulty obtaining the necessary information about an issuer after the expiration of a trading suspension. This difficulty, however, does not relieve a broker-dealer of its responsibilities under the Rule. Without having a reasonable basis to believe that its information is true and correct and obtained from reliable sources, the broker-dealer should not submit quotations for the securities of the subject issuer for publication in a quotation medium.[51]

II. Proposed Amendments

The Commission is proposing an amendment to the Rule that would require broker-dealers to review the Rule's specified information before initiating or resuming a quotation, whether or not there has been a trading suspension, and have a reasonable basis to believe that the information is true and correct and obtained from reliable sources. Moreover, as discussed above, the Commission is concerned about the initiation or resumption of quotations following the expiration of a trading suspension under circumstances when it is questionable whether the broker or dealer submitting the quotations has true and correct information obtained from reliable sources.[52] Therefore, the Commission proposes to clarify the obligations of a broker-dealer under the Rule if the Commission has issued a trading suspension. The amendments also would: modify the information gathering requirements of the Rule

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[45] *See, e.g.*, Release No. 34–25737, *supra* n.5, in which the Commission announced a ten day trading suspension for the securities of AMX International, Inc., stating:

The Commission suspended trading in the securities of AMX International because of an apparent lack of current and accurate public information concerning the financial condition of the company and the value of its assets; and in view of questions that have been raised about, among other things, the adequacy and accuracy of publicly disseminated information concerning these matters.

[46] Copies of Commission releases may be obtained from the Commission's Public Reference Room in Washington, D.C. and in regional Commission offices. Commission releases are available from information databases (*e.g.*, LEXIS), and also are published in the SEC Docket, which is available from publication services (*e.g.*, Commerce Clearing House). Furthermore, the Commission's staff generally endeavors to notify identified market makers in a security about a trading suspension in that security. *See* n. 60 *infra*. Finally, a proposed Commission telephone service should facilitiate retrieval of trading suspension orders by broker-dealers. *See* discussion in Section II. A. *infra*.

Proposed paragraphs (a)(6) and (h) of the Rule would require broker-dealers to obtain a copy of the trading suspension order and review the 15c2–11 information in light of the information contained in the order. *See* Sections II. B. and C. *infra*.

[47] *Cf.* Release 34–19673, 48 FR at 17114. For example, if the Commission issued a trading suspension because it had serious questions regarding the adequacy or accuracy of the issuer's financial statements, the broker-dealer may be unable to provide itself with a reasonable basis for relying on the questioned financial statements even if they otherwise satisy the Rule's presumption of "reasonably current" information. *See* 17 CFR 240.15c2–11(g). The presumption that information is "reasonably current" is vitiated if the broker-dealer has "information to the contrary." *Id.*

[48] Inherent in the requirement to have a reasonable belief that the source is reliable is the obligation that the broker-dealer know the identity of the soirce of the information. *See Bunker Securities Corporation*, 48 S.E.C. 859, 865 (1987).

[49] "[I]nformation received from little known companies or their officials, transfer agent or counsel must be treated with great caution as these are the very parties that may be seeking to deceive the firm." Securities Act Release No. 5168 (July 7, 1971).

[50] The fact that the issuer had assembled a new package of information following a trading suspension, however, would not necessarily call into question the information as having been obtained from an unreliable source. If the new information were prepared by a person independent of the issuer, the broker-dealer would not have to question the reliability of that source if under the circumstances the broker-dealer had a reasonable basis for believing that the source is reliable.

[51] The situation in which broker-dealers may be precluded from publishing quotations for a security because they lack the information required by the Rule should be distinguished from the situation following a trading suspension under Section 12(k). *See* n. 5 *supra*. A trading suspension halts *all* trading in a security for the duration of the period. In contrast, the inability of a broker-dealer to publish market making quotations does not prevent investors from engaging in transactions in the security. Indeed, Rule 15c2–11(f)(2) provides that broker-dealer may publish quotations on behalf of a customer representing the *bona fide* customer's unsolicited indication of interest in buying or selling a security in situations where the broker-dealer does not have the required information. *See* Release 34–21470, 49 FR at 45119–45120 and n. 13.

[52] *See Richfield Securities, Inc.*, Securities Exchange Act Release No. 26129 (September 29, 1988), 41 SEC Docket (CCH) 1235. The Commission found that Richfield violated section 15(c)(2) of the Exchange Act and Rule 15c2–11 by publishing a quotation for the securities of Hiex Development USA, Inc. ("Hiex") in the pink sheets following a ten-day trading suspension in the securities of Hiex. This quotation was published notwithstanding Richfield's inability to meet the requirement under Rule 15c2–11 that it have no reasonable basis for believing that the information about Hiex in its file was not true and correct and reasonably current at the time the quotation was published.

regarding reporting issuers; clarify the time period the broker-dealer must retain the specified information; revise the time period by which a broker-dealer must furnish the form to the interdealer quotation system to initiate or resume a quotation; and clarify the exception for NASDAQ securities.

A. Revisions to Paragraph (a)

There currently is no explicit requirement in the Rule that a broker-dealer review the Rule 15c2–11 information in its records prior to initiating or resuming quotations. However, "[t]he Rule is intended to require a broker-dealer to give some measure of attention to financial and other information about the issuer of a security before it commences trading in that security." [53] Moreover, inherent in the requirements of current paragraph (a)(5), both currently and as proposed to be amended, with respect to accuracy and currency of the information gathered by broker-dealers and with respect to the reliability of their sources of that information, is the premise that the broker-dealer must at least verify that it has received the required information and know the source of the information. Beyond that, the "measure of attention" that the broker-dealer must pay to the information will vary with the circumstances.[54]

The Commission proposes to clarify and enhance a broker-dealer's obligation to obtain and review information prior to initiating or resuming quotations for a pink sheet security. The proposed amendment to paragraph (a) would impose an explicit requirement that the broker-dealer review the documents or information (collectively, "information") specified in subparagraphs (a)(1) through (a)(5), have a reasonable basis for believing that the information is true and correct in relation to the day that the quotation is submitted, and have a reasonable basis for believing that the information was obtained from sources that are reliable. The broker-dealer would satisfy this standard if, after reviewing the information in a professional manner, and appropriately examining any "red flags," the broker-dealer had a reasonable basis to believe that the information was true and correct, and had a reasonable basis for believing that the source was reliable.

The "reasonable belief" standard in paragraph (a) as proposed to be amended would require a broker-dealer to have "a reasonable basis for believing (that the Rule 15c2–11 information) is true and correct." The Commission proposes to discontinue using the phrase in current paragraph (a)(5) which requires that a broker-dealer have "no reasonable basis for believing that (the Rule 15c2–11 information) is not true and correct." The Commission believes that the "double negative" language of paragraph (a)(5) is susceptible of varying interpretation, especially when compared with the reasonable belief standard regarding the sources of the information in current paragraph (a)(5), which requires that the broker-dealer have "a reasonable basis for believing (that the sources) are reliable." The proposed amendment would use the same reasonable belief standard throughout the Rule. The change in language is intended to clarify the parallelism between the responsibilities of broker-dealers under the Rule, after reviewing the Rule 15c2–11 information in a professional manner to conduct whatever inquiry with respect to the information and with respect to the sources of the information that is required under the circumstances. The proposed language also would apply to the representation implied by current paragraph (a)(5) when a broker-dealer makes available information upon request as required by that paragraph. By providing the information, the broker-dealer would be representing, *inter alia*, that the broker-dealer has a reasonable basis for believing that the information is true and correct.

The proposed addition of the phrase "in relation to the day that the quotation is submitted" [55] is intended to clarify that a broker-dealer must satisfy the requirement to have "a reasonable basis for believing (that the information required by paragraphs (a)(1) through (a)(5)) is true and correct" on the basis of the information required by paragraphs (a)(1) through (a)(5) and any other information relating to the issuer in the broker-dealer's knowledge or possession at the time that the quotation is submitted.[56] This means, for example, that a broker-dealer would not satisfy the Rule's requirements if it technically had the information called for by paragraphs (a)(1) through (a)(5) but turned a blind eye to additional, and particularly more current, adverse information in the broker-dealer's knowledge or possession.[57]

In addition to determining whether there is a reasonable basis for believing that the required information is true and correct, a review of the information may alert the broker-dealer to possible fraudulent or manipulation schemes that may be taking place and that might be facilitated by the publication of quotations.[58] The Commission also preliminarily believes that the enhanced review requirement would benefit the Commission's enforcement efforts. For example, broker-dealers would be precluded from asserting that they were not aware that the information in their files revealed that the issuer whose securities they were quoting was a "shell corporation." [59]

B. New Paragraph (a)(6)

Currently, if a broker-dealer has not received notice of a trading suspension regarding the securities of an issuer, it may claim to have reasonably relied on available information (often supplied by the issuer or a promoter) when initiating or resuming a quotation. Even brokers or dealers that are aware of the trading suspension may be unaware of the specific basis for the suspension unless they had obtained, or received, a copy of the Commission's trading suspension order.[60] To fill this significant informational gap, the Commission proposes that paragraph (a)(6) be added to the Rule to require a broker-dealer proposing to initiate or resume a quotation following a trading suspension to have in its records a copy of any trading suspension order issued by the Commission during the preceding 12 month period, or a copy of the public

[53] Release 34–21470, 49 FR at 45118.

[54] *See Bunker Securities Corporation*, 48 S.E.C. 859, 865 (1987).

[55] The phrase presently appears in paragraph (a)(5) in qualifying the term "reasonably current" for purposes of that paragraph. *See also* paragraph (g), 17 CFR 240.15c2–11(g).

[56] Paragraph (c) of the Rule, 17 CFR 240.15c2–11(c), already requires that such other information be maintained in the broker-dealer's files.

[57] The Commission requests comment on whether it would be preferable to combine the information maintenance and review requirements of revised paragraph (a) and current paragraph (c) into one provision, and whether new paragraph (h), *see* section II.C. *infra*, could be incorporated feasibly into such a provision.

[58] *See* n.12 *supra* and accompanying text.

[59] *See* Securities Exchange Act Release No. 21914 (April 1, 1985), 50 FR 14111, 14112 (discussing the evidentiary benefit of the Rule).

[60] It is not necessary that a broker-dealer actually see a copy of the suspension order for it to be relevant to the submission of quotations by the broker-dealer. Paragraph (c) of the Rule, 17 CFR 240.15c2–11(c), requires the broker-dealer to maintain in writing in its records information regarding the issuer, including adverse information, "which comes to his knowledge or possession" (emphasis supplied) before submission or publication of the quotation.

When a trading suspension is ordered for a security, it is the Commission staff's practice to advise market makers of the existence of the suspension. Generally, telephone calls are made to these broker-dealers listed on the pink sheets for the subject security, and they are provided with information about the trading suspension.

release issued by the Commission announcing that trading suspension.[61] These documents would inform the broker-dealer of the basis for the trading suspension. Because pink sheet issuers sometimes change their names, in many cases to conceal prior difficulties, proposed paragraph (a)(6) would require a broker-dealer to obtain a copy of a trading suspension order issued with respect to the securities of the issuer and any predecessor issuer during the preceding 12 months.[62] The proposed amendment would enhance investor protection because the broker or dealer will have notice of recent questions raised by the Commission regarding the securities of an issuer (including any predecessors) that should be considered in initiating or resuming a quotation.[63]

Because announcements of trading suspensions are issued as Exchange Act releases and published in the SEC Docket, information regarding trading suspensions is readily available from the Commission and from other sources. In addition, the Commission is developing a supplemental service to provide broker-dealers and others with information about trading suspensions. This new service will provide inquiring persons with information by telephone of all trading suspensions ordered within the month preceding the date of the call, and a written list by mail of all trading suspensions within the prior year. It is contemplated that the Exchange Act release relating to each suspension also will be available.

Therefore, the collection and maintenance burden on broker-dealers should be minimal. The Commission, however, asks commentators to address whether any difficulties are presented in obtaining this information and whether the period specified, *i.e.*, suspension orders issued during the preceding 12 months, is appropriate.

C. New Paragraph (h)

Paragraph (a) of the Rule (currently and as proposed to be amended) requires a broker or dealer to obtain specified information concerning the issuer and its securities before submitting quotations to a quotation medium for publication.[64] A trading suspension in the securities of an issuer should alert a broker-dealer that the information about the issuer in its possession, such as the information included in a prior effective registration statement or annual report, may no longer be true or correct,[65] and a broker-dealer should not assume that it can rely on those documents. While the issuance of a trading suspension order constitutes no finding or adjudication by the Commission that the available information regarding the issuer is false, misleading, or noncurrent, the Commission's determination that the protection of the public interest required it to exercise its extraordinary trading suspension authority should cause each broker-dealer to scrutinize carefully the information upon which it proposes to publish quotations.

The Commission particularly is concerned that some market makers are not presently meeting their obligations under the Rule after a trading suspension. Accordingly, the Commission proposes to amend Rule 15c-11 by adding a new paragraph (h) [66] providing that, if a trading suspension has been ordered during the preceding 12 months, the broker or dealer could not submit a quotation on the basis of having the documents referred to in subparagraphs (a)(1) through (a)(5), unless the broker-dealer had reviewed the documents required by those subparagraphs in light of the information contained in the trading suspension order, and had a reasonable basis to believe that the information in its possession was true and correct and was obtained from reliable sources.

In essence, paragraph (h) would require a determination by the broker-dealer that, taking into account the "red flag" of the trading suspension, the broker-dealer had a reasonable basis for believing that the information in its possession or knowledge concerning the issuer is true and correct in relation to the day that the quotation is submitted,[67] and was obtained from reliable sources. As discussed in Section I.A. above, the extent of the inquiry of the facts and circumstances that would form the basis for a "reasonable belief" will vary with the circumstances.

D. Amendments to Paragraph (a)(3)

a. Expansion of Scope

Under paragraph (a)(3)(iii), a broker or dealer submitting quotations for a security of an issuer required to file reports under sections 13 or 15(d) of the Exchange Act ("reporting issuer") must have in its records the issuer's most recent annual report [68] together with any other report required to be filed at regular intervals thereafter, *i.e.*, quarterly reports on Form 10-Q under the Exchange Act.[69] An issuer may be subject to the Exchange Act reporting requirements because it issued securities pursuant to an effective registration statement under the Securities Act; [70] has a class of equity security held of record by 500 or more shareholders and has $5 million or more in total assets; [71] or voluntarily registered its securities under Section 12 of the Exchange Act to become a reporting issuer.[72] In each of these situations, the issuer will have filed a disclosure document with the Commission that is subject to the liability provisions of the securities laws.[73]

Even though these filings provide substantial information concerning the issuer and its securities,[74] and subject the issuer to a continuous reporting obligation,[75] a broker-dealer seeking to publish quotations cannot comply with the terms of paragraph (a)(3) until the issuer files its first annual report. Prior to the time that an issuer files its first annual report, therefore, a broker-dealer would generally look to the informational requirements of paragraph (a)(5) of the Rule. However, if more formal documents, such as a Securities Act registration statement, are

[61] The Commission's order imposing a trading suspension sets forth the basis for, and the time period of, the suspension. The release published in the SEC Docket incorporates the information in the order, and contains cautionary language addressed to broker-dealers regarding compliance with Rule 15c2-11. *See* n.44 *supra*.

[62] Item (1) of paragraph (a)(5) of the Rule requires brokers or dealers relying on the informational requirements of paragraph (5) to obtain "the exact name of the issuer and its predecessor (if any)" (emphasis supplied.)

[63] Proposed new paragraph (h) would complement proposed paragraph (a)(6); *see* section II.C. *infra*.

[64] *See* nn.23-35 *supra* and accompanying text.

[65] *See* discussion in Section I.C. *supra*.

[66] Current paragraph (h) would be redesignated as paragraph (i).

[67] *See* text accompanying nn.55-57 *supra*.

[68] *See* 17 CFR 249.310.

[69] *See* 17 CFR 249.308a.

[70] *See* section 15(d) of the Exchange Act, 15 U.S.C. 78*o*(d).

[71] *See* section 12(g) of the Exchange Act, 15 U.S.C. 78*l*(g), and Rule 12g-1 thereunder, 17 CFR 240.12g-1.

[72] *See, e.g.*, 17 CFR 249.210, 249.218, 249.220f.

[73] *See* sections 11, 12, and 17(a) of the Securities Act, 15 U.S.C. 77K, 77*l*, and 77(q)(a), and Sections 10(b) and 18 of the Exchange Act, 15 U.S.C. 78j(b) and 78r, and Rule 10b-5 thereunder, 17 CFR 240.10b-5. False or misleading statements in filed documents may result in Commission enforcement actions under Securities Act section 20(b), 15 U.S.C. 77t(b), or Exchange Act section 21(d), 15 U.S.C. 78u(d), and criminal prosecution under Securities Act section 24, 15 U.S.C. 77x, or Exchange Act section 32, 15 U.S.C. 78ee.

[74] *See, e.g.*, section 7 and Schedule A of the Securities Act, 15 U.S.C. 77g and 17 CFR 230.251 *et seq.*, (registration statements); Form 10 under the Exchange Act, 17 CFR 249.210 (registration under section 12(g) of the Exchange Act).

[75] Sections 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78m(a) and 78*o*(d), respectively.

available, these documents would seemingly provide better information.[76]

Therefore, the Commission proposes to amend paragraph (a)(3) to provide that, if a reporting issuer has not filed its first annual report, the broker-dealer may satisfy paragraph (a)(3) by having in its records the document that caused the issuer to become a reporting company, *e.g.*, the registration statement [77] or the Form 10, which was filed and became effective, together with any subsequent reports filed by the issuer. The proposed amendment to paragraph (a)(3) to allow these public documents to satisfy the information maintenance requirements in this limited context furthers the Rule's purpose by requiring that broker-dealers have the most accurate and current information available when submitting quotations. In these circumstances, the broker-dealer would be unable to rely on paragraph (a)(5), which is unavailable to the broker-dealer after a report has been filed with the Commission.[78]

2. Current Reports

Paragraph (a)(3) requires broker-dealers to have not only copies of the issuer's most recent annual report, but also any other reports required to be filed at regular intervals, *i.e.*, quarterly reports on Form 10-Q. The Commission proposes to further amend the paragraph to require broker-dealers also to obtain any current reports on Form 8-K [79] filed by the issuer between the time that the issuer filed its most recent annual report (or the time that the issuer became a reporting company in the situation where the issuer has not filed its first annual report) and the date on which the broker-dealer submits the information to the quotation medium to initiate or resume a quotation. The Commission is proposing this amendment because the events triggering the Form 8-K filing requirements involve material events which may be important to a broker-dealer establishing a quotation for a security covered by the Rule.[80] For example, when a newly-formed or an existing shell corporation subject to Exchange Act reporting requirements acquires a nonpublic corporation involving a significant amount of assets, Item 2 of Form 8-K requires comprehensive disclosure about the acquisition,[81] and Item 7 requires financial statements and pro forma financial information. By requiring broker-dealers to obtain Form 8-K reports before they initiate or resume quotations for such securities,[82] they will have the most current available information about material events relating to the issuer.

The Commission recognizes that it may not be possible for a broker-dealer to ascertain contemporaneously whether an issuer has filed reports with the Commission, obtain copies of all filed reports, and submit a quotation to a quotation medium. Therefore, the Commission believes that a broker-dealer would be deemed to be in compliance with paragraph (a)(3) if the broker-dealer obtains all Forms 8-K and other Exchange Act reports filed with the Commission as of a date reasonably in advance of the date that the broker-dealer submits the quotation to the quotation medium.[83] Although the broker-dealer would have no affirmative obligation to ascertain whether a report had been filed during this period and until the quotation is published, paragraph (c) of the Rule requires the broker-dealer to maintain in its records any information regarding the issuer which comes into its knowledge or possession before the publication of the quotation. Accordingly, if the broker-dealer receives or is apprised of information contained in a report filed by the issuer during this period, that information must be included in the broker-dealer's Rule 15c2-11 file.

Because this proposal would increase recordkeeping burdens for broker-dealers,[84] the Commission solicits comment on the costs and benefits of requiring broker-dealers to obtain this information, and any other comments that may be helpful to the information, and any other comments that may be helpful to the Commission in assessing whether this proposed amendment is necessary or appropriate.

E. Amendments to Paragraphs (c) and (d)

1. Paragraph (c)

Paragraph (c) provides that a broker-dealer must maintain as part of its records the information (including adverse information) regarding the issuer that comes to his knowledge or possession before publication or submission of the quotation, and preserve such records "for the periods specified in Rule 17a-4" under the Exchange Act.[85] Rule 17a-4, however, specifies different time periods for the retention of specific categories of books and records, ranging from three years to an indefinite period.[86] None of the paragraphs in Rule 17a-4 refers specifically to the information required to be maintained by Rule 15c2-11(c). Accordingly, the Rule 15c2-11(c) requirement is ambiguous on the length of time that the information must be preserved.

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[76] [I]n the case of reporting companies, which are subject to a Congressionally-mandated system of continuous disclosure, a broker-dealer ought to have in its possession certain comprehensive [information] in order to submit or publish a quotation. Only when the paragraph (a)(3) information is not reasonably available may a broker-dealer substitute the information required by paragraph (a)(5).

Released 34-21470, 49 FR at 45122. Documents that are filed with the Commission are "reasonably available." *See* n.33 *supra*.

[77] Paragraph (a)(1) of the Rule permits a broker-dealer to initiate or resume quotations based on a registration statement that became effective less than 90 days before the publication or submission of the quotation. Under the proposed amendment to paragraph (a)(3), the broker-dealer could enter quotations based on the registration statement during the period between 90 days after effectiveness of the registration statement and the filing of the first annual report.

[78] *See* n.33 *supra*. The broker-dealer also must have a reasonable basis for believing that the issuer is current in filing its reports 17 CFR 240.15c2-11(a)(3)(ii).

[79] *See* 17 CFR 240.308.

[80] For example, a report on Form 8-K must be filed upon the occurrence of a change in control (Item 1), acquisition or disposition of assets (Item 2), bankruptcy or receivership (Item 3), and resignations of directors (Item 6). A reporting issuer also voluntarily may file a Form 8-K to report other events that the issuer "deems of importance to security holders" (Item 5).

[81] Item 2 requires, *inter alia*, a description of the assets acquired, the nature and amount of consideration paid, the identity of the persons from whom the assets were acquired, the relationship between such persons and the issuer, and the source of funds used.

[82] The Commission's Public Reference Room in Washington, DC can advise a broker-dealer whether an issuer has filed a report under the Exchange Act. There are three principal means for a broker-dealer to obtain reports filed with the Commission by an issuer: from the issuer itself; from one of the user organizations that reproduce and distribute reports filed with the Commission; or from the Commission's Public Reference Room. Market makers frequently are on an issuer's mailing list and regularly receive copies of issuer filings. User organizations provide copies of reports for a fee, usually within a short time from the date of a telephone or written request. The Public Reference Room will provide copies for a fee in response to written requests (the response time can be significantly longer than that of the user organizations). The development of a fully operational electronic filing and processing system (*i.e.*, EDGAR) for various types of issuer filings should facilitate rapid access by broker-dealers to the kinds of information specified in paragraph (a)(3).

[83] The Commission believes that a period of up to five business days is reasonable.

[84] For the fiscal years 1988, 1987 and 1986, the number of Form 8-Ks filed with the Commission was approximately 12,925, 12,570 and 11,850, respectively. These figures represent an average of one Form 8-K per reporting company per year.

[85] 17 CFR 240.17a-4. Rule 17a-4 is the general provision relating to the preservation of books and records by exchange members, brokers, and dealers.

[86] *See* paragraphs (a)-(e), 17 CFR 240.17a-4(a)-(e).

The Commission believes that requiring the retention of Rule 15c2-11 information for the time periods specified in Rule 17a-4(b), namely, for a three-year period, the first two in an easily accessible place, would be appropriate for purposes of examinations and investigations by the Commission and self-regulatory organizations. The Commission also recognizes that burdens and storage costs are imposed on broker-dealers by this requirement. Therefore, the Commission proposes that paragraph (c) of Rule 15c2-11 indicate that the broker-dealer preserve the information for the periods specified in Rule 17a-4(b).

2. Paragraph (d)

Paragraph (d) of the Rule requires a broker-dealer submitting quotations for publication to furnish to the interdealer quotation system, in such form as such system shall prescribe and at least two days before the quotation is to be published, the information regarding the security and its issuer that the broker-dealer is required to maintain pursuant to paragraph (a)(5). The Commission is proposing to amend paragraph (d) to expand the period between the time that information is furnished to the interdealer quotation system and the time that the quotation may be published. The Commission proposes to amend paragraph (d) to require broker-dealers to submit the information to the interdealer quotation system at least three business days before publication of the quotation. This modification is proposed to afford the interdealer quotation system and regulations sufficient time to obtain and review, in advance of publication of quotations, the information furnished by broker-dealers pursuant to paragraph (d).[87]

F. Amendment to Paragraph (f)(5)

Paragraph (f)(5) provides an exception to the informational requirements of the Rule for "[t]he publication or submission of a quotation respecting a security that is authorized for quotation in an interdealer quotation system sponsored and governed by the rules of a registered securities association * * *." This paragraph is intended to except from the Rule quotations for securities authorized for inclusion in NASDAQ.[88] The Commission considered it appropriate to except quotations for NASDAQ securities because the NASD imposes qualification standards regarding the security and the issuer that seeks authorization for inclusion of that security in NASDAQ. These qualification standards require that a security be subject to regular and continuous two-way priced quotations by at least two market makers; a minimum number of shares of the security be held by a minimum number of public shareholders; the issuer meet minimum asset as well as capital and surplus requirements; and the issuer comply with certain continuous disclosure obligations.[89] The Commission believed that these qualification standards promoted the public availability of information about the security and its issuer and helped to inhibit quotations for shell corporations.[90]

The NASD has filed with the Commission a proposal to establish the "OTC Bulletin Board Display Service" ("OTC Service") which, if implemented, would constitute an electronic alternative to the National Daily Quotation Service.[91] The OTC Service, however, will be very different from NASDAQ. Quotations need not be priced and may be one-sided. There will be no minimum qualifications standards or disclosure obligations imposed on an issuer as prerequisites for inclusion of quotations for its securities in the Service. Accordingly, the Commission does not believe that the OTC Service is comprehended by the present paragraph (f)(5) exception.

In order to provide notice to broker-dealers of the scope of the exception in paragraph (f)(5), the Commission proposes to amend paragraph (f)(5) to clarify that the exception is applicable only to the publication or submission of a quotation authorized for quotation in NASDAQ.[92]

III. Request for Comments Concerning the "Piggyback" Provision

The piggyback provision is contained in paragraph (f)(3) of the Rule which permits a broker-dealer to publish quotations for a security without having any information about the security's issuer, if the security has been quoted in an interdealer quotation system with the frequency specified in the Rule.[93] The Commission is concerned that permitting broker-dealers to piggyback on existing quotations for a security may be undermining, and may be inconsistent with,[94] the fundamental goal of the Rule to assure that a broker-dealer has adequate information about an issuer before submitting a quotation.

The Commission is requesting comment on whether the piggyback provision should be eliminated to the extent that it allows broker-dealers to enter quotations without having the information specified by the Rule. As noted above,[95] the piggyback provision is based upon a presumption that the quotation of a security subject to regular and frequent two-sided market making will reflect independent supply and demand forces. The deeper premise of this presumption appears to be that trading solely on the basis of perceived supply and demand forces, without having information about the issuer, is an appropriate market making function. In discussing this trading "by the numbers," the Commission has stated that

> when * * * a dealer [has] no basis on which those numbers could be related to the security's investment value, careful scrutiny of all surrounding circumstances with a view to detecting any sign of possible manipulation [is] called for.[96]

When the Rule was adopted, it covered a broad spectrum of over-the-counter securities, including widely-followed stocks subject to two-way priced quotations by several market makers. In that context, trading activity (*i.e.*, supply and demand forces) could be gauged from such quotations. Today, the Rule applies principally to the pink sheet market, predominantly consisting of infrequently-traded securities with unpriced entries and few market makers. In 1984, the Rule was amended to bring unpriced ("name-only") entries by broker-dealers within its coverage.[97]

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[87] The Commission notes that it is the NQB's practice to hold an application for publication of a quotation on NQB Form 211 for three business days after receipt. Thus, the amendment should have no significant impact on broker-dealers in the vast majority of cases.

[88] The Commission in adopting paragraph (f)(5) stated that "an exception from the Rule has been established for the publication of quotations for securities authorized to be quoted in the NASDAQ system * * *." *See* Release 34-21470, 49 FR at 45119.

[89] *See* NASD By-laws, Schedule D, Part II, Section 1, NASD Manual (CCH) ¶ 1803.

[90] Release No. 34-21470, 49 FR at 45118-45119.

[91] *See* n.2 *supra*.

[92] If NASDAQ authorization for a security is suspended, terminated or prohibited, but the security remains eligible for quotation in another interdealer quotation system, a broker or dealer will be required to have in its records the information required by the Rule in order to publish a quotation in that other system.

[93] *See* text at nn. 36-40 *supra*.

[94] At least one commentator has observed that the piggyback provision appears to be "antithetical" to the informational requirements of the Rule. Letter from Blinder, Robinson & Co., Inc. to John Wheeler, Secretary, SEC, dated June 14, 1985, included in File No. S7-14-85. However, some of the comment letters in File No. S7-14-85 indicated that the piggyback provision was important in reducing the compliance burden of the Rule. *See, e.g.*, letter from William R. Harman, Chairman, Federal Regulation Committee, Securities Industry Association, to John R. Wheeler, III, Secretary, SEC (June 10, 1985), included in File No. S7-14-85.

[95] *See* text accompanying n. 40 *supra*.

[96] *Alessandrini, supra* n. 9., 45 S.E.C. at 405.

[97] *See* Release 34-21470.

The Commission questions whether retention of the piggyback provision continues to be appropriate in light of developments in the over-the-counter marketplace and changes to the Rule since its adoption. The Commission is concerned, moreover, that the piggyback provision can result in pink sheet market makers unwittingly facilitating fraudulent schemes in that their quotations add credibility to the illusion of a legitimate market for the securities involved in the fraud. The Commission therefore seeks comment on whether market making in a pink sheet security by a broker-dealer whose quotations are submitted pursuant to the piggyback provision of the Rule is appropriate.

The Commission preliminarily believes that extending the Rule's information gathering requirements to all participating market makers might increase the efficient valuation of low-priced, speculative offerings, and increase the likelihood that sham issuers will be quickly exposed.[98] The Commission also notes that, at least for firms engaged in a retail business, the elimination of the piggyback exception should impose no new burdens. Because these firms must have a reasonable basis for any recommendations to customers, they have an obligation to be familiar with material information about issuers of any recommended security for which they also make markets.[99]

Another aspect of the piggyback provision is the difficulty that broker-dealers may have in determining whether the conditions of its availability have been satisifed.[100] Because the pink sheets are disseminated in paper format, this requires the broker-dealer to have available and review a month's collection of pink sheet quotations before initiating or resuming a quotation. As a result, the Commission understands that some market makers ignore the piggyback provision and maintain or obtain the required information about the issuer in all cases.

Finally, the Commission is concerned about difficulties in addressing noncompliance with the piggyback provision.[101] Because the NQB is not an SRO, it does not have the affirmative obligation that an SRO would have to determine whether broker-dealers are complying with the piggyback provision when entering quotations, nor does the NQB have the statutory authority of an SRO to enforce the provisions of the Rule.[102]

Therefore, the Commission seeks responses to the following questions:

A. Are there investor protection concerns when a broker-dealer publishes quotations for a security solely on the basis of perceived supply and demand forces and the broker-dealer has no information about the issuer? Is the response different if the issuer is a reporting issuer under the Exchange Act?

B. Should the piggyback provision be retained:

1. In its current formulation?

2. In a different formulation, *e.g.*, a requirement that there must have been quotations for every trading day during the preceding 30 calendar day period?

3. Only for certain (*e.g.*, reporting) issuers?

4. At all?

C. Does the response to Question B change if there are efficient methods of surveillance and enforcement of the piggyback provision (*e.g.*, an interdealer quotation system facility that would preclude the publication of piggyback quotations where the terms of the piggyback exception have not been satisfied)? Should the availability of the piggyback exception be limited to interdealer quotation systems with such a facility?

D. Should the Commission revise (and, if so, how) or eliminate the present ability of a market maker that had satisfied the Rule's informational requirements to continue to submit quotations indefinitely[103] without any requirement to obtain additional information (*i.e.* "self-piggybacking"). In effect, the revision or elimination of the ability to self-piggyback would require every market maker to update its issuer information,[104] and to include in its files any information that came to the market maker's knowledge or possession between those updatings.[105] Would there be situations (*e.g.*, issuer bankruptcy) that would have to be specifically addressed in the Rule if self-piggybacking were eliminated?

E. The NASD and other commentators have suggested that a central, electronic repository of Rule 15c2–11 information would be a more efficient means of assembling and retrieving information.[106] Would the response to Question B change if there were a central repository for issuer information accessible to broker-dealers and the

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[98] In responding to the Commission's requests for comments on proposed Rule 15c2–6 under the Exchange Act, *see* Securities Exchange Act Release No. 26529 (February 8, 1989), 54 FR 6693, a number of commentators have implied that broker-dealers that publish quotations for pink sheet securities without having information about the issuer may be contributing to the "penny stock fraud" phenomenon. These commentators suggested that the Commission consider eliminating the piggyback exception, thereby requiring all market makers to have issuer information when they submit quotations for an issuer's securities. *See, e.g.*, letter from American Bar Association, Section of Business Law, Committee on Federal Regulation of Securities, Subcommittee on Broker-Dealer Matters, to Jonathan G. Katz, Secretary, SEC (April 25, 1989); letter from Frank J. Wilson, Executive Vice President and General Counsel, National Association of Securities Dealers, Inc. (June 15, 1989). Other commentators on proposed Rule 15c2–6 similarly pointed to the lack of issuer information available to potential investors in pink sheet securities. These commentators suggested that Rule 15c2–11 type information should be available to prospective investors, and the information could be supplied by broker-dealers that recommend the purchase of such securities. *See, e.g.*, letter from Lowry & Chernis, P.C., to SEC, Division of Market Regulation (May 11, 1989); letter from Malone & Associates, Inc., to Jonathan G. Katz, Secretary, SEC (March 29, 1989). These comment letters are contained in File S7–3–89 in the Commission's Public Reference Room.

[99] *See, e.g.*, letter from Sutro & Co. Incorporated to John Wheeler, Secretary, SEC (June 7, 1985), included in File No. S7–14–85; letter from Blinder Robinson & Co., Inc. to John Wheeler, Secretary, SEC (June 4, 1985), included in File No. S7–14–85. *See also* text accompanying n. 41 *supra*.

[100] The security must have been the subject of quotations (at specified prices in certain contexts under Rule 15c2–11(f)(3)(ii)) for the preceding 30 calendar days, and during that 30 day period there must have been quotations on at least 12 business days with no more than a 4 business day hiatus between quotations. *See* text at nn. 36–39 *supra*.

[101] The Commission's concern in this area is long-standing, *see* Release 34–19673, 48 FR at 17114, and has grown as a result of the increase in pink sheet manipulation cases and trading suspensions.

[102] As the Commission has noted, because of certain procedures employed by the NQB, broker-dealers have been able to enter quotations in the pink sheets for a security in purported reliance on the piggyback provision during the 30 days after the initial publication of a quotation for the same security. *See* Release No. 34–19673, 48 FR at 17114. In that release, the Commission also stated that permitting broker-dealers to submit quotations without complying strictly with the piggyback provision after a trading suspension was of particular concern. *Id.* During recent conversations with the staff of the NQB, the Division of Market Regulation was informed that the NQB now has developed procedures that prevent a broker-dealer from submitting a quotation for at least 30 days following an initial quotation unless the broker-dealer supplies a Form 211.

This situation also will change to some extent if the NASD's OTC Service becomes operational. *See* n.2 *supra*. As an SRO, the NASD has the obligation to enforce compliance with the provisions of the Rule. If the OTC Service is implemented, the NASD presumably will monitor the quotations for compliance with the Rule 15c2–11 and take appropriate action if broker-dealers fail to comply.

[103] The market maker's quotations must be continuous within the parameters of the Rule. Therefore, where a break in the market maker's quotation of more than four consecutive business days occurred, the market maker would be required to obtain the information required by the Rule prior to resuming quotations following the hiatus. *Cf.* Rule 15c2–11(f)(3)(iii), 17 CFR 240.15c2–11(f)(3)(iii).

[104] *See* paragraph (g) of the Rule, 17 CFR 240.15c2–11(g). With respect to reporting to issuers, broker-dealers would have to update their files periodically.

[105] *See* paragraph (c) of the Rule, 17 CFR 240.15c2–11(c).

[106] *See, e.g.*, letter from the NASD to John Wheeler, Secretary, SEC, dated December 16, 1985 included in File S7–14–85. To date, however, such a repository has not been proposed or implemented.

public? What would be the costs and benefits of such a repository?

F. What are the costs imposed on market makers by eliminating or reformulating the piggyback exception?[107]

IV. Solicitation of Comment

All interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should submit three copies thereof to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, no later than December 1, 1989.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed amendments to Rule 15c2–11. The IRFA indicates that one of the reasons for requiring a broker-dealer to review the Rule 15c2–11 information in its records prior to initiating or resuming quotations is to help alert it to possible fraudulent or manipulative schemes that may be taking place and that may be facilitated by the publication of quotations. The IRFA also states that the proposals requiring a broker-dealer to obtain a copy of a trading suspension order (or Exchange Act release announcing such order) for any security that has been the subject of such order within the preceding 12 months, and to review the documents referenced in paragraphs (a)(1) through (a)(5) in the light of that order, are designed to guard against the initiation or resumption of quotations based on stale or unreliable information. The IRFA also recognizes that having current 8–K reports of reporting companies will benefit the over-the-counter market, especially regarding the trading of the securities sold in offerings involving shell corporations.

The IRFA notes that, while in many instances the proposed amendments would codify current market practices, in some cases additional burdens may be placed on broker-dealers and issuers. The Commission specifically seeks comments on the costs associated with these additional requirements.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Michael T. Dorsey, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2848.

VI. Effects on Competition

Section 23(a)(2) of the Exchange Act[108] requires the Commission, in adopting rules under the Exchange Act, to consider any anticompetitive effects of such rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Exchange Act. The Commission views, preliminarily, the proposed amendments to Rule 15c2–11 as causing no burden on competition unnecessary or inappropriate in furtherance of the purposes of the Exchange Act. The Commission, however, requests comment on any competitive burdens that might result from adoption of the proposed amendments described in this release.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Statutory Basis and Text of Proposed Rule Amendments

The Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations to read as follows:

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

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 910, as amended, 15 U.S.C. 78w * * * § 240.15c2–11 also issued under secs. 3, 10(b), 15(c), 17(a), and 23(a); 15 U.S.C. 78c, 78j(b), 78*o*(c), 78q(a), and 78w(a).

2. By amending § 240.15c2–11 by revising paragraphs (a) (1)–(4), introductory text of (a)(5), the first sentence after (a)(5)(xvi), (d), and (f)(5); redesignating paragraph (h) as (i); adding new paragraphs (a)(6) and (h); and amending paragraph (c) by changing "§ 240.17a–4" to "§ 240.17a–4(b);" as follows:

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

(a) It shall be a fradulent, manipulative, and deceptive practice within the meaning of section 15(c)(2) of the Act, for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this section) unless such broker or dealer has in its records the following documents or information which the broker or dealer has reviewed and has a reasonable basis for believing is true and correct in relation to the day that the quotation is submitted, and which was obtained by the broker or dealer from sources which the broker or dealer has a reasonable basis for believing are reliable.

(1) A copy of the prospectus specified by section 10(a) of the Securities Act of 1933 for an issuer that has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F–6, which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided*, That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted; or

(2) A copy of the offering circular provided for under Regulation A under the Securities Act of 1933 for an issuer that has filed a notification under Registration A which became effective less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided*, That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which is still in effect when the quotation is published or submitted; or

(3) A copy of the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act or a copy of the annual statement referred to in section 12(g)(2)(G)(i) of the Act, in the case of an issuer required to file reports pursuant to section 13 or 15(d) of the Act or an issuer of a security covered by section 12(g)(2) (B) or (G) of the Act, together with any quarterly and current reports that have been filed under the provisions of the Act by the issuer after such annual report or annual statement: *Provided, however*, That until such issuer has filed its first annual report pursuant to section 13 or 15(d) of the Act or annual statement referred to in section 12(g)(2)(G)(i) of the Act, the broker or dealer has in its records a copy of any registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective within the prior 16 months or a copy of any registration statement filed by the issuer under section 12 of the Act that become effective within the prior 16 months, together with any quarterly and current reports filed thereafter under

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[107] The Commission has posed this question at least twice before. *See* Release No. 34–19673, 48 FR at 17114 and Release 34–21914, 50 FR at 14114. Responses to these inquiries have been inconclusive. *See* Summaries of Comments relating to those releases contained in Files S7–967 and S7–14–85 respectively.

[108] 15 U.S.C. 78w(a)(2).

section 13 or 15(d) of the Act; and *Further Provided*, That the broker or dealer has a reasonable basis for believing that the issuer is current in filing annual, quarterly, and current reports filed pursuant to section 13 or 15(d) of the Act, or, in the case of an insurance company exempted from section 12(g) of the Act by reason of section 12(g)(2)(G) thereof, the annual statement referred in section 12(g)(2)(G)(i) of the Act; or

(4) The information furnished to the Commission pursuant to § 240.12g3-2(b) since the beginning of the issuer's last fiscal year, in the case of an issuer exempt from section 12(g) of the Act by reason of compliance with the provisions of § 240.12g3-2(b), which information the broker or dealer shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer; or

(5) The following information, which shall be reasonably current in relation to the day the quotation is submitted and which the broker or dealer shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer:

* * * If such information is made available to others upon request pursuant to this subparagraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is true and correct, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that the broker or dealer has a reasonable basis for believing the information is true and correct, and that the information was obtained from sources which the broker or dealer has a reasonable basis for believing are reliable. * * *

(6) In addition to the records required by paragraphs (a)(1) through (a)(5) of this section, the broker or dealer has in the broker's or dealer's records a copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act respecting any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation, or a copy of the public release issued by the Commission announcing such trading suspension order.

* * * * *

(d) For any security of an issuer included in paragraph (a)(5) of this section, the broker or dealer submitting the quotation shall furnish to the interdealer quotation system (as defined in paragraph (e)(2) of this section), in such form as such system shall prescribe, at least 3 business days before the quotation is published or submitted, the information regarding the security and the issuer which such broker or dealer is required to maintain pursuant to said paragraph (a)(5) of this section.

* * * * *

(f) * * *

(5) The publication or submission of a quotation respecting a security that is authorized for quotation in the NASDAQ system (as defined in Rule 11Ac1-2(a)(3) under the Act), and such authorization is not suspended, terminated, or prohibited.

* * * * *

(h) If any securities of the issuer or its predecessor (if any) for which a broker or dealer intends to publish or submit a quotation have been the subject of a trading suspension order issued by the Commission pursuant to section 12(k) of the Act during the 12 month period preceding the publication of submission of the quotation, the broker or dealer may not rely upon the documents or information required by paragraphs (a)(1) through (a)(5) of this section unless the broker or dealer has reviewed the documents or information in light of the information contained in any such trading suspension order, and has a reasonable basis for believing that the documents or information required by paragraphs (a)(1) through (a)(5) of this section is true and correct in relation to the day that the quotation is submitted, and was obtained from sources that the broker-dealer has a reasonable basis for believing are reliable.

* * * * *

Dated: September 14, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22423 Filed 9-22-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Belt Entry Ventilation Review; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on the Agency's report of findings and recommendations regarding belt conveyor entry ventilation in underground coal mines.

DATES: Written comments must be received on or before November 27, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 25, 1989, (54 FR 35356) MSHA announced the availability of a report of findings and recommendations regarding belt conveyor entry ventilation in underground coal mines. Belt conveyor entry ventilation and related matters addressed in the new report are subjects of MSHA's proposed ventilation standards for underground coal mines. The Agency is currently preparing the final rule and believes that public comments on these issues will be useful in drafting the final rule. The comment period was to remain open until September 25, 1989, but in response to requests from the mining community, MSHA is extending the comment period to November 27, 1989. All interested parties are encouraged to submit comments prior to this date.

Dated: September 19, 1989.

Roy L. Bernard,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-22474 Filed 9-22-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

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

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Texas regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consisted of numerous changes to the Texas regulations that were intended to improve operational efficiency and to