"SECURITIES EXCHANGES FOR SMALL BUSINESS ISSUES"

Volume Two
Related Exhibits
For The
U.S. Small Business Administration
Contract No. 3063-0A-88

Ulice Payne, Jr.
Principal Investigator
July 23, 1989

Milwaukee, Wisconsin
(414) 271-8210

Madison, Wisconsin
(608) 253-4440

Zurich, Switzerland
(01) 391-4161

Tampa, Florida
(813) 222-8300

London, England
(01) 405-0750
"SECURITIES EXCHANGES FOR SMALL BUSINESS ISSUES"
Study Report For The U.S. Small Business Administration
Contract No. 3063-OA-88

CONTENTS

SECTION B.
UNITED KINGDOM THIRD MARKET

EXHIBIT 1 ............. Comparison of ISE Markets
EXHIBIT 2 ............. Profile of Third Market Companies
EXHIBIT 3 ............. Third Market Trading History

SECTION C.
SECURITIES LAW IMPACT ON SMALL BUSINESS ISSUERS

SECTION D.
REGISTRATION EXEMPTIONS AND POSSIBLE MODIFICATIONS

July 23, 1989
SECURITIES EXCHANGES FOR SMALL BUSINESS ISSUES

Background

The American markets have, in general, not proven to be conducive to the trading of small business issues. Trading in these types of securities is thin because the quantity of securities issued is not great and market makers do not find it profitable to facilitate trades. Further, most exchanges or associations such as the NASD's Additional List are national in scope and many small businesses are not. Although NASDAQ's Additional List contains some small issuers but it is not known if this national listing is readily available to a significant number of smaller businesses. Small businesses do not have their securities, by and large, publicly traded. Instead, small businesses that issue securities rely on private placements and restricted stock which provide wholly inadequate pricing mechanisms. Valuation of ownership interests, liquidation of estates and other dispositions of these securities are generally confounded because no market exists to ascertain share value.

Recently, the London Stock Exchange (LSE) created a Third Market for securities issues of small business concerns. It has grown rapidly in the last year and currently over 30 issues are listed. To trade on this exchange, among other requirements, an issuer must be sponsored by a broker and must be a U.K. company. Almost all of these issues represent stock of small (under $2 million) companies which would otherwise not be afforded an opportunity to be traded on public markets and thereby secure external capital for expansion purposes. Most similar sized companies in the U.S. are not traded and rely on retained earnings for expansion instead.

The Third Market of the U.K. seems to bridge these gaps by providing liquidity for investors and a safe and confident climate for investment in small companies. Some state and regions have indicated an interest in establishing a regional market for small business issuers similar to the Third Market in London. However, there are several uncertainties which need to be examined including the:

ATTACHMENT NO. 1
1) Extent to which federal and state regulatory obstacles exist.

2) Advantages and disadvantages to various market participants of developing a process similar to the London Stock Exchange's Third Market.

Objectives

The purpose of this study is to ascertain the existence, if any, of "markets" for small business securities. If "markets" do exist, the purpose is to identify ways in which they can be enhanced. If "markets" for small business securities do not exist, the purpose of the study will be to identify existing regulatory hurdles that hinder the development of a market similar to the LSE's Third Market. The proposed market would probably be on a regional basis.

Tasks

The proposal should include specific work tasks. Due to the primarily legal nature of the research, it is not anticipated that surveys of market participants will be required. Foreign travel is not necessary to the completion of this study and will not be funded. The primary tasks are to determine what hurdles exist in the U.S. to the formation of regional or statewide exchanges designed to address the specific needs of small regional businesses.

1. Describe and analyze the public markets available in the U.S. for small businesses including a careful discussion of the factors affecting the decision to enter public equity markets by small firms.

2. Determine if the threshold listing requirements preclude small businesses from listing.

3. Compile a list of expenses incurred by a listing issuer.

4. Identify the problems that occurred in the Denver and Vancouver, B.C. exchanges which caused a loss of investor confidence due in part, to market volatility and some incidents of fraud. Also propose methods to alleviate potential abuses on regional small business securities exchanges.
5. Identify and describe specific features of the London Stock Exchange Third Market, by comparing the legal and economic environment for such an institution in the U.S.:

a. Specific admission requirements for businesses or their issues to trade on the exchange, including all conditions they must meet -- size and issue requirements, disclosure requirements, kind of company eligible to be issued, as well as types of issuers and securities which are not deemed appropriate for trading on the Third Market.

b. Companies admitted to the LSE's Third Market must be sponsored by a member stock exchange firm. Clarification is needed concerning:

1. How they determine the suitability of a candidate company for sponsoring.

2. Responsibility of the sponsor for a company's compliance, entry and subsequent guidelines. The method for assuring reasonable liquidity of the companies' shares and other legal responsibilities borne by sponsors, including any authority they may hold over a sponsored company.

3. Cost of sponsoring the offering by the broker.

c. Features related to procedures, costs, sponsorship, public offerings, liquidity, rules, regulations and terms of agreement.

d. Analyzing the pros and cons for each party.

6. An analysis of the federal SEC regulations to determine their compatibility with the creation of a regional market in the U.S. for small business issuers.

7. An analysis of State securities laws to determine what changes are required to accommodate a regional market in the U.S. for small business issuers.
"SECURITIES EXCHANGES FOR SMALL BUSINESS ISSUES"
Study Report For The U.S. Small Business Administration
Contract No. 3063-OA-88

CONTENTS

SECTION A.
RECOMMENDATION OF REGIONAL PILOT PROJECTS

EXHIBIT 1................Office Of The Chief Counsel For
Advocacy, U.S. Small Business
Administration, "Small Business:
America's Competitive Edge -
A Conference Summary

EXHIBIT 2................The Indiana Seed Capital Network

EXHIBIT 3...............Florida Black Business Investment
Board-1987 Annual Report

EXHIBIT 4.................Midwest Stock Exchange Member
Organizations

EXHIBIT 5.................Midwest Stock Exchange Rules

EXHIBIT 6.................Council Of Great Lakes Governors -
Economic Development Agreement

EXHIBIT 7...............SEC Exchange Act Release
No.34-26708, April 11, 1989

EXHIBIT 8...............Remarks of SEC Chairman
David S. Ruder -"Penny Stock
Manipulation And The Small Investor"

EXHIBIT 9...............Response Of The Office Of Chief
Counsel For Advocacy,
U.S. Small Business Administration -
SEC Proposed Rule 15c2-6

-viii-
Small Business: America’s Competitive Edge
A Conference Summary

Office of the Chief Counsel for Advocacy
U.S. Small Business Administration
II. INNOVATIVE ROLES IN SMALL BUSINESS FINANCE

The States' Role in Stimulating Private Investment in Small Businesses

Moderator: William Wetzel, Jr., President, Venture Capital Network, Inc., P.O. Box 882, Durham, New Hampshire 03824 (603) 862-3369

Panelists: Colleen Schwarz, Senior Commercial Program Officer, Colorado Housing Finance Authority, 777 Pearl Street, Denver, Colorado, 80203 (303) 861-8962
Ulice Payne, Jr., Commissioner, Wisconsin Securities Commission, 111 West Wilson St., P.O. Box 1768, Madison, Wisconsin 53701 (608) 266-3431

William Wetzel began by noting that a relatively small proportion of small businesses—some 15 percent—are responsible for most innovation. These are the businesses of primary interest to investors of venture capital. But this capital source has not been fully developed. Of some 50,000 startups in need of equity capital, only about 2,300 are assisted by venture capitalists, while there are some 250,000 willing investors, each with $30,000-$50,000 to invest. States have a legitimate role in making this capital market work more efficiently.

New Hampshire has established a data base that matches potential investors with entrepreneurs who have a commercially viable product. The state maintains the confidentiality of investors, while circulating proposals from entrepreneurs. It takes 2-3 years to establish a successful network, Wetzel said. There are 12 such networks around the country. Wetzel is working to establish linkages between them.

Colleen Schwarz discussed the wide variety of business finance programs operated by the Colorado Housing Finance Authority. An extensive statewide study indicated a need to match informal investors with entrepreneurs. The state is in the process of developing a system based on the New Hampshire model.

Ulice Payne commented on the undercapitalization of small business. In 1980, Congress passed the Small Business Investment Incentives Act, which directed the Securities and Exchange Commission (SEC) to develop a uniform exemption from registration for small business issuers. In response to this directive, the SEC prepared a series of rules called "Regulation D," designed to facilitate investment in small businesses by exempting their offerings from SEC regulations, leaving regulation in the hands of each state. In an attempt to standardize state regulations to permit multi-state offerings, the North American Securities Administrators Association (NASAA) endorsed a Uniform Limited Offering Exemption (ULOE).

Experience has shown that Regulation D is not being used by small businesses. Eighty-six percent of listings under Regulation D are real estate syndicators, which represent neither new employment nor small business growth. Only 9 percent of ULOE offerings have been equity infusions in small business, according to Payne. To correct this situation, states must market this program to small business more effectively. Payne also suggested that small businesses need a third, regional stock market that would provide liquidity to investors willing to participate in small business.
Mid-Risk Financing of Small Business (BIDCO)

Moderator: Derek "Pete" Hansen, Derek Hansen & Associates, 1 Embarcadero Center, Suite 320, San Francisco, California 94111 (415) 397-2171

Panelists: Jim Paquet, BIDCO Program Manager, Michigan Strategic Fund, P.O. Box 30234, Lansing, Michigan 48909 (517) 373-7750

Dave Dougherty, Regional Advocate, U.S. Small Business Administration, 2615 Fourth Avenue, Room 440, Seattle, Washington 98121 (206) 442-5231

Jim Paquet provided a description of BIDCOs—business and industrial development corporations: "Many sound businesses are unable to obtain growth capital because their financings are viewed as too risky for conventional bank lending, yet cannot provide the super high rates of return sought by venture capitalists. BIDCOs are a new type of licensed and regulated private financial institution well suited to fill this financing gap."

The Michigan BIDCO Act, which became law in May 1986, has become a model for legislation in other parts of country. The Act provides for the licensing and regulation of BIDCOs by the Michigan Financial Institutions Bureau. Michigan's BIDCOs are designed to leverage private capital with a minimum of public investment, to build institutions that will foster long-term growth, and to retain private decisionmaking that is based on market rationales.

In June 1986, the Michigan Strategic Fund (MSF) adopted a program to form BIDCOs by investing up to $2 million per BIDCO, to be matched at least 2 to 1 by private equity. Already, the MSF has made commitments to invest in three BIDCOs. Over the next 5 years, if the industry continues to develop, the MSF expects to invest in 20 to 25 intermediary institutions.

Why is there a need for these organizations? Banks face significant constraints in the types of financings they can provide. They are heavily leveraged: the debt-to-equity ratio may be as high as 15 to 1. They are also highly regulated by both state and federal governments. As a result, bank lending to businesses has focused on relatively low-risk, low-return financings.

Venture capitalists, on the other hand, invest in the high-risk, high-return end of the financing spectrum. To attain the desired rates of return, they focus their investments on companies with super rapid growth potential that have a prospect of going public or being acquired within 5 to 7 years.

Thus, there is a large gap between the low-risk debt financings that banks are able to provide and the high-risk equity offerings of the venture capitalists. Many small and medium-sized companies have needs that fall between these extremes. BIDCOs, which seek to achieve a debt-to-equity ratio of 3 to 1, have a great deal of flexibility in how they structure financings, and can address some of these needs.

Businesses may receive financing from a BIDCO in the form of straight debt, straight equity, royalties, debt with equity features, or almost any combination that makes sense for the business and the BIDCO. For example, a BIDCO may make a loan to a company at 11 percent interest, but with "equity kickers" built in so that if the company is successful, the BIDCO may receive an overall 20 to 25 percent compounded annual return on the investment. Paquet noted that a number of existing institutions—including the Massachusetts Capital Resource Company in Boston; Allied Investment Corporation in
Washington, D.C.; and Capital South Corporation in Charleston, South Carolina—are already successfully making investments in this moderate risk/moderate return niche by using subordinate debt with equity kickers.

Because they are licensed and regulated lending institutions, BIDCOs may apply to become approved lenders under the SBA's 7(a) loan guarantee program. SBA 7(a) loans are pure debt vehicles, and SBA's criteria for guaranteeing them are generally conservative. Thus, there is a limit on the degree to which a BIDCO can use the 7(a) program to address moderate risk growth capital financing needs. The SBA program has the potential of being a valuable tool as one part of a diversified BIDCO, but a BIDCO heavily dependent on the program could encounter substantial obstacles.

The licensing and regulation of BIDCOs in Michigan is the responsibility of the Michigan Financial Institutions Bureau, which also charters and regulates state chartered banks, savings and loan associations, credit unions, and other entities. The system focuses on preventing fraud, conflict of interest, and mismanagement and promotes accurate recordkeeping and appropriate communication with shareholders.

The private sector response to MSF's BIDCO program has been excellent. Bankers, investment bankers, financial consultants, accountants, and lawyers have expressed an interest. In September 1987, MSF doubled its original allocation to $24 million to invest in BIDCOs. So far, MSF has committed at least $2 million each to 3 BIDCOs: Onset BIDCO in Farmington Hills, which is seeking to raise $8 million; Arcadia BIDCO in Kalamazoo, which has secured $4 million in private equity; and LGA Capital Resources BIDCO in Troy, which is attempting to raise $6 million in private equity.

Dave Dougherty, SBA's Regional Advocate for Region X, said that small businesses continue to have difficulty obtaining capital for growth. He also noted that SBA loans often are not profitable for banks unless they can be assisted by an intermediary like a BIDCO, which is geared to handle such loans. Dougherty urged state legislators whose paramount concern in business development is job creation, to take a look at the opportunities offered by BIDCOs. "Prime the pump once by investing in BIDCOs," he said, "Then stand back and let the private sector take over." He encouraged state legislators also to look at different BIDCO models in other states and reviewed the status of BIDCO legislation in the Northwest.

"At the political level, we must focus on growing businesses," said Pete Hansen. The private sector may not always work as well as it should: BIDCOs may be able to assist the private markets to work more efficiently. He said that the Michigan BIDCO program is an excellent model to follow. The response to Michigan's program has helped change attitudes about whether BIDCOs can be made to work and also about Michigan as a place to invest.

In the discussion, several issues were clarified:

Michigan Strategic Fund investments in BIDCOs come from a pool of dollars generated by oil and land lease funds in Michigan. Only administrative funds are appropriated by the state.

If BIDCOs are to grow and flourish, legislators should be careful about the kinds of restrictions they place on them with regard to interest limits, the types of individuals they will be designed to help, etc.

It was suggested that BIDCOs be capitalized at 12-15 times the average investment, with a minimum of $4-5 million in capital.
Incentives for Institutional Financing for Small Business

Moderator: Colleen Schwarz, Senior Commercial Program Officer, Colorado Housing Finance Authority, 777 Pearl Street, Denver, Colorado 80203-3716 (303) 861-8962

Panelists: Stanley Provus, Chief Executive Officer, Finance Authority of Maine, 83 Western Avenue, P.O. Box 949, Augusta, Maine 04330 (207) 623-3263

R.S. Montgomery, Director, Existing Industry Development, Kansas Department of Commerce, 400 SW 8th Street, 5th floor, Topeka, Kansas 66603-3957 (303) 861-8962

Institutional investors (foreign banks, insurance companies, pension funds, taxable bond proceeds) are an increasing source of capital for small businesses. Sources of funds and several state pension plan investment strategies were the topic of this discussion.

Providing access to a variety of business financing is key to being competitive with Japan and other foreign competitors, said Stan Provus of Maine's Housing Finance Authority. He opened the session with a review of small business finance programs in Maine. He noted that his office makes loans as small as $2,000.

Small businesses face a capital disadvantage when entering the international arena: they are generally locked out of capital markets, Provus said. To counter this disadvantage, Maine has developed several programs.

The Finance Authority of Maine has created a new public financing program in which it will sell industrial development bond issues secured by a combination of the agency's own mortgage insurance and letters of credit from a European bank. The program will allow small businesses in the state to make long-term borrowings at either fixed or floating interest rates. Several small projects may be pooled or a single issue may be customized for one large project.

Colleen Schwarz explained the small business loan programs of the quasi-public Colorado Housing Finance Authority (CHFA). She reviewed CHFA's INDEX, QIC, and ACCESS programs. INDEX was a composite, pooled Industrial Development Bond program that was very difficult to operate. CHFA found that SBA's 504 program could generally satisfy the commercial market they were trying to reach through INDEX.

CHFA's QIC (Quality Investment Capital) program is funded by the Colorado State Treasurer and administered by CHFA to provide fixed-rate financing for small business loans guaranteed by the U.S. Small Business Administration. QIC loans must originate with the lender and qualify for an SBA guarantee. On behalf of the State Treasurer, CHFA commits loan funds at a fixed rate for up to seven years.

CHFA's ACCESS program is a secondary market for a portion of first mortgages approved as part of the U.S. Small Business Administration's 504 loan program. This means that CHFA participates in up to 90 percent of a commercial bank's position for a loan of this type, largely overcoming the reluctance or inability of commercial
Jenders to make 504 project loans and improving the terms available to the borrower. The ACCESS program makes money available for plant and capital equipment, but not for working capital.

R.S. Montgomery, Director, Existing Industry Development (EID), Kansas Department of Commerce, provided an overview of EID's small business finance programs. He commented on both direct and indirect financing.

Kansas offers several direct financing programs. Kansas Funds for Kansas Small Business is for startup and expanding small businesses. It is short-term, low-interest financing with a maximum of $200,000. One job must be created for each $2,000 borrowed. The Kansas Industrial Training Program targets new and expanding industries, primarily manufacturing, warehousing, and distribution. KIT seeks to enhance job creation by meeting the specialized training needs of businesses.

Kansas is developing two additional financing programs. One is a seed capital investment program that will be operated by the Kansas Technology Institute. The other is a state revolving loan fund for small business.

Indirect financing is also available to Kansas small businesses through a variety of sources. Venture Capital Companies is a certified Kansas venture capital group which targets new products or processes. This group is still raising its initial capital. It is a Small Business Investment Corporation combined with three venture capital companies.

Other sources of indirect financing include local seed capital pools, small business incubators, research matching grants, Small Business Innovation Research matching grants, Centers of Excellence, and Small Business Development Centers.

The Kansas Public Employee Retirement System currently invests $300 million in small business through two investment firms. As of November 1987, PERS had invested in 91 Kansas companies.
The Indiana Seed Capital Network (SCN), sponsored by the Indiana Institute for New Business Ventures, Inc., is an innovative approach to matching the financing needs of entrepreneurs with the resources of private investors. Utilizing a sophisticated computer program, SCN introduces Indiana entrepreneurs in search of seed, start-up or expansion capital to private investors.

The purpose

Research has shown that a source of investment capital is critical to the growth of successful businesses. Research has also shown that many investors would invest in entrepreneurial enterprises "if the right opportunity were found." SCN is designed to address the needs of both investors and entrepreneurs in a confidential, sophisticated and efficient manner. Qualified investors and business enterprises of any size can benefit from participation in the Indiana Seed Capital Network.

Network operation

Investors participate in SCN by completing an Investor Interest Profile which specifies the type, size, industry and location of desired opportunities. This information is then compiled in a confidential investor database.

Entrepreneurs participate in SCN by completing an Entrepreneur Application Profile and an Executive Summary describing their specific opportunity. This information is then compiled in a confidential entrepreneur database.

Each time a new entrepreneur or investor enters the Indiana Seed Capital Network, the computer compares their profile criteria against the full database to identify matching opportunities.

Stage I

When a match is found, SCN will send the Entrepreneur Application Profile information to the identified investor. The investor then completes and mails a stage I response card indicating his level of interest in that specific opportunity.

Stage II

A positive response by the investor in stage I results in SCN sending a copy of the entrepreneur's Executive Summary to the investor. The investor then mails a stage II response card indicating his continuing level of interest in that specific opportunity.

Stage III

Upon receiving an investor's positive stage II response card, SCN will disclose identities by mailing the respective names, addresses, and phone numbers to each party. Once the introduction is accomplished, SCN will not be involved in negotiations between the parties.

A negative response from the investor at any stage results in SCN closing the file on that specific match opportunity.

Confidentiality

All information submitted to the Indiana Seed Capital Network is considered confidential and is strictly controlled. The identity of participating investors and entrepreneurs will only be disclosed upon the request of an interested investor (Stage III above). Only the information provided by the entrepreneur in the original Entrepreneur Application Profile and Executive Summary will be provided to potential investors. The entrepreneur may amend this information at any time.

Participation costs

The Indiana Seed Capital Network annual maintenance fee is $100 for participating investors and entrepreneurs. SCN receives no fees or commissions related to the outcome of the information exchanged.

Investment evaluations

No representations are made as to the quality, capabilities, or qualifications of participating investors and entrepreneurs. SCN does not function as an investment advisor nor as a broker-dealer of securities. It purposefully avoids these functions and makes specific disclaimers regarding the viability of enterprises or the success potential for any matches that may occur.

Participation limitations

SCN is designed to facilitate the flow of information between entrepreneurs and investors. SCN is not designed as a source of clients for investment intermediaries, consultants, brokers or others who charge fees for services to entrepreneurs. SCN reserves the right to withhold its services from individuals and organizations who are not acting as principals investing on their own behalf.

INDIANA INSTITUTE FOR NEW BUSINESS VENTURES, INC.

The Institute is a not-for-profit corporation created by the State of Indiana to encourage the organization and development of new business enterprises. The Institute sponsors numerous conferences and programs providing high growth companies with information vital to the successful operation of their enterprises. Contact the Institute for specific information on how we can assist your business.

COOPERATING ORGANIZATIONS

The following organizations are providing active support for the Indiana Seed Capital Network. The Institute wishes to recognize their contributions.

Arthur Andersen & CO
Arthur Young & Company
Blue & CO CPA
Coopers & Lybrand
Crowe Chadbourne & CO
Deloitte Haskins & Sells
Dunbar Cook & Shepard CPA
Ent & Imler CPA Group
Ernst & Whitney
Ford Brinkoff & Koehler
Katz Sapper & Miller
LM Henderson & CO CPA
McGee Rice & Wheat
Geo. S. Olive & CO
Peat Marwick Mitchell & CO
Price Waterhouse CPA
Indiana State Chamber of Commerce
Indiana Small Business Development Centers
The Florida Black Business Investment Board was created under the "Florida Small and Minority Business Act of 1985." This Act was a recognition on the part of the State of Florida that there was a great disparity in the economic and social well-being of black Floridians relative to all other Floridians. The legislature further recognized that locally owned small and minority businesses provide a foundation for community stability and also contribute to the overall welfare of Florida's economy. As such, the legislature found that it was in the best interest of the State to assist in the development of small and minority businesses.

To assist small and minority businesses the Act required the State to establish several new entities and to alter various State procedures. These actions included:

- Formation of the gubernatorially appointed "Small and Minority Business Advisory Council"
- Establishment of a position within the Florida Department of Commerce to serve as the "Small and Minority Business Advocate"
- Development of a statewide contracts register to be made available to small and minority businesses through Florida's "Small Business Development Center"
- Establishment of the "Black Business Investment Board"
- Creation of a $5,000,000 "Investment Incentive Trust Fund" to help capitalize black businesses

The Board was established to develop a black business investment system which would address the "gaps and problems" inhibiting the development and expansion of black businesses in Florida. As mandated by Florida statute, the Board is to take economically sound actions that benefit the state by: 1) Increasing opportunities for employment, 2) strengthening the state's economy, and 3) expanding black business enterprises.

The Act gave the Board various authorities to accomplish its mandate. These included establishing Black Business Investment Corporations who would be directly responsible for the underwriting of black businesses, managing the Investment Incentive Trust Fund and an array of other capital instruments, and developing other business assistance programs like a franchise technical assistance and finance program and a surety bonding program. To date, the Board's primary effort has been to create Black Business Investment Corporations.

While other states have established Investment corporations, Florida is the first to target such an entity to a specific minority. Florida's Black Business Investment Corporations are designed to provide venture capital loans and investments to new or expanding black businesses. Any black business enterprise can apply to one of the six Investment corporations for financial assistance. The black enterprises must be organized to engage in commercial transactions. At least 51 percent of the enterprise must be owned by one or more black Americans, and the management and daily operations must be controlled by such persons.

Each Investment corporation must be administratively sound and institutionally appropriate. The Board expects that a Black Business Investment Corporation will be designed to leverage not only a significant amount of private and public sector financial resources, but also the talent of all the citizens of an area.

The Board recognizes that each area and proposed Black Business Investment Corporation may differ in its goals and approach. For example, one area may determine that the primary financing need in its community to be seed capital for new black businesses. On the other hand, in areas where there are existing black businesses, the black business investment corporation's proposed focus may be to support other institutions to assist in the expansion of black businesses.

The Board will play an active role in assuring the success of each Investment corporation. It's relationship to each Investment corporation will closely mirror that of a bank holding company to its affiliate banks. The Board will allow each corporation as much autonomy as possible, and seek to restrict its oversight to issues involving portfolio quality, use of funds, Board policy and legislative intent.
SOUTHERN DEVELOPMENT FOUNDATION

TOTAL CAPITALIZATION: $10,090,000

CORPORATIONS

MIAMI
$2,000,000
Business Assistance Consortium
Newall Daughtrey (305) 693-3550
6600 N.W. 27th Avenue
Miami, Florida 33147

BROWARD COUNTY
$1,000,000
Metro-Broward Capital Corp.
Clive Solis (305) 467-5000
Sun Bank
25 S. Andrews Ave.
Ft. Lauderdale, Florida 33301

WEST PALM BEACH
$1,000,000
Palm Beach County Black Business Investment Corp.
John Howard (305) 845-8055
2001 Broadway, Suite 301
Riviera Beach, Florida 33404

ORLANDO
$1,330,000
Black Business Investment Fund of Central Florida
c/o Al Poller (305) 275-2796
University of Central Florida - SBDC
P.O. Box 25000, Bldg. 522
Orlando, Florida 32816

JACKSONVILLE
$2,110,000
First Coast Black Business Investment Corporation
Greg Miller (904) 354-4500
3911 Moss Oak Drive
Jacksonville, Florida 32211

TAMPA / ST. PETERSBURG
$1,650,000
Tampa-Bay Black Business Investment Corporation
Carolyn Reed (813) 223-8381
315 E. Kennedy Blvd.
Tampa, Florida 33602

STATEWIDE
$1,000,000
Southern Development Foundation
Marvin Beaulieu (318) 232-9206
1006 Surrey Street
Lafayette, Louisiana 70501
PROPOSED PROGRAMS

FRANCHISE TECHNICAL ASSISTANCE AND FINANCE PROGRAM
The goals of this program would be to increase black business ownership through franchising; educate potential black entrepreneurs on the wealth of business opportunities available in franchising; assist in the discernment of a quality franchise investment; and provide financing as needed to support the transaction. Financial assistance services would be designed to overcome traditional credit and capital problems with banks and other financial institutions.

SURETY BONDING PROGRAM
Under this program the Board will guarantee reimbursement to a surety for losses incurred as a result of a black contractor's breach of terms of a guarantee bid, payment and performance bond, or bonds which are ancillary or coterminous with such bonds.

SECONDARY MARKET AND RESALE PROGRAM
This is one of several alternatives being considered as a vehicle to recapitalize the fund. Under this program a market for certain types of seasoned loans to black businesses would be established with public and private investor groups such as pension funds, insurance companies and other institutional investors. Loans made by black business investment corporations, banks, and other economic development lenders would be pooled and resold to these investors in much the same fashion as are GNMA and FNMA mortgage loan pools. These loan pools will likely be supported by some form of credit enhancement.

PROGRAM START-UP DATES
JANUARY 1988 - DECEMBER 1989
## FINANCIAL INFORMATION

**Florida Black Business Investment Board**  
**Fiscal year ending June 30, 1986 (Actual)**

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>ALLOTMENTS</th>
<th>TRANSFERS</th>
<th>NET ALLOTMENTS</th>
<th>EXPENDITURES</th>
<th>YEAR-END BALANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Benefits</td>
<td>$ 90,000</td>
<td>$ 90,000</td>
<td>$ 38,564</td>
<td>$ 51,436</td>
<td></td>
</tr>
<tr>
<td>OPS</td>
<td>33,000</td>
<td>33,000</td>
<td>27,500</td>
<td>5,500</td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td>56,000</td>
<td>56,000</td>
<td>24,797</td>
<td>31,203</td>
<td></td>
</tr>
<tr>
<td>OCO</td>
<td>35,000</td>
<td>35,000</td>
<td>31,667</td>
<td>3,333</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$ 214,000</strong></td>
<td><strong>$ 214,000</strong></td>
<td><strong>$ 122,528</strong></td>
<td><strong>$ 91,472</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Twelve months ending June 30, 1987 (Actual)**

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>ALLOTMENTS</th>
<th>TRANSFERS</th>
<th>NET ALLOTMENTS</th>
<th>EXPENDITURES</th>
<th>YEAR-END BALANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Benefits</td>
<td>$ 186,835</td>
<td>$ 5,425</td>
<td>$ 163,260</td>
<td>$ 132,478</td>
<td>$ 30,782</td>
</tr>
<tr>
<td>OPS</td>
<td>6,906</td>
<td>29,000</td>
<td>35,906</td>
<td>17,620</td>
<td>18,286</td>
</tr>
<tr>
<td>Expenses</td>
<td>74,404</td>
<td>-</td>
<td>74,404</td>
<td>52,069</td>
<td>22,335</td>
</tr>
<tr>
<td>OCO</td>
<td>1,650</td>
<td>-</td>
<td>1,650</td>
<td>1,624</td>
<td>26</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$ 269,795</strong></td>
<td><strong>$ 5,425</strong></td>
<td><strong>$ 275,220</strong></td>
<td><strong>$ 203,791</strong></td>
<td><strong>$ 71,429</strong></td>
</tr>
</tbody>
</table>

1 Additional funds allocated for state-wide salary increases.  
2 Funds transferred to OPS category to cover contracted legal expense.

### Proposed Budget

**Twelve months ending June 30, 1988 (Proposed)**

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>ALLOTMENTS</th>
<th>TRANSFERS</th>
<th>NET ALLOTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Benefits</td>
<td>$ 181,513</td>
<td>$ 7,500</td>
<td>$ 174,919</td>
</tr>
<tr>
<td>OPS</td>
<td>6,906</td>
<td>14,094</td>
<td>21,000</td>
</tr>
<tr>
<td>Expenses</td>
<td>74,612</td>
<td>74,612</td>
<td></td>
</tr>
<tr>
<td>OCO</td>
<td>1,583</td>
<td>$ 7,500</td>
<td>1,583</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$ 264,614</strong></td>
<td><strong>$ 7,500</strong></td>
<td><strong>$ 272,114</strong></td>
</tr>
</tbody>
</table>

### INVESTMENT INCENTIVE TRUST FUND

Reconciliation as of June 30, 1987

<table>
<thead>
<tr>
<th>Sources of funds</th>
<th>$ 5,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal</td>
<td>413,460</td>
</tr>
<tr>
<td>Interest (thru 6/30/87)</td>
<td></td>
</tr>
<tr>
<td><strong>Total sources of funds</strong></td>
<td><strong>$ 5,413,460</strong></td>
</tr>
</tbody>
</table>

**Use of funds**

| BAC - Miami     | 1,000,000  |
| SUBTOTAL        | **1,000,000** |

**Total Use of funds**

| M-BCC - Ft. Lauderdale | 500,000 |
| FCBBCIC - Jacksonville | 1,000,000 |
| TB-BBIC - Tampa/St. Pete | 825,000 |
| PBCBBIC - West Palm Beach | 500,000 |
| BBIFCF - Orlando | 665,000 |
| SDF - Statewide | 844,600 |
| **Encumbrances** | **4,334,460** |

| Net Sources Available for New Program Development | $ 79,000 |

### NOTES TO FINANCIAL STATEMENTS

As in the prior two years, the Black Business Investment Board has operated substantially below the appropriated budget. Only three of the four authorized staff positions were filled during FY 86/87 and the first half of FY 87/88. The position of Program Development Officer will be filled during the second half of FY 87/88.

OPS expenses were for contracted legal services. The original budget included a staff position for a Senior Attorney. During the staff reorganization, this position was eliminated creating a need for contracted legal services. The proposed 88/89 budget includes additional monies for legal expenses so a transfer will not be necessary.

Travel and rental of office space were the main expenditures in the expense category. The Board meetings are located in different cities each month to expose the program to the entire state. Travel is paid for Board staff and each Board member.
### MSEP Member Organizations

<table>
<thead>
<tr>
<th>MSE Member Organizations</th>
<th>GEORGE K. BAUM &amp; COMPANY, INC.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A &amp; S SECURITIES</td>
<td>Kansas City, Missouri</td>
</tr>
<tr>
<td>ABD SECURITIES CORP</td>
<td>BEAR, STEARNS &amp; COMPANY, INC.</td>
</tr>
<tr>
<td>ADAMS, HESS, MOORE &amp; CO.</td>
<td>BEECROFT, COLE &amp; COMPANY, INC.</td>
</tr>
<tr>
<td>ADVEST, INC.</td>
<td>Topeka, Kansas</td>
</tr>
<tr>
<td>AMERICAN INVESTMENT GROUP</td>
<td></td>
</tr>
<tr>
<td>AMERITRADE, INC.</td>
<td>F. BERDON &amp; CO., L.P.</td>
</tr>
<tr>
<td>ANCEL, INC.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>ANDOVER SECURITIES CORP.</td>
<td>BILLINGS &amp; COMPANY</td>
</tr>
<tr>
<td>ARNOLD AND S. BLEICHROEDER, INC.</td>
<td></td>
</tr>
<tr>
<td>ASIEL &amp; CO.</td>
<td>BILLINGS EQUITIES, INC.</td>
</tr>
<tr>
<td>AVIZA &amp; ASSOCIATES</td>
<td>JAMES I. BLACK &amp; COMPANY</td>
</tr>
<tr>
<td>BHC SECURITIES, INC.</td>
<td>WILLIAM BLAIR &amp; COMPANY</td>
</tr>
<tr>
<td>THE B &amp; R GROUP</td>
<td>BLOOM SECURITIES</td>
</tr>
<tr>
<td>RABBITT &amp; COMPANY, INC.</td>
<td>BOETTCHER AND COMPANY, INC.</td>
</tr>
<tr>
<td>JULIUS BAER SECURITIES, INC.</td>
<td></td>
</tr>
<tr>
<td>ROBERT W. BAIRD &amp; COMPANY, INC.</td>
<td></td>
</tr>
<tr>
<td>BARNES FINANCIAL MANAGEMENT, INC</td>
<td></td>
</tr>
<tr>
<td>BARTLETT &amp; CO.</td>
<td>Bowen &amp; Company</td>
</tr>
<tr>
<td>BATEMAN EICHLER, HILL RICHARDS, INC.</td>
<td></td>
</tr>
</tbody>
</table>

4.1
HOENIG & CO. INC.  
New York, New York

THE HOGGATT PARTNERSHIP  
Chicago, Illinois

HOGG PARTNERSHIP  
Chicago, Illinois

HOWE BARNES INVESTMENTS, INC.  
Chicago, Illinois

WAYNE HUMMER & COMPANY  
Chicago, Illinois

HUNTLIEGH SECURITIES CORP.  
St. Louis, Missouri

E. F. HUTTON & COMPANY, INC.  
Chicago, Illinois

ICAHN & CO., INC.  
New York, New York

IK SECURITIES, LTD.  
Chicago, Illinois

THE ILLINOIS COMPANY, INC.  
Chicago, Illinois

INC TRADING CORPORATION  
New York, New York

INVESTMENT PLANNING, INC.  
Dubuque, Iowa

IOWA WISCONSIN CAPITAL, INC.  
Dubuque, Iowa

JMC SECURITIES, INC.  
Metairie, Louisiana

JSS INVESTMENTS  
Chicago, Illinois

JAMES SECURITIES, INC.  
Glencoe, Illinois

JESUP & LAMONT SECURITIES CO., INC.  
New York, New York

JOHNSON, LANE, SPACE, SMITH & CO.  
Atlanta, Georgia

EDWARD D. JONES & CO., L.P.  
Maryland Heights, Missouri

JOSEPHTHAL & COMPANY, INC.  
New York, New York

K SECURITIES, INC.  
Chicago, Illinois

KAHN INVESTMENTS CORPORATION  
Glenview, Illinois

KAMCO, L. P.  
New York, New York

KAMENSKY FINANCIAL, INC.  
Chicago, Illinois

KARDOLRAC INDUSTRIES CORP.  
Chicago, Illinois

KAUFMAN, ALSBERG & CO., INC.  
New York, New York

KEEFE, BRUYETTE & WOODS, INC.  
New York, New York

KELCO PARTNERS, LTD.  
Chicago, Illinois

KEMPER CLEARING CORP.  
Milwaukee, Wisconsin

KERNS (M. S.) INVESTMENTS, INC.  
Clayton, Missouri

KESSLER ASHER CLEARING INC.  
Chicago, Illinois

KESSLER ASHER SECURITIES TRADINGS  
Chicago, Illinois

KIDDER, PEABODY & CO., INC.  
Chicago, Illinois

KINNARD (JOHN G.) & CO., INC.  
Minneapolis, Minnesota

KIRKPATRICK PETTIS, SMITH POLIAN  
Omaha, Nebraska

KOEHLER & COMPANY  
Chicago, Illinois

H. G. KUCH & COMPANY, INC.  
Philadelphia, Pennsylvania

LADENBURG, THALMANN & COMPANY  
New York, New York

LANGILL & COMPANY  
Chicago, Illinois

C. J. LAWRENCE, MORGAN GRENFELL  
New York, New York

LAZARD FRERES & COMPANY  
New York, New York

LEGEND SECURITIES, INC.  
New York, New York

LETCO  
Chicago, Illinois
LIT AMERICA, INC.  
Chicago, Illinois

LOMAS SECURITIES USA, INC.  
Houston, Texas

LYNCH, JONES & RYAN, INCORPORATED  
New York, New York

MABON, NUGENT & COMPANY  
New York, New York

MANUFACTURERS HANOVER SECURITIES CORP.  
New York, New York

MARK METALS  
Reno, Nevada

MARKET TRADERS, INC.  
Chicago, Illinois

MARLAND (JAMES B.) PARTNERSHIP  
Chicago, Illinois

MAY FINANCIAL CORPORATION  
Dallas, Texas

McCOURTNEY-BRECKENRIDGE & CO.  
St. Louis, Missouri

McDONALD & COMPANY SECURITIES  
Cleveland, Ohio

McKEOWN (P.H.) SECURITIES, INC.  
Chicago, Illinois

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.  
Chicago, Illinois

MESIROW, WEB-MARSH, INC.  
Chicago, Illinois

METROPOLITAN SECURITIES, INC.  
Chicago, Illinois

MIDLAND DOHERTY, INC.  
Chicago, Illinois

MIDWEST TRADING CO.  
Chicago, Illinois

THE MILWAUKEE COMPANY  
Milwaukee, Wisconsin

MINTON SCHMID, LANDERS VINTON REUTHER & SMITH, INC.  
Fort Worth, Texas

MKI SECURITIES CORP.  
New York, New York

MONTGOMERY SECURITIES, INC.  
San Francisco, California

MOORE, JURAN & COMPANY, INC.  
Minneapolis, Minnesota

J. P. MORGAN EQUITIES, INC.  
New York, New York

MORGAN, OLMSHEAD, KENNEDY & GARDNER, INC.  
Los Angeles, California

MORGAN STANLEY & COMPANY, INC.  
New York, New York

H. MOSES & CO.  
Northbrook, Illinois

MURRAY (JANET) CORP.  
Chicago, Illinois

MVI EQUITIES, INC.  
New York, New York

NANSEMOND CORPORATION  
Chicago, Illinois

NATIONAL FINANCIAL SERVICES CORP.  
New York, New York

N. B. CLEARING CORP.  
New York, New York

NESBITT THOMSON SECURITIES, INC.  
New York, New York

NEUBERGER & BERMAN  
New York, New York

NEWBRIDGE SECURITIES, INC.  
New York, New York

NEWHARD, COOK & COMPANY, INC.  
St. Louis, Missouri

NEW SALEM INVESTMENT CORP.  
Chicago, Illinois

NEW YORK & FOREIGN SECURITIES  
New York, New York

NIEHOFF (JAS. H.) & CO., INC.  
Chicago, Illinois

NOMURA SECURITIES INTERNATIONAL  
New York, New York

NORRIS & HIRSCHBERG, INC.  
Atlanta, Georgia
M. H. NOVICK & COMPANY, INC.
Minneapolis, Minnesota

DAVID A. NOYES & COMPANY
Chicago, Illinois

NPE FINANCIAL CORPORATION
Northbrook, Illinois

OBERWEIS SECURITIES, INC.
Naperville, Illinois

O'BRIEN (J.F.) AND CO.
Chicago, Illinois

OCEAN VIEW SECURITIES, INC.
Northbrook, Illinois

O'CONNOR & ASSOCIATES
Chicago, Illinois

THE OHIO COMPANY
Columbus, Ohio

OLDE DISCOUNT CORPORATION
Detroit, Michigan

WILLIAM O'NEIL & COMPANY, INC.
Los Angeles, California

OPPENHEIMER & COMPANY, INC.
New York, New York

OPTION OPPORTUNITIES CO.
Chicago, Illinois

OTRA FINANCIAL GROUP, INC.
Glendale, California

PACIFIC BROKERAGE SERVICES, INC.
Los Angeles, California

PAINE, WEBBER, INCORPORATED
New York, New York

PARKER/HUNTER, INCORPORATED
Pittsburgh, Pennsylvania

PECAUT & COMPANY, INC.
Sioux City, Iowa

PEELER (J. LEE) & CO., INC.
Durham, North Carolina

PEMBROKE CLEARING CORPORATION
Chicago, Illinois

PENINSULAR SECURITIES COMPANY
Grand Rapids, Michigan

PERELMAN-CARLEY & ASSOCIATES, INC.
Omaha, Nebraska

PERKINS, WOLF, McDONNELL & CO.
Chicago, Illinois

PERRY BROTHERS
Atlanta, Georgia

BERNEY PERRY & COMPANY
Birmingham, Alabama

PETCO OPTIONS CO.
Chicago, Illinois

JAS. G. PHILBIN & CO., INC.
Chicago, Illinois

PIPER, JAFFRAY & HOPWOOD, INC.
Minneapolis, Minnesota

PRESCOTT, BALL & TURBEN, INC.
Cleveland, Ohio

PRIVATE LEDGER FINANCIAL SERVICES, INC.
San Diego, California

PRUDENTIAL-BACHE SECURITIES, INC.
New York, New York

PURCELL, GRAHAM & COMPANY, INC.
New York, New York

PURDIE, JR. (ALEXANDER MACKAY)
Atlanta, Georgia

Q & COMPANY
Chicago, Illinois

Q & R CLEARING CORP.
New York, New York

QUINN (F. P.) & CO.
Chicago, Illinois

QUINN (F. P.) TRADING CO.
Chicago, Illinois

RAFFENSPERGER, HUGHES & CO., INC.
Indianapolis, Indiana

RAUSCHER PIERCE REFSNES, INC.
Dallas, Texas

RBC DOMINION SECURITIES CORP.
New York, New York

REAVES (W. H.) & CO., INC.
Jersey City, New Jersey

REGIONAL CLEARING CORP.
New York, New York
<table>
<thead>
<tr>
<th>Company Name</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>R.F.G. CO.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>RICH OPTIONS CO.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>RICHARDS (J. B.) SECURITIES CORP.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>RICHARDSON GREENSHIELDS SECURITIES, INC.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>ROBERTSON, COLMAN &amp; STEPHENS</td>
<td>San Francisco, California</td>
</tr>
<tr>
<td>THE ROBINSON-HUMPHREY COMPANY</td>
<td>Atlanta, Georgia</td>
</tr>
<tr>
<td>RODMAN &amp; RENSHAW/GRANT CORP.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>RODMAN &amp; RENSHAW, INC.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>ROMANO BROTHERS AND CO.</td>
<td>Evanston, Illinois</td>
</tr>
<tr>
<td>RONEY &amp; COMPANY</td>
<td>Detroit, Michigan</td>
</tr>
<tr>
<td>ROSE &amp; CO. INVESTMENT BROKERS</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>L. F. ROTHSCHILD &amp; CO., INC.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>ROULSTON RESEARCH CORP.</td>
<td>Cleveland, Ohio</td>
</tr>
<tr>
<td>ROUND LOT SERVICE, INC.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>ROWLAND, SIMON &amp; CO., L. P.</td>
<td>St. Louis, Missouri</td>
</tr>
<tr>
<td>SALOMON BROTHERS, INC.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>SALVATORE &amp; COMPANY, INC.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>SAN GREGORIO PARTNERS</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>SCHARFF &amp; JONES, INC.</td>
<td>New Orleans, Louisiana</td>
</tr>
<tr>
<td>SCHWAB (CHARLES) &amp; CO., INC.</td>
<td>San Francisco, California</td>
</tr>
<tr>
<td>SCOTIA McLEOD (USA), INC.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>SCOTTSDALE SECURITIES, INC.</td>
<td>St. Louis, Missouri</td>
</tr>
<tr>
<td>SECURITIES CORPORATION OF IOWA</td>
<td>Cedar Rapids, Iowa</td>
</tr>
<tr>
<td>SECURITIES OPTIONS CORP.</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>SECURITIES SETTLEMENT CORP.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>SHATKIN INVESTMENT CORPORATION</td>
<td>Chicago, Illinois</td>
</tr>
<tr>
<td>SHATKIN-LEE SECURITIES CO.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>SHEARSON LEHMAN HUTTON, INC.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>JOHN A. SIBERELL &amp; COMPANY</td>
<td>South Bend, Indiana</td>
</tr>
<tr>
<td>SMITH BARNEY, HARRIS UPHAM &amp; COMPANY, INC.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>SOUTHWEST SECURITIES, INC.</td>
<td>Dallas, Texas</td>
</tr>
<tr>
<td>STANDARD &amp; POOR'S SECURITIES, INC.</td>
<td>New York, New York</td>
</tr>
<tr>
<td>STEPHENS, INC.</td>
<td>Little Rock, Arkansas</td>
</tr>
<tr>
<td>STERN BROTHERS &amp; COMPANY</td>
<td>Kansas City, Missouri</td>
</tr>
<tr>
<td>STIFEL, NICOLAUS &amp; CO., INC.</td>
<td>St. Louis, Missouri</td>
</tr>
<tr>
<td>STOFAN, AGAZZI &amp; CO., INC.</td>
<td>Joliet, Illinois</td>
</tr>
<tr>
<td>STUART JAMES COMPANY, INC.</td>
<td>Denver, Colorado</td>
</tr>
<tr>
<td>SUTRO &amp; COMPANY, INC.</td>
<td>San Francisco, California</td>
</tr>
<tr>
<td>SWENEY CARTWRIGHT &amp; COMPANY</td>
<td>Columbus, Ohio</td>
</tr>
<tr>
<td>SWISS AMERICAN SECURITIES, INC.</td>
<td>New York, New York</td>
</tr>
</tbody>
</table>
SYDAN & CO.  
Chicago, Illinois

TECHNOLOGY ENTERPRISES, INC.  
Chicago, Illinois

THOMSON McKINNON SECURITIES, INC.  
Chicago, Illinois

TOMAC SECURITIES, INC.  
Chicago, Illinois

TORSHEN SECURITIES, INC.  
Chicago, Illinois

TUCKER, ANTHONY & R. L. DAY, INC.  
New York, New York

UNDERWOOD, NEUHAUS & CO., INC.  
Houston, Texas

UNIFIED MANAGEMENT CORPORATION  
Indianapolis, Indiana

RICHARD B. VANCE & COMPANY, INC.  
Joliet, Illinois

M. B. VICK & COMPANY  
Chicago, Illinois

WADAS INVESTMENTS, INC.  
Chicago, Illinois

WAGNER STOTT CLEARING CORP.  
New York, New York

WALL STREET CLEARING COMPANY  
New York, New York

WATERHOUSE SECURITIES, INC.  
New York, New York

WATERS, PARKERSON & COMPANY, INC.  
New Orleans, Louisiana

WEBSTER, MARSH & COMPANY, INC.  
Chicago, Illinois

WEISS, PECK & GREER  
New York, New York

H. G. WELLINGTON & CO., INC.  
New York, New York

WERTHEIM SCHRODER & CO., INC.  
New York, New York

WHARTON SECURITIES CORP.  
New York, New York

WHEAT, FIRST SECURITIES, INC.  
Richmond, Virginia
SPECIALIST CAPITAL REQUIREMENTS *

Clearing through another broker/dealer, a specialist need only maintain $5,000 as minimum net Capital ($6,000 to remain off monthly reporting). Under this scenario, the specialist is guaranteed by the clearing broker and has a specialist clearing account agreement.

The self-clearing specialist has three options under the net capital rule:

(1) **MSE Specialist Rule** requires the member to maintain "net liquid assets" of the value of 250 shares times the price of each issue assigned or $50,000, whichever is greater. Operating under this rule exempts the specialist from taking securities haircuts.

(2) **Basic Net Capital Rule** requires $25,000 minimum or 6 2/3% of aggregate indebtedness (fixed liabilities). The basic haircut on equity securities under this rule is 30% of the greater of the long or short positions, and to the extent that the market value of the lesser of the long or short position exceeds 25% of the value of the greater of the long or short position, that excess is haircut 15 percent.

(3) **Alternative Net Capital Rule** requires $100,000 minimum or 2% of Aggregate Debit Items (customer debits). The alternative haircut on equity securities is 15% of the long position and to the extent that the value of the short position exceed 25 percent of the value of the long position that excess is haircut 30 percent.

Every specialist member/member organization, whether self-clearing by using the facilities of a clearing organization or clearing through another broker/dealer under a clearing account agreement must prepare and maintain certain books and records in accordance with SEC Rule 17a-3, 17a-4 and 17a-5.

*SOURCE: *Midwest Stock Exchange, Inc.
MARKET MAKER CAPITAL REQUIREMENTS

A market maker on the MSE floor provides an alternative to the specialist's markets. While the specialist has the first rights to any order brought to the post, a market maker may compete with the specialist for any order by establishing a superior market. A market maker has less responsibility in making markets than a specialist and does not hold limit orders as a specialist does with orders which are entrusted to him by a floor broker in the specialist "book".

A market maker who chooses to self-clear his trades must establish a corporation or partnership to join the clearing corporation. Present Net Capital requirements including trust and clearing requirements, is $75,000. (Be advised that this minimum is under review by the SEC and is subject to being increased a higher minimum level)
A self-clearing market maker firm must file quarterly financial FOCUS Reports.

A market maker who does not self-clear may be a sole proprietor, corporation or partnership. They must get a Market Maker Clearing Agreement with a clearing broker/dealer whereas all trades are guaranteed by the clearing firm. The non-clearing market maker files annual FOCUS Reports and presently has a $5,000 capital requirement. (Be advised that this minimum is under review by the SEC and is subject to being increased to a higher minimum level.)

All MSE market makers are considered dealers in securities and operate under exempt credit provisions of Regulations T and U. In addition, market makers may offer stock short on a zero minus tick on the MSE floor in any security they are registered, in accordance with SEC Rule 10a-1. (Text of related Exempt Credit Rule - ART. XXXIV, Rule 17 - reprinted on following page).

In order for market makers to maintain registration in an issue, they must initiate or increase their positions 50 percent of the time on the Midwest Floor. This must be complied with on a quarterly basis for each issue. This 50 percent standard allows a market maker to reduce or eliminate a position on any exchange provided he is unable to execute the trade on the Midwest Floor. All trades must be initiated on the MSE Floor and clear the MSE specialist post before being executed elsewhere.

Every member/member organization, whether using the facilities of a clearing organization or a clearing account agreement with a clearing broker/dealer must prepare and
maintain certain books and records in accordance with SEC Rule 17a-3, 17a-4 and 17a-5.

**MARKET MAKER REGULATORY STATUS**

Article XXXIV, Rule 17

.01 Utilization of Exempt Credit. MSE Members registered as equity market makers are members registered as specialists for purposes of the Securities Exchange Act of 1934 and as such are entitled to obtain exempt credit for financing their market maker transactions. Members and/or prospective members who are anticipating becoming registered as equity market makers as well as those clearing firms who are or will be carrying the accounts of market makers should be aware of the following interpretation relative to the use of such credit:

1. Only those transactions initiated on the MSE Floor qualify as market maker transactions. This restriction prohibits the use of exempt credit where market maker orders are routed to the Floor from locations off the Floor.

2. Fifty percent (50%) of the quarterly share volume which creates or increases a position in a market maker account must result from transactions consummated on the MSE.

3. Only those positions which have been established as a direct result of bonafide equity market maker activity qualify for exempt credit treatment. This restriction precludes exempt credit financing based on an equity market maker registration for positions resulting from options exercises and assignments.

.02 When requested by a floor broker, a market maker must accept and guarantee execution on all 100 share agency orders in accordance with the procedures set forth in Article XX, Rule 34 (the Best System).
TO: DESIGNATED MEMBERS & MEMBER ORGANIZATIONS

SUBJECT: REPORTING REQUIREMENTS

Attached is a compilation of the reports which members are required to file with the Exchange, reflecting who must file, by when, and with which Exchange department.

Effective July 1, 1989 every designated broker/dealer member will be required to file FOCUS Reports Form I, II, or IIA in accordance with the requirements of SEC Rule 17a-5 as follows:

- Every broker/dealer who clears transactions or carries customer accounts shall file Part I of FOCUS Form X-17A-5 within 10 business days after the end of each month [SEC Rule 17a-5(a) (2)(i)].

- Every broker/dealer who clears transactions but does not do a public customer business shall file part IIA of FOCUS Form X-17A-5 within 17 business days after the end of each calendar quarter. Fully-disclosed broker/dealers shall file within 17 business days after their annual CPA Audit date if other than the calendar quarter [SEC Rule 17a-5(a)(2)(ii)].

- Every broker/dealer who clears transactions or carries customer accounts shall file Part II of FOCUS Form X-17A-5 within 17 business days after the end of the calendar quarter and within 17 business days after the annual CPA Audit date if other than calendar quarter [SEC Rule 17a-5(a)(2)(ii)].

- Every broker/dealer who does not clear transactions nor carry customer accounts shall file Part IIA of FOCUS Form X-17A-5 within 17 business days after the end of each calendar quarter and Fully disclosed broker/dealers shall file within 17 business days after the annual CPA Audit date if other than calendar quarter [SEC Rule 17a-5(a)(2)(iii)].

- Every inactive broker/dealer shall continue to file Part IIA of FOCUS Form X-17A-5 within 17 business days after each year-end [SEC Rule 17a-5 (a) (4)]
In some cases this is a departure from FOCUS Report filing now being done by broker/dealer members and in many instances members will have to file more frequently. However, this is not a change from the books and recordkeeping requirements of SEC Rule 17a-3 and MSE Article XI, Rule 3(d) which require the preparation of books and records on a monthly basis. The FOCUS Report filing is in accordance with the reporting requirements placed on broker/dealers for purposes of surveillance by the SEC and the Exchange.

Every broker/dealer member will be notified in advance when the appropriate FOCUS Report is to be filed and blank copies of the Report will be furnished. Questions regarding specific reports and filing times may be addressed to the Michael Cardin, Market Regulation Department, at extension 663-2204.
Reports Required for Filing
Designated Members
(Effective July 1, 1989)

To be filed with MARKET REGULATION DEPT.

<table>
<thead>
<tr>
<th>Title of Form</th>
<th>Required for Filing By</th>
<th>Contact</th>
<th>Frequency/Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>X-17A-5 Part II</td>
<td>Firms carrying customers and/or MCC/MSTC Self-Clearing members (subject to 15c3-1)</td>
<td>Michael Cardin</td>
<td>Quarterly – 17th business day following quarter-end</td>
</tr>
<tr>
<td>(FOCUS Report)</td>
<td></td>
<td>(312) 663-2204</td>
<td></td>
</tr>
<tr>
<td>X-17A-5 Part IIA</td>
<td>Self-clearing MCC/MSTC firms not carrying customers (subject to 15c3-1)</td>
<td>Michael Cardin</td>
<td>Quarterly – 17th business day following quarter-end</td>
</tr>
<tr>
<td>(FOCUS Report)</td>
<td></td>
<td>(312) 663-2204</td>
<td></td>
</tr>
<tr>
<td>X-17A-5 Part I</td>
<td>Firms carrying customers and MCC/MSTC Self-clearing specialist and market maker members (subject to 15c3-1)</td>
<td>Michael Cardin</td>
<td>Monthly – (Interim to quarterly filings above) – 10th business day following interim month-end</td>
</tr>
<tr>
<td>(FOCUS Report)</td>
<td></td>
<td>(312) 663-2204</td>
<td></td>
</tr>
<tr>
<td>X-17A-5 Part IIA</td>
<td>Non-clearing and non customer carrying firms (subject to 15c3-1)</td>
<td>Michael Cardin</td>
<td>Quarterly – 17th business day following quarter-end</td>
</tr>
<tr>
<td>(FOCUS Report)</td>
<td></td>
<td>(312) 663-2204</td>
<td></td>
</tr>
<tr>
<td>X-17A-5 Part IIA</td>
<td>Members not normally filing FOCUS reports (Inactive members)</td>
<td>Michael Cardin</td>
<td>Annually – 17th business day following December 31st year-end</td>
</tr>
<tr>
<td>(Short Form)</td>
<td></td>
<td>(312) 663-2204</td>
<td></td>
</tr>
<tr>
<td>X-17A-5 Schedule I</td>
<td>All registered broker-dealers</td>
<td>Michael Cardin</td>
<td>Annually – 17th business day following December 31st year-end</td>
</tr>
<tr>
<td>(FOCUS Report)</td>
<td></td>
<td>(312) 663-2204</td>
<td></td>
</tr>
<tr>
<td>Audited Financial</td>
<td>Members doing a public business and/or transacting a business in securities with other than members of a national securities exchange and/or MCC/MSTC self-clearing firms</td>
<td>Michael Cardin</td>
<td>Annually – 60 days subsequent to audit date</td>
</tr>
<tr>
<td>Statements</td>
<td></td>
<td>(312) 663-2204</td>
<td></td>
</tr>
<tr>
<td>Title of Form</td>
<td>Required for Filing</td>
<td>Contact</td>
<td>Frequency/Due Date</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
<td>---------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>Net Capital Computations</td>
<td>Non-clearing specialists and market makers doing no public business but subject to SEC Rule 15c3-1</td>
<td>Michael Cardin (312) 663-2204</td>
<td>Monthly -- 17th business day following month-end</td>
</tr>
<tr>
<td>Equity Computations</td>
<td>Non-clearing specialists and market makers and other members not subject to SEC Rule 15c3-1 and guaranteed by a clearing broker</td>
<td>Michael Cardin (312) 663-2204</td>
<td>Monthly -- 17th business day following month-end</td>
</tr>
<tr>
<td>SIPC-6</td>
<td>All Broker/dealers</td>
<td>Paul Smith (312) 663-2723 or Martha Hannon (312) 663-2598</td>
<td>Semi-annually -- within 30 days following calendar or CPA fiscal mid-year</td>
</tr>
<tr>
<td>SIPC-7</td>
<td>All Broker/dealers</td>
<td>Paul Smith (312) 663-2723 or Martha Hannon (312) 663-2598</td>
<td>Semi-annually -- within 60 days of calendar or CPA fiscal year-end</td>
</tr>
<tr>
<td>Report for Equity, Options Activity</td>
<td>All must file report if not filed by their clearing firms</td>
<td>Michael Cardin (312) 663-2204</td>
<td>Daily -- next business day</td>
</tr>
<tr>
<td>(Pursuant to Article XXI, Rule18)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

To be filed with FLOOR OPERATIONS DEPT.

<table>
<thead>
<tr>
<th>Title of Form</th>
<th>Required for Filing By</th>
<th>Contact</th>
<th>Frequency/Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSE-BFP</td>
<td>All Floor Members who earn floor brokerage and handling fees on floor</td>
<td>Kim Klawitter (312) 663-2287</td>
<td>Monthly -- 15th of each month</td>
</tr>
</tbody>
</table>
ARTICLES XVIII and XIX
[Reserved for future use.]

BY-LAWS, PART III, RULES APPLICABLE TO
EQUITY TRADING
(THE RULES IN PART II OF THE BY-LAWS ARE ALSO
APPLICABLE TO EQUITY TRADING)

ARTICLE XX
Making Exchange Contracts

§ 1681 Application
RULE 1. These Rules shall apply to all Exchange Contracts made on the
Exchange and, to the extent determined by the Exchange to be
applicable, to Exchange Contracts not made on the Exchange.

Interpretations and Policies:
.01 Notwithstanding the above, transactions effected pursuant to ITS or any
other Application of the System (as that term is defined in Rule 36 of Article
XX) shall be subject only to those rules specified in Rule 36 of Article XX.


§ 1682 Determination of Hours of Transaction
RULE 2. The Board of Governors shall determine by resolution the hours
during which transactions may be made on the Exchange and the
days the Exchange shall be open for business. Such days shall be known as
business days. Except as may be otherwise ordered by the Board of Gov-
ernors, the Exchange shall be open for the transaction of business every busi-
ness day, provided, however, that on any business day that the banks, transfer
agencies and depositories for securities in the State of Illinois are closed:

Deliveries or Payments
(a) Deliveries or payments ordinarily due on such a day (exclusive of
cash contracts made on such a day) shall be due on the following business day.
This does not, however, apply to payment from customers under Regulation
T or delivery of securities sold by customers under SEC Rule 15c-3;

Day for Settlement
(b) Such a day shall not be considered as a business day in determining
the day for settlement of a contract, the day on which stock shall be quoted
ex-dividend or ex-rights, or in computing interest on contracts and bonds or
premiums on loans of securities; and

Right to Market, Reclamation or Close
(c) The right to market to market, to make reclamation or to close con-
tracts under Article IX of the Rules (other than "cash" contracts made on
such a day) shall not be exercised on such a day.

Amended Nov. 28, 1980.

Midwest Stock Exchange Guide
§ 1683 Hours of Floor Dealings

RULE 3. Dealings upon the Exchange shall be limited to the hours during which the Exchange is open for the transaction of business. No member or member organization shall make any bid, offer or transaction upon the Floor of the Exchange, in the vicinity of the Exchange, issue a commitment to trade through ITS from the Floor, or send an order in a NASDAQ/NMS Security for execution via telephone to a NASDAQ System market maker before or after those hours, except that a specialist may issue and receive pre-opening notifications and pre-opening responses, pursuant to the provisions of the Plan relating to the Pre-Opening Application of the System, before the official opening of business of the Exchange and loans of money or securities may be made after those hours.


• • • Interpretations and Policies:

.01 In consideration of transactions in Dual Trading System issues, a member may, subject to obtaining permission from two members of the Committee on Floor Procedure, effect a transaction for a period of five minutes after the final sales in the primary market have been printed on the tape, provided such transaction was in negotiation prior to closing time and consideration is given to all other orders present at the close. In respect to NASDAQ/NMS Securities, under certain circumstances, a member or member organization may, upon obtaining permission from two (2) members of the Committee on Floor Procedure, effect transactions at times other than those specified in this Rule.

Amended May 12, 1987.

§ 1684 Securities Dealt In

RULE 4. Only securities admitted to dealings on an "issued," "when issued," "when distributed" or "unlisted trading" basis shall be dealt in upon the Exchange.

§ 1685 Security Transaction

RULE 5. No transaction in any security admitted to dealings on the Exchange shall be made on the Floor of the Exchange except with a member or member organization with an officer or employee of the Exchange authorized to close contracts "under the rule."

• • • Interpretations and Policies:

.01 Nothing in this rule to the contrary shall be construed to prohibit a commitment or obligation to trade received on the Floor through ITS, or any other application of the System, from being accepted or rejected on the Floor, or to prohibit transactions permitted by Rule 39 or Rule 40 of this Article.


§ 1686 Units of Trading

RULE 6. The unit of trading in stocks shall be 100 shares, except that in the case of certain stocks designated by the Committee on Floor Procedure, the unit of trading shall be determined by said Committee, with respect to each stock so designated.

The unit of trading in bonds shall be $1,000 original principal amount thereof.

§ 1683 Art. XX © 1987, Commerce Clearing House, Inc.
Transactions in Rights to Subscribe

**RULE 7.** Except as otherwise designated by the Committee on Floor Procedure, transactions in rights to subscribe shall be on the basis of one right accruing on each share of issued stock and the unit of trading in rights shall be 100 rights.

**RULE 8.** Recognized quotations shall be public bids and offers in lots of one or more trading units or multiples thereof. Bids and offers in other market centers which may be displayed on the Floor for the purpose of ITS, or in accordance with Rule 39 or Rule 40 of this Article or other purposes shall have no standing in the trading crowds on the Floor. Bids or offers for less than one unit of trading shall specify the number of shares of stock or the principal amount of the bonds covered by the bid or offer. All bids made and all offers made shall be in accordance with the provisions of Rule 11Aa1 under the Securities Exchange Act of 1934, governing the dissemination of quotations for reported securities.

The following interpretations and policies pertain to all specialist system issues for which last sale information is reported pursuant to SEC Rule 11Aa3-1.

Amended May 12, 1987.

**Interpretations and Policies:**

.01 Specialists shall input their current markets and sizes to the quotation system through the key terminal or the mark sense terminal at the post. These quotations shall be firm as to both price and size unless exempted under one of the conditions specified in paragraphs .06-.09 of this Rule.

.02 In respect to Dual Trading System issues specialists utilizing the Auto Quote mode are prohibited from disseminating a bid and/or offer more than 3/4 point away from the best ITS market.

.03 Market Makers, while at the post, shall input to the quotation system their bids and/or offers which better the current Midwest Stock Exchange market. Such quotations shall remain in force until the market maker leaves the post. Market maker quotations and accompanying sizes shall be firm unless exempted under one of the conditions specified in paragraphs .06-.09 of this Rule.

.04 Floor Brokers, while at the post, shall input to the quotation system those bids or offers which better the current Midwest Stock Exchange market unless the bid or offer is cancelled or withdrawn if not executed immediately. If a floor broker transfers possession of an order to a specialist, the requirement for input to the quotation system becomes the obligation of the specialist. When a floor broker who retains possession of an order leaves the post he must withdraw his bid or offer from the quotation system. Quotations and accompanying sizes shall be firm until withdrawn unless exempted under one of the conditions specified in paragraphs .06-.09 of this Rule.

.05 Quotation sizes, unless otherwise specified, shall be assumed to be for 100 shares. Where bids or offers are made at the same price the aggregate quotation size of such equal bids or offers shall be inputted into the quotation system. Such aggregate sizes shall remain firm until withdrawn unless exempted under one of the conditions specified in paragraphs .06-.09 of this Rule.
.06 In instances where a block trade on the Midwest Stock Exchange or other market against which orders are being protected, takes place outside the current Midwest Stock Exchange quotation, all effective bids or offers limited to the block price or better will be executed at the more favorable block price rather than at the limit price of the affected orders.

.07 All offerings shall be executed in accordance with applicable short sale rules:

**EXAMPLE:**

MSE market in XYZ—43¼-43½ (short)
NYSE market in XYZ—43¼-43½
Consolidated Tape last sale = 43½

The MSE offering at 43½ may be filled at its limit price subsequent to a Consolidated Tape sale at 43½ provided that the offering was equal to or above the last sale on the Consolidated Tape at the time it was first communicated.

.08 No specialist, market maker or floor broker shall be obligated to execute a transaction for any security as provided for in paragraphs .01, .03 and .04 of this Rule if:

(A) before an order sought to be executed is presented, such specialist, market maker or floor broker has inputted a revised bid, offer or quotation size into the quotation system or

(B) at the time an order sought to be executed is presented, such specialist, market maker or floor broker is in the process of effecting a transaction in such security and, immediately after completion of such transaction, such specialist, market maker or floor broker inputs a revised bid, offer or quotation size into the quotation system.

.09 In the event of unusual market conditions as determined by two Committee on Floor Procedure members, quotations in a given issue will not be subject to firmness provided that the Exchange has notified the following specified persons:

1. Each quotation vendor
2. The processor for the consolidated system or NASDAQ
3. The processor for the Options Price Reporting Authority (in the case of a notification with respect to a reported security which is a class of securities underlying options admitted to trading on any exchange).

.10 Prior to making a determination that a particular security or securities be exempted from the firmness requirement, the Committee on Floor Procedure members shall consider:

1. The level of trading activity in existence at the time on the Midwest Stock Exchange.
2. The level of trading activity in existence at the time in other markets on which the particular security is traded.
3. The condition of the Exchange's quotation dissemination system.

The Committee Members who grant a request for exemption from the firmness requirement are required to monitor the activity or conditions which formed the basis for such exemption and shall immediately notify the Exchange when such conditions no longer exist.

Bids and Offers, "When Issued," "When Distributed"

RULE 9. Bids and offers in securities admitted to dealings on a "when issued" basis shall be made only "when issued," i.e., for delivery when issued as determined by the Exchange.

Bids and offers in securities admitted to dealings on a "when distributed" basis shall be made only "when distributed," i.e., for delivery when distributed as determined by the Exchange.

Procedure for Bids and Offers on "Issued" Basis

RULE 10. Bids and offers in stocks admitted to dealings on an "issued" basis shall be made only as follows, and may be made simultaneously as essentially different propositions, but when made without stated conditions shall be considered to be "regular way":

"Cash"

(a) "Cash" i.e., for delivery on the day of the contract;

"Regular Way"

(b) "Regular way," i.e., for delivery on the fifth full business day following the day of the contract;

"Seller's Option"

(c) "Seller's option," i.e., for delivery within the time specified in the option, which time shall not be less than six (6) full business days nor more than 60 days following the day of the contract; except that the Exchange may provide otherwise in specific issues of stocks or classes of stocks;

"Next Day"

(d) "Next day," i.e., for delivery on the next business day following the day of the contract. For purposes hereof, "next day" may also include deliveries within the time specified in the contract which time may include either the second, third, or fourth full business day following the day of the contract.

On the second, third, fourth and fifth full business days preceding the final day for subscription, bids and offers in rights to subscribe shall be made only "next day," i.e., for delivery on the next business day following the day of the contract and shall be made only for "cash" on day preceding the final day for subscription, except as otherwise designated by the Committee on Floor Procedure.


Manner of Bidding and Offering

RULE 11. Bids and offers to be effective must be audibly made at the post and shall remain in full force until the person making the bid or offer shall audibly announce that he is out of the market or until he leaves the post.

Interpretations and Policies:

01. The committee recognizes that there may be a certain amount of negotiation by voice away from the post, but every trade must be consummated at the post.
the post. Failure to do so will subject both parties to the trade to automatic
fines of a minimum of $50.00 each.

1692 Stocks of 100 Shares or Less

RULE 12. Stocks having no designated unit of trading shall be assigned for
dealings by use of cabinets and shall be dealt in at a location designated for that purpose.

The Exchange may also designate bonds which are to be dealt in by use of cabinets.

Bids and offers in securities dealt in by use of cabinets shall be written
on cards, which shall be filed in the cabinets in the following sequence:
1. According to price, and
2. According to the time received at the cabinet.

Orders in such securities shall be filled according to the bids and offers
filed in the cabinets, in the sequence indicated above, except that oral bids and
offers in such securities may be made if not in conflict with bids and offers in
the cabinets.

Every card placed in the cabinets shall bear a definite price and number of
shares and no mark or identification shall be placed thereon to indicate it is
other than a limited order at the price.

1693 Binding of Bid or Offer

RULE 13. All bids made and accepted, and all offers made and accepted in
accordance with the Rules contained in this Article shall be binding.

1694 Over One Trading Unit

RULE 14. All bids and offers for more than one trading unit shall be con-
sidered to be for the amount thereof or any lesser number of units.

1695 Bids or Offers Below Bid

RULE 15. When a bid is clearly established, no bid or offer at a lower price
shall be made.

When an offer is clearly established, no offer or bid at a higher price
shall be made.

1696 Precedence of Bids

RULE 16. The highest bid shall have precedence in all cases.

1697 Precedence of Bids at Same Price

RULE 17. Where bids are made at the same price, the priority and precedence
shall be determined as follows:

Bids Clearly Established

(a) When a bid is clearly established as the first made at a particular
price, the maker shall be entitled to priority and shall have precedence on the
next sale at that price, up to the number of shares of stock specified in the bid,
irrespective of the number of shares of stock specified in such bid.
Simultaneous Bids

(b) When bids are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, all such bids shall be on a parity.

Sale Removes All Bids

(c) A sale shall remove all bids from the Floor except that if the number of shares of stock offered exceeds the number of shares specified in the bid having priority or precedence, a sale of the unfilled balance to other bidders shall be governed by the provisions of these Rules as though no sales have been made to the bidders having priority or precedence.

Subsequent Bids

(d) After bids have been removed from the Floor under the provisions of paragraph (c) hereof, priority and precedence shall be determined, in accordance with these Rules, by subsequent bids.

Priority of Bid or Offer

(e) Priority of a bid may be transferred from one member or member organization to another provided that the bid is continued for the same amount for which it was originally made.

Transfer

(f) Priority or precedence established by a member or member organization acting as a specialist may be transferred to another member or member organization taking over the "book".

1 1698 Precedence of Offers

RULE 18. The lowest offer shall have precedence in all cases.

1 1699 Precedence of Offers at Same Price

RULE 19. Where offers are at the same price the priority and precedence shall be determined in the same manner as specified in the case of bids under Rule 17.

1 1700 Precedence of Offers to Buy "Seller's Option"

RULE 20. On offers to buy "seller's option" at the same price, the longest option shall have precedence. On offers to sell "seller's option" at the same price, the shortest option shall have precedence.

1 1701 Claim of Prior or Better Bid

RULE 21. A claim by a member or member organization who states that he or it had on the Floor a prior or better bid or offer shall not be sustained if the bid or offer was not made with the publicity and frequency necessary to make the existence of such bid or offer generally known at the time of the transaction.

Midwest Stock Exchange Guide

Art. XX 1 1701
2095-6 Midwest Stock Exchange, Incorporated—Rules 227 9-67

1702 Disputes

Rule 22. Disputes arising on bids or offers, if not settled between the parties interested, shall be settled, if practicable, by a vote of the members knowing of the transaction in question; if not so settled, they shall be settled by the Committee on Floor Procedure.

1703 Minimum Fractional Changes

Rule 23. Bids or offers in stocks above $1.00 per share shall not be made at a less variation than 1/4 of $1.00 per share; in stocks below $1.00 but above 50¢ per share, at a less fraction than 1/16 of $1.00 per share; in stocks below 50¢ per share, at a less variation than 1/32 of $1.00 per share; provided that the Committee on Floor Procedure may fix variations of less than the above for bids and offers in specific securities or classes of securities.

1704 Order to Buy and Sell Same Security

Rule 24. When a member or member organization has an order to buy and an order to sell the same security, he or it shall, except as provided in Rule 12 of this Article, publicly offer such security at a price which is higher than his or its bid by the minimum variation permitted in such security before making a transaction with himself or itself.

1705 Record of Orders

Rule 25. (a) Every member or member organization shall preserve for at least three years a record of every order originated by him or it on the Floor and given to another member or member organization for execution, and of every commitment or obligation to trade issued from the Floor through ITS or any other application of the System or pursuant to Rule 39 or Rule 40, and of every order originating off the Floor, transmitted by any person other than a member or member organization to such member or member organization on the Floor, which record shall include the name and the amount of the security, the terms of the order and the time when such order was so given or transmitted; provided, however, that the Exchange may, upon application, grant exemption from the provisions of this Rule.

(b) Whenever a cancellation is entered with respect to such an order or commitment or obligation to trade, or a report of the execution of such an order or commitment or obligation to trade is received, there shall be preserved for at least three years, in addition to the record required by the foregoing paragraph, a record of the cancellation of the order or commitment or obligation to trade or of the receipt of such report, which shall include the time of entry of such cancellation or of the receipt of such report.

(c) Before any such order is executed, including the case where an order is to be executed by the issuance from the Floor of a commitment or obligation to trade through ITS or any other application of the System or pursuant to Rule 39 or Rule 40, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change in such account name or designation shall be made unless the change has been authorized by the member or by a partner of the member firm or by an officer of the member corporation, as the case may be, who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.
Exceptions

Under exceptional circumstances the Exchange may upon written request waive the requirements contained in (1)(a) above.

.01 Every order covered by (1)(a) above to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-l(T) thereunder shall bear an identifying notation that will enable the executing member to disclose to other members that the order is subject to those provisions.


§ 1706 Prohibitions to Offer Publicly on Floor

RULE 26. No member or member organization shall offer publicly on the Floor:

"At the Close"

(a) to buy or sell securities "at the close";

Buying and Selling

(b) to buy or sell dividends;

Betting

(c) to bet upon the course of the market; or

Privileges and Securities

(d) to buy or sell privileges to receive or deliver securities.

§ 1707 Limitation to One Broker

RULE 27. No member or member organization shall maintain with more than one broker, for execution on the Exchange, market orders or orders at the same price, for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal, unless specific permission has been obtained from the Committee on Floor Procedure.

§ 1708 Transmitting Names from Floor Prohibited

RULE 28. The name of a bidder, offeror, buyer or seller on the Floor of the Exchange shall not be transmitted from the Floor except pursuant to Rule 39 or Rule 40 and except that:

Direct or Indirect Interest

(a) the name of a specialist bidding or offering for an account in which he has a direct or indirect interest may be transmitted from the Floor, provided it is made clear that the specialist is acting for his own account and not for the "book"; and

Purpose and Process

(b) a member or member organization may send to his or its office a written report containing the name of the opposite party to the transaction, solely for the purpose of processing the transaction; and

Disclosure During Market Hours and After Closing

(c) subject to consent of the participants, an officer of the Exchange may disclose, during the market session and after the closing, the names of buyers and sellers in a transaction.
(d) subject to his consent, a Floor Broker's name may be disclosed during market hours.
Amended May 12, 1987.

§ 1709 Liability for "Stop" Orders

RULE 29. An agreement by a member or member organization to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

§ 1710 Prearranged Trade

RULE 30. An offer to sell coupled with an offer to buy back at the same or an advanced price, or the reverse, is a prearranged trade and is prohibited. This Rule applies both to transactions in the unit of trading and in lesser and greater amounts.

§ 1711 Acting for or on Behalf of Another

RULE 31. No member on the Floor shall make any bid, offer or transaction for, or on behalf of, another member or member organization except pursuant to a written order. If a member to whom an order has been entrusted leaves the post without actually transferring the order to another member, the order shall not be represented in the market during his absence.

* * * Interpretations and Policies:
01 Notwithstanding the foregoing, this rule shall not be applicable to orders received pursuant to Rule 40(b)(1).

§ 1712 Security Quoted "Ex-dividend," "Ex-distribution," "Ex-rights" or "Ex-interest"

RULE 32. When a security is quoted "ex-dividend," "ex-distribution," "ex-rights" or "ex-interest" the following kinds of orders shall be reduced by the value of the payment or rights, and increased in shares in the case of stock dividends and stock distributions which result in round lots, on the day the security sells ex. Should the disbursement be in an amount other than the fraction in which bids and offers are made, or a multiple thereof, orders shall be reduced by the next higher fraction:

Order to Buy
(a) Open buying orders;

Order to Sell
(b) Open stop orders to sell. (With open stop limit orders to sell, the limit, as well as the stop price shall be reduced.)

Not Reduce Order to Buy
(a) Open stop orders to buy;

§ 1709 Art. XX © 1987, Commerce Clearing House, Inc.
(b) Open selling orders.

Interpretations and Policies:

.01 Reduction of orders—Proportional procedure.—Open buy orders and open stop orders to sell shall be reduced by the proportional value of a stock dividend or stock distribution on the day a security sells ex-dividend or ex-distribution. The new price of the order is determined by dividing the price of the original order by 100% plus the percentage value of the stock dividend or stock distribution. For example, in a stock dividend of 3%, the price of an order would be divided by 103%.

The chart at the end of .03 below lists, for the more frequent stock distributions, the percentages by which the prices of open buy orders and open stop orders to sell shall be divided to determine the new order prices.

If, as a result of this calculation, the price is not equivalent to or is not a multiple of the fraction of a dollar in which bids and offers are made in the particular security, the price should be rounded to the next lower variations; i.e., when a calculation results in a price of $14.27, the price of an order is rounded to 14; a calculation resulting in $14.47 is rounded to 14½.

In reverse splits, all orders (including open sell orders and open stop orders to buy) should be cancelled.

.02 Procedure for increase in number of shares.—When there is a stock dividend or stock distribution, open buy orders and open stop orders to sell shall be increased in shares as follows:

(a) When there is a stock dividend or stock distribution which results in one or more full shares for each share held, the number of shares in open buy orders and open stop orders to sell shall be increased accordingly.

EXAMPLES:

A 3-for-1 stock distribution.

An order for 100 shares is increased to 300 shares.
An order for 200 shares is increased to 600 shares.
An order for 500 shares is increased to 1,500 shares.

(b) When there is a stock dividend or stock distribution of less than a one-for-one basis and thus results in fractional shares, open buy orders and open stop orders to sell shall be increased to the lowest full round-lot.

EXAMPLES:

A 25% stock dividend or a 5-for-4 stock distribution.

An order for 100 shares remains at 100 shares.
An order for 300 shares remains at 300 shares.
An order for 900 shares is increased to 1,100 shares.
An order for 2,000 shares is increased to 2,500 shares.

(c) When there is a stock dividend or stock distribution which results in fractional shares combined with full shares, the number of shares in open buy orders and open stop orders to sell shall be increased to the lowest full round-lot.
EXAMPLE:

A 5-for-2 stock distribution.
An order for 100 shares is increased to 200 shares.
An order for 200 shares is increased to 500 shares.
An order for 700 shares is increased to 1,700 shares.
An order for 1,200 shares is increased to 3,000 shares.

.03 Responsibility for reducing price and increasing shares in orders.—
Open orders held by a specialist prior to the day a stock sells ex-dividend, ex-distribution or ex-rights shall be reduced in price and, if .02 above is applicable, increased in shares by the specialist by the value of the dividend, distribution or rights, unless he is otherwise instructed by the members or member organizations from whom the orders were received. In this regard, a member or member organization may enter a Do Not Reduce or “DNR” order if he or it does not want the price of an order reduced for cash dividends, or a Do Not Increase or “DNI” order if he or it does not want an order increased in shares for stock dividends or stock distributions.

<table>
<thead>
<tr>
<th>Distribution</th>
<th>Price of Order Divided By</th>
<th>Distribution</th>
<th>Price of Order Divided By</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-for-4</td>
<td>125%</td>
<td>2-for-1</td>
<td>200%</td>
</tr>
<tr>
<td>4-for-3</td>
<td>133 1/3%</td>
<td>3-for-2</td>
<td>250%</td>
</tr>
<tr>
<td>3-for-2</td>
<td>150%</td>
<td>3-for-1</td>
<td>300%</td>
</tr>
<tr>
<td>4-for-3</td>
<td>166 2/3%</td>
<td>4-for-1</td>
<td>400%</td>
</tr>
</tbody>
</table>

1713 Authority of Committee on Floor Procedure

RULE 33. The Committee on Floor Procedure shall have power to supervise and regulate active openings and unusual business situations that may arise in connection with the making of bids, offers or transactions on the Floor. The Committee on Floor Procedure shall have power also to supervise and regulate the operation of (1) ITS or any application of the System during active openings and unusual situations, (2) any linkage described in Rule 39 of this Article (“Linkage Rule”), and (3) trading as described in Rule 40 of this Article, including the authority to resolve market disputes involving the Rules of the Exchange arising between Exchange members and (1) members of another national securities exchange or securities association concerning ITS commitments received on the Exchange Floor, (2) members of a participating exchange (as defined in the Linkage Rules) concerning orders sent to the Floor through a linkage from such participating exchange, and (3) NASDAQ System market makers concerning orders sent to the Floor pursuant to Rule 40 of this Article.


1714 Guaranteed Execution System

RULE 34. The Midwest Stock Exchange Guaranteed Execution System (the BEST System) shall be available to Exchange member firms and, where applicable, to members of a participating exchange who send orders to the Floor through a linkage pursuant to Rule 39 of this Article, in all issues in the specialist system which are traded in the Dual Trading System and NASDAQ/NMS Securities. System orders from 100 up to and including 1099 shares shall be executed pursuant to the following requirements:

© 1987, Commerce Clearing House, Inc.
1. Specialists must accept and guarantee execution on all agency orders other than limit orders in NASDAQ/NMS Securities from 100 up to and including 1099 shares in accordance with this rule.

2. Subject to the requirements of the short sale rule, all agency market orders must be filled on the basis of the best bid disseminated pursuant to SEC Rule 11Ac1-1 on a sell order or the best offer disseminated pursuant to SEC Rule 11Ac1-1 on a buy order.

3. All agency limit orders in Dual Trading System issues will be filled if one of the following conditions occur: (a) the bid or offering at the limit price has been exhausted in the primary market (as defined in the CTA plan) (b) there has been a price penetration of the limit in the primary market, or (c) the issue is trading at the limit price on the primary market unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill.

4. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NMS securities must be accepted and filled at the Exchange opening. In trading halt situations, orders will be executed based on the Exchange reopening price.

5. Simultaneous orders must be executed pursuant to the guidelines set out in 1 and 2 above.

6. Since executions are guaranteed on the basis of the best bid or offering, the order may be executed out of the primary market range for the day but in a Dual Trading System issue a stop must be granted if requested.

7. In unusual trading situations, a Specialist or Floor Broker may seek relief from the requirements of 1 through 6 above from two (2) Committee on Floor Procedure Members or a designated member of the Exchange staff who would have authority to set execution prices.

1715 Semi-Annual Confirmation of Open Orders

Rule 35. All open orders resting in the specialists' books will expire at the end of the semi-annual confirmation period unless reentered with the specialists after the close of business on the last business day of such period. Open orders shall be confirmed semi-annually and the dates on which the confirmation periods end shall be prescribed by the Exchange.

Specialists must remain on the Floor or have a representative thereon as long as necessary after the close of the last business day of each semi-annual confirmation period for the purpose of receiving renewals of open orders.

Open orders properly confirmed in the manner of their original entry, except as to partial execution or reduction in shares, are entitled to retain the same order of precedence on the specialists' books; and the specialists will be responsible for their proper entry. Open orders not so confirmed are automatically canceled. Specialists must inform the originating broker of an order's cancellation prior to the opening of business on the first business day of the new semi-annual confirmation period.

Open orders which have been canceled due to the absence of a proper reentry will be accepted as new orders with priority based on new time of receipt provided they are received no later than one hour after the opening of business on the first business day of the new semi-annual confirmation period.

Adopted Nov. 21, 1977.

1716 Intermarket Trading System

Rule 36. (a) Definitions.

(i) "CTA Plan" means the plan filed with the Securities and Exchange Commission ("SEC") pursuant to SEC Rule 17a-15 (subsequently amended and redesignated as Rule 11Aa3-1), approved by the SEC and declared effective as of May 17, 1974, as from time to time amended.

(ii) "Eligible Listed Security" means any security listed on the Exchange that can be traded through the System.

(iii) "Intermarket Trading System" ("ITS") means the application of the System that permits intra-day trading in Eligible Listed Securities between Participant markets as set forth in the ITS Plan.

(iv) "ITS Plan" means the plan pursuant to which the Exchange, other national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD") (collectively, the "Participants") act jointly in planning, developing and operating the System and its applications, as from time to time amended in accordance with its provisions, and that has been approved by the SEC pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934, as amended, and SEC Rule 11Aa3-2.

(v) "Network A Eligible Security" has the meaning assigned to that term in the CTA Plan.
(vi) "Network B Eligible Security" has the meaning assigned to that term in the CTA Plan.

(vii) "Pre-Opening Application" means the application of the System that permits a market maker in one Participant market who wishes to open his market in an Eligible Listed Security to obtain from other market makers registered in that security in other Participant markets any pre-opening interests such other market makers might decide to disclose as set forth in the ITS Plan.

(viii) "Previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system.

(ix) "System" means the communications network and related equipment that links electronically the Participant markets as described in the ITS Plan.

(b) Provisions of the Plan. By subscribing to and submitting the Plan for filing with the Securities and Exchange Commission, the Exchange has agreed to comply to the best of its ability, and, absent reasonable justification or excuse, to enforce compliance by its members, with the provisions of the Plan. In this connection, the following shall apply:

(1) All transactions effected through ITS shall be on a "regular way" basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which ITS transactions may be compared and settled and which agrees to supply each participating market center with data reasonably requested in order to permit such market center to enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder, and the rules of such market center.

(2) Any "commitment to trade", which is transmitted by a member to another participating market center through ITS, shall be firm and irrevocable for the period of time following transmission as is chosen by the sender of the commitment. All commitments to trade shall, at a minimum:

(i) identify one or more clearing members,

(ii) direct the commitment to a particular participating market center,

(iii) specify the security which is the subject of the commitment,

(iv) designate the commitment as either a commitment to buy or a commitment to sell,

(v) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof,

(vi) specify the price at or below which the security is to be bought or the price at or above which the security is to be sold, or specify that the commitment is a commitment to trade "at the market",

(vii) designate the commitment "short" or "short exempt" whenever it is a commitment to sell which, if it should result in an execution in the market of the receiving market center, would result in a short sale to which the provisions of Rule 10a-1 under the Act would apply.
(viii) specify the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, the longer of the two options available under the Plan shall be assumed by ITS.

(3) Each commitment to trade sent through ITS (other than a commitment to trade "at the market"), if a commitment to buy, shall be priced at the offer price then being displayed from the market center to which the commitment is sent and, if a commitment to sell, shall be priced at the bid price then displayed from such market center.

(i) A "commitment to trade" received on the Floor through ITS shall be treated in the same manner, and entitled to the same privileges, as would an immediate or cancel order that reached the Floor at the same time except as otherwise provided in the Plan and except further that such a commitment may not be "stopped" and the commitment shall remain irrevocable for the time period chosen by the sender of the commitment.

(4) The member or members on the Floor who made the bid or offer which is sought by a commitment to trade received on the Floor through ITS shall accept such commitment to trade up to the amount of the bid or offer if the bid or offer is still available on the Floor when the commitment to trade is received by such member or members, unless acceptance is precluded by the rules of the Exchange. In the event that the bid or offer which is sought by a commitment to trade is no longer available on the Floor when the commitment is received, but a new bid or offer is available on the Floor which would enable the commitment to trade to be executed at a price which is as or more favorable than the price specified in such commitment, then the member or members who has made such new bid or offer shall accept such commitment at the price, and up to the amount of, his bid or offer, unless acceptance is precluded by the rules of the Exchange.

(5) Any member to whom a commitment to trade received through ITS is communicated and who intends to reject that commitment shall notify the market center from which the commitment was sent of such rejection as promptly as possible.

(6) Any commitment to trade received on the Floor through ITS and any execution thereof and any commitment to trade issued by a member through ITS shall be subject to rules as the Exchange may from time to time determine.

Pre-Opening Application

(7) The provisions of subparagraph (1) above shall also be applicable to any transaction effected through the Pre-Opening Application.

(c) Openings on the Exchange.

(i) Notification Requirement—Whenever an Exchange specialist, in arranging an opening transaction on the Exchange in any Eligible Listed Security, anticipates that the opening transaction on the Exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" (as defined below), he shall notify the other Participant markets of the situation by sending a "pre-opening notification" through the System. Thereafter, the specialist shall not open the security in his market until not less than three minutes (four minutes prior to May 1, 1984) after his transmission of the pre-opening notification. The "applicable price changes" are:

Midwest Stock Exchange Guide

Art. XX ¶ 1716

5.23
(ii) Applicability following Regulatory Halts—The procedures for and the provisions of the Pre-Opening Application shall also apply prior to any resumption of trading on the Exchange in any Eligible Listed Security following the initiation of a “Regulatory Halt” by any Participant that is an exchange (as referred to in section X of the CTA Plan) if both trading has been halted in all exchange markets and, when the affected security is also eligible for trading through the interface between the System and the NASD’s Computer Assisted Execution System (“CAES”), the NASD has suspended quotations in the affected security. In such a circumstance, the determination of whether an Exchange specialist must send a pre-opening notification shall be made with reference to the consolidated last sale reporting system that pertains to the last transaction in the affected security prior to the Regulatory Halt. The Pre-Opening Application shall not apply when trading on the Exchange is resumed (A) following the initiation of a Regulatory Halt if either trading has not been halted in all exchange markets or, when the affected security is also eligible for trading through the interface between the System and CAES, the NASD has not suspended quotations in the affected security or (B) following any other type of halt in trading on the Exchange for any other reason.

(iii) Form of Notification—A pre-opening notification shall
(A) be designated as a pre-opening notification (“IND”),
(B) identify the Exchange (“X”), the Exchange specialist and the security (“XYZ”), and
(C) indicate the “applicable price range” by being formatted as a standardized pre-opening administrative message as follows:

IND X/XYZ [RANGE]

The price range shall not exceed the “applicable price range” shown below:

<table>
<thead>
<tr>
<th>Security</th>
<th>Consolidated Closing Price</th>
<th>Applicable Price Change (More Than)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Network A</td>
<td>Under $15</td>
<td>¼ point</td>
</tr>
<tr>
<td>Network A</td>
<td>$15 or over *</td>
<td>½ point</td>
</tr>
<tr>
<td>Network B</td>
<td>Under $5</td>
<td>¾ point</td>
</tr>
<tr>
<td>Network B</td>
<td>$5 or over</td>
<td>¾ point</td>
</tr>
</tbody>
</table>

The price range also shall not straddle the previous day’s consolidated closing price, although it may include it as an endpoint (e.g., a ¼—½ price range would be permissible if the previous day’s consolidated closing price were ½ or ¾, but not if the closing price were ¼, ¾ or ½).

(iv) Decision on Opening Transaction—If an Exchange specialist who has issued a pre-opening notification receives “pre-opening responses” through

*If the previous day’s consolidated closing price of a Network A Eligible Security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the “applicable price change” is one point.

**If the previous day’s consolidated closing price of a Network A Eligible Security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the “applicable price range” is two points.
the System containing "obligations to trade" from market makers in other Participant markets ("responding market makers"), he shall combine those obligations with orders he already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the specialist has received more than one pre-opening response from a Participant market, he shall include in such combination only those obligations to trade from such Participant Market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the specialist has effected his opening transaction shall be to no effect.

(v) Allocation of Imbalances—Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the Exchange specialist may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the specialist shall allocate the remaining imbalance (which may be greater than 50 percent if the specialist elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself to take or supply as principal at the opening price in his pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph (c)(v), multiple responding market makers in the same Eligible Listed Security in the same Participant market shall be deemed to be a single responding market maker.

(vi) Subsequent Notifications—If, after sending a pre-opening notification, the situation in an Exchange specialist’s market changes, he may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the specialist shall wait either (A) one minute or (B) until the balance of the original three-minute waiting period expires (four-minute period prior to May 1, 1984), whichever is longer, before opening his market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the specialist must wait for the rest of the period to pass before opening his market).

(A) Increase or Decrease in Applicable Price Range—Where, prior to the specialist’s opening of his market in the security, his anticipated opening price shifts so that it (1) is outside of the price range specified in his pre-opening notification but (2) still represents a change from the previous day’s consolidated closing price of more than the applicable price change, he shall issue a replacement pre-opening notification (an “additional” notification) before opening his market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.

(B) Shift to within Applicable Price Change Parameter—The specialist shall, by issuing a “cancellation” notification, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which he anticipates opening his market shifts so that it (1) is outside of the price range specified in his pre-opening notification but (2) does not represent a change from the previous day’s consolidated closing price of more than the applicable price change.

(C) Participation as Principal Precluded (“Second Look”)—If a responding market maker who has shown in his pre-opening response interest as

Midwest Stock Exchange Guide

Art. XX ¶ 1716
principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., his responding principal interest is to sell at a price 1/4 or more below the opening price established by paired agency orders), the specialist shall send a "second look" notification notifying such responding market maker of the price and size at which he could participate as principal (i.e., in the parenthetical example above, the total amount of the security that he would have to sell at the 1/4-better price to permit the opening transaction to occur at that price).

(vii) Treatment of Obligations to Trade—In receiving a pre-opening response, an Exchange specialist shall accord to any obligation to trade as agent included in the response the same treatment as he would to an order entrusted to him as agent on the Exchange at the same time such obligation was received.

(viii) Responses Increasing the Imbalance—An Exchange specialist shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

(ix) Reports of Participation—Promptly following the opening in any security as to which an Exchange specialist issued a pre-opening notification, the specialist shall report to each Participant responsible for a market in which one or more responding market makers are located (A) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof or (B) if the responding market maker(s)' response included principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

(x) Tape Indications—If either paragraph (c)(i) or paragraph (c)(ii) requires the Exchange specialist to send a pre-opening notification and the CTA Plan or the Exchange's rules also require that an "indication of interest" be furnished to the consolidated last sale reporting system, then the opening or re-opening indication of interest, if also transmitted through the System in the format of a standardized pre-opening administrative message, shall substitute for and satisfy the requirements of such paragraph. In any such situation, any subsequent indication of interest sent through the System in the format of a standardized pre-opening administrative message concurrently with the furnishing of the indication of interest to the consolidated last sale reporting system shall satisfy the requirements of paragraphs (c)(vi)(A) and (B). For the purposes of paragraphs (c)(iv), (c)(v), (c)(vi)(C) and (c)(vii)—(ix), "pre-opening notification" includes an indication of interest sent through the System in compliance with this paragraph (c)(x).

(d) Openings in Other Participant Markets.

(i) Pre-Opening Responses—Whenever an Exchange specialist who has received a pre-opening notification as provided in the ITS Plan in any Eligible Listed Security as to which he is registered as a specialist wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall

(A) be designated as a pre-opening response ("RES"),

(B) identify the Exchange ("X"), the specialist and the security ("XYZ"), and

(C) show the specialist's interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each
price level within the price-range indicated in the pre-opening notification (e.g., 40½), reflected on a netted share basis by being formatted as a standardized pre-opening administrative message as follows:

RES X/XYZ BUY [SELL] A—P 40½

The response may also show market orders separately. For the purposes of this paragraph (d), "pre-opening notification" includes an "indication of interest" received through the System in compliance with the counterpart to paragraph (c)(x) in another Participant market's rule pertaining to the Pre-Opening Application.

(ii) Revised Responses—An Exchange specialist may cancel or modify his pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in his original response and, if a modification is desired, that substitutes new obligations to trade stating the specialist's aggregate interest (i.e., his interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.

(iii) Sole Means of Pre-Opening Routing—Once a pre-opening notification as to any security is received on the Exchange, the one or more Exchange specialists in such security shall submit any obligations to trade that security as principal for his or their own accounts to the Participant market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for his or their own accounts to such Participant market for participation at the opening in that market by any other means. The foregoing sentence shall have no application to orders sent to that market by the specialist(s) prior to the issuance of a pre-opening notification.

(iv) Use of System before Opening—No Exchange member, whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security from the Exchange through the System to any other Participant market prior to the opening of trading in the security in the Participant market (or prior to the resumption of trading in the security in the Participant market following the initiation of a Regulatory Halt in the security as referred to in section X of the CTA Plan if, as described in paragraph (c)(ii), the Pre-Opening Application applies) until a pre-opening notification in the security has been issued from the other Participant market or, if no pre-opening notification is required, until the market in the security has opened in such other Participant market.

(v) Duration of Obligations to Trade—Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an Exchange specialist includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on him, and on any person for whom he is acting, until the security has opened in the Participant market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such Participant market, and any such modification shall itself be binding on the Exchange specialist until a subsequent cancellation or modification thereof has been received in such Participant market.

2 0 1 - 1 0  Midwest Stock Exchange, Incorporated—Rules 2 1 1 4 - 8

• • • Interpretations and Policies:

.01 No member shall buy against a commitment or obligation to sell designated as "short" which is received on the Floor through ITS or any other Application of the System if the resulting transaction would violate the short selling rules as in effect on the Exchange.

.02 Any purchase or sale against a commitment to trade received on the Floor through ITS shall be effected in accordance with the rules applicable to the making of bids, offers and transactions on the Floor. In addition, the following rules shall be applicable in the case where commitments or obligations to trade are issued (transmitted) from the Floor of the Exchange through ITS or any other Application of the System: Article IX, Rules 3 and 5; Article XX, Rules 3, 25 and 33; Article XXI, Rules 17 and 18; Article XXX, Rules 2 and 10; Article XXXI, Rule 13.


¶ 1717 ITS “Trade-Throughs” and “Locked Markets”

Rule 37. (a) Definitions.

(1) An “Exchange trade-through”, as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase on the Exchange of a security traded through ITS (an “ITS Security”) at a price which is higher than the price at which the security is being offered (or initiates the sale on the Exchange of such a security at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the “member who initiated an Exchange trade-through”.

(2) A “third participating market center trade-through”, as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the “member who initiated a third participating market center trade-through”.

(3) A “trade-through”, as that term is used in this Rule, means either an Exchange trade-through or a third participating market center trade-through.

(4) A “locked market”, as that term is used in this Rule, occurs whenever the Exchange disseminates a bid (offer) for an ITS Security at a price that equals or exceeds (is less than) the price of the offer (bid) for the security then being displayed from another ITS participating market center (the “locked offer (bid)”). This Rule refers to the bid (offer) that causes the locked market as the “locking bid (offer)”.  

(5) As used in this Rule in reference to the Cincinnati Stock Exchange, Inc. (“CSE”), a contra party shall be “within another ITS participating market center” if he is a “User” (which has the meaning assigned to it in CSE Rule 11.9 as in effect on January 26, 1981) participating in the transaction through the CSE’s “National Securities Trading System”.

¶ 1717 Art. XX © 1986, Commerce Clearing House, Inc.
(6) "ITS/CAES Market Maker", as that term is used in this Rule, means a NASD member that is registered as a market maker with the NASD for the purposes of the Applications with respect to one or more specified "ITS/CAES securities" as more fully described in the ITS Plan.

(b) Trade-Throughs.

(1) When purchasing or selling, either as principal or agent, any ITS Security on the Exchange or by issuing a commitment to trade through the System, members on the Exchange should avoid initiating a trade-through unless one or more of the provisions of paragraph (b)(3) below are applicable.

(2) (A) Except as provided in paragraph (b)(3) below, if a trade-through occurs and a complaint thereof is received by the Exchange through the System from the party whose bid or offer was traded-through (the "aggrieved party"), then:

(i) except as provided in paragraph (b)(2)(A)(ii) below, (a) the member who initiated the trade-through shall satisfy, or cause to be satisfied, through the System the bid or offer traded-through in its entirety either at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with paragraph (b)(2)(B) below) or (b) if he elects not to do so (and, in the case of a third participating market center trade-through, he obtains the agreement of the contra party within the ITS participating market center that received the commitment that caused the trade-through), then the price of the transaction that constituted the trade-through shall be corrected to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; or

(ii) in the case of an Exchange trade-through only, if the member who initiated the trade-through and the member on the contra side of the transaction had each originated his side of the transaction while on the Exchange for his own account or for any account in which he has an interest, the transaction shall be deemed void and a cancellation thereof shall be reported through the consolidated last sale reporting system; or

(B) The price at which the bid or offer traded-through shall be satisfied pursuant to clause (a) of paragraph (b)(2)(A)(i) shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of "block size" but did not constitute a "block trade" (as those terms are defined in the Exchange's ITS Block Trade Policy) and (ii) the member who initiated the trade-through did not make every reasonable effort to satisfy, or cause to be satisfied, through the System the bid or offer traded-through at its price and in its entirety within two (2) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system. In the case of such exception, the price at which the bid or offer traded-through shall be satisfied shall be the price that caused the trade-through.

(C) Whenever paragraph (b)(2)(A)(i) applies, if the member who initiated the trade-through, or the member (or the broker-dealer within another ITS participating market center) on the contra side of the transaction was, or if both such parties were, executing (in whole or in part) orders that originated from off their respective floors (or, in the case of a contra party who is a User or an ITS/CAES Market Maker, as to which he acts as agent for another person), each such order or portion thereof that was executed in the transaction that constituted the trade-through (whether such order or portion thereof was executed by the member who initiated the trade-
through or by the member (or the broker-dealer within another ITS participating market center) on the contra side of the transaction) shall receive the price that caused the trade-through, or the price at which the bid or offer trade-through was satisfied, if it was satisfied, pursuant to clause (a) of paragraph (b)(2)(A)(i), or the adjusted price, if there was an adjustment, pursuant to clause (b) of paragraph (b)(2)(A)(i), whichever price is most beneficial to the order or portion. Resulting money differences shall be the liability of the member who initiated the trade-through.

(3) Paragraph (b)(2) above shall not apply under the following conditions:

(A) the size of the bid or offer traded-through was for 100 shares;

(B) the member who initiated the trade-through made every reasonable effort to avoid the trade-through, but was unable to because of a systems/equipment failure or malfunction;

(C) the transaction which constituted the trade-through was not a "regular way" contract;

(D) the trade-through was an Exchange trade-through and occurred during a period when, with respect to the ITS Security which was the subject of the trade-through, members on the Exchange were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; provided, however, that, unless one of the conditions of paragraph (b)(3) of this Rule (other than that of this subparagraph (D)) applies, during any such period members shall make every reasonable effort to avoid trading-through any bid or offer displayed on the Exchange from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1;

(E) the bid or offer traded-through was being displayed from another ITS participating market center whose members were relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1;

(F) the bid or offer traded-through had caused a locked market in the ITS Security which was the subject of such bid or offer;

(G) a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through and, in any event,

(i) in the case of an Exchange trade-through, within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system, or

(ii) in the case of a third participating market center trade-through, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

(c) Responsibilities and Rights following Trade-Through Complaints.

(1) When a trade-through complaint is received by the Exchange, the member who initiated the trade-through shall respond as promptly as prac-
ticable to the aggrieved party. Such a response shall notify the aggrieved party either

(A) that one of the conditions specified in paragraph (b)(3) of this Rule is applicable (specifying the particular condition), or

(B) that the complaint is valid and appropriate corrective action is being taken pursuant to paragraph (b)(2) of this Rule.

(2) If it is ultimately determined that there was a trade-through, that the corrective action required by either paragraph (b)(2)(A)(i) or (b)(2)(A)(ii) above was not taken, and that none of the conditions of paragraph (b)(3) above was applicable, the member who initiated the trade-through shall be liable to the aggrieved party for the lesser of:

(A) the amount of the actual loss proximately caused by the trade-through and suffered by the aggrieved party, and

(B) the loss proximately caused by the trade-through that would have been suffered by the aggrieved party had he purchased or sold the security subject to the trade-through so as to mitigate his loss and had such purchase or sale been effected at the "loss basis price".

For purposes of this paragraph (c)(2), the "loss basis price" shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system, in the security in question after one hour has elapsed from the time the complaint is received by the Exchange (or, if the complaint is so received within the last hour of trading on the Exchange on any day, then the price of the opening transaction in that security on the Exchange on the next day on which the Exchange trades that security).

(3) Any member who is an aggrieved party under the trade-through rule of another ITS participating market center may at any time at his discretion take steps to establish and mitigate any loss he might incur as a result of the trade-through of his bid or offer. If so, he shall give prompt notice to such other market center of any such action.

(4) If a complaint of a purported trade-through is received by the Exchange and the complained-of transaction resulted from a member's execution on the Exchange of a commitment to trade received from another ITS participating market center, the member should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated on the Exchange and (B) of the identity of the ITS participating market center that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the member for any loss associated with the complained-of transaction.

(5) If a transaction that resulted from a member's execution on the Exchange of a commitment to trade constitutes a trade-through under the rules of the originating ITS participating market center, then:

(A) if the broker-dealer on such market center who initiated the transaction requests that the Exchange member correct the price of such transaction in accordance with the counterpart in such market center's trade-through rule to paragraph (b)(2)(A)(ii) of this Rule, the Exchange member may, but need not, acquiesce and so correct the price; and

(B) paragraph (b)(2)(C) of this Rule shall apply as if the Exchange member were a contra party within the meaning of that paragraph.

(d) Locked Markets.

Midwest Stock Exchange Guide
(1)(A) Except as provided in paragraphs (d)(1)(B) and (d)(2) below, if a locked market occurs and the Exchange receives a complaint through the System from the party whose bid (offer) was locked (the "aggrieved party"), the member responsible for the locking offer (bid) (the "locking member") shall, as specified in the complaint, either promptly "ship" (i.e., satisfy through the System the locked bid (offer) up to the size of his locking offer (bid)) or "unlock" (i.e., adjust his locking offer (bid) so as not to cause a locked market). If the complaint specifies "unlock", he may nevertheless ship instead.

(B) If there is an error in a locking bid or offer that relieves the locking member from his obligations under paragraph (c)(2) of Rule 11Ac1-1 and if the Exchange receives a "ship" complaint through the System from the aggrieved party, the locking member shall promptly cause the quotation to be corrected and, except as provided in paragraph (d)(2) below, he shall notify the aggrieved party through the System of the error within two minutes of receipt of the complaint on the Floor. If the locking member fails to so notify the aggrieved party, he shall promptly ship.

(2) Paragraph (d)(1) above shall not apply under the following conditions:

(A) the locked bid or offer was for 100 shares;

(B) the locking bid or offer no longer prevails on the Floor at the time the complaint is received on the Floor;

(C) the rules of the Exchange would prohibit the issuance of a commitment to trade to satisfy the locked bid or offer;

(D) the locking member makes every reasonable effort to comply with paragraph (d)(1) above, but is unable to comply because of a systems/equipment failure or malfunction;

(E) the locking bid or offer was not for a "regular way" contract; or

(F) the locked market occurred at a time when, with respect to the affected ITS Security, members either on the Exchange or in the ITS participating market center in which the aggrieved member is located were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

(e) Opening and Block Trades. This Rule shall not apply to (1) purchases and sales effected by members participating in an opening (or re-opening) transaction on the Exchange in an ITS Security or (2) any "block trade" as defined in the Exchange's ITS Block Trade Policy.


• • • Interpretations and Policies:

.01 Nothing in paragraph (d)(2)(B) above is intended to discourage a locking member from electing to ship if the complaint requests him to do so.

.02 The fact that a transaction may be cancelled or the price thereof may be adjusted pursuant to the provisions of paragraph (b)(2) of this Rule shall not have any retroactive effect, under the rules, on other transactions or the execution of orders not involved in the original transaction.

.03 Specialists are prohibited from utilizing the Auto Quote mode in an ITS Security to disseminate a bid and/or offer size which is greater than 100 shares.

.04 The provisions of this Rule shall supersede the provisions of any other rule which might be construed as being inconsistent with such provisions.

§ 1717 Art. XX © 1986, Commerce Clearing House, Inc.
paragraph (c) (other than that of this subparagraph (4)) applies, members shall nevertheless make every reasonable effort during any such period to satisfy through ITS any better-priced bid or offer displayed on the Exchange from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1;

(5) the better-priced bid or offer was being displayed from an ITS participating market center whose members were relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1; or

(6) the better-priced bid or offer had caused a "locked market", as that term is defined in Exchange Article XX, Rule 37, in the ITS Security that was the subject of the block trade.

(7) A transaction not subject to this Policy may be subject to the trade-through provision of Exchange Article XX, Rule 37. A member who makes a bid or offer on the Exchange otherwise than in connection with a block trade may be subject to the locked markets provisions of Exchange Article XX, Rule 37.


¶ 1718 Liability of Exchange Relating to Operation of ITS

RULE 38. (a) As used in this Rule the term "System Transaction" shall mean any purchase or sale of a security which results from the acceptance of a commitment or obligation to trade received on the Floor through ITS or the Pre-Opening Application or from the acceptance in another market of a commitment or obligation to trade sent from the Floor through ITS or the Pre-Opening Application. Each System Transaction shall be reported on the clearing tape generated by the System at the end of each trading day and such tape shall also identify one or more clearing members who will clear and settle each System Transaction. A member on the Floor who instructs an Exchange employee (referred to in paragraph (b) hereof) to issue or accept a commitment or obligation to trade which results in a System Transaction reported on the clearing tape (the "instructing member") shall also be identified in Exchange records.

(b) For the convenience of members on the Floor, Exchange employees at the ITS Service Center operated by the Exchange will, when requested by such members, if the member's equipment is not operational or other good reason exists, (in the event the requesting member is the specialist in such security) send and receive through the System commitments to trade, pre-opening notifications and responses thereto (hereinafter referred to in this Rule 37 as a "System Transmission"). Requests for transmissions of pre-opening notifications and responses thereto will only be accepted from the specialist or specialist unit in such security. It shall be the responsibility of each member who instructs an Exchange employee regarding a System Transmission or proposed System Transmission to verify the accuracy of such transmissions sent and received and responses thereto, and to keep abreast of the status of such instructions.

(c) The Exchange shall not be liable for any loss resulting from or claimed to have resulted from any System Transmission or purported System Transmission, failure to compare a trade resulting therefrom or other act, error or omission of an Exchange employee sending or receiving a System Transmission for a member pursuant to paragraph (b) of this Rule 37.
(d) Members and their member firms shall be fully responsible for all System Transmissions sent from equipment assigned to them, or sent by their officers, employees or agents, or sent by MSE employees on their behalf and pursuant to their request in accordance with paragraph (b) of this Rule. No member or member firm shall refuse to treat as a compared trade any trade resulting from such a System Transmission, whether or not the member's System Transmission was in error, and any member or member firm which purports to reject responsibility for such a trade shall reimburse the Exchange for all costs and expenses occasioned by the Exchange being required to accept responsibility for clearance and settlement of any such trades.

(e) Whenever a clearing agency to which a System Transaction has been reported excludes such System Transaction from the clearance procedures conducted by such agency, either because such agency ceases to act (either with respect to transactions generally or as to a particular transaction) for a member or member organization, or because of the insolvency of such member or member organization, the Exchange shall not be obligated to assume and honor any one or more or all of such excluded System Transactions for the account of and on behalf of the member or member organization for which the clearing agency ceased to act or which is insolvent and such trade shall be returned to such member or member organization.


§ 1719 Foreign Exchange Linkage Plan

Rule 39. (a) Definitions.

(i) A "Linkage Plan" is any plan or agreement, including any amendments thereto, between the Exchange and a foreign securities exchange implementing an electronic link intended to allow a direct flow of orders between the members of the Exchange and the members of such foreign securities exchange; provided, however, that the Intermarket Trading System Plan shall not be included within the term Linkage Plan.

(ii) The term "participating exchange" means a foreign securities exchange with which the Exchange is linked pursuant to a Linkage Plan.

(b) Quotations and Trading.

(i) In accordance with the provisions of each Linkage Plan, the Exchange will display on its trading floor the quotes distributed by the participating exchange with respect to the securities eligible for trading through such linkage. Such securities shall be the securities specified in, or determined pursuant to, the applicable Linkage Plan.

(ii) In accordance with the provisions of each Linkage Plan, the members of the participating exchange may transmit orders through such linkage.

[The next page is 2101-19.]
for execution on the Exchange. The type or types of orders which may be transmitted through each linkage, as well as any limitations thereon or requirements with respect thereto, shall be as specified in the applicable Linkage Plan. A Linkage Plan may, although it need not, specify that some or all of the orders received by the Exchange through the linkage shall be guaranteed execution up to a minimum amount.

(c) Comparison and Settlement.

Transactions effected through a linkage will be compared, cleared and settled as provided in the relevant Linkage Plan. With respect to transactions effected on the Exchange through a linkage, clearing names acceptable to the Exchange must be given up on each trade.

(d) Compliance with Linkage Plans.

With respect to each transaction effected through a linkage, each member of the Exchange shall be subject to and bound by the provisions of the relevant Linkage Plan as if the same were set forth in these rules.

(e) Other Rules.

Each transaction effected through a linkage shall be subject to (1) the rules of the Exchange applicable to trading on the Exchange, except to the extent such rules are inconsistent with the provisions of this Rule 39 or the relevant Linkage Plan and (2) all applicable federal securities laws.


* * * Interpretations and Policies:

.01 An order designated as "short", which is received on the Floor through a linkage from a participating exchange shall not be executed if the resulting transaction would violate the short selling rules applicable on the Exchange.

.02 Any order received on the Floor through a linkage from a participating exchange shall be effected in accordance with the rules applicable to the making of bids and offers and transactions on the Floor, except where this Rule 39 or the provisions of the applicable Linkage Plan otherwise require. In addition the following rules shall be applicable in the case where orders are sent from the Floor of the Exchange through a linkage to a participating exchange: Article IX, Rules 3, 5 and 6; Article XX, Rules 3 and 25; Article XXI, Rules 17 and 18; Article XXX, Rules 2, 9 and 10; Article XXXI, Rule 13.

.03 Exchange rules concerning members' responsibility in the execution of orders require that where an order is to be executed on the Floor, it must be represented in the Trading Crowd and executed at the post at which the security is traded. These rules apply to members seeking to send orders from the floor of the Exchange through a linkage to a participating exchange, and members are thereby required to make the existence of a bid or offer generally known and represent an order in the Trading Crowd, prior to directing that such order be sent to a participating exchange through a linkage.


§ 1720  Trading in NASDAQ/NMS Securities

RULE 40.  (a) Definitions.

(i) The term "NASDAQ/NMS Security" shall mean any security (1) designated as a national market system security pursuant to the NASD's "National Market System Securities Designation Plan with respect to NASDAQ Securities", filed with and approved by the Securities and Exchange Commission pursuant to SEC Rule 11Aa2-1 under the Exchange Act
and (2) which is either listed on the Exchange pursuant to Article XXVII of these Rules or as to which unlisted trading privileges have been granted pursuant to Section 12(k) of the Exchange Act.

(ii) The term "NASDAQ System" shall mean the NASD's Automated Quotation System.

(b) Quotations and Trading

(i) Each Exchange specialist shall permit each NASDAQ System market maker, acting in its capacity as market maker, direct telephone access to the specialist post in each NASDAQ/NMS Security in which such market maker is registered as a market maker. Such access shall include appropriate procedures to assure the timely response to communications received through telephone access. NASDAQ System market makers may use such telephone access to transmit orders for execution on the Exchange.

Any order received on the Floor via telephone from a NASDAQ System market maker shall be effected in accordance with the rules applicable to the making of bids and offers and transactions on the Floor.

(ii) The Exchange will display on its trading floor the quotes distributed by any NASDAQ System market maker in NASDAQ/NMS Securities. Exchange specialists may send orders from the Floor of the Exchange for execution via telephone to any NASDAQ System market maker in each NASDAQ/NMS Security in which it displays quotations. The following rules shall be applicable to orders sent from the Floor in NASDAQ/NMS Securities to a NASDAQ System market maker: Article IX, Rules 1, 2, 3, 4, 5, 6, 7, and 9; Article XX, Rules 3 and 25; Article XXI, Rules 17 and 18; Article XXX, Rules 2, 5, 9, and 10; and Article XXXI, Rule 13.

(c) Comparison

Comparison of transactions effected with a NASDAQ System market maker via telephone access will be made pursuant to procedures to be established between the NASD and the Exchange.

Added May 12, 1987.

ARTICLE XXI

Exchange of Contracts, Tickets and Comparisons

¶ 1721 Duty to Report Transaction

RULE 1. It shall be the duty of every member to report each of his transactions as promptly as possible.

¶ 1722 Comparison of Transactions

RULE 2. Every clearing member or member organization shall keep his or its office open to a sufficiently late hour to enable other members and member organizations reasonably to complete comparisons each day. Members or member organizations who make transactions on the Floor but clear through other members or member organizations shall be responsible for the maintenance of adequate facilities for the comparison of their transactions.

¶ 1723 Delivery of Tickets to Be Compared

RULE 3. It shall be the duty of the seller to deliver tickets to the Clearing House for the purpose of making comparison of each transaction effected on the Exchange, not later than one hour following the time of execution.

¶ 1721 Art. XXI © 1987, Commerce Clearing House, Inc.
Tickets for all transactions made between 2:00 and 2:30 P.M. shall be delivered to the Clearing House no later than one half hour after the last sale on the primary market tape.

It shall be the duty of the buyer in each transaction to investigate within the second hour following the time of execution, all transactions for which a comparison ticket has not been submitted by the seller. All transactions effected between 2:00 P.M. and 2:30 P.M. must be checked no later than one half hour after the last sale on the primary market tape.

Responsibility for any loss incurred through failure to comply with this rule shall rest solely on the parties failing to conform.

§ 1724 Procedure for Exchange or Comparison
Rule 4. An exchange of tickets or a comparison of transactions shall be made in the manner prescribed by the Rules of the Midwest Securities Trust Company.

§ 1725 Unidentified Comparison Ticket
Rule 5. When a comparison ticket received pertaining to a transaction of which the recipient has no knowledge, it shall be clipped to a "don't know" flag, initialled by the person so declaring, and the comparison ticket so flagged shall be returned immediately to the maker.

§ 1726 Reporting of "Don't Know" Comparison Ticket
Rule 6. When a comparison ticket is flagged in accordance with the preceding rule, the member or member organization which attempted to compare shall not later than one hour after the close of the Exchange report the transaction to the executing broker for investigation. The Floor brokers concerned shall investigate such items immediately.

§ 1727 Duty of Buyer of Bonds
Rule 7. It shall be the duty of the buyer of bonds to investigate before 10:00 A.M. of the business day following the purchase, each transaction which has not been compared by the seller.

§ 1728 Comparison of "Sellers Option," "When Issued" and "When Distributed"
Rule 8. On "seller's option" transactions and on all transactions made "when issued" or "when distributed," comparison on forms approved by the Midwest Securities Trust Company shall be made not later than one hour and a half after the closing of the Exchange.

§ 1729 Give-Ups
Rule 9. An original party to a transaction may give up to the other original party to said transaction, the names of other members or member organizations; but such giving up or the acceptance hereof shall not constitute a substitution of principals. Such give-ups shall be effected either at the time of the transaction or within one hour and a half after the time of the transaction; except that the time limit for effecting give-ups on cleared securities on any day shall be one hour earlier than the time limit on that day for delivering comparison tickets to the Midwest Securities Trust Company.
The member or member organization so given up shall have the same
duty of comparison as original parties; and no original party shall refuse to
compare with a member or member organization given up as provided in
this Rule.

In the event a give-up is not effected within the time limit specified in
this Rule, the transaction shall be compared and cleared by the party who
failed to give up.

§ 1730 Give Up by Specialists and Floor Brokers

Rule 10. When specialists and other Floor brokers give up other names,
members or member organizations receiving such give-ups shall
immediately record such names on their cards or other records.

§ 1731 Failure to Exchange Tickets, Written Contracts
or Effect Comparison

Rule 11. The neglect or failure of a member or member organization to
exchange tickets, to exchange written contracts, or to effect com-
parison shall constitute a default and such defaulted contract may be closed
"under the rule."

§ 1732 "Fail to Deliver" Ticket

Rule 12. If a delivery on a contract has not been made on the due date,
either the buyer or the seller may, while such contract remains
open, send to the other party, in duplicate, a "fail to deliver" confirmation.

When a "fail to deliver" confirmation is sent to a member or member
organization, the party to whom the confirmation is presented shall retain
the original, if it be correct, and promptly return the duplicate stamped and
initialled. If such party has no knowledge thereof, the confirmation shall be
stamped "don't know."

§ 1733 Comparison Does Not Create Contract

Rule 13. No exchange of tickets or comparison or failure to exchange tickets
or to compare, and no notification or acceptance of notification, such
as notification of failure to receive or failure to deliver, shall have the effect
of creating or of cancelling a contract, or of changing the terms thereof, or
of releasing the original parties from liability.

§ 1734 Long Sales

Rule 14. For the purpose of effecting delivery within the time period re-
quired under regular settlement procedures, any sale of a security
for a customer which is designated as a "long" sale may be effected only if:

(a) The customer is "long," in good deliverable form, the security to be
sold on the books of the selling member organization, or

(b) The selling member organization notes on the order ticket that

1. It has received from the customer assurance that the security to
be sold is placed or deposited, in good deliverable form, in such a manner
as to be obtainable only by the customer by physical means other than
the giving of instructions, and that the customer may be bought in with
respect to the security within a time period which is reasonable in view
of the circumstances, or

© 1979, Commerce Clearing House, Inc.
2. Such security is on deposition, in good deliverable form, with a member of a registered securities exchange, a member of the NASD, any broker-dealer registered with the Securities and Exchange Commission or any organization subject to state or federal banking regulations and that instructions have been or are being forwarded to such depository to deliver such security against payment, or

(c) The selling firm has available such security to lend to or has arranged to borrow such security for the customer; or

(d) The customer presents to the selling member organization, with proper instructions, a security convertible into or exchangeable for, or an option, warrant or right which entitles him to purchase, together with the necessary funds, prior to settlement date, the security to be sold.

\[\text{Mandatory Stock Borrowing}\]

RULE 15. (a) A contract in securities admitted to dealing on the Exchange which has not been fulfilled in accordance with its terms for a period of twenty-seven calendar days (or the first business day thereafter) after the due date for delivery shall be closed by the Exchange under the following procedure:

1. The Midwest Securities Trust Company ("Company"), acting as agent for the selling member organization ("seller"), will attempt to borrow the securities for delivery against payment to the buying member organization ("firm");

2. Company will attempt to borrow securities at the most favorable loan price, but will not be liable for having contracted a loan at other than the lowest loan charge available;

3. The loan charge made by the lending organization will be charged to the seller's account by Company;

4. All deliveries of securities by a seller in repayment of a loan initiated by Company must be directed to Company;

5. In the event that Company is unable to borrow securities through regular channels within three business days after initiating borrowing action, Company shall so notify the seller, the buying firm and the Exchange. Upon receipt of such notice from Company, it will be the responsibility of the seller to close the contract on a (1) cash, (2) guaranteed delivery, or (3) regular-way basis. This means the seller, if unable to borrow in order to effect settlement, shall attempt to buy the securities for cash and, if such securities are not then available at a fair market price, seller shall buy in for guaranteed or regular-way delivery.

6. In exceptional circumstances, the Exchange may excuse the seller from the time limits imposed by this Rule.

(b) Nothing in this Rule shall alter or detract from the rights and duties of member organizations to close contracts "under the rule" under Article IX of these Rules or the related Rules of Company.

\[\text{Order of Midwest Securities Trust Company Binding}\]

RULE 16. Orders issued by Midwest Securities Trust Company ("Company") for the receipt or delivery of securities are binding upon and enforceable against all members and member organizations for whom Company acts.
Transactions for Personal Interest Accounts

**Rule 17.** No member, partner of a member firm, or officer or director of a member corporation, while on the Floor, shall, without the prior approval of a member of the Committee on Floor Procedure, initiate the purchase or sale on the Exchange of any stock for any account in which he or his member firm or any partner of such firm, or his member corporation or any officer or director of such corporation is directly or indirectly interested with any person other than such member firm or a partner thereof or such member corporation or an officer or director thereof. This Rule shall not apply to any purchase or sale (1) for any joint account maintained solely for effecting bona fide domestic or foreign arbitrage transactions; or (2) by an odd-lot dealer or a specialist for any joint account in which he is expressly permitted to have an interest or participation by the Rules.

- - - Interpretations and Policies:

.01 A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.


Dealing in Stocks on Put, Call, Straddle or Option

**Rule 18.** No member, partner in a member firm or officer or director of a member corporation while on the Floor, shall initiate the purchase or sale on the Exchange for his own account or for any account in which he, his member firm or any partner thereof or his member corporation or any officer or director thereof is, directly or indirectly interested, of any stock in which he holds or has granted any put, call, straddle or option, or in which he has knowledge that his member firm or any partner thereof or his member corporation or any officer or director thereof, holds or has granted any put, call, straddle or option; provided, however, that the preceding prohibition shall not be applicable in respect of any option issued by the Options Clearing Corporation that was acquired or granted in a publicly reported transaction. Each person able to initiate the purchase or sale of any stock while on the Floor shall report to the Exchange, in such form and at such times as the Exchange requires, all options that he holds or has granted, or that his member firm or any partner thereof, or his member corporation or any officer or director thereof, holds or has granted.


- - - Interpretations and Policies:

.01 A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a
consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.


§ 1739  Floor Trading for Own Account

RULE 19. (a) No member, partner in a member firm or officer or director of member corporation, while on the Floor, shall effect a transaction for his own account, or an account in which he has an interest, in a security solely listed on the Exchange, unless he acts as the specialist, co-specialist, relief specialist or odd-lot dealer, or he has been duly registered as a "Floor Trader," for the privilege of effecting transactions as principal, and had at the time of application for the privilege a liquid net worth of not less than $10,000 and is in compliance with Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder.

Provisions for Floor Trading

(b) All trading by a Floor Trader under this privilege shall conform to the following provisions:

1. bids or offers shall yield priority, parity and precedence to orders originating off the floor other than off floor orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder.

2. bids or offers in the same issue shall not be made subsequent to his execution of an agency order during the remainder of the same trading session.

3. any agency order or orders in the same issue received during a single trading session following a purchase or sale for the Floor Trader's own account shall be relinquished to another Floor member.

4. 75% of such transactions executed by a Floor Trader in any one month, shall be of a stabilizing nature, i.e., purchases shall be at prices lower than the last different-price transaction on the Exchange and sales shall be at prices higher than the last different-price transaction except where the sale involves a loss.

5. monthly reports shall be filed with the Exchange as to transactions effected under this Rule in such form as the Exchange may prescribe.

(c) Members, while acting as Registered Floor Traders on the Floor of the Exchange, shall not congregate in a particular stock and dominate the market in that stock; and shall effect purchases and sales in an orderly manner. They shall not be conspicuous in the market. The Chairman of the Committee on Floor Procedure, and in his absence, any Committee man shall approve or disapprove the presence of Registered Floor Traders as to their numbers and trading activities.

Amended March 30, 1979.

ARTICLE XXII

Settlement of Exchange Contracts

§ 1751  Exchange Contracts Extended or Postponed

RULE 1. Anything contained in the Rules to the contrary notwithstanding, (1) the Board of Governors may extend or postpone the time for the performance of Exchange Contracts whenever, in its opinion, such action is necessary to effect a fair settlement of the contracts.
called for by the public interest or by just and equitable principles of trade, or to meet unusual conditions; and (2) unless otherwise directed by the Exchange, all contracts which would otherwise be due on any day on which deliveries are suspended under clause (1) shall be due and settled on the next day on which deliveries are resumed and all other contracts due for settlement after any day on which deliveries are so suspended shall be settled on the original due dates of such contracts.

§ 1752  Delivery Time of Securities

RULE 2. Deliveries of securities on a full business day, except as provided in Rule 3 of this Article, shall be due before 12:00 Noon unless the Midwest Securities Trust Company shall advance or extend the time within which securities deliverable through it may be delivered, in which event the time within which other securities may be delivered shall thereby be similarly advanced or extended.

§ 1753  Delivery on Cash Contracts

RULE 3. Deliveries against transactions made for "cash" at or before 12:00 Noon on a full business day shall be due before 12:15 P.M. Deliveries against transactions made for "cash" after 12:00 Noon on a full business day shall be due within 30 minutes after the time of the transaction.

§ 1754  Contracts Due on Saturday or Holiday

RULE 4. All contracts which otherwise fall due on a Saturday or a holiday, shall mature on the succeeding full business day, unless otherwise agreed. The Exchange may, however, in any specific case direct otherwise.

§ 1755  Deliveries on "Seller's Option"

RULE 5. When securities have been sold "seller's option" deliveries shall be due on the day of the expiration of the option (unless such day is a holiday or Saturday, when the preceding Rule shall apply) but may be made at the option of the seller on any full business day prior thereto upon one day's written notice. Such notice shall be given by the seller before 4:00 P.M. on a full business day and may not be given until the day when delivery would have been due if the contract had been made "regular way".

When securities have been sold "regular way delayed delivery", delivery may be made at the option of the seller on any full business day prior to the day the contract is due, without advance notice, except that such delivery shall not be made before the fourth full business day following the day of the contract. A notice given pursuant to the provisions of this Rule shall be considered as in full force until delivery is made.

§ 1756  Failure to Deliver

RULE 6. If securities due on any particular day are not delivered within the time hereinabove specified, the contract may be closed "under the rule". If not so closed, and in the absence of any notice or agreement, the contract shall continue without interest until the following business day; but in every case of non-delivery of securities, the party in default shall be liable for any damages which may accrue thereby. All claims for such damages shall be made promptly.

¶ 1752  Art. XXXII  © 1979, Commerce Clearing House, Inc.
Interpretations and Policies:

With respect to the above Rule, the Executive Committee has established the following interpretation and policy in connection with claims for damages resulting from the inability of a member to make a tender offer or subscription date because of a fail to receive:

Any firm with an open contract, where the intention is to tender the purchased stock, should maintain close supervision of its open item; and, where it becomes probable that delivery may not be made in time to meet the tender date, action should be taken by the buying firm.

A recommended procedure is the use of a "Letter of Protection." Under this procedure, the buyer would contact the selling firm and request delivery sufficiently in advance of the tender date to be in a position to tender stock or to effect a buy-in. The buying firm may be satisfied by receiving the certificate numbers, in advance of delivery, for protection in transmitting these certificate numbers to the tender agent, assuming that the tender agent will permit this practice. Firms must be careful that the certificates actually delivered correspond to the numbers given earlier; otherwise the tender agent may reject the delivery. The buying firm may be willing to accept a commitment from the failing firm rather than take any other action; if so, the buyer would request at this point a "Letter of Protection" from the seller which would state, in effect, that it would deliver the equivalent of the tendered stock in the future. This requires the buying firm to state, in advance of the tender cut-off date, his intention regarding the tender.

If the seller neglects to afford protection to the buyer's satisfaction, the buyer should utilize the provisions of Rule 4, Article IX for closing the contract. If the stock cannot be bought in, or if the "Letter of Protection" procedure is followed but no ultimate settlement is made, claims under the rule should be made within several business days of the exchange date, or the date that promised settlement was not effected.

In reviewing claims under the rule, the Exchange will depend to a great extent on the documentation of the effort made by the buying firm to obtain delivery. It also should be understood that, in order to be valid, a claim should be made promptly relative to the circumstances involved.

Rule 7. The receiver of shares of stock shall have the option of requiring the delivery to be made either in securities therefor or by transfer thereof; except that in cases where personal liability attaches to ownership, the seller shall have the right to make delivery by transfer.

If the receipt or delivery is made through the Midwest Clearing Corporation/Midwest Securities Trust Company the right to require receipt or delivery by transfer shall be exercised only as prescribed in the Rules of the Midwest Clearing Corporation/Midwest Securities Trust Company.

The right to require receipt or delivery by transfer shall not obtain while the transfer books are closed.

Rule 8. If the transfer of securities entails any expense (such as transfer fees, additional taxes, etc.) which is not ordinarily payable on a sale of such securities, the expense shall be borne by the party at whose instance the transfer is made.

Midwest Stock Exchange Guide

Art. XXII 1758
If delivery is made during the closing of the transfer books with an assignment executed as hereinafter provided, the expense of making transfer shall be borne by the party who first delivered the security during the closing of the transfer books.

The Exchange may in any particular case direct otherwise.

§ 1759 Payment on Delivery

RULE 9. In all deliveries of securities, the party delivering shall have the right to require the purchase money to be paid upon delivery. If delivery is made by transfer, payment may be required at the time and place of transfer; provided, however, that payment on deliveries through the Midwest Clearing Corporation/Midwest Securities Trust Company shall be in conformity with its Rules.

§ 1760 Deduction of Damages for Non-delivery Prohibited

RULE 10. Parties receiving securities shall not deduct from the purchase price any damages claimed for non-delivery, except with the consent of the party delivering the same.

§ 1761 Stock Certificates

RULE 11. Unless otherwise agreed, stock certificates delivered in settlement of contracts in stock in which the unit of trading is 100 shares shall be for the exact amount of the trading unit, for smaller amounts aggregating the trading unit, or for any multiple of the trading unit.

Unless otherwise agreed, stock certificates delivered in settlement of contracts in stocks in which the unit of trading is less than 100 shares shall be for the exact amount of stock sold or for smaller amounts aggregating the amount sold.

Unless otherwise agreed, stock certificates delivered in settlement of contracts in stocks for less than the unit of trading shall be for the exact amount of stock sold or for smaller amounts aggregating the amount sold.

§ 1762 Delivery of Coupon Bonds

RULE 12. Unless otherwise agreed, coupon bonds shall be delivered in denominations of $1,000 or $500 each.

§ 1763 Delivery of Registered Bonds

RULE 13. Unless otherwise agreed, registered bonds shall be delivered in denominations of not less than $500 and not more than $10,000.

§ 1764 Buyer's Option to Accept

RULE 14. The buyer shall accept any portion of a lot of securities contracted for or due on a security balance if tendered in lots of one trading unit or multiples thereof, and may buy in the undelivered portion; but on sales made "seller's option" or "regular way delayed delivery", the buyer shall not be required to accept, before the date of the expiration of the option, a portion of a lot of securities contracted for.

§ 1759 Art. XXII © 1977, Commerce Clearing House, Inc.
§ 1765  "Part-Paid" Securities

RULE 15. Securities which have been partly paid for on subscription shall be described as "part-paid" securities.

The settlement price of contracts in part-paid securities shall be determined by deducting from the contract price the unpaid portion of the subscription price.

§ 1766  Delivery of Securities Subject to Tax on Transfer or Sale

RULE 16. Each delivery of securities subject to tax on transfer or sale must be accompanied by a sales ticket stamped in accordance with the laws of the United States or the securities themselves must be so stamped, except that in the case of securities cleared by or delivered by the Midwest Clearing Corporation/Midwest Securities Trust Company, sales tickets or securities so stamped shall be delivered in accordance with its Rules.

§ 1767  Accompaniment of Proper Assignment

RULE 17. A certificate of stock, a registered bond, or other registered security shall be accompanied by a proper assignment, executed either on the certificate itself or on a separate paper, in which latter case there shall be a separate assignment for each certificate or bond. There may be more than one certificate accompanying each assignment if all certificates as of the same issue have the identical registration and prior notice of delivery has been received in accordance with the policies of the Exchange.

§ 1768  Provision for Appointment of Attorney

RULE 18. A separate assignment shall contain provision for the irrevocable appointment of an attorney, with power of substitution and a full description of the security, and shall be in the form approved by the Midwest Clearing Corporation/Midwest Securities Trust Company. The number of shares of stock or the principal amount of the bond shall be expressed in both words and numerals.

§ 1769  Power of Substitution by Individual, Firm or Corporation Member

RULE 19. When the name of an individual, firm or corporation has been inserted in an assignment, as attorney, a power of substitution shall be executed in blank by such individual, firm or corporation.

When the name of an individual, firm or corporation has been inserted in a power of substitution, as substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

§ 1770  Explanation of Alteration or Correction in Assignment

RULE 20. Any alteration or correction in an assignment, power of substitution, or other instrument shall be accompanied by an explanation on the original instrument signed by the person, firm or corporation executing the same.
§ 1771 Signature to Assignment or Power of Substitution

RULE 21. The signature to an assignment or power of substitution shall be technically correct; i.e., it shall correspond with the name as written upon the certificate in every particular without alteration or enlargement, or any change whatever, except that “and” or “&”, “Company” or “Co.” may be written either way. Machine imprinted facsimile signatures may be used as provided in the Rules.

§ 1772 Member Shall Be Able to Mechanically Reproduce Facsimile Signature to Assign Securities and Execute Powers of Substitution

RULE 22. A member or member firm may assign securities registered in the name of such member or member firm, and may execute powers of substitution, by means of a mechanically reproduced facsimile signature, provided the member or member firm shall have executed and filed with the Exchange, in the form prescribed by it, an agreement with respect to the use of such facsimile signature and shall have complied with such other requirements as may be prescribed by the Exchange in connection with the use of facsimile signatures.

§ 1773 When Member Corporation May Assign Securities and Execute Substitution by Facsimile Signature

RULE 23. A member corporation may assign securities registered in the name of such member corporation and may execute powers of substitution, by means of a mechanically reproduced facsimile signature of an officer of such member corporation, provided the member corporation shall have (1) executed and filed with the Exchange, in the form prescribed by it, an agreement with respect to the use of such facsimile signature, (2) filed with the Exchange, in the form prescribed by it, a certified copy of resolutions of the Board of Directors of such member corporation authorizing the execution and filing with the Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the Exchange in connection with the use of facsimile signatures.

§ 1774 Facsimile Signature of Stock Clearing Corporation and Nominee

RULE 24. Stock Clearing Corporation and any nominee of Stock Clearing Corporation may each assign and execute powers of substitution for any security registered in their respective names or with respect to which they have, respectively, been appointed attorney, by means of a mechanically reproduced facsimile signature, provided Stock Clearing Corporation shall have (1) executed and filed with the Exchange, in the form prescribed by it, an agreement with respect to the use of each such facsimile signature, (2) filed with the Exchange, in the form prescribed by it, a certified copy of resolutions of the Board of Directors of Stock Clearing Corporation authorizing the execution and filing with the Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the Exchange in connection with the use of facsimile signatures.
RULE 25. A certificate in the name of a corporation or institution or in a name with official designation shall be a delivery only if the statement "proper papers for transfer filed by assignor" is placed on the assignment and signed by the transfer agent.

A separate assignment or a power of substitution in the name of a corporation or an institution, or in a name with official designation, in order to effect a delivery of the certificate accompanying such separate assignment or power of substitution, must likewise be so endorsed in order to be a delivery.

RULE 26. A certificate shall not be a delivery except as noted under (a), (b) or (c) below with an assignment or power of substitution executed by a: (1) person since deceased; (2) trustee or trustees, except trustees acting in the capacity of a board of directors of a corporation or association in which case the applicable delivery rule shall apply; (3) guardian; (4) infant; (5) executor; (6) administrator; (7) receiver in bankruptcy; (8) agent; or (9) attorney, except as provided in Rule 26 of Article VI.

Exceptions:
(a) Domestic individual executor/s or administrator/s.
(b) Domestic individual trustee/s under inter vivos or testamentary trusts.
(c) Domestic guardian/s, including committees, conservators and curators.

Interpretations and Policies:
.10 "Exceptions—Domestic"—the above exceptions to the Rule are to cover transfers that will be effected by transfer agents without additional documentation. Such exceptions apply only to securities of a domestic issuer (one organized under the laws of any state of the United States and the District of Columbia), which bear the above domestic registrations set forth in (a), (b) and (c). Certificates bearing such registrations must be properly assigned and the signature(s) to the assignment must be guaranteed, pursuant to Rule 33 of Article VI.

RULE 27. A member or member organization may authorize one or more persons who are either his or its employees or who are officers or employees of the Stock Clearing Corporation or who are officers or employees of the Service Corporation, to assign registered securities in the name of such member or member organization and to guarantee assignments with the same effect as if the name of such member or member organization had been signed under like circumstances by such member or by one of the partners of the member firm or by one of the authorized officers of the member corporation by executing and filing with the Exchange, in a form prescribed by it, a separate Power of Attorney for each person so authorized.
§ 1778  Certificate Executed by Insolvent

Rule 28. A certificate with an assignment or power of substitution executed by an insolvent shall be a delivery only during the closing of the transfer books, during which time such a certificate shall be a delivery only if held by others than the insolvent and if it is accompanied by an affidavit that the said certificate was so held on a date prior to the insolvency and the signature to the assignment or power of substitution is guaranteed as hereinabove provided.

§ 1779  Certificate Executed by Partnership or Corporation

Rule 29. A certificate with an assignment or power of substitution executed by a partnership or corporation that has ceased to exist shall be a delivery only during the closing of the transfer books, provided the execution of the assignment or power of substitution is properly acknowledged and the signature thereto is guaranteed as hereinabove provided.

§ 1780  Certificate Dissolved and Succeeded by Partnership or Corporation

Rule 30. A certificate with an assignment or a power of substitution executed by a partnership or a corporation that has since dissolved and is succeeded by a partnership or corporation having, as the case may be, as general partners, one or more of the general partners of the dissolved firm, or as officers one or more of the officers of the dissolved corporation, shall be a delivery only if the new firm or corporation shall have signed the statement “execution guaranteed” as of the date of or a date subsequent to the formation of the new firm or the incorporation of a new corporation so signing.

§ 1781  Certificate Executed by Firm or Corporation Which Changed Name

Rule 31. A certificate with an assignment or power of substitution executed by a firm or corporation the name of which has since been changed, shall be a delivery only if the firm or corporation shall have signed the statement “execution guaranteed” as of the date of or a date subsequent to the change in name.

§ 1782  Certificate with Qualification

Rule 32. A certificate with an inscription to indicate a qualification, restriction or special designation, shall not be a delivery.

A certificate with an inscription to indicate tenancy in common shall be a delivery only if signed by all co-tenants.

§ 1783  Certificate Executed in Names of Two or More

Rule 33. A certificate executed in the names of two or more individuals or firms shall be a delivery only if signed by all of the registered owners.

§ 1784  Signature Not in Name of Member

Rule 34. The signature to an assignment of a certificate not in the name of a member or member organization or Stock Clearing Corporation or a nominee of Stock Clearing Corporation shall be guaranteed by a member or
d. In the event unusual circumstances exist, the Committee on Floor Procedure will rule as to the disposition of liability notwithstanding the lapsing of any of the above stated time periods.

Amended July 11, 1980; April 15, 1983.

**Interpretations and Policies:**

.01 Notwithstanding Rule 15(a) above and subject to any applicable ITS rules, a specialist shall assume full responsibility from trade date (T) up to the opening of business on the next business day (T+1), for erroneous comparisons reflected on ITS reports provided to a floor broker. Commencing with the opening of business on T+1 and continuing through settlement date, responsibility for erroneous comparisons will be shared between the floor broker and the specialist, with the floor broker assuming 3/4 and the specialist assuming 1/4 respectively. The foregoing allocation of responsibility shall exist only where the specialist has attached a copy of the ITS confirmation to the order when reported on trade date. Where the ITS confirmation is not attached to the order, the specialist shall remain fully responsible for the erroneous comparison. The specialist shall, however, continue to have no responsibility for erroneous comparisons presented after settlement date. Notwithstanding the foregoing, where the Exchange determines unusual circumstances exist in respect to an erroneous comparison, subsection (d) of Rule 15 of this Article shall govern.


† 1936  
**Surprise Audit on Any Issue**

**Rule 16.** The Exchange may conduct a surprise audit of a specialist's position in any issue.

† 1937  
**Surprise Audits on Listed Issues**

**Rule 17(a).** The Exchange four times annually shall conduct a surprise audit of specialists' positions in issues listed solely on the Exchange.

† 1938  
**Unusual Activity**

**Rule 17(b).** The Exchange, at any time it regards the activity in any issue that is listed solely on the Exchange to be unusual, may require members to answer a questionnaire regarding such activity.

† 1939  
**Survey of Executions in Dual System Issues**

**Rule 18.** Four times annually the Exchange shall conduct a surprise survey of round-lot and odd-lot executions in dual system issues.

† 1940  
**Bidding on Issues for Self-Interest Accounts**

**Rule 19.** Without the prior approval of at least two members of the Committee on Floor Procedure, no specialist shall make a bid in any issue that is listed solely on the Exchange for any account in which he has an interest at a price higher than the last price at which such issue sold.

† 1941  
**Specialist May Not Be Officer of Issuing Corporation**

**Rule 20.** No member on the Floor of the Exchange, who acts as a Specialist or Co-Specialist shall (a) be an officer or director of a corporation in whose issue he is so registered; or (b) accept any orders in an issue in which he deals.
which he is so registered directly from an officer, director or controlling stockholder of such corporation.

1 1942 Reports on Business with the Public

RULE 21. Member organizations which are registered as Specialists and do business with the public shall file such reports of transactions with customers in issues in which they are so registered as the Exchange shall require.

1 1943 Stop Orders

RULE 22. A specialist must not initiate a transaction for his own account in a stock in which he is registered that would result in putting into effect any stop order he may have on his book. However, a specialist may be party to the election of a stop order only when his bid or offer made with the approval of a Floor Official has the effect of bettering the market and when he guarantees that the stop order will be executed at the same price as the electing sale.


ARTICLE XXXI

Odd Lots and Odd-Lot Dealers, Dual System

1 1951 Floor Procedure Committee Determines Lots

RULE 1. The Committee on Floor Procedure may designate any number of shares as a full lot in any issue of stock admitted to trading on the Exchange. The Committee on Floor Procedure may also designate which dually traded issues shall be subject to optional trading. The full lot in an issue subject to optional trading shall conform to the full lot designated in the primary market, unless otherwise determined by the Committee on Floor Procedure.


1 1952 Definition of Odd Lot

RULE 2. An odd lot in any particular issue of stock is any number of shares less than a full lot.

1 1953 Odd-Lot Dealer

RULE 3. An odd-lot dealer is a member or member organization who has been appointed by the Exchange to deal in less than full lots. An odd-lot dealer may, subject to the approval of the Exchange, select his or its odd-lot agents. The odd-lot dealer shall be responsible for the acts, errors and omissions of his or its odd-lot agents.

1 1954 Odd-Lot Agent or Broker

RULE 4. An odd-lot agent is a member representing an odd-lot dealer on the Floor of the Exchange. He may be also sometimes called an odd-lot broker.

© 1988, Commerce Clearing House, Inc.
Odd-Lot Dealer Registration

Rule 5. No member or member organization shall act as an odd-lot dealer in any security unless such member or member organization is registered as an odd-lot dealer in such security. Before a member or member organization registered thereon shall be registered as an odd-lot dealer, application shall be made in writing to the Exchange, naming the stock or stocks in which it is proposed to act as such odd-lot dealer and containing an agreement to be bound by all the Rules now or hereafter adopted with respect to odd-lot dealers and odd-lot trading. Upon receipt of such application, the President shall make such examination of the applicant's qualifications as he shall deem necessary and shall render a report to the Committee on Specialist Assignment and Evaluation. The Committee on Specialist Assignment and Evaluation shall consider the applicant's financial responsibility, experience and demonstrated ability. The Board of Governors may, in its discretion, prescribe minimum capital requirements for odd-lot dealers. After consideration of the application on the basis of the foregoing standards, the Committee on Specialist Assignment and Evaluation shall either approve or disapprove the application.


Interpretations and Policies:

01. Notwithstanding the foregoing, any member or member organization registered as a specialist in any NASDAQ/NMS Security shall automatically be registered as the Odd-Lot Dealer in such security.


Dealer Required to Purchase All Odd Lots Offered

Rule 6. In any security in which he or it is registered as such, an odd-lot dealer shall be required to purchase all odd lots offered to him or it by any member or member organization of the Exchange and he or it shall be required to sell to any member or member organization of the Exchange any odd lots bid for by such member or member organization.

Amended Feb. 1, 1978; June 1, 1979.

Short Sale of Stock on Odd-Lot Basis

Rule 7. No member or member organization or partner, officer or director thereof shall effect on the Exchange any short sale of a stock on an odd-lot basis unless such sale is based upon a sale of a full lot, the price of which (1) is higher than the price of the last "regular way" sale of a full-lot on the Exchange of such stock, or (2) is the same as the price of such last sale and such price was higher than the last different price of a "regular way" sale of a full lot on the Exchange of such stock. The provisions of this Rule shall not apply to any sale by an odd-lot dealer in a stock in which he is registered as such.

1959 Combining of Orders to Buy or Sell Lots of Same Stock

Rule 8. No member or member organization or partner, officer or director thereof shall combine the orders given by several different customers to buy or sell odd lots of the same stock, into an order for one or more full-lot units without the prior approval of the customers interested.

When a person gives, either for his own account or for various accounts in which he has an actual monetary interest, buy or sell odd-lot orders which aggregate 100 shares or more, such orders shall, as far as possible, be consolidated into full-lot units, except that selling orders marked "long" need not be so consolidated with selling orders marked "short."

1960 Execution of Odd Lot Orders

Rule 9. (a) MSE Exclusive Issues. Odd-lot market orders in MSE exclusive issues will be executed at the best bid or ask price of a full lot in effect at the time the order is presented.

(b) Dually Traded Issues. As to NASDAQ/NMS Securities and to certain stocks dually traded on this Exchange and on another national securities exchange and which stocks have been designated as being in the dual trading system, market orders will be accepted for execution as an odd lot based on the best bid disseminated pursuant to SEC Rule 11Acl-1 on a sell order or the best offer disseminated pursuant to SEC Rule 11Acl-1 on a buy order in effect at the time the order is presented at the specialist post, provided the order is for a number of shares less than the full lot in said stock.

(i) An odd lot as part of an order involving a full lot, shall be filled on the basis of the full lot price whether such full lot is executed on the MSE or on another exchange; in such case the order shall be marked "on sale".

(ii) Odd-lot market orders which are entered during trading halt situations will be executed based on the reopening price in the primary exchange market.

(c) General. An odd lot market order shall be executed at the proper full lot bid or ask price.

(i) Stop orders to buy shall become market orders when a full-lot transaction takes place at or above the stop price. The order shall be filled at the price of the next transaction.

(ii) Stop orders to sell shall become market orders when a full-lot transaction takes place at or below the stop price. The order shall be filled at the price of the next transaction.

(iii) Odd-lot transactions shall not be made on "seller" or "cash" trades.

(iv) Buy Limit Orders. Buy limit orders shall be executed at the limit price only after there has been a full lot transaction in the primary market at a price below the limit price.
(v) Sell Limit Orders, Marked "Long". Sell limit orders marked "long" shall be executed at the limit price, only after there has been a full lot transaction in the primary market at a price above the limit price.

¶ 1961 Orders to Odd-Lot Dealers
RULE 10. All orders given to odd-lot dealers must be in writing and time stamped when received on the Floor.

¶ 1962 Supervision of All Transactions of Odd-Lot Dealers
RULE 11. All business and transactions of odd-lot dealers shall be subject to the scrutiny and supervision of the Board of Governors, or any committee designated by it, or of the Chairman or any officer designated by him. The records of odd-lot dealers will be examined not less than four times annually to determine compliance with the Rules governing the execution of odd-lot orders.
Amended Feb. 29, 1980.

¶ 1963 Odd-Lot Dealer Joint Accounts
RULE 12. No odd-lot dealer shall, directly or indirectly, acquire or hold any interest or participation in any joint account for buying or selling on the Exchange, or through ITS or any other Application of the System, any security in which such odd-lot dealer is registered, except a joint account with a member, a general partner in a member firm or an officer or director of a member corporation, or with a member firm or member corporation.

¶ 1964 Odd-Lot Dealer Put, Call, Straddle or Option
RULE 13. No odd-lot dealer, and no firm or corporation of which such odd-lot dealer is a partner, officer or director of such corporation shall acquire, hold, or grant, directly or indirectly, any interest in any option in any stock in which such odd-lot dealer is registered; provided, however, that the preceding prohibition shall not be applicable in respect of any option issued by the Options Clearing Corporation that was acquired or granted in a publicly reported transaction. Each odd-lot dealer able to initiate the purchase or sale of any stock while on the Floor shall report to the Exchange, in such form and at such times as the Exchange requires, all options that he holds or has granted, or that his member firm or any partner thereof, or his member corporation or any officer or director thereof, holds or has granted.

¶ 1965 Termination of Registration
RULE 14. Whenever it shall appear or be called to the attention of any member of the Committee on Floor Procedure or the Chairman that an odd-lot dealer is violating any of the Rules of the Exchange or the federal securities laws or is conducting business as an odd-lot dealer in an unethical manner, the member of the Committee on Floor Procedure or the Chairman shall, without the necessity of previous notice, suspend the registration of such odd-lot dealer pending an opportunity for a prompt hearing on the apparent violation in accordance with Article XII of the Rules of the Exchange. Notwithstanding the opportunity for hearing, upon imposition of the summary suspension of registration, the Exchange shall provide notification thereof to
the Securities and Exchange Commission (the “Commission”). At the same
time, the affected odd-lot dealer may immediately file a request with the Com-
mission for a stay of imposition of the suspension of registration in accord-
ance with such procedures as the Commission may provide.

In connection with its responsibilities to monitor and evaluate the per-
formance of registered odd-lot dealers, the Committee on Specialist Assign-
ment and Evaluation may suspend or terminate any such registration based
upon a finding after an opportunity for a hearing in accordance with Article
XVII that the particular odd-lot dealer has not satisfactorily performed his
responsibilities as defined in the federal securities laws and the rules and poli-
cies of the Exchange.


Execution Time

RULE 15. Odd-lot orders in the dual trading system received before 9:00
A. M. shall be executed on the opening sale in the New York market.

Amended July 1, 1977.

ARTICLE XXXII

Exchange Distribution Plan

RULE 1. To effect an Exchange Distribution of a block of a listed security,
or security admitted to unlisted trading, a member or member
organization, for his or its own account or the account of a customer, may

Making an Arrangement

(A) make an arrangement with one or more other members or member
organizations under which

(1) the members or member organizations, with whom the arrange-
ment is made, solicit others to purchase such security; and

(2) the selling member or member organization pays to the members
or member organizations, with whom the arrangement is made, a
commission which is mutually agreeable; and

(3) the members or member organizations, with whom the arrange-
ment is made, may pay a special commission to their registered repre-
sentatives; and/or

Paying Commissions

(B) pay a commission to his or its registered representatives for
soliciting others to purchase such security.

RULE 2. An Exchange Distribution may be made only with the prior approval
of the Exchange (given after consulting and with the concurrence
of a Governor who is active on the Floor of the Exchange). Such a Distribu-
tion shall not be approved unless the Exchange shall have determined that the
regular market on the Floor of the Exchange cannot, within a reasonable time
and at a reasonable price or prices, otherwise absorb the block of securities
which is to be the subject of the Exchange Distribution. In making such
determination, the following factors may be taken into consideration, viz:

© 1980, Commerce Clearing House, Inc.
Price Range and Volume

(1) price range and the volume of transactions in such security on the Floor of the Exchange during the preceding month;

Attempts at Disposition

(2) attempts which have been made to dispose of the security on the Floor of the Exchange;

Condition of Specialist's Book and Floor Quotations

(3) the existing condition of the specialist's book and Floor quotations with respect to such security;

Past and Current Interest

(4) the apparent past and current interest in such security on the Floor; and

Number and Current Market Value

(5) the number of shares or bonds and the current market value of the block of such security proposed to be covered by such Exchange Distribution.

§ 1973 Conditions for Exchange Distributions

RULE 3. No Exchange Distribution shall be made unless each of the following conditions is complied with:

Owner of Entire Block

(1) The person for whose account the Distribution is to be made shall, at the time of the Distribution, be the owner of the entire block of the security to be so distributed;

Written Statement of Broker

(2) The person for whose account the Distribution is to be made shall include within the Distribution all of the security which he then intends to offer within a reasonable time, and there shall be furnished to the Exchange, before the Distribution is made, a written statement by his broker stating that the broker has been so advised by the offeror;

No Bid or Purchase During Distribution by Person for Whose Account Distribution Is Made

(3) The person for whose account the Distribution is made shall agree that, during the period the Distribution is being made, he will not bid for or purchase any of the security for any account in which he has a direct or indirect interest;

No Bid or Purchase by Members, Firms, or Corporations

(4) The members and member organizations who are parties to the arrangement for the Distribution shall not, during the period the Distribution is being made, bid for or purchase any of the security for an account in which they have a direct or indirect interest;
Granting of Approval to Effect an “Exchange Distribution”

(5) No member shall be granted approval to effect an “Exchange Distribution” of a block of a security for an account in which he has a direct or indirect interest, if he is registered as a Specialist in such security, unless the Exchange has determined that such member has been unable, within a reasonable period of time, to dispose of the block of security in the ordinary course of his dealings as a Specialist. Such approval shall stipulate that the Specialist may not deal directly with the public but must make an arrangement with one or more other members or member organizations to solicit others to purchase the security, and may pay a commission to such other members and member organizations as provided for in this Article.

Soliciting Purchase Orders

(6) Each member or member organization soliciting purchase orders for execution in the Distribution shall advise the person so solicited before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares or bonds being offered in an Exchange Distribution, and that he or it

(a) is acting for the seller, and will receive a special commission from the seller or his broker, or is acting as a principal; and

(b) is charging a commission, or is making the sale at a net amount, whichever the case may be;

“Short” Sales

(7) No “short” sale may be made in connection with the Distribution, except that securities may be borrowed to make delivery where the person owns the securities sold and intends to deliver such securities as soon as is possible without undue inconvenience or expense.

Exceptions or Qualifications of (2), (3), and (4)

(8) The conditions set forth in (2), (3) and (4) above shall not apply to transactions effected on the Exchange, for the purpose of maintaining a fair and orderly market, by a member in a security in which he is registered as a specialist and which is the subject of an “Exchange Distribution” for an account in which he has an interest, except that, while such Distribution is in effect, he shall not bid for or purchase such stock on the Exchange for an account in which he has an interest:

(a) at a price above the preceding sale (i.e., a “plus” tick) or

(b) at a price above the next preceding different sale price (i.e., a “zero plus” tick)

The conditions set forth in (3) and (4) above shall not apply to purchases necessitated solely in connection with “crossing” orders pursuant to the Distribution.

Rule 4. In effecting an Exchange Distribution, the orders for the purchase of the securities being distributed must be sent to the Floor together with an order to sell an equal amount to be “crossed” in accordance with the Rules applicable to the crossing of orders on the Floor, and such transactions shall be printed on the ticker tape.
Report of Distribution

Rule 5. The member or member organization selling securities in an Exchange Distribution shall report to the Exchange all transactions in such securities effected by him or it for any account in which the seller had a direct or indirect interest, commencing with the time arrangements for the Distribution were made and ending with the time the Distribution was completed.

Article XXXIII

Proxies

Rule 1. Giving of Proxies Restricted

Rule 1. No member organization shall give a proxy to vote stock registered in its name, except as required or permitted under the provisions of Rule 3 of this Article, unless the organization is the beneficial owner of such stock.

Rule 2. Transmission of Proxy Material to Customers

Rule 2. (a) Whenever a person soliciting proxies shall furnish a member organization:

(1) copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that he will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, if any, incurred by such firm or corporation, in obtaining instructions from the beneficial owners of stock.

such organization shall transmit to each beneficial owner of stock which is in its possession or control, the material furnished; and

(b) Such organization shall transmit with such material either:

(1) a request for voting instructions and also a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock. (However, when the proxy soliciting material is transmitted to the beneficial owner of the stock twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock.) or

(2) a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such firm or corporation, and also a letter informing the beneficial owner of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

This rule shall not apply to beneficial owners outside the United States.

Rule 3. Instructions of Beneficial Owner

Rule 3. A member organization shall give a proxy for stock registered in its name, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.
A member organization may give a proxy to vote any stock registered in its name if such organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member organization which was transmitted proxy soliciting material to the beneficial owner of stock and solicited voting instructions in accordance with the provisions of Rule 2, and which has not received instructions from the beneficial owner by the date specified in the statement accompanying such material may give a proxy to vote such stock, provided the person signing the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action does not include authorization for a merger, consolidation or any other matter which may affect substantially the legal rights or privileges of such stock.

A member organization which has in its possession or control stock registered in the name of another member organization, and which has solicited voting instructions in accordance with the provisions of Rule 2(b)(1), shall

1. forward to the second member organization any voting instructions received from the beneficial owner, or
2. if the proxy-soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 2 and no instructions have been received by the date specified in the statement accompanying such material, notify the second member organization of such fact in order that such organization may give the proxy as provided in the third paragraph of this rule.

A member organization which has in its possession or control stock registered in the name of another member organization, and which desires to transmit signed proxies pursuant to the provisions of Rule 2(b)(2), shall obtain the requisite number of signed proxies from such holder of record.

### Statement of Number of Shares

**RULE 4.** In all cases in which a proxy is given by a member organization the proxy shall state the actual number of shares for which the proxy is given.

### Committee Instructions to Transfer Securities

**RULE 5.** A member organization when so requested by the Exchange, shall transfer certificates of stock held either for its own account or for the account of others, if registered in the name of a previous holder of record, into its own name, prior to the taking of the record of stockholders, to facilitate the convenient solicitation of proxies.

The Exchange shall make such request at the instance of the issuer or of persons owning in the aggregate at least ten per cent of such stock, provided, if the Exchange so requires, the issuer or persons making such request agree to indemnify member organizations against transfer taxes. The Exchange may make such a request whenever it deems it advisable.

### Persons Subject to Proxy Rules

**RULE 6.** Rules 1 through 7 of this Article apply to members and member organizations and the nominees or employees of any of them.
§ 1997 Transmission of Interim Reports and Other Material

RULE 7. A member organization, when so requested by a company, and upon being furnished with:

1 copies of interim reports of earnings or other material being sent to stockholders,

2 satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner.

This rule shall not apply to beneficial owners outside the United States.

§ 1998 Term “Stock” as Used in this Article

RULE 8. As used in this Article XXXIII, the term “stock” means securities listed exclusively on this Exchange.

ARTICLE XXXIV

Registered Market Makers—Equity Floor

§ 2011 General Responsibilities

RULE 1. A registered market maker shall effect all of his transactions in securities traded on the Exchange so that they constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. No registered market maker shall enter into transactions or make bids or offers that are inconsistent with such a course of dealings.

§ 2012 Obligation to Bid and Offer

RULE 2. A registered market maker shall, at the request of a floor broker, make a bid or offer in any security to which he is assigned or in which he is then trading such that a transaction effected thereon will contribute to the maintenance of a fair and orderly market.

§ 2013 Assigned Securities

RULE 3. A registered market maker shall engage to a reasonable degree under existing circumstances in a course of dealing in the securities to which he is assigned that is reasonably calculated to contribute to the maintenance of a fair and orderly market. The Floor Procedure Committee (or other committee appointed for the purpose by the Board) shall specify the percentage of the shares purchased and sold by a registered market maker that must be of securities to which he is assigned.

* * * Interpretations and Policies:

.01 Fifty percent (50%) of a Market Maker’s quarterly share volume must be in issues to which he is assigned. In situations where a Floor Official requests a Market Maker to participate in trading an issue in which he is not assigned, the share volume so accumulated will be included as part of the volume required to satisfy the 50% requirement.

.02 The Committee on Floor Procedure has approved a program which provides for the dissemination of continuous two-sided quotations by Market Makers in those issues lacking a registered specialist (Cabinet Issues). In discussing the implementation of the program, the Committee recognized that definitive procedures must be set forth in order to avoid any misunderstanding concerning this program and current Cabinet System policy. The Midwest Stock Exchange Guide
Committee wishes to make it clear that the program is open to all floor members who are interested in seeing all MSE issues quoted. The Committee retains the right to review the program on an ongoing basis.

The procedures and policies relative to this program are as follows:

1. A Market Maker who agrees to disseminate a continuous two-sided quotation in a Cabinet System issue will be considered the "Post" in the issue.

2. The "Post" classification carries with it the obligation to accept and reflect all orders which qualify for entry on a "Post Protection" basis.

3. The subject issues are no longer classified as Cabinet System issues.

4. All current rules and policies in effect relative to clearing the Post apply with equal force with respect to the subject issues.

5. Limit orders will be handled under the same guidelines which apply to the handling of such orders by Specialists except for application of the Best requirement which is limited to 100 shares.

6. The designation of "Lead" or "Primary" Market Maker will be assigned to the first Market Maker in a given Cabinet System issue who is willing to abide by the dictates of this program.

7. The Lead or Primary Market Maker, as the repository for limit orders in the subject issues, will be responsible for lodging all applicable Trade Through complaints against other ITS Participants.


§ 2014  Trading From Off the Floor

RULE 4. Except in unusual circumstances, no registered market maker shall initiate a transaction on the Exchange in his market maker account from off the floor. Such transactions must be approved by two members of the Equity Floor Procedures Committee and a written report thereof must be submitted to the Department of Member Firms stating the nature of the unusual circumstances and containing the signatures of the approving members of the Floor Procedure Committee.

§ 2015  Relief From Responsibilities

RULE 5. A registered market maker may be relieved from his responsibilities under Rules 1 through 4 of Article XXXIV only in unusual conditions as determined by two members of the Equity Floor Procedures Committee. A written report thereof shall be submitted to the Department of Member Firms describing the nature of the unusual circumstances and containing the signatures of the approving members of the Floor Procedure Committee.

§ 2016  Relation to Specialists

RULE 6. Registered market makers and specialists shall coordinate their activities in furtherance of the maintenance of fair and orderly markets.

§ 2017  Order Acceptance

RULE 7. A registered market maker may accept limit orders in any security to which he has been assigned that have been presented to the specialists and not accepted by him. Limit orders and market orders accepted by a registered market maker shall be handled by him in accordance with Exchange rules governing the handling of such orders by specialists.

© 1981, Commerce Clearing House, Inc.
Joint Participation  
RULE 8. When the bids or offers of one or more registered market makers are equal in price to those of the specialist, the registered market maker or market makers as a group are entitled to participate in the transactions effected thereon to the extent of one-third of the total shares involved (excluding those needed to satisfy public orders).

Openings  
RULE 9. Registered market makers as a group are entitled to participate in opening a security on the Exchange to the extent of one-third of the net imbalance (excluding specialist participation) of purchase and sale orders on the Exchange.

Public Outcry  
RULE 10. No specialist or market maker shall effect a transaction for his own account unless the presence of the other side of that transaction had been audibly announced at the post.

Limit Orders  
RULE 11. A limit order held by a specialist or registered market maker shall be executed taking into account transactions on the Exchange.

Unusual Circumstances  
RULE 12. Questions as to the respective responsibilities and rights of specialists and registered market makers shall be promptly brought to the attention of a member of the Floor Procedure Committee who shall resolve such questions subject to review by the full committee.

Registration and Application  
RULE 13. A member may be registered, upon application and subject to such requirements of training, experience, and competence as the Exchange may impose, as a registered market maker.

Amended Aug. 18, 1980.

Interpretations and Policies:
.01 Approval or Disapproval of Registration. Pursuant to Rule 13 of Article XXXIV, applications on such form or forms as the Exchange shall prescribe shall be reviewed by the Floor Procedure Committee which shall consider an applicant's ability as demonstrated by his passing an examination prescribed by the Exchange, and such other factors as the Committee deems appropriate. After reviewing the application, the Committee shall approve or disapprove the registration stating the reasons for disapproval. Upon approval the name of the applicant shall be posted on the bulletin board of the floor of the Exchange for a period of at least three business days.

Amended Aug. 18, 1980.

In the event the application is not approved, the applicant may obtain review of such decision by filing a written request therefor with the Secretary of the Exchange within five business days.

.02 Suspension or Termination of Registration. The registration of a market maker under Rule 13 of Article XXXIV may be suspended or terminated by the Equity Floor Procedure Committee in accordance with the provisions of Article XVII of these Rules.
2154 Midwest Stock Exchange, Incorporated—Rules

**2024 Assignment**

**Rule 14.** Each registered market maker shall be assigned one or more securities by the Floor Procedure Committee (or other committee appointed for the purpose by the Board) for which he shall have responsibility under Rule 3 of this Article.

**2025 Required Capital**

**Rule 15.** A registered market maker shall have net liquid assets (or a letter of guarantee from a member firm clearing his transactions) of not less than $10,000 per security to which he is assigned or $25,000 in total.

**2026 Suspension and Termination**

**Rule 16.** The registration of a registered market maker may be suspended or terminated by the Floor Procedure Committee (or other committee appointed for the purpose by the Board) in accordance with procedures specified in the Rules upon a determination that he violated the Constitution or Rules of the Exchange or failed adequately to fulfill his responsibilities as a registered market maker.

**2027 Regulatory Status**

**Rule 17.** Registered market makers are members registered as specialists for purposes of the Securities Exchange Act of 1934 and as such may not effect on the Exchange as broker any transactions except upon a market or limited price order.


**Interpretations and Policies:**

.01 Utilization of Exempt Credit. MSE Members registered as equity market makers are members registered as specialists for purposes of the Securities Exchange Act of 1934 and as such are entitled to obtain exempt credit for financing their market maker transactions. Members and/or prospective members who are anticipating becoming registered as equity market makers as well as those clearing firms who are or will be carrying the accounts of market makers should be aware of the following interpretation relative to the use of such credit:

1. Only those transactions initiated on the MSE Floor qualify as market maker transactions. This restriction prohibits the use of exempt credit where market maker orders are routed to the Floor from locations off the Floor.

2. Fifty per cent (50%) of the quarterly share volume which creates or increases a position in a market maker account must result from transactions consummated on the MSE.

3. Only those positions which have been established as a direct result of bona fide equity market maker activity qualify for exempt credit treatment. This restriction precludes exempt credit financing based on an equity market maker registration for positions resulting from options exercises and assignments.

.02 When requested by a Floor broker, a market maker must accept and guarantee execution on all 100 share agency orders in accordance with the procedures set forth in Article XX, Rule 34 (the Best System).

COUNCIL OF GREAT LAKES GOVERNORS

ECONOMIC DEVELOPMENT AGREEMENT

GREAT LAKES, GREAT FUTURE: GROWTH THROUGH COOPERATION

INTRODUCTION

The Governors of the Great Lakes states declare their mutual commitment to improve the economy of the Great Lakes region as set forth in the economic development agreement, Growth Through Cooperation:

"We are now facing new challenges: the need for increased flexibility—the capacity for business, government, and workers to respond to change; the need for greater investment in the foundations of competitiveness: research, technology, and labor skills; the need for a strong international orientation. How we choose to respond to these challenges, the precise manner in which resources, human, public, and private, are mobilized, is within our control."

Our region has been tested and strengthened by economic change. As individual states we have responded to changes in the economy with the development of new and innovative programs. Cooperatively we can take action to confront new issues and use our region's strengths to lead the nation's economy into the 21st century. As individuals, states, businesses, and together as a region we will choose our path and face the future with a vision of what we seek to become. Through cooperation and collaboration, our states have learned the strength of regionalism. Public and private partnerships among governors, corporate leaders, entrepreneurs, and labor leaders will enhance our states' cooperative approach to economic development.

The initiatives outlined later in this document represent the initial collective steps toward the realization of this vision, the beginning of a constantly evolving economic development process. Changes in these initiatives and other actions may be required as we confront new issues and recognize new opportunities. But our vision will remain: an expression of common objectives to guide and sustain our energy and commitment to cooperation.

PURPOSE

The purpose of this agreement is to forge a plan of action for the Great Lakes states to act in concert to confront the economic challenges we face; to encompass the region's strengths, to supplement and foster economic growth, and to join around our common goals to ensure a strong and healthy Great Lakes economy. This expression of common objectives will guide and sustain our energy and commitment.
I. SHOWCASING OUR REGION: RECOGNIZING OUR STRENGTHS

Great Lakes/Great Future Campaign

Together the Great Lakes states offer unparalleled resources in areas ranging from science and education to recreation. Few regions offer the depth and diversity present in the Great Lakes states. State marketing initiatives can be strengthened when these resources are promoted together.

In a changing economy, we must continue to remind ourselves, the nation, and the world of the full richness of opportunity present in the Great Lakes region. An effective marketing effort can both contribute to generating new business opportunities and to energizing regional pride and commitment, thereby augmenting overall economic development initiatives.

Therefore:

1) The governors agree that the states will join in the development of a series of marketing materials, which highlight the region's key economic, natural, and human resources. These common materials will be designed to capture the richness of the region as a whole, increasing both national and international recognition of the Great Lakes as a business and recreational destination. These marketing materials will be distributed to state and major private sector trade offices. An effort will be made to link the marketing effort to a common theme, "Great Lakes/Great Future."

2) The governors direct their state marketing, tourism, and trade directors to design these campaign materials. The directors will develop materials in traditional promotional areas, such as tourist sites, as well as exploring other potential topics to be highlighted, such as educational institutions, and business and research opportunities.

3) The directors will meet and develop their initial materials on or before September 1, 1988.

Great Lakes Trade Mission

Each of the states organize many trade missions each year. The enhanced visibility that could be generated by a joint trade mission, however, can provide a catalyst to regional marketing efforts. A joint effort can also serve to distinguish the region by capturing the spirit of economic cooperation that links the states.
Therefore:

In 1989 the Great Lakes governors will undertake a joint trade mission. The state trade directors and other appropriate staff will meet on or before September 1, 1988, to select a destination, identify and reserve appropriate dates for the mission.

Great Lakes 2000: A Higher Education Inventory

Higher education institutions have been a cornerstone of the region's past and present economic success. Our institutions of higher education are some of the finest in the nation. However, the future holds critical challenges. The Great Lakes region must keep pace with national rates of college attendance and graduation. A changing population, financial constraints, increasing competition for faculty and students, and shifting relationships among the tiers of the higher education system carve a clear agenda for both individual states and the region.

The governors believe that one critical initial regional step in addressing these challenges is to undertake a detailed assessment of the Great Lakes higher education infrastructure. Such an assessment can provide the basis for an aggressive promotional effort which markets the region's higher educational opportunities as a whole, stimulates a new generation of cooperative programs, helps identify future investment needs, and serves as a means of elevating key issues, such as minority student and faculty recruitment. The governors agree that such an inventory is a means of showcasing and enhancing excellence and access.

Therefore:

1) The states will cooperate to undertake a detailed inventory of programs and initiatives at public and private colleges and universities in the Great Lakes. The inventory may include, some of the following categories:

a) A trend analysis of degree programs, enrollments, and faculty levels at public and private Great Lakes institutions;

b) A listing of existing and planned research centers and specializations;

c) A description of state, system, and institution minority recruitment and retention programs;

d) A description of model curricula in critical areas such as labor/management relations;
2) The inventory will be directed at accomplishing at least the following objectives:

a) An outline for a comprehensive marketing campaign (including a plan and budget) to attract regional, national, and international students, faculty, and investment.

b) Recommendations, for use by the states, of areas where regional cooperation and future investments are most critical.

c) A mechanism for annually monitoring regional success in, and promoting increased awareness of, minority recruitment and retention.

3) The initiative will be directed by a steering committee, which will be designated by the governors from representatives of higher education communities in the states. This steering committee may seek input from business, labor, and other educational communities as it deems necessary.

a) The representatives will be designated by July, 1988.

b) A detailed work plan for the inventory will be submitted by December 1, 1988.

c) The inventory and marketing plan will be completed by June 30, 1989.

Promoting Our Research Capabilities

In emerging high growth research areas such as new materials, advanced manufacturing technology and biotechnology, the Great Lakes region has unparalleled resources. The region also leads the nation in innovative state programs that enable business to access and apply research outcomes.

Despite this leadership, public and private investment in research can be improved. In response, the states must collectively mobilize their energy and resources. We must act to make both ourselves and the world more aware of the region's research capabilities.
An initial "compendium" of the region's research capabilities has been completed. The governors believe that an aggressive marketing campaign based upon a refined and expanded compendium can enhance the region's competitiveness for federal research funding, promote greater cooperation among institutions, and with the industrial community and elevate public understanding of the critical role research and development plays in the overall health of the economy.

Therefore:

1) The governors agree to undertake a focused marketing campaign on the research and development capabilities of the Great Lakes states.

2) The marketing campaign will center around a detailed compendium of research capabilities. The compendium may include the following components:
   a) A listing of state science and technology programs, including technology centers, technology transfer programs, research corridors, or parks and targeted technologies;
   b) Federal research facilities in the region, including federal laboratories and National Science Foundation Centers;
   c) University research capabilities, including major research or user facilities;
   d) A listing of major regional research institutes and general areas of private sector research excellence; and
   e) A description of regional research consortia.

3) The marketing campaign will be targeted to at least the following groups:
   a) Congress, especially the Great Lakes Congressional delegation and key science and technology committees;
   b) Federal research agencies and their peer review committees; and
   c) Key U.S. and international industry leaders.

4) Representatives of the state science and marketing programs will outline a detailed plan for the refinement, design, production, and distribution of the compendium. This plan will be completed for submission to the governors by September 1, 1988. The compendium will be distributed by March, 1989.
II. EXPANDING OPPORTUNITIES FOR BUSINESS GROWTH: ACCESS TO MARKETS, CAPITAL AND INNOVATION

Great Lakes Development Bank

The Great Lakes states recognize the need to nurture business growth and new business opportunities. What is required to achieve the desired rates of investment in the region are new efforts that will provide entrepreneurs access to capital in sufficient amounts and at competitive rates. While capital markets are now national and international in scope, financial policy at state and regional levels can have a substantial impact on whether local investment needs are met.

Therefore:

1) The governors agree to establish methods for providing supplemental financing to small- and medium-sized companies, constrained by conventional lending and investment limits. One approach to be pursued will be the development of a Great Lakes Development Bank.

2) The creation of a development bank will be based on the results of a feasibility study to be initiated by State Development officials.

State economic development representatives and other appropriate state personnel will design the feasibility study by September 1, 1988.

Great Lakes Trade Office

Proven to be among the most effective tools for promoting exports abroad, a trade office operated jointly by the states can be a particularly powerful resource for Great Lakes firms by combining specializations of state trade programs. The region's shared economic and nature resources provide a natural base for extending individual state efforts to expand foreign markets.

A trade office can provide a point of entry to the international marketplace, particularly for small firms. It can offer extensive services and expertise and help with the bureaucratic and cultural imperatives of successful exporting. A Great Lakes regional trade office can also assist tourists and foreign companies seeking suppliers in the Great Lakes region.

Therefore:
1) The governors agree to establish a joint trade office to maximize the region's potential for exporting both goods and services.

2) The state trade directors will develop options for the structure, location and cost of the trade office on or before September 1, 1988.

Buy Great Lakes Initiative

Structural economic change has rendered new market development an imperative for the region's firms. Throughout the nation, corporate restructuring, new production methods, and rapid product changes have altered traditional buyer/supplier relationships. These relationships play a critical role in the region's economic dynamism, stimulating innovation, cooperative ventures, and the flow of skills and inventions.

The Great Lakes states individually have been developing creative programs to generate access to new markets and reinvigorate local supply networks. Given the region's common economic base, the governors believe that a regionwide economic buyers' network would enhance both state and regional development efforts. Such a network would give new vigor to buyer/supplier networks within the region. In addition to stimulating greater use of local suppliers and providing a key avenue to new markets for small and rural producers, the initiative could provide the basis for future efforts to promote quality and market regional products.

Therefore:

1) The governors agree that the states will join in the creation of a regional electronic Buy Great Lakes Network. The network will list businesses according to product and service categories. The network will be designed to operate on a tiered basis, with firms first obtaining listings of in-state producers, followed by a scan of regional suppliers of the desired goods or services.

2) The development of the network will be coordinated with existing or planned state capabilities or networks.

3) The state development and commerce directors will be responsible for preparation of a detailed implementation schedule. This schedule will include system design, operation, and timing considerations and will be submitted to the governors by the fall of 1988. The system will be phased in beginning in mid-1989.
Rural Information Technologies Outreach

No single initiative holds the key to the economic future of rural communities. But the availability of telecommunications services and the ability to use those services creatively will be essential. Understanding the needs of potential buyers is key to agriculture and crop diversification. Thus, farmers will increasingly require access to a number of new information sources. Market-oriented agriculture will depend on the capability to receive and send all types of information within rural communities. Similarly, the future of rural manufacturing will depend on access to telecommunications. Information technologies will be essential to enable rural firms to access advanced services and supply distant companies and markets. Finally, telecommunications and other forms of information technology will play a vital role in ensuring the continued delivery of the public services all business activities will require. Telecommunications offer tremendous potential to expand and maintain educational opportunities at rural schools by linking them with instruction and teacher training capabilities in other locations.

Many states have undertaken initiatives to utilize information technologies to strengthen rural development. The region has also benefited from industry investment in fiber optics, which is critical to realizing the full range of capabilities associated with information technologies. However, deregulation and the historic barriers rural communities have faced in the spread of technology present clear challenges.

The governors believe that a regional initiative to demonstrate the application of information technologies has many benefits. It will increase rural awareness of telecommunications and information technologies and strengthen the region's overall comparative advantages in this key emerging technology. The initiative will include two components: demonstration projects and an outreach program.

Therefore:

1) In cooperation with telecommunications service providers, the states will undertake demonstration projects aimed at illustrating the various applications of information technologies to assist rural development. The projects will be designed to address the three key components of rural development: enhancing agriculture, assisting manufacturing, and aiding public service delivery. The demonstration projects will include the use of both new and existing technologies. Particular emphasis will be placed on linking this initiative with existing state and community efforts, to ensure applicability and impact on a broad audience. One project to be pursued will be the development of an electronic Specialty Crop Clearinghouse.
The Clearinghouse will link university, federal, and private data sources containing information on basic market assessments, optimal pricing, startup and operating costs, and potential buyers for specialty products. This project will meet critical needs for small- and medium-sized farmers interested in diversification, demonstrate the capacity for telecommunications technologies to cost-effectively expand access to diverse information sources and facilitate regional cooperation in an emerging area of need.

2) A second focus of the initiative will be to develop and implement strategies for promoting increased awareness of telecommunications applications in rural communities. To meet this objective, the project may include a combination of conferences, information exchanges, the publication of joint materials, and a detailed inventory of initiatives in this area.

3) This initiative will be implemented through a steering committee linking representatives of key state and federal agencies, rural organizations, universities, and, most critically, the region’s telecommunications industry.

a) The steering committee will be designated by July, 1988.

b) An overall project plan will be submitted by December, 1988.

c) The initial demonstration project will commence by July, 1989.

Great Lakes Research Network

The Great Lakes region is home to many superior technological assets. In critical emerging fields, the region benefits from a highly interconnected science and technology base of university, private sector, state, and federal institutions. Collaborative projects in areas of shared excellence and interest are emerging from within these laboratories, often in partnership with regional industry, and with state science programs providing the catalyst for cooperation.

However, these resources and research projects can be enhanced. With the future of the region increasingly dependent on the capacity for innovation and the economic dynamism generated by a strong research base, it is imperative that the Great Lakes states join together to present these resources and the case for enhancing them to the federal government.

Therefore:

1) The governors will join in the creation of a Great Lakes Research Network to:
a) Develop strategies to expand regional participation in collaborative projects, drawing upon the research capabilities identified in the compendium;

b) Provide a mechanism for mobilizing the Great Lakes Congressional delegation, Congress, and the federal research agencies to support science and technology projects that are multistate in nature, have the potential for substantial impact on the region's industrial base, and are of world-class significance; and

c) Assist in organizing and coordinating a systematic effort to assist Great Lakes firms pursuing federal research and development contracts and grants, a critical but underdeveloped component of the region's research base.

2) The critical outcomes of the initiative will be:

a) A process through which the governors can, on a regular basis, identify projects emerging from the research community which have regional, technical, and industrial merit and, through the collective efforts of the states, develop and pursue federal support;

b) An outreach effort cooperatively undertaken with the Great Lakes Congressional delegation to enhance the competitiveness of regional firms for research and development grants and subcontracts by improving access to information on emerging federal programs;

c) The state science advisors, in cooperation with the state Washington offices, will submit a detailed operating plan for the approval of the governors by July, 1988. The operating plan will specify the criteria for project selection, an outline of the subcontractor's initiative, and an overall operating framework, including a consideration of new and existing organizations capable of meeting the critical needs reflected in the agreement;

d) The network will begin operation in the fall of 1988.

III. MAXIMIZING HUMAN POTENTIAL: PROMOTING QUALITY AND EXCELLENCE

Great Lakes Strategy Board

Changes in the economy are shifting the region's emphasis toward more sophisticated manufacturing processes and services. We face a rapid introduction of new technologies into our industrial base which will lead to dramatic changes in the workforce.
Advances in technology will also strengthen the need for cooperative relationships in the workplace between labor and management.

Therefore:

1) The Great Lakes Governors agree to create a Great Lakes Strategy Board whose members will represent a broad cross-section of concerned public and private interests.

2) The board and appropriate staff will be appointed by September, 1988.

3) In the fall of 1988 the board will meet to draft an action plan for its efforts in the upcoming year and make its first report to the governors by June, 1989.

Collaboration in New Educational Fields

The evolution of technology is creating entirely new educational disciplines, subfields of research and instruction related to a specific science process. These nascent fields are integral to industry and have tremendous technology transfer opportunities. Given their dependence on capital intensive and often unique facilities, regional cooperation in the development and operation of such specialized programs can strengthen educational and economic development opportunities in each of the states.

There is a clear economic development value for the region to undertake cooperative planning and reciprocity in specialized graduate instruction. Working together to develop specialized programs can extend the resources of each state and indeed the region by creating world-class programs. These programs have tremendous potential to increase the transfer of research applications to business and may strengthen the region's ability to attract major federal science programs. The development of such centers and programs can also play a key role in shaping our region's comparative economic advantages in terms of educational excellence and resources for advanced industries.

Therefore:

1) The governors will pursue the development of reciprocity and cooperative planning agreements designed to provide regional access to specialized centers in new educational fields.

2) Representatives of the state science and economic development programs and higher education authorities will be designated to develop administrative procedures for student reciprocity and
identify existing, planned, and potential disciplines and centers warranting regional collaboration. These representatives will convene in September, 1988, and submit detailed recommendations to the governors by March, 1989.

Great Lakes Skills Bank

The governors believe that a regional effort is needed to maximize the awareness of students of the tremendous and exciting career opportunities available in the region and to enhance the capacity for the region's dynamic small- and medium-sized companies to tap the talented graduates produced by Great Lakes colleges and universities. Such an initiative has the potential to make a critical contribution to the continued economic vitality of the region. By facilitating student access to employment opportunities in the Great Lakes states, the initiative can help retain a greater share of graduates in whom the region has much invested. Moreover, the flow of graduates from our world-class universities to our businesses is the most effective means of technology transfer.

Therefore:

1) The governors agree that the states will join in the creation of a Great Lakes Skills Bank. The Skills Bank will operate as a regional electronic network containing the resumes of graduates of Great Lakes colleges and universities. The Skills Bank will be developed and marketed as a public/private partnerships among the states, colleges and universities, and with key associations, including business, alumni, and regional educational organizations. The initiative will be directed to facilitate access by small- and medium-sized firms and will build upon the existing interstate service for job applicants. The design of the Skills Bank will also be aided by the results of the higher education inventory the states will undertake.

2) Representatives of the state job service agencies and college placement offices will be designated by July, 1988, and will meet in the summer of 1988 to outline a detailed implementation plan for a Great Lakes Skills Bank.

3) The Skills Bank will be operational by the end of 1989.

IV. STRENGTHENING THE FEDERAL PARTNERSHIP: SPEAKING WITH A COMMON VOICE

Federal policies have a dramatic impact on the region's economy. A partnership with the federal government must be built on increased federal responsiveness and a recognition of the role the Great Lakes states can play in shaping the national agenda. The future of the
region will primarily rest on the capacity to mobilize our own resources. Such an approach has been the cornerstone of the Council's efforts to protect the Great Lakes, and underlies the economic development initiatives around which we now join.

Though we have proven and continue to prove our strength as a region, we can also play an active role in shaping national policy. In key areas, increased federal responsiveness to the region can be more aggressively pursued. Collectively our voice in Washington is stronger and can afford opportunities to affect issues at the forefront of national debate.

Therefore:

The governors agree that a Great Lakes liaison in Washington will work with each of the state Washington offices in pursuing a variety of issues of importance to the region. Some of the issues that may receive particular attention include: rural economic policies, research and development appropriations, and human investment policies.

1) The reemergence of rural economic problems in the 1980's has led several federal agencies to take steps to reorient their assistance programs for rural communities. Major industries which have been wholly or partially deregulated in the last decade or two include railroads, banking, airlines, trucking, intercity busing, and telecommunications. In general, deregulation has provided significant improvements in price or quality of service to most customers, often at the expense of rural users.

2) Massachusetts and Maryland receive roughly the same share of federal research as the entire Great Lakes region and California receives almost three times our level of research and development funding. In 1988 more than half of all research spending will be done by the federal government. A joint effort can promote the region's strengths and mobilize support for collaborative efforts.

3) The Great Lakes region faces the same human investment challenges as the rest of the nation. A regional collaboration on a federal agenda could be a powerful tool for shaping national policy to strengthen the link between federal training programs, college and postsecondary institutions, and others providing skills training. The agenda may include working to obtain federal funding for special demonstration projects and discretionary programs.
OVERSIGHT AND IMPLEMENTATION

This Agreement represents an initial step in our efforts to join together to shape the economic future of the Great Lakes region. It recognizes that economic development is an ongoing process, with success dependent upon the capacity to respond to changing conditions and opportunities. Most importantly, we must seek to sustain the dialogue between the states and the public, private, management, labor, and academic communities from which this Agreement springs.

Therefore:

The signatory states commit to the coordinated implementation of this Agreement. To this end, the governors shall appoint an oversight committee which will review progress toward implementation of this Agreement and advise the governors on actions taken to carry out the Agreement, together with other recommendations for further action.

In keeping with the spirit of broad based representation which guided the formulation of this Agreement, the review process shall incorporate input and participation from a number of regional communities. Potential participants may include corporate, labor, academic and community leaders, and key state and federal officials.

A process for Agreement review shall be determined and an Oversight Committee shall be appointed by September 1, 1988. The first annual review shall be due to the governors by September 1, 1989.

Signed and entered this day of 23 May, 1988.

James J. Blanchard, Governor
State of Michigan

Richard F. Celeste
State of Ohio

Robert D. Orr, Governor
State of Indiana

Rudolph Perlik, Governor
State of Minnesota

James R. Thompson, Governor
State of Illinois

Jenny L. Thompson, Governor
State of Wisconsin
SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26708;  File No. S7-13-89]

Proprietary Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission solicits comment on a proposed rule under the Securities Exchange Act of 1934 ("Act") that would govern the operation of securities trading systems that are not operated as facilities of national securities exchanges or associations and a conforming amendment to Rule 3a12-7 under the Act. The proposed rule is designed to provide for Commission review of proprietary trading systems that are not operated as facilities of a registered national securities exchange or association and are not subject to Commission regulation as national securities exchanges or associations pursuant to Sections 6 or 15A of the Act.

DATE: Comments must be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comments should refer to File No. S7-13-89, and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.
FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Esq.,
Special Counsel, Division of Market Regulation, Securities and
Exchange Commission, Room 5205 (Mail Stop 5-1), 450 Fifth

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission")
solicits comment on proposed Rule 15c2-10 1/ under the Securi-
ties Exchange Act of 1934 ("Act"), 2/ that would govern certain
securities trading and information systems that are not
operated as facilities of a registered national securities
exchange or association ("proprietary trading systems") and
are not subject to Commission regulation as exchanges or
associations. Certain aspects of such systems currently are
not governed by any formal regulatory structure. If adopted,
the new rule would provide regulatory requirements for such
systems, which currently are in large part subject to the
provisions contained in no-action positions provided to system
operators by the Commission staff.

Previously, the Commission's Division of Market Regulation
("Division") has informed several operators of proprietary
trading systems, that, subject to certain conditions, the staff

1/ 17 C.F.R. §240.15c2-10.

2/ 15 U.S.C. §§78a et seq., as amended by the Securities
94-29 (June 4, 1975), 89 Stat. 97, 1975 U.S. Code Cong. &
will not recommend enforcement action if the system is not registered as an exchange under the Act. The staff also has issued to three entities no-action letters regarding their non-registration as clearing agencies under Section 17A of the

Finally, it has issued to one of those three entities a no-action letter regarding its non-registration as a national securities association under Section 15A of the Act.

The Commission continues to believe that the no-action approach is consistent with its objective of maintaining an appropriate level of review of proprietary trading systems. Nevertheless, in view of the Commission's experience in overseeing these systems, the Commission believes that it is appropriate to reassess some of the assumptions underlying its approach in this area.

Several commentators have criticized the Commission's current policy of addressing these matters through staff no-action letters. Specifically, these commentators have

4/ See Instinet, Adler, and NAPEX no-action letters, supra note 3.

5/ See Instinet no-action letter, supra note 3.

suggested that such an approach could provide an unfair competitive advantage for systems operating pursuant to a staff no-action position in relation to registered securities exchanges or associations offering competing products and services. 7/ In addition, several of the same commentators raised concerns that the use of such relief did not provide them with the notice and comment procedures required in Commission rulemaking. 8/

The Commission believes that the competitive issues raised by the commentators deserve consideration. Moreover, the Commission recognizes that many proprietary trading systems are becoming increasingly complex. The Commission is concerned that the imposition of regulatory conditions in a no-action approach to systems linked to foreign markets may be inadequate to ensure the viability and quality of intergovernment and intermarket surveillance and enforcement enhancements, such as international information sharing arrangements. Moreover,

6/ (...continued)

7/ See CBOE and OCC letter, supra note 6, dated September 26, 1985, at 11; Amex letter at 2.

8/ See CBOE and OCC letter, supra note 6, dated September 26, 1985, at 7, 12-13; SIA letter; NYSE letter; CME letter at 4; Dingell letter, dated November 7, 1985, at 2-3; Amex letter at 3.
there have been instances in which operators of certain trading systems have failed to request no-action positions.

In light of the commentators' concerns and the Commission's experience in administering the current no-action approach, the Commission has determined to reexamine its procedures. The Commission, therefore, is proposing Rule 15c2-10, which would provide a direct regulatory scheme for proprietary trading systems.

II. Background

Over the past twenty years, the Commission has explored ways to respond to the activities of proprietary trading systems. In 1969, Instinet began operating a computer/communications network to be used by professional investors to effect large block trades. In response, at that time, the Commission proposed Rule 15c2-10 to require such an automated trading and information system to file with the Commission a

---

2/ Instinet currently is a subsidiary of Reuters Holdings PLC, a London-based news and financial data company. As originally operated, the Instinet system allowed subscribers to enter offers to buy and sell securities, as well as acceptances of such offers and counteroffers. All information was entered into the system anonymously through code numbers. Although the Instinet customer base primarily was institutional, Instinet made its services available to anyone who was "financially responsible," including broker-dealers. Any security could be traded through the system, and there were no market makers, floor brokers, or other traditional "exchange-type" participants. Instinet continues to allow its participants to accept "live" orders, and, in addition, has expanded its system to initiate a "crossing network" in which buy and sell orders for portfolios of securities are matched with one another. See infra n. 15.
Instead of adopting the proposed rule, however, the Commission determined that Instinet could be appropriately regulated as a broker-dealer. The Commission determined that:

(1) Instinet, unlike registered exchanges, operated on a for-profit basis with no members;
(2) Instinet had no "exchange-type" market participants, such as market makers or floor brokers;
(3) customers furnished all quotes and orders themselves, through the Instinet facilities; and
(4) Instinet did not seem to fit within the statutory scheme contemplated for exchanges.

Rule 15c2-10 was withdrawn in 1975, when the Commission adopted Rule 11Ab2-1, providing for the registration of securities information processors ("SIPs"). The Commission believed that Rule 15c2-10 was no longer necessary in light of the regulatory scheme provided by the 1975 Amendments.


11/ See Securities Exchange Act Release No. 11673 (September 23, 1975), 40 FR 45422. After Instinet's registration as a broker-dealer, the Commission determined to regulate certain automated trading and information systems as facilities of either an exchange or an association. For example, in 1978, the Commission examined the status of the Cincinnati Stock Exchange's ("CSE") National Securities Trading System ("NSTS"). The CSE argued that NSTS should be treated as a facility of an exchange, in part, so that it could trade listed securities without concerns regarding off-board trading restrictions. The Commission approved operation of the NSTS, and determined that exchange off-board trading restrictions would not prohibit (continued...)
In the early 1980s the Commission responded to the expanding number of automated trading systems operating in the over-the-counter ("OTC") market by reviewing its actions with respect to such systems. On October 4, 1984, the Commission concurred in the staff's recommendation that the Division inform the sponsors of automated OTC execution systems that the Division would consider granting no-action positions with regard to the Act's definition of the term "exchange." 12/

Subsequently, on August 8, 1986, the Commission discussed the staff's no-action positions regarding the non-registration as exchanges of certain proprietary trading systems, including

11/(...continued)
users of the NSTS from trading multiply-listed stocks, and, thus determined to treat the system as a facility of an exchange. Similarly, in 1981, the Commission treated the Computer Assisted Execution System ("CAES") of the National Association of Securities Dealers, Inc. ("NASD") as an NASD facility, therefore obviating the need for duplicative registration.

12/ Section 3(a)(1) of the Act defines the term "exchange" as:

Any organization, association or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

the planned Security Pacific system for the trading of options on government securities. While it determined not to object to the Division's advising Security Pacific of its determination to grant a no-action position with respect to Security Pacific's operation of the system, the Commission also recognized the limitations of the no-action approach and directed the Division to prepare for Commission consideration a release proposing for comment a rule to regulate proprietary trading systems.

III. Current Systems

The staff has granted no-action positions to eleven proprietary trading systems. The systems include several automated execution systems for trading common stocks, and trading and information systems for common stocks, limited partnership interests, and municipal bonds.

13/ Ten of the eleven systems are sponsored by either: (1) broker-dealers registered pursuant to Section 15(b) of the Act ("registered broker-dealers") or Section 15C of the Act ("government securities broker-dealers"); (2) entities affiliated with registered broker-dealers; or (3) entities in the process of registering as broker-dealers under Section 15(b). The eleventh system was proposed to be operated by Security Pacific, a national bank subject to supervision by the Comptroller of the Currency. As noted infra, Security Pacific sold its system to RMJ Securities (a registered government securities broker) in December 1987; a subsidiary of Security Pacific now serves as the facilities manager of the registered clearing agent of the RMJ system. As a consequence, investors and intermediaries using the services of these systems benefit from the panoply of protections that accrue from broker-dealer and government securities dealer registration under the Act or from oversight by the Comptroller of the Currency.
Three of the trading systems for common stocks that have received no-action treatment from the Commission facilitate the trading of both exchange-listed and OTC stocks. For example, the Instinet system provides market information and order routing and execution services to foreign and domestic institutions, broker-dealers, specialists, and market makers. 14/ The system also permits institutional and broker-dealer negotiation, as well as execution of large blocks and smaller trades. 15/

Another system, POSIT (Portfolio System for Institutional Trading), sponsored by Jefferies and Company, Inc. ("Jefco"), a registered broker-dealer, permits the trading of portfolios of exchange-listed and OTC securities by institutional customers with substantial securities portfolios, e.g., mutual funds, insurance companies, commercial banks and pension funds. 16/ The

14/ Prior to October 19, 1987, the Instinet system had the capacity, through a network of exchange specialists and OTC market makers, automatically to execute market orders of up to 1,000 shares of exchange-listed and OTC equity securities. On October 19, 1987, Instinet discontinued the automatic execution feature because of complaints from market makers about the increased exposure to loss precipitated by automatic executions during the market break.

15/ See Instinet no-action letter, supra note 3. Since this no-action letter was granted, Instinet has begun to open as early as 3:00 A.M. EST (see letter from Murray L. Finebaum, President, Instinet, to Richard G. Ketchum, dated May 29, 1987), instituted a "Crossing Network" allowing the execution of orders for groups of stocks, and included a small group of American Depository Receipts not authorized for quotation on the NASD Automated Quotations system ("non-NASDAQ stocks") in its system.

16/ See POSIT no-action letter, supra note 3.
system permits its subscribers to post an indication of interest to be matched on a confidential basis against other orders in the system. After reviewing the matched order to determine whether the order should be executed as matched, Jefco either executes the order or contacts the subscribers to seek a modification of the order.

Finally, the staff issued a no-action letter to Exchange Services, a broker-dealer that sponsored a system to facilitate trading in NYSE-listed and NASDAQ issues. The proposed system would have permitted its retail customers to obtain quotes when the primary markets were closed, e.g., evenings and weekends, and to enter agency orders into the system. The system then would have matched the order with others in the system and executed it, if a match was found, or stored the order until the markets reopened, if the customer had so chosen. The system never operated.

An additional three systems that have received no-action treatment facilitate the trading of OTC securities listed on NASDAQ. With some variations distinguishing them, INside, 

17/ See Exchange Services no-action letter, supra note 3.
18/ In a development related to the operation of automated execution systems for OTC securities, NASD Market Services, Inc. ("MSI") commenced operation of its Advanced Computerized Execution System ("ACES"). ACES, acting through MSI as its facilities manager, allows individual market makers to automate their internal execution functions and to manage their inventory. ACES provides a variety of capabilities to subscribers, including automated execution, maintenance of a limit order file, intraday trade corrections and maintenance and control of (continued...)
sponsored by Troster Singer Corp., Tran, sponsored by Transac-
tion Services, a subsidiary of Gruntal, Inc., and the Customer
Order Protection System ("COPS") sponsored by B & K Securities,
Inc., permit subscribing broker-dealers to obtain automated
execution at the inside NASDAQ price for orders up to specified
size limits.  Of the three, only INside and Tran remain in
operation.  

18/(...continued)
traders' positions in individual securities. With MSI
maintaining the necessary computer switches and
transmission lines, each subscriber markets its unique
version of ACES to order entry firms. See letter from
Frank Wilson, Executive Vice President and General
Counsel, NASD, to Richard G. Ketchum, dated May 12, 1988.

19/ See no-action letters issued to: (1) Troster, Singer; (2)
Transaction Services; and (3) B&K Securities, Inc., supra
note 3. Primarily, the distinctions are based on the size
of the orders accepted for automatic execution. For
example, INside accepts for automatic execution orders of
varying sizes, depending upon the liquidity of a par-
ticular issue; INside also limits orders to those issues
in which its sponsor and any other invited market maker
makes a market. Tran's order size depends upon the
selling price of the issue, i.e., order sizes of up to
1,000 shares are permitted for issues selling above one
dollar while orders of up to 2,000 shares are permitted
for issues selling at less than one dollar. COPS would
have accepted either principal or agency orders of up to
1,099 shares; retail agency orders took precedence over
principal or market maker orders. COPS also included an
open limit order book available to all participants;
however, participants were not able to identify another
subscriber's order.

20/ The Division also recently issued a no-action letter to
Petruzzi and Associates ("PA"), a partnership operating as
a broker-dealer, which proposes to trade NYSE-listed
stocks, bonds and warrants. Although it will not
disseminate quotations for securities, PA will permit its
customers, who are intended to be small, individual
investors, to place orders with PA for NYSE-listed
securities; those orders will be filled from the inventory
(continued...
Four organizations receiving no-action letters sponsor or sponsored proprietary trading systems for non-equity securities. Of particular note, the staff extended no-action positions to the proposed Security Pacific system for trading options on government securities, and to its successor as owner and operator of the system, RMJ Securities Corporation ("RMJ Securities"). Security Pacific developed a quotation and settlement system for put and call options on U.S. Treasury securities. Security Pacific, however, never began operating the system; although Security Pacific received the necessary approval to operate the system from the Federal Reserve Board, banking legislation imposed a moratorium until March 1, 1988, on expansion by commercial banks into securities, real

20/ (...continued)
of a fund managed by PA or with which PA has a contractual relationship. The price for the securities will be the NYSE closing price for the applicable security on the day that the order is placed. The system has not yet commenced operations.

21/ See no action letters issued to: (1) Adler; (2) NAPEX; (3) Security Pacific; and (4) RMJ, supra note 3.

22/ See Security Pacific and RMJ no-action letters, supra note 3. The Commission received substantial critical comment on the staff's no-action positions with respect to the Security Pacific system. See supra notes 6-8 and accompanying text, and letters from Thomas R. Donovan, President and Chief Executive Officer, Board of Trade of the City of Chicago ("CBT"), Charles J. Henry, President, CBOE, and William Brodsky, President and Chief Executive Officer, CME, to David S. Ruder, Chairman, SEC, dated June 10, 1988, February 19, 1988, and November 6, 1987.

estate, and insurance activities. The moratorium applied to the Security Pacific system.

On December 1, 1987, Security Pacific sold the system to RMJ Securities. The sale conveyed to RMJ Securities ownership of the computer software, other proprietary rights associated with the system, and the right to act as the exclusive operator of the system. 24/

The system as operated by RMJ Securities is made up of:

(1) a newly-formed Delaware corporation [Delta Government Options Corp. ("Delta")], which issues the options contracts and provides clearing services to participants 25/; and (2) a brokerage subsidiary of RMJ Securities Corp. [RMJ Options Trading Corp. ("RMJ Options"). The RMJ system is designed, through the interaction of these components, to permit broker-dealers, banks, and other institutions to trade non-standar-
dized options on U.S. Treasury bills, notes, and bonds with one another, on either an anonymous or fully-disclosed basis.

In addition to its function as clearing agent for the system, Delta also issues the options traded through the system and establishes margin requirements and trading and position limits for participants. RMJ Options disseminates bid and ask quotations on the options through a computerized communications network; at the discretion of the participants, RMJ Options either: (1) executes the trade at the quoted price on an anonymous basis, or (2) permits the participants to negotiate the trade directly with one another, on a fully disclosed basis. Further, RMJ Options generates trade reports for transactions executed through the system, calculates margin and premiums due from participants in light of the positions they have taken, and instructs Delta's facilities manager, Security Pacific National Trust Co. ("SPNTCO") as to whether, and in what amounts, funds are due to be paid. Finally, Delta (acting through its agent SPNTCO) and RMJ Options arrest any transaction that fails to match, breaches a trading or position limit, or has been entered by a defaulted participant. 26/

26/ By letters, dated February 4, 1988 and June 17, 1988, RMJ Securities requested that the staff issue a no-action letter similar to the ones issued to Security Pacific in 1985 and 1986, regarding non-registration of the RMJ system as a national securities exchange pursuant to Sections 3(a)(1) and 6 of the Act. Pursuant to the Commission's determination not to object to the staff's issuance of such a letter, the staff issued the requested no-action letter to RMJ Securities on January 12, 1989. Supra notes 3, 24.
IV. The Need for Regulation

The Commission long has recognized that there must be some practical limitations on entities encompassed within the broad definition of the term "exchange". Nonetheless, the definition of the term "exchange" in Section 3(a)(1) of the Act presents interpretative questions because of the phrase "facilities [27] for bringing together purchasers and sellers of securities." Read broadly, this phrase would incorporate

27/ Supra note 14. In a general analysis of the bill, the 1934 Report stated that most of the definitions (including that for "exchange") are "self-explanatory." S. Rep. No. 792, 73d Cong., 2d Sess. 14. On the other hand, the many actual references to stock exchanges in the legislative history of the Act are to those specific entities that existed at the time and Congress did not appear to anticipate any type of new, yet unrecognizable form of an exchange. Instead, Congress referred to exchanges "as that term is generally understood."

28/ There is little background for the definition of the term "facility." Section 3(a)(2) of the Act states:

The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or services.

The definition of the term has not changed since it was originally adopted and is very similar to the originally-proposed version. No testimony refers to the definition of the term "facility" and as in the case of the "exchange" definition, the Committee felt that the definition was "self-explanatory." 1934 Report at 14.
many of the activities of OTC market makers and brokers' brokers for government and municipal securities.

Brokers' brokers for government and municipal securities traditionally have brought buyers and sellers together by disseminating, through video display systems installed in dealers' offices, the prices and sizes of orders at which primary dealers are willing to trade and the prices and order sizes of the most recently completed transactions. A primary

---


Section 3 of the bill contains definitions of the terms used in the bill. These definitions are unusually broad and sweeping. I call your attention particularly to the first definition which defines the word "exchange" to include not only the institution itself, but also all of its members.

*Cf.*, *Stock Exchange Practices Hearings* (testimony of Oliver J. Troster) at 7072:

Under Section 3 exchanges are defined to include:

Any board or market place, whether organized or unorganized, however managed or conducted, and whether incorporated or unincorporated, where or by means of any facility of which, contracts or offers for the purchase or sale of securities or other transactions in such securities are made.

It appears to me as a layman that these words may be broad enough to cover every place of business of an over-the-counter dealer. Purchases and sales are certainly made there and by the use of its facilities. In a broad sense it is itself a board or market place. Yet we feel certain that the Congress cannot intend the absurd result that every little over-the-counter dealer's place of business is itself to be an "exchange" for all purposes of the act.
dealer, having decided to effect a trade at a particular price and order size, instructs the blind broker to execute the trade with the contra party. Trades are executed by the blind broker on an anonymous basis -- i.e., without the disclosure to either dealer of the identity of the contra party at the time of the trade. Although such systems are designed to facilitate the execution of orders, Congress gave no indication in enacting the Government Securities Act of 1986 30/ that it intended to subject brokers' brokers to exchange registration requirements.

The Commission believes that the proprietary systems that have developed to-date are distinguishable in function from exchange markets. These proprietary systems offer to participants the capacity to execute automatically transactions based on derivative pricing and also offer the opportunity to advertise purchasing and selling interest. These systems have not, however, evolved into interdealer quotation or transaction mechanisms in which participants enter two-sided quotations on a regular or continuous basis, thus ensuring a liquid marketplace.

The Commission also notes that an overly expansive interpretation of exchange registration would impose substantial burdens on existing proprietary trading systems. Specifically, application of the statutory fair representation standard set forth in Section 6(b)(3) of the Act to proprietary systems could act as a barrier to entry for those systems.

Moreover, exchange registration would raise substantial questions regarding the ability of institutions to participate in existing proprietary systems. In light of the functional differences between existing proprietary systems and exchange marketplaces and the potential burdens on competition which might arise, the Commission believes at this time that the existing proprietary systems are not required to register as exchanges.

The Commission believes that subjecting proprietary trading systems to exchange registration pursuant to Section 6 would substantially deter development of innovative trading systems. The Commission believes that it is desirable for certain trading and quotation systems to be operated as proprietary businesses, rather than as self-regulatory

31/ An argument can be made that Section 6(f)(1) of the Act permits such institutional participation in existing proprietary trading systems. It is not clear, however, whether interpreting Section 6(f)(1) as permitting institutional participation comports with Congress' intent, set forth in Section 3(a)(3)(A) of the Act, to limit membership in an exchange to registered broker-dealers. In any event, it is clear that the Commission, under Section 6(f)(1), could not compel compliance with the systems' regulations by non-registered institutions that execute transactions solely through brokerage services offered by those systems.

32/ Moreover, several of the systems that will be subject to the Rule, e.g., the RMJ, Instinet, and POSIT systems, are designed to serve large institutional investors rather than small retail customers. Because these large institutions have far greater capacity to assess and avoid trading risk than do small retail investors, the Commission is satisfied that the purpose of the Act in applying the incremental protections afforded by exchange registration would not be served by their application to these systems.
organizations ("SROs"), so long as each system is subject to an appropriate level of Commission oversight.

The Commission believes, however, that some form of oversight of these proprietary trading systems is necessary. In particular, the Commission is concerned with surveillance of these systems as trading volume has increased, and as the systems have become more sophisticated and have begun to operate on an international basis. It is appropriate for

33/ The Commission emphasizes that this view is based on the present configuration and trading volumes of those systems.

34/ The Commission notes that SRO registration might provide registered entities certain advantages over nonregistered trading systems. For example, only SROs are participants in the Intermarket Trading System and the Consolidated Tape Association ("CTA"). While Instinet has a contract allowing it to report trades through CTA, it has no share in revenues or votes on CTA matters. The options SROs are able to use registration and disclosure materials tailored specifically for standardized options, while non-registered entities must utilize conventional registration forms. Moreover, the antitrust protection accorded exchanges also may be considered a benefit of registration, although this immunity brings with it, and indeed is premised upon, Commission regulation and oversight. Of course, any entity that felt its operation was unduly hampered for these reasons could avail itself of those advantages by seeking exchange registration rather than operating as a proprietary system.

35/ For example, in 1987, the average monthly trading volume in Instinet (aggregated for all its systems) was approximately 120 million shares. The average monthly trading volume in Troster Singer's INside system was approximately 184 million shares.

36/ In this connection, the Commission has required, as a prerequisite to international linkages established by the SROs, comprehensive surveillance information sharing agreements or undertakings. Although the proprietary systems have not as yet established linkages with foreign (continued...
the Commission to ascertain that foreign entities participating in the systems are financially responsible and that surveillance information can be obtained regarding trading in such systems. Regulation could also ensure that these systems have sufficient capacity so that they do not cease to function in periods of unusual volume. Further, given the potential for expansion of these proprietary trading systems, it may be important that the Commission have an opportunity to review and approve or disapprove the rules that govern the operation of these systems. Finally, particularly as proprietary trading systems grow in size and importance, the question of access to those systems on terms that are fair and non-discriminatory becomes increasingly significant.

Domestically, activity occurring through these trading systems does not go unscrutinized. The NASD examines a member's activities in various trading systems just as it does any member's other OTC trading activities. The exchanges also conduct surveillance of their specialists' trading activity occurring through Instinet.

Although the activities of most of these systems would constitute broker or dealer activities under Sections 3(a)(4) and 3(a)(5) of the Act and would require registration as a broker-dealer under Section 15(b) of the Act, as a municipal securities dealer under Section 15B, or as a government securities broker or a government securities dealer under Section 15C, and thus would trigger the incremental protections afforded by those provisions, proposed Rule 15c2-10 could ensure that system capacity is adequate, and that access is not unfairly denied. Registration as a broker-dealer subjects the registrant to requirements to maintain adequate net capital (Rule 15c3-1 (continued...))
Proprietary trading systems increasingly are assuming new functions (such as Instinet's and POSIT's crossing features) and providing new trading and quotation mechanisms. The systems also are expanding to include a growing universe of securities, such as the options to be traded on the RMJ system and the foreign securities traded on Instinet. In light of these developments, the Commission believes that it is important for sponsors of these systems to accept clear responsibility for enforcing compliance by their participants with the securities laws.

The regulatory conditions imposed in the no-action approach rely on the episodic reporting of trading and product innovations and limit the availability to the Commission of the information it needs to monitor these systems. In its no-action letters, the Division informed operators of automated systems that it would not recommend Commission enforcement action if they did not register their systems as exchanges. 39/

38/ (...continued) under the Act) and to provide for the protection of customers' securities and funds (Rule 15c3-3 under the Act). Broker-dealer registration, however, may limit the Commission's oversight of the actual organizational nature of the systems, including regulation of such burdens on competition as entry criteria for order-entry firms and market makers. The broker-dealer regulatory framework also would not apply to essential areas such as terms of execution, the routing of indications of interest and the handling of system errors or failures.

39/ The Division also advised the operators of several systems that the Division's no-action position applies to non-registration of their systems as clearing agencies. See Instinet, NAPEX, and Adler no-action letters, supra note (continued...
The no-action posture was conditioned on the Division's being promptly informed of any material operational changes. In addition, so that the Commission could be kept advised of changing market conditions, the system operators also were required to provide certain quarterly data. 40/ The purpose of this data was to permit the staff to monitor activity in the trading and information systems, as well as the rules these systems developed regarding executions in the systems and quotation dissemination; however, the staff does not believe it has enough regular information to do so effectively.

Finally, the Commission believes that, given the potentially significant impact of these systems on the OTC trading of securities, it is appropriate for public investors to have notice and an opportunity to comment on the trading systems

39/(...continued)

3. Moreover, the staff extended a no-action position to Instinet regarding its nonregistration as a national securities association. Instinet no-action letter, supra note 3.

40/ As a general matter, the staff requested that each applicant provide on a quarterly basis data on: (1) the number and identity of subscribers in the system; (2) the applicants or subscribers who have been denied participation or have withdrawn, and the reasons why; (3) the number of money defaults or failures to deliver; (4) the system's response, if any; (5) the cost to the company of satisfying such defaults; and (6) the estimated cost to subscribers of any defaults not satisfied by the system. The Division also requested trading volume data and information concerning the kinds of securities (e.g., common stock) traded through the system and current copies of any rules, regulations or similar documents and any contracts that participants are required to sign. Finally, the system operator was to provide the staff with thirty days' notice of any contemplated material changes in the operation of its system.
themselves and on significant changes to those systems proposed by the sponsors of the systems. Such opportunity for comment, which is not available under the no-action approach but which would be provided under the proposed Rule, 41/ will assist the Commission in ensuring that the systems operate in a manner consistent with the purposes of the Act.

V. Description of the Proposed Rule

For the reasons discussed above, the Commission is proposing Rule 15c2-10 ("Rule") to require identification of trading and information facilities. The Rule is intended to permit proprietary trading systems to operate effectively while at the same time subjecting those systems to Commission scrutiny in order to assess whether the systems operate in a manner consistent with the fundamental purposes of the Act -- the protection of investors and the maintenance of fair and orderly markets.

The proposed Rule would require each operator of a trading and information system 42/ to submit to the Commission a plan covering the system. The Commission would publish and review the plan, and, if the Commission determined that it met the requirements of the Rule, it would declare the plan effective. Under the Commission's proposal, a broker or dealer or municipal securities dealer or government securities dealer would be

41/ See Sections c(2)(i) and d(3) and (4) of the proposed Rule, infra at 52-53, 55-56.

42/ The rule would define specifically the term "trading system."
prohibited from sponsoring or entering an indication of interest, quotation, or order to purchase or sell a security in the trading system unless the plan had been declared effective. 43/

A. Systems Covered by the Rule

The Rule would encompass any system that provides for the dissemination outside the sponsor 44/ and its affiliates of indications of interest, quotations, or orders to purchase or sell securities and that provides procedures for executing or settling transactions in such securities. 45/ The proposed Rule, however, excludes the following three types of trading and information facilities.

First, the Rule would not apply to a system in which the sponsor is a broker or dealer that limits use of the system to its own retail customers. The Commission believes that a system in which all transactions are executed by the broker or

43/ Should the Commission adopt the Rule, the Division would continue to provide no-action relief with respect to registration as an exchange for proprietary trading systems in appropriate circumstances, and prior no-action positions would not be withdrawn. The Rule would, of course, apply to operators of all trading systems that receive or have received no-action treatment from the staff.

44/ The Rule specifically would define a "sponsor" as a person who organizes, operates, administers or otherwise controls, directly or indirectly, a trading system.

45/ Thus, a system that only disseminates information and does not provide any execution or settlement procedures would not be subject to the Rule. Procedures for executing or settling transactions would include any rules, guidelines or facilities for either order entry and execution or the clearing and settling of trades.
dealer for itself or its customers does no more than automate
the internal execution functions traditionally engaged in by an
integrated broker-dealer. 46/ For example, many firms operate
proprietary automatic execution systems for NASDAQ securities.
These internal systems route orders from the branch office of a
retail firm to the firm's traders. The system then executes
the order automatically at the NASDAQ inside quotation (i.e.,
the highest bid price or the lowest asked price) and reports
the execution to the trader, the branch office, back office
clearing, and for National Market System ("NMS") securities, to
the NASD. 47/

46/ The Commission requests comment on the appropriate breadth
of this exemption; specifically, whether the exemption
should be rewritten to apply to systems that automate the
internal order routing and execution capacities of the
sponsoring broker-dealer, and that provide their customers
with access to those services.

47/ In the case of a proprietary trading system that links the
facilities of an introducing broker-dealer to those of a
clearing broker-dealer, and that permits orders entered by
customers of the introducing firm to be executed through
the system and cleared through the facilities of the
clearing firm, both the introducing firm and the clearing
firm would be deemed one broker-dealer for purposes of
this exception. Accordingly, the proprietary trading
system linking the two firms would fall within the
exception to the Rule.
Second, the Rule also would not apply to certain systems currently operating solely as brokers' brokers for non-equity securities. A brokers' broker trading system would be defined as any system that, with respect to non-equity securities including, but not limited to, government and municipal securities, only collects and disseminates without any identification of the responsible firm, quotations or indications of interest to brokers and dealers and provides: (1) the means for executing transactions based on such indications of interest or quotations, or (2) the means for executing, as principal, the contemporaneous purchase and offsetting sale or sale and offsetting purchase from or to other brokers, dealers, and municipal and government securities dealers.

Finally, the Rule would not cover a trading and information facility operated by a registered national securities

48/ A brokers' broker, which operates chiefly in the government and municipal securities markets, collects and disseminates buy and sell interests from and to its customers by receiving indications of interest from dealers and communicating them by telephone or rebroadcasting such interest over its proprietary system. In effect, a system operated by a brokers' broker permits dealers to advertise anonymously their trading interests.

49/ A system, such as the system proposed to be operated by RMJ Securities, that provides clearing and settling as well as blind brokerage services to participants, would not fall within this exclusion. Similarly, systems such as the RMJ system, which permits participants to submit quotations and trade directly with one another on a fully disclosed basis, and the POSIT system, in which customers may specify how much information about their orders may be revealed to other participants in POSIT, would fall outside this exclusion.
exchange or association, such as the New York Stock Exchange's "Designated Order Turnaround" system or the NASD's Small Order Execution System. Such a facility already is regulated through the Commission's review of the rules of each registered national securities exchange or association. 50/

B. Contents of the Plan and Initial Submission

The Rule would require system sponsors to submit as part of the plan the following information regarding the system:

(1) The name and address of the plan sponsor and a description of the sponsor's organization, including any subsidiary or other affiliate involved with the operation of the system.

(2) The securities, or types of securities, 51/ that may be traded on or through the system.

(3) A description of the method of the operation of the system, including the procedures governing the execution and, if applicable, clearance and settlement of transactions and the entry of indications of interest, quotations and orders. The operator should include in this description the types of

50/ Self-regulatory organizations are generally required to file with the Commission, pursuant to Rule 19b-4 under the Act, changes to "any material aspect of the facilities" of the self-regulatory organizations.

51/ For example, a system operator could specify in its filing that the system is available for trading in such categories as listed stocks, or NASDAQ stocks, or both. The operator would not need to name each security and would be required to amend the filing only if a new type of security were included in the system.
transactions that can be executed and the specific parameters for each type of transaction.

(4) The terms and conditions under which persons will be granted or denied access to the system as participants or subscribers. The sponsor should include the specific procedures and standards to govern such grant or denial of access. 52/

(5) A description of the system's requirements regarding the financial soundness and integrity of participants and subscribers.

(6) A description of the staffing, systems, and procedures in place to supervise the system for compliance by participants and subscribers with the terms and conditions of the plan and the federal securities laws and rules and regulations thereunder.

(7) A description of procedures that will be followed in the event of an operational failure.

(8) An agreement to keep, preserve, and make available to the Commission on request, all records made or received by it in the course of its business, including financial statements and data regarding indications of interest, quotations, orders, and trades in the system. The plan shall provide that the

52/ Denial of access here would encompass a refusal by the sponsor to enter into the contractual relationship with a person necessary to allow that person to use the system. Such denials of access would be reviewable by the Commission under paragraph (e) of the proposed Rule, which incorporates the procedural provisions set forth in Rule 11Aa3-2 under the Act.
system operator shall keep all such documents for at least five years, the first two years in an easily accessible place.

(9) An agreement to submit to the Commission annually, and to furnish promptly at any time upon request, data regarding indications of interests, quotations, orders, and trades in the system, and copies of the above-enumerated records.

(10) An agreement to report to the Commission any information received by the sponsor providing the sponsor reasonable grounds to suspect that a participant or subscriber may have violated the federal securities laws.

(11) An agreement to supervise the system to ensure compliance with the plan and the federal securities laws. 53/

(12) An agreement to notify the Commission in writing immediately should the system cease its operations.

(13) If any entity would hold or safeguard subscriber funds on a regular basis, a description of the procedures and controls that will be implemented to ensure the safety of those funds, and an agreement to submit to the Commission annual

53/ Where, as in the case of five of the six systems currently in operation, the sponsor of the system plan is a registered broker-dealer, that sponsor is subject to the oversight of the appropriate self-regulatory organization, as defined under Section 3(a)(26) of the Act. The existence of Commission supervision pursuant to the proposed Rule in no way replaces the oversight responsibilities of those self-regulatory organizations.
audited financial statements as a condition to the effectiveness of the plan. 54/

(14) An agreement to permit examinations, by representatives of the Commission, of the sponsor and of the trading system operated by the sponsor.

(15) A description of all other material aspects of the system, its facilities, operations, and financial condition.

Should a sponsor fail to comply with any of the provisions or agreements contained in the plan, the Commission, after appropriate notice and hearing, may rescind the effectiveness of the trading system plan if it finds that the sponsor's failure to comply is inconsistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets, or the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions. In this connection, the Rule authorizes the Commission to conduct examinations of the sponsor and of the trading system operated by the sponsor, including an examination of all books and records maintained pursuant to the Rule.

Under the Rule, with respect to approval of a trading system plan, the Commission would use the procedures provided in paragraphs (c)(1) and (2) of Rule 11Aa3-2 under the Act, 55/

---

54/ Such an entity may be required to register as a broker-dealer and clearing agency under Sections 15 and 17A, respectively, of the Act.

55/ 17 C.F.R § 240.11Aa3-2 (1990)
which generally apply to national market system plans. These procedures require the Commission to publish notice of the filing of a trading system plan and the terms of the substance of the plan and provide interested persons an opportunity to submit written comments. Within 120 days of the publication of notice of the filing of the plan, or within 180 days of such date should the Commission find a longer period to be appropriate and publish its reasons for so finding, the Commission would approve the plan if it determined that: (1) the sponsor and system are organized and have the capacity to comply and to enforce compliance by participants and subscribers with the terms and conditions of the plan; 56/ (2) the plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets and to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions; and (3) the plan does not impose a burden on competition not necessary or appropriate in furtherance of the Act and rules thereunder. Under the Rule, the Commission also

56/ This generally will require a showing of the capacity to monitor trading and quotation dissemination in the system, and to ensure at a minimum compliance with the requirements of the sponsor's contract. In addition, this may require information-sharing agreements with U.S. SROs as well as any foreign SROs or governments where the system may be operating. Furthermore, the Commission would have the authority pursuant to the proposed Rule to inspect any system to ensure its continuing ability to ensure compliance with this requirement.
could impose such terms and conditions as it deemed necessary and appropriate, in accordance with the above approval standards.

C. Plan Amendments

Requirements analogous to those of Section 19 of the Act and Rule 19b-4 thereunder would apply to plan amendments. A system sponsor would submit to the Commission any amendment to an effective plan, accompanied by a concise general statement of the basis and purpose of a plan amendment. 57/ The amendment would ordinarily take effect thirty days after filing with the Commission, 58/ unless the Commission approves the plan amendment before the expiration of the thirty-day period upon a good cause finding. 59/ Moreover, a plan amendment may take effect immediately upon filing with the Commission if the

57/ Unlike procedures under Section 19(b)(1), the Commission would, upon the filing of the plan amendment, "publish notice thereof together with the terms of substance of the [plan amendment] or a description of the subjects and issues involved," and provide "interested persons an opportunity to submit written data, views, and arguments concerning such [plan amendment]" only where it finds that public comment is necessary or appropriate.

58/ The proposal that an amendment take effect thirty days after filing varies from the standard procedures of Section 19 of the Act, but the Commission believes that such variance would be desirable to accommodate the needs of proprietary trading systems to remain flexible in developing additional capabilities. Should certain trading systems in the future grow to a size and importance equivalent to existing trading markets, the Commission would review the appropriateness of this provision.

59/ The "good cause" standard for accelerated effectiveness is based on Section 19(b)(2)(B) of the Act, which governs the accelerated effectiveness of proposed rule changes by SROs.
amendment meets the standard for immediate effectiveness of proposed rule changes filed by SROs as set forth in Section 19(b)(3)(A) of the Act. 60/ Within thirty days of the submission, the Commission by order may defer the effectiveness of any amendment (whether pending or effective on filing) upon a Commission finding of good cause, if the Commission determines that such deferral of effectiveness is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission defers effectiveness, it must publish notice of the plan amendment. In addition, if the Commission determines not to defer effectiveness, but determines that public comment on a plan amendment would be appropriate, the Commission may publish notice of the plan amendment. Within thirty days of the publication of notice of the filing of the plan amendment (and notice, where applicable, of a determination to defer effectiveness of the rule filing), or a longer period as to which the system sponsor consented or as the Commission designated up to 120 days if it found such longer period to be appropriate and published its reasons for so finding, the Commission would by order: (1) approve the plan amendment if it appears to the

60/ Under Section 19(b)(3)(A), a proposed rule change is effective upon filing with the Commission if it is designated by the SRO as: (1) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; (2) establishing or changing a fee or other charge imposed by the SRO; or (3) concerning solely the administration of the SRO.
Commission that the plan amendment is consistent with the requirements of the Act and the rules applicable to the trading system plan or (2) permanently disapprove (or abrogate in the case of an amendment that was either effective on filing or had taken effect prior to thirty days after filing) the plan amendment if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Unless the Commission orders otherwise, Commission action abrogating an amendment would not affect the validity or force of the amendment during the period it was in effect.

Finally, the Commission itself also could promulgate by rule an amendment to an effective trading system plan should it determine that the amendment were necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets and to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions. 61/

61/ See Section 19(c) of the Act, which provides that the Commission may abrogate, add to, or delete from the rules of SROs upon notice to the appropriate SRO, publication of the proposed change to the SROs rules, and the provision of an opportunity for oral presentation of views regarding the proposed change.
D. Appeals

The Commission would have the discretion, pursuant to Section (e) of the Rule, to entertain appeals concerning the implementation or operation of an effective plan, including appeals concerning prohibitions or limitations, in the same manner and subject to the same standards as described in Rule 11Aa3-2(e) under the Act.

E. Exemptions

The Commission would be able to exempt from the requirements of the Rule any person, either unconditionally or on specified terms and conditions, if the Commission determines that the exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to and perfection of the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions.

F. Rescission

After appropriate notice and hearing, pursuant to subsection (g) of the proposed rule, the Commission could rescind the effectiveness of a trading system plan if it determined that:

1. the sponsor of a plan, without reasonable justification or excuse, had failed to comply or to enforce compliance by participants, subscribers, or customers with the terms, conditions, and agreements of its effective trading system plan; and
of the term "exchange" under the Act. Nevertheless, the application of each requirement set forth in Section 6 of the Act to these systems arguably may continue to be inappropriate. Accordingly, the Commission requests comment on whether it should articulate standards for the granting of exemptions from exchange registration requirements.

Section 5 of the Act requires that all United States exchanges either register with the Commission as national securities exchanges or obtain a Commission exemption from that registration. An exemption may be granted if the Commission determines that, "by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors" to require such registration. The legislative history of the Act does not discuss the factors the Commission should consider in determining whether registration is not practicable and not necessary or appropriate by reason of "limited volume." 67/ Further, in the seven instances in which the Commission has granted Section 5 exemptions to stock exchanges on other than a temporary basis, the Commission's exemptive orders have not delineated the factors considered in reaching the determination that the "limited volume" criterion has been satisfied. Rather, tracking the language of Section

67/ S. Rep. No. 792, to accompany S. 3420, at 6 (April 17, 1934) ("[t]he Commission ... is empowered to exempt from registration small exchanges where the volume of transactions is not sufficient to invite the abuses prevalent on the large markets").
those orders recite the Commission's conclusion that registration was "not practicable and not necessary or appropriate in the public interest or for the protection of investors" in light of the limited volume of transactions effected on the exempted exchanges. 68/ [Prior to enactment of the Act, five of the exchanges that received exemptions in 1935 and 1936 submitted the following information to the Senate:

<table>
<thead>
<tr>
<th>Exchanges</th>
<th>Volume in Shares (1932)</th>
<th>Market Value of Shares Listed (1933)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado Springs Stock Exchange</td>
<td>52,519</td>
<td>$5.6 million</td>
</tr>
<tr>
<td>Milwaukee Grain &amp; Stock Exchange</td>
<td>143,305</td>
<td>$113.6 million</td>
</tr>
<tr>
<td>Minneapolis-St. Paul Stock Exchange</td>
<td>323,062</td>
<td>$84 million</td>
</tr>
<tr>
<td>Richmond Stock Exchange</td>
<td>14,014</td>
<td>not available</td>
</tr>
<tr>
<td>Seattle Stock Exchange</td>
<td>15,393</td>
<td>$29.3 million</td>
</tr>
<tr>
<td>New York Stock Exchange</td>
<td>425,234,294</td>
<td>$22.2 billion</td>
</tr>
</tbody>
</table>

Specifically, the Commission requests comment on whether it should interpret the term "limited volume" in Section 5 of the Act to take into account all, or a combination of, the following characteristics, among others that might be suggested by the commentators:

1. the dollar volume and/or number of transactions done through the system, expressed as a percentage of all trading done in the market of which that particular system is a part;

2. the number and characteristics of participants or subscribers permitted to trade in the system; and

3. the characteristics of the instruments traded, or transactions allowed, in the system.

Of course, the Commission could, as it has in the past, impose conditions on such exemptions if they are granted. For example, in prior exemptive orders the Commission has imposed on exempted exchanges recordkeeping and reporting requirements, and requirements to comply and to enforce compliance with the Act. 69/ Similarly, future exemptions could be conditioned on the exempted exchanges' being required to file plans and plan amendments with the Commission, and to submit to: (1) Commission review of action taken by the

exchanges denying access to the system to current or prospective members, and (2) Commission jurisdiction to amend the rules of the exchange if the public interest so requires. In view of the range of alternatives open to the Commission, the Commission solicits comment on the proper regulation of exchanges exempted pursuant to Section 5 of the Act. As a related matter, the Commission requests suggestions and comments on any other possible method of regulation or oversight of the trading and information systems.

VII. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") pursuant to the Regulatory Flexibility Act 70/ regarding proposed Rule 15c2-10. The IRFA states that although a minimal number of broker-dealers operating trading systems would be covered by the Rule (and an even smaller number would be deemed small entities), the Commission determined to prepare the IRFA because the exact number of small entities that could be affected by the Rule is unknown. The IRFA states that the proposed Rule would ensure that proprietary trading systems operate effectively and in a manner consistent with the fundamental purposes of the Act. The IRFA also sets forth the concerns with the current regulatory approach, and discusses possible alternatives to the proposed Rule for the regulation of small entities. The IRFA solicits comments on any possible costs the proposed Rule might have on

70/ 5 U.S.C. 603.
small entities, and on possible alternatives with regard to small entities.

A copy of the IRFA may be obtained from Gordon K. Fuller, Esq., Special Counsel, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5-1), 450 Fifth Street, N.W., Washington, D.C. 20549, 202/272-2414.

LIST OF SUBJECTS IN 17 CFR 240

Reporting and recordkeeping requirements, securities.

VIII. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 2, 3, 11A, 15(c), 17, 17A and 23(a) thereof, 15 U.S.C. §§ 78b, 78c, 78k-1, 78g(c), 78q, 78q-1 and 78w(a), the Commission proposes to amend § 240.3a12-7 and to add § 240.15c2-10 in Chapter II of Title 17 of the Code of Federal Regulations.

TEXT OF PROPOSED AMENDMENT TO RULE 3a12-7 AND PROPOSED RULE 15c2-10

CHAPTER II, TITLE 17 OF THE CODE OF FEDERAL REGULATIONS IS AMENDED AS FOLLOWS:

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

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w), unless otherwise noted. * * * § 240. 15c2-10, also issued under Secs. 2, 3, 6, 9, 10, 15, 17 and 23, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901; sec. 15A, as added by
sec. 1, Pub. L. 75-719, 52 Stat. 1070; sec. 11A as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1); 15 U.S.C. 78a et seq., and particularly secs. 2, 3, 10(a), 10(b), 15(c), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), and 78w(a).

Note - Arrows indicate text proposed to be added.

2. Section 240.3a12-7 is revised as follows:

Any put, call, straddle, option, or privilege traded exclusively otherwise than on a national securities exchange and for which quotations are not disseminated through an automated quotation system of a registered securities association, which relates to any securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States or securities issued or guaranteed by a corporation in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury pursuant to Section 3(a)(12) of the Act, shall be exempt from all provisions of the Act except for Sections 15(c)(2), 11A, and 17A< which by their terms do not apply to any "exempt security" or "exempted securities," provided that the securities underlying such put, call, straddle, option or privilege represent an obligation equal to or exceeding $250,000 principal amount.

3. Section 240.15c2-10 is added as follows:

§ 240.15c2-10 Trading and information facilities.
(a) No broker, dealer, municipal securities dealer, government securities broker, or government securities dealer shall act as a sponsor of a trading system, or enter an indication of interest, quotation, or order to purchase or sell a security into such a trading system except in accordance with the terms of a plan covering such system that has been filed by the sponsor and declared effective by the Commission pursuant to paragraph (c) of this Section.

(b) Definitions. For purposes of this Section,

(1) The term "trading system" shall mean any system providing for the dissemination outside the sponsor and its affiliates of indications of interest, quotations, or orders to purchase or sell securities, and providing procedures for executing or settling transactions in such securities; provided, however, the term does not include:

(i) a system in which all transactions are executed by either the broker or dealer operating or controlling the system or the customers of such broker or dealer; or

(ii) a brokers' brokers trading system; or

(iii) a facility of a registered national securities exchange or association.

(2) The term "sponsor" shall mean any person who organizes, operates, administers or otherwise controls, directly or indirectly, a trading system.
(3) The term "facility of a national securities association" shall mean that association's premises, tangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction (including, among other things, any system of communication to or from the association, by ticker or otherwise, maintained by or with its consent), and any right of the association to the use of any property or service.

(4) The term "brokers' brokers trading system" shall mean any system that, with respect to securities other than equity securities as defined under Section 3(a)(11) of the Act, including, but not limited to, government and municipal securities, only collects and disseminates, without any identification of the responsible firm, indications of interest or quotations from and to brokers, dealers, municipal securities dealers, government securities brokers or government securities dealers, and provides:

   (i) means for executing transactions based on such indications of interest or quotations; or

   (ii) means for, as principal, executing the contemporaneous purchase and offsetting sale or sale and offsetting purchase as
principal from or to other brokers, dealers, municipal securities dealers, government securities brokers and government securities dealers.

(c) (1) A sponsor of a trading system filing a plan pursuant to this section shall submit to the Commission the text of the plan, together with a statement of the purpose of the plan. Any such plan shall contain, at a minimum:

(i) The name and address of the plan sponsor and a brief description of the sponsor's organization, including any other person involved with the operation of the system.

(ii) The securities or types of securities traded on or through the facilities of the system.

(iii) A description of the manner of operation of the system, including the procedures governing the execution and, if applicable, clearance and settlement of transactions and the entry of indications of interest, quotations, and orders.

(iv) The terms and conditions under which persons will be provided or denied access to the system as participants and subscribers (including specific procedures and standards governing such grants or denials of access).
(v) A description of the system's requirements regarding the financial soundness and integrity of participants, subscribers, and customers.

(vi) A description of the staffing, systems and procedures in place to supervise the system for compliance by participants and subscribers with the terms and conditions of the plan and the federal securities laws and the rules and regulations thereunder.

(vii) A description of the procedures that will be followed in the event of an operational failure.

(viii) An agreement to keep, preserve, and make available to the Commission on request, at least one copy of each document including all correspondence, memoranda, papers, books, notices, accounts, and other such records, as shall be made or received by the sponsor in the course of the operation of its trading system, including, but not limited to, (A) financial statements and (B) data regarding indications of interest, quotations, orders, and trades in the system. The system operator shall agree to keep all such documents for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions described in § 240.17a-6.
(ix) An agreement to submit to the Commission annually, and to furnish promptly at any time upon request of a representative of the Commission, data regarding indications of interest, quotations, orders, and trades in the system, and copies of documents required to be kept and preserved pursuant to paragraph (c)(1)(viii) of this section.

(x) An agreement to report to the Commission any information the sponsor receives that provides it reasonable grounds to suspect that a participant or subscriber may have violated the federal securities laws or the rules and regulations thereunder;

(xi) An agreement to supervise the system to ensure compliance by participants and subscribers with the terms and conditions of the plan and the federal securities laws and the rules and regulations thereunder;

(xii) An agreement to notify the Commission in writing immediately should the system cease its operations;

(xiii) If any entity would hold or safeguard subscriber funds on a regular basis, a description of the procedures and controls that will be implemented to ensure the safety of those funds, and an
agreement to submit to the Commission annual audited financial statements as a condition to the effectiveness of the plan.

(xiv) An agreement to permit examinations, by representatives of the Commission, of the sponsor and of the trading system operated by the sponsor; and

(xv) A description of all other material aspects of the system, its facilities, operation, and financial condition.

(2) (i) A trading system plan filed pursuant to this section shall not become effective until it is approved by the Commission in accordance with the procedures set forth in paragraphs (c)(1) and (2) of § 240.11Aa3-2 governing national market system plans. A plan shall be declared effective by the Commission if the Commission determines that:

(A) The sponsor and system are organized and have the capacity to comply, and to enforce compliance by participants and subscribers, with the terms and conditions of the plan;

(B) The plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the
mechanisms of a national market system for
securities and a national system for the
clearance and settlement of securities
transactions; and

(C) The plan does not impose a burden on competition
not necessary or appropriate in furtherance of
the Act and rules thereunder.

(ii) The Commission may impose such terms and conditions
upon such approval as it deems necessary and ap-
propriate in furtherance of the requirements of
paragraphs (c)(2)(i)(A)-(C) of this section.

(d) (1) Each system sponsor shall submit to the Commission any
amendment to an effective plan, accompanied by a concise
general statement of the basis and purpose of a plan
amendment. An amendment to an effective plan shall take
effect thirty days after filing with the Commission
provided, however:

(i) An amendment may take effect upon filing with
the Commission if designated by the sponsor as:
(A) constituting a stated policy, practice, or
interpretation with respect to the meaning,
administration, or enforcement of an existing
rule regarding the trading system;
(B) establishing or changing a fee or other
charge imposed by the sponsor; or (C) concerning
solely the administration of the trading system; or

(ii) An amendment may take effect prior to thirty days after filing with the Commission if the Commission finds there is good cause for such early effectiveness.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, within thirty days of the date of filing with the Commission of a plan amendment, the Commission may, by order, defer the effectiveness of any amendment prior to thirty days after filing, if it appears to the Commission that such deferral of effectiveness is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. The Commission shall publish notice of the order of deferred effectiveness with the terms of the substance of the plan amendment and provide interested persons an opportunity to submit written data, views and arguments concerning such plan amendment. The order of deferred effectiveness shall remain in effect until the Commission:

(i) takes action in accordance with the provisions of paragraph (d)(4)(i) or (ii) of this section, or
(ii) otherwise orders as is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

(3) Within thirty days of the date of filing with the Commission of a plan amendment, if the Commission determines not to defer effectiveness but finds that public comment on a plan amendment is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, the Commission shall publish notice of the plan amendment together with the terms of the substance of the plan amendment or a description of the subjects and issues involved, and provide interested persons an opportunity to submit written data, views and arguments concerning such plan amendment.

(4) Within thirty days of the date of the publication of a notice published pursuant to either paragraph (d)(2) or (3) of this section or within such longer period as to which the plan sponsor consents or as the Commission may designate, up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission may:
by order approve the plan amendment if it appears to the Commission that the plan amendment is consistent with the requirements of the Act and the rules thereunder applicable to the trading system plan; or

by order disapprove or, abrogate in the case of an amendment that previously had taken effect pursuant to paragraph (d)(1) of this section, the plan amendment if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Unless the Commission orders otherwise, Commission action abrogating an amendment pursuant to paragraph (d)(4)(ii) of this section shall not affect the validity or force of the amendment during the period it was in effect.

The Commission may promulgate by rule an amendment to an effective trading system plan if it determines that such amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market or national clearance and settlement system.
(e) The Commission may, in its discretion, entertain appeals concerning any action taken or failure to act by any person in connection with an effective trading system plan, including prohibitions or limitations of access, in the same manner and subject to the same standards as described in paragraph (e) of § 240.11Aa3-2 under the Act.

(f) The Commission may exempt any person from the provisions of this section, either unconditionally or on specified terms and conditions if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions.

(g) The Commission may conduct examinations of the sponsor and of the trading system operated by the sponsor, including an examination of all books and records maintained pursuant to paragraph (c)(1)(viii) of this section.

(h) If the Commission, after appropriate notice and hearing, finds that the sponsor of any plan, absent reasonable justification or excuse, has failed to comply, or to enforce compliance by participants or subscribers, with the terms, conditions, and undertakings of its effective trading system plan, and, if it appears to the Commission that such failure is inconsistent with the public inter-
est, the protection of investors, and the maintenance of fair and orderly markets, or the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions, the Commission shall rescind the effectiveness of the trading system plan.

(i) **Effective dates:** The effective date of this section shall be [six months after date of adoption of rule].

By the Commission.

Jonathan G. Katz
Secretary

Dated: April 11, 1989