

Dated: January 3, 2002.

Hector V. Barreto,

Administrator.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-45291; File No. S7-02-02]

Amendments to Rule 31-1, Securities Transactions Exempt From Transaction Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today is amending the rule that provides an exemption from section 31(c) of the Securities Exchange Act of 1934 ("Act") for over-the-counter ("OTC") transactions in OTC securities that are subject to unlisted trading privileges on a national securities exchange. One subparagraph of the rule has become obsolete and unnecessary due to the enactment of H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act").

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Katherine England, Assistant Director, 202-942-0155, or Joseph Morra, Special Counsel, 202-942-0781, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION:

I. Discussion

Subparagraph (b) of Rule 31-1¹ under the Act is being rescinded. At the time this subparagraph was adopted, an exemption from section 31(c) of the Act was necessary to ensure that OTC transactions in OTC securities that were subject to unlisted trading privileges on a national securities exchange ("OTC-UTP Transactions") were not subject to dual charges under both sections 31(c) and (d) of the Act. With passage of the Fee Relief Act, former sections 31(c) and (d) of the Act were combined into a new Section 31(c).² Therefore, there is no longer a need for the exemption created by subparagraph (b) of Rule 31-1. The Commission also is making technical conforming changes to Rule 31-1 to renumber the subparagraphs and to

reflect the exception in the Fee Relief Act for options on securities indexes (other than narrow-based security indexes).

Section 553(b) of the Administrative Procedure Act³ generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."⁴ The Commission finds good cause to forego notice and comment procedures for the rule amendments being adopted today.

The President signed the Fee Relief Act on January 16, 2002. If the Commission does not rescind paragraph (b) of Rule 31-1 effective as of January 16, 2002, the intent of Congress in passing the Fee Relief Act could be frustrated. In addition, persons subject to section 31 of the Act may be confused as to whether OTC-UTP Transactions remain subject to fees under section 31.⁵

Specifically, as noted above, paragraph (b) of existing Rule 31-1 exempts OTC-UTP Transactions from the fee provisions of section 31(c) of the Act.⁶ The purpose of the rule was to clarify that such transactions were not subject to dual charges under both former sections 31(c) and (d). OTC-UTP Transactions, however, remained subject to the fee provisions of former section 31(d) of the Act. The Fee Relief Act combined former sections 31(c) and (d) of the Act into a new section 31(c) (which encompasses all transactions formerly covered by former sections 31(c) and (d)). If paragraph (b) of

³ 5 U.S.C. 553(b).

⁴ *Id.*

⁵ The Fee Relief Act provides that changes to section 31 of the Act (except for the immediate fee reduction in section 2 of the Fee Relief Act) are effective October 1, 2001. While we are rescinding paragraph (b) of Rule 31-1 effective as of January 16, 2002, the date the President signed the Fee Relief Act into law, the Commission does not believe that it would be consistent with the intent of the Fee Relief Act to rely on paragraph (b) of Rule 31-1 (and thereby seek to avoid paying Section 31 fees on OTC-UTP Transactions) for the period from the effective date of the Fee Relief Act (October 1, 2001) to the effective date of our rescission of paragraph (b) of Rule 31-1. As a result, Section 31 fees will continue to apply to OTC-UTP transactions from the effective date of the Fee Relief Act.

⁶ See Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590, 68591 n.10 (December 30, 1996) ("Without the exemption, the application of section 31 fees to all transactions in particular OTC securities would have depended entirely on exchange decisions to trade OTC/UTP securities, or on issuer decisions to retain an exchange listing despite the stock being designated a Nasdaq/NMS security.")

existing Rule 31-1 were to remain in effect, affected persons might conclude that OTC-UTP Transactions are now exempt from section 31 fees altogether. Neither Congress, in enacting the Fee Relief Act, nor the Commission, in promulgating Rule 31-1, intended to exempt such transactions from the fee provisions of section 31. Rescinding paragraph (b) of Rule 31-1 effective immediately would preserve the intent of Congress in enacting the Fee Relief Act and avoid any confusion by persons affected by the legislation.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.⁷ However, an agency may forego the 30-day requirement if it finds good cause for doing so.⁸ For the same reasons as it is waiving the notice and comment period, the Commission finds good cause to waive the 30-day pre-effective requirement.

II. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act⁹ requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact with the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. As noted above, in amending Rule 31-1 the Commission is merely conforming the rule to recently enacted legislation. Moreover, adoption of the amendment to Rule 31-1 will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Regulatory Flexibility Act¹⁰ is not applicable to the revisions to Rule 31-1. The Regulatory Flexibility Act's flexibility analysis requirements are limited to rulemaking for which the Commission would be required by the Administrative Procedure Act to publish general notice of proposed rulemaking.¹¹

The Paperwork Reduction Act does not apply because the proposed amendments do not impose record keeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

⁷ See 5 U.S.C. 553(d).

⁸ *Id.*

⁹ 15 U.S.C. 78w(a)(2).

¹⁰ 5 U.S.C. 601-612.

¹¹ 5 U.S.C. 603(a). As noted above, the Commission is not required to solicit public comment due to the nature of the Commission's revisions to Rule 31-1.

¹ 17 CFR 240.31-1(b).

² New section (c) applies to off-exchange trades of exchange registered and last-sale reported securities.

III. Statutory Basis

The amendments to Rule 31-1 under the Exchange Act are being adopted pursuant to 15 U.S.C. 78a et seq., particularly sections 23(a) and 31 of the Exchange Act.

IV. Text of Final Amendments

List of Subjects in 17 CFR Part 240

Reporting and record keeping requirements, Securities.

Text of Rule Amendment

For the reasons set forth above, the Commission amends Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.31-1 is revised to read as follows:

§ 240.31-1. Securities transactions exempt from transaction fees.

Preliminary Note

The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange (with the exception of sales of options on securities indexes other than narrow-based security indexes) is to be paid by the exchange or the national securities association itself, respectively, or by the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option. The following shall be exempt from section 31 of the Act:

(a) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of

1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder.

(b) Transactions by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(c) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(d) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(e) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in § 240.11Aa3-1 (Rule 11Aa3-1 under the Act) and any approved plan filed thereunder.

By the Commission.

Dated: January 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 02-05]

RIN 1515-AC85

Extension of Deadline To File a Wool Duty Refund Claim for Claim Year 2000

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim rule.

SUMMARY: This document amends the Customs Regulations on an interim basis to extend the deadline to file a wool duty refund claim for calendar year 2000, as authorized by section 505 of the Trade and Development Act of 2000. The regulations currently require that claims for a wool duty refund for calendar year 2000, except for certain amended claims, should already have been received by Customs by December 31, 2001. This deadline is extended until December 31, 2002, to reflect the fact that proposed legislation is currently pending before Congress which would significantly alter the scope of section 505 in regard to the amount of payment manufacturers would be eligible to receive, as well as

the documents that a manufacturer would need to file to be entitled to a refund and, in part, because of the destruction of records at the New York Customhouse on September 11, 2001. The deadline extension is also intended to spare manufacturers from the filing of unnecessary documentation, again, in part, due to the destruction of records in New York. Additionally, Customs is amending the regulations to reflect the new Customs location to which all wool duty refund documentation should be sent.

DATES: This interim rule is effective January 23, 2002. The deadline to file a wool duty refund claim for calendar year 2000 is extended to December 31, 2002. Comments must be received on or before February 7, 2002.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Wool duty refund documentation should be sent to the U.S. Customs Service, Office of Field Operations, Wool Duty Refund Unit, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management (202) 927-1082.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Public Law 106-200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs published in the **Federal Register** (65 FR 81344), as T.D. 01-01, the final rule adding the eligibility, documentation and procedural requirements for obtaining a wool duty refund to § 10.184 of the Customs Regulations (19 CFR 10.184).

On April 23, 2001, Customs published in the **Federal Register** (66 FR 20392), as T.D. 01-33, an interim rule amending § 10.184 regarding the description of the wool products that are eligible to provide the basis for a wool duty refund and the tariff provisions that eligible wool products must be entered under to substantiate a refund.