

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4535

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IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, JULY 20), 1994

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

To amend the Securities Exchange Act of 1934 with respect to the extension of unlisted trading privileges for corporate securities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unlisted Trading  
5 Privileges Act of 1994”.

6 **SEC. 2. AMENDMENTS TO THE SECURITIES EXCHANGE ACT**  
7 **OF 1934.**

8 (a) UNLISTED TRADING PRIVILEGES.—Section 12(f)  
9 of the Securities Exchange Act of 1934 (15 U.S.C. 78l(f))  
10 is amended by striking paragraphs (1) and (2) and insert-  
11 ing the following:

1       “(f)(1)(A) Notwithstanding the preceding subsections  
2 of this section, any national securities exchange, in accord-  
3 ance with the requirements of this subsection and the  
4 rules hereunder, may extend unlisted trading privileges  
5 to—

6           “(i) any security that is listed and registered on  
7 a national securities exchange, subject to subpara-  
8 graph (B); and

9           “(ii) any security that is otherwise registered  
10 pursuant to this section, or that would be required  
11 to be so registered except for the exemption from  
12 registration provided in subparagraph (B) or (G) of  
13 subsection (g)(2), subject to subparagraph (E) of  
14 this paragraph.

15       “(B) A national securities exchange may not extend  
16 unlisted trading privileges to a security described in sub-  
17 paragraph (A)(i) during such interval, if any, after the  
18 commencement of an initial public offering of such secu-  
19 rity, as is or may be required pursuant to subparagraph  
20 (C).

21       “(C) Not later than 180 days after the date of enact-  
22 ment of the Unlisted Trading Privileges Act of 1994, the  
23 Commission shall prescribe, by rule or regulation, the du-  
24 ration of the interval referred to in subparagraph (B), if  
25 any, as the Commission determines to be necessary or ap-

1 appropriate for the maintenance of fair and orderly markets,  
2 the protection of investors and the public interest, or oth-  
3 erwise in furtherance of the purposes of this title. Until  
4 the earlier of the effective date of such rule or regulation  
5 or 240 days after such date of enactment, such interval  
6 shall begin at the opening of trading on the day on which  
7 such security commences trading on the national securities  
8 exchange with which such security is registered and end  
9 at the conclusion of the next day of trading.

10 “(D) The Commission may prescribe, by rule or regu-  
11 lation such additional procedures or requirements for ex-  
12 tending unlisted trading privileges to any security as the  
13 Commission deems necessary or appropriate for the main-  
14 tenance of fair and orderly markets, the protection of in-  
15 vestors and the public interest, or otherwise in furtherance  
16 of the purposes of this title.

17 “(E) No extension of unlisted trading privileges to  
18 securities described in subparagraph (A)(ii) may occur ex-  
19 cept pursuant to a rule, regulation, or order of the Com-  
20 mission approving such extension or extensions. In pro-  
21 mulgating such rule or regulation or in issuing such order,  
22 the Commission—

23 “(i) shall find that such extension or extensions  
24 of unlisted trading privileges is consistent with the  
25 maintenance of fair and orderly markets, the protec-

1       tion of investors and the public interest, and other-  
2       wise in furtherance of the purposes of this title;

3           “(ii) shall take account of the public trading ac-  
4       tivity in such securities, the character of such trad-  
5       ing, the impact of such extension on the existing  
6       markets for such securities, and the desirability of  
7       removing impediments to and the progress that has  
8       been made toward the development of a national  
9       market system; and

10          “(iii) shall not permit a national securities ex-  
11       change to extend unlisted trading privileges to such  
12       securities if any rule of such national securities ex-  
13       change would unreasonably impair the ability of a  
14       dealer to solicit or effect transactions in such securi-  
15       ties for its own account, or would unreasonably re-  
16       strict competition among dealers in such securities  
17       or between such dealers acting in the capacity of  
18       market makers who are specialists and such dealers  
19       who are not specialists.

20          “(F) An exchange may continue to extend unlisted  
21       trading privileges in accordance with this paragraph only  
22       if the exchange and the subject security continue to satisfy  
23       the requirements for eligibility under this paragraph, in-  
24       cluding any rules and regulations issued by the Commis-  
25       sion pursuant to this paragraph, except that unlisted trad-

1 ing privileges may continue with regard to securities which  
2 had been admitted on such exchange prior to July 1, 1964,  
3 notwithstanding the failure to satisfy such requirements.  
4 If unlisted trading privileges in a security are discontinued  
5 pursuant to this subparagraph, the exchange shall cease  
6 trading in that security, unless the exchange and the sub-  
7 ject security thereafter satisfy the requirements of this  
8 paragraph and the rules issued hereunder.

9 “(G) For purposes of this paragraph—

10 “(i) a security is the subject of an initial public  
11 offering if—

12 “(I) the offering of the subject security is  
13 registered under the Securities Act of 1933;  
14 and

15 “(II) the issuer of the security, imme-  
16 diately prior to filing the registration statement  
17 with respect to the offering, was not subject to  
18 the reporting requirements of section 13 or  
19 15(d) of this title; and

20 “(ii) an initial public offering of such security  
21 commences at the opening of trading on the day on  
22 which such security commences trading on the na-  
23 tional securities exchange with which such security  
24 is registered.

1       “(2)(A) At any time within 60 days of commence-  
2 ment of trading on an exchange of a security pursuant  
3 to unlisted trading privileges, the Commission may sum-  
4 marily suspend such unlisted trading privileges on the ex-  
5 change. Such suspension shall not be reviewable under sec-  
6 tion 25 of this title and shall not be deemed to be a final  
7 agency action for purposes of section 704 of title 5, United  
8 States Code. Upon such suspension—

9           “(i) the exchange shall cease trading in the se-  
10 curity by the close of business on the date of such  
11 suspension, or at such time as the Commission may  
12 prescribe by rule or order for the maintenance of  
13 fair and orderly markets, the protection of investors  
14 and the public interest, or otherwise in furtherance  
15 of the purposes of this title; and

16           “(ii) if the exchange seeks to extend unlisted  
17 trading privileges to the security, the exchange shall  
18 file an application to reinstate its ability to do so  
19 with the Commission pursuant to such procedures as  
20 the Commission may prescribe by rule or order for  
21 the maintenance of fair and orderly markets, the  
22 protection of investors and the public interest, or  
23 otherwise in furtherance of the purposes of this title.

24       “(B) A suspension under subparagraph (A) shall re-  
25 main in effect until the Commission, by order, grants ap-

1 proval of an application to reinstate, as described in sub-  
2 paragraph (A)(ii).

3 “(C) A suspension under subparagraph (A) shall not  
4 affect the validity or force of an extension of unlisted trad-  
5 ing privileges in effect prior to such suspension.

6 “(D) The Commission shall not approve an applica-  
7 tion by a national securities exchange to reinstate its abil-  
8 ity to extend unlisted trading privileges to a security un-  
9 less the Commission finds, after notice and opportunity  
10 for hearing, that the extension of unlisted trading privi-  
11 leges pursuant to such application is consistent with the  
12 maintenance of fair and orderly markets, the protection  
13 of investors and the public interest, and otherwise in fur-  
14 therance of the purposes of this title. If the application  
15 is made to reinstate unlisted trading privileges to a secu-  
16 rity described in paragraph (1)(A)(ii), the Commission—

17 “(i) shall take account of the public trading ac-  
18 tivity in such security, the character of such trading,  
19 the impact of such extension on the existing markets  
20 for such a security, and the desirability of removing  
21 impediments to and the progress that has been made  
22 toward the development of a national market sys-  
23 tem; and

24 “(ii) shall not grant any such application if any  
25 rule of the national securities exchange making ap-

1 plication under this subsection would unreasonably  
2 impair the ability of a dealer to solicit or effect  
3 transactions in such security for its own account, or  
4 would unreasonably restrict competition among deal-  
5 ers in such security or between such dealers acting  
6 in the capacity of marketmakers who are specialists  
7 and such dealers who are not specialists.”.

8 (b) CONFORMING AMENDMENT.—Section 12(f)(3) of  
9 the Securities Exchange Act of 1934 (15 U.S.C. 78l(f)(3))  
10 is amended by striking “The Commission” and inserting  
11 “Notwithstanding paragraph (2), the Commission”.

Passed the House of Representatives August 1,  
1994.

Attest: DONNALD K. ANDERSON,  
*Clerk.*