

transaction, or any class or classes of persons, or transactions, from any provision of the Advisers Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Advisers Act]."

5. Applicants request that the SEC grant an exemption from section 205(a)(1) of the Advisers Act to permit Excelsior to deem realized any unrealized gains or losses attributable to securities distributed in kind to its members for purposes of payment of the performance fee to the Investment Adviser and Investment Sub-Adviser.

6. Applicants assert that their exemption from section 205(a)(1) is consistent with the standards of section 206A regarding investor protection and the purposes of the Advisers Act. Applicants argue that Congress has already found it appropriate to permit a performance fee in the case of an investment adviser to a BDC. Applicants argue further that, to the extent that section 205(b)(3) of the Advisers Act requires such a fee to be based on net realized capital gains, Applicants' proposal is consistent with the statutory purposes. Once the in-kind distribution is made, Excelsior's members and the members of the Feeder Fund will have the exclusive ability to liquidate such investments and realize any gains or losses. Applicants also assert that there should be no concern over the proper valuation of the securities upon which the fee is based, because Applicants are requesting exemptive relief only with respect to in-kind distributions of securities for which a trading market exists on a national securities exchange or on the NASDAQ Stock Market.

7. Applicants state that they believe that it is in the best interests of the members of Excelsior and the members of the Feeder Fund, and in the public interest, for Excelsior to make in-kind distributions of securities. Applicants state that they believe that an in-kind distribution would enable Excelsior's members and the members of the Feeder Fund to maximize their investment. First, Applicants state that the alternative to an in-kind distribution is the sale of the securities and argue that such sales may have a negative effect on the price of the shares in the market. Second, Applicants represent that the securities to be distributed will be freely transferable and will not be subject to either legal or contractual restrictions on their sale. Moreover, Applicants represent that a distribution of securities will not constitute a taxable event with respect to Excelsior, its members, and

members of the Feeder Fund, so that the members of Excelsior and the Feeder Fund will, in determining whether to hold or sell the securities, control the timing of realization of capital gains or losses. Finally, Applicants assert that as a venture capital fund, Excelsior and its advisers have not held themselves out as having experience with respect to publicly traded securities, and therefore its members do not lose any benefit of management expertise by receiving an in-kind distribution of securities.

#### Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The relief will only apply to the distribution in kind by Excelsior of securities that are traded on a national securities exchange or on the NASDAQ Stock Market and are subject to no legal or contractual restriction on their sale.

2. Securities distributed in kind pursuant to the relief will be valued at the average of the closing bid and asked price (or in the case of exchange-traded securities, the closing sale price) at which the relevant securities were quoted on the relevant exchange or system during the five trading days immediately preceding the distribution. Members will receive notice of the basis for the valuation at the time of or before distribution.

3. Excelsior agrees to use all reasonable endeavors to ensure that securities that are the subject of an in-kind distribution are transferred to its members as soon as practicable following their valuation in connection with the allocation of the Incentive Carried Interest, and in any event within 30 days thereof.<sup>3</sup> Distributions will be recommended by Applicants, and the Board of Managers of Excelsior will approve each distribution and establish its record date, which will also be the valuation date. Prior to an in-kind distribution, members who are not account holders at U.S. Trust will be requested to provide brokerage instructions or establish an account if necessary, and procedures will be followed to assure that members who respond on a timely basis will receive the portfolio securities promptly. Members that hold accounts at U.S. Trust will receive distributions within five (5) business days of the record date.

<sup>3</sup> Excelsior will make the same efforts to distribute securities to members of the Feeder Fund as it does for its own members.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 04-6108 Filed 3-17-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [69 FR 11901, March 12, 2004]

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street NW., Washington, DC.

**ANNOUNCEMENT OF ADDITIONAL MEETING:** Additional Meeting.

A Closed Meeting will be held on Monday, March 15, 2004 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (3), (5), (7) (9), and (10) and 17 CFR 200.402(a) (3), (5), (7), (9), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meeting in a closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting to be held on Monday, March 15, 2004 will be: an investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: March 15, 2004.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 04-6254 Filed 3-1-04; 3:56 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49408; File No. S7-10-04]

### Regulation NMS

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of hearings.

**SUMMARY:** On February 26, 2004, the Securities and Exchange Commission (the "Commission") approved for publication proposed Regulation NMS (the "Proposing Release"), which is designed to enhance and modernize the regulatory structure of the U.S. equity markets (Securities Exchange Act Release No. 34-49325). In connection with the Proposing Release, the Commission will hold public hearings to give the Commission the benefit of the views of interested members of the public regarding the issues raised and questions posed in the Proposing Release.

**DATES:** The initial public hearing will be held on April 1, 2004 in Washington, DC. A subsequent public hearing will be held on April 21, 2004 in New York, New York. The following information pertains to both hearings. The hearings will begin at 9 a.m. Both hearings will be broadcast live and access will be available via webcast on the Commission's Web site at <http://www.sec.gov>. Persons who wish to testify at either hearing must submit a written request to the Commission specifying the date on which they prefer to testify and, if they are flexible as to either date, to specify so in their request. The Commission must receive these requests on or before March 22, 2004. Persons requesting to testify must also submit three copies of their oral statements or a summary of their intended testimony to the Commission. The Commission must receive these submissions on or before March 26, 2004. Those who do not wish to appear at the hearings may submit written testimony on or before the end of the comment period for the Proposing Release, which is 75 days after publication of the Proposing Release in the **Federal Register** (May 24, 2004), for inclusion in the public comment file.

**ADDRESSES:** The April 1, 2004 hearing will be held in the William O. Douglas Room of the Commission's headquarters at 450 Fifth Street, NW., Washington, DC 20549. The April 21, 2004 hearing will be held at the InterContinental The Barclay New York at 111 East 48th Street, New York, NY 10017. Persons submitting requests to appear or written testimony in lieu of testifying should file three copies of the request or testimony with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459-0609. Persons requesting to appear should also submit three copies of their oral statement or summary of their testimony to the same

address. Requests to appear and copies of oral statements or summaries of intended testimony may be filed electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). The words "Request to Testify" should be clearly noted on the subject line of the request. All requests and other submissions also should refer to File No. S7-10-04. Copies of all requests and other submissions and transcripts of the hearings will be available for public inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. All submitted requests and other materials will be posted on the Commission's Internet Web site (<http://www.sec.gov>). We do not edit personal information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Sapna C. Patel, Special Counsel, Office of Market Supervision, Division of Market Regulation, at (202) 942-0166, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

**SUPPLEMENTAL INFORMATION:****I. Summary of Rule Proposals**

The public hearings concern the Commission's proposed Regulation NMS. As more fully described in the Proposing Release<sup>1</sup> (available on the Commission's Web site at <http://www.sec.gov/rules/proposed/34-49325.htm>), Regulation NMS would incorporate four substantive proposals that are designed to enhance and modernize the regulatory structure of the U.S. equity markets. First, the Commission has proposed a uniform rule for all national market system ("NMS") market centers that, subject to certain exceptions, would require a market center to establish, maintain, and enforce policies and procedures reasonably designed to prevent "trade-throughs"—the execution of an order in its market at a price that is inferior to a price displayed in another market. Second, the Commission has proposed a market access rule that would modernize the terms of access to quotations and execution of orders in the NMS. The third proposal would prohibit market participants from accepting, ranking, or displaying orders, quotes, or indications of interest in a pricing increment finer than a penny, except for securities with a share price of below \$1.00. Finally, the Commission has proposed amendments to the rules and joint industry plans for

disseminating market information to the public that, among other things, would modify the formulas for allocating plan net income to reward markets for more broadly based contributions to public price discovery. The Commission also has proposed to redesignate the NMS rules adopted under Section 11A of the Securities Exchange Act of 1934 as Regulation NMS. The Commission will consider the hearing record in connection with its rulemaking proposals.

**II. Procedures for Hearing**

The Commission will publish a schedule of appearances for the April 1st hearing on or about March 26, 2004 and for the April 21st hearing on or about April 12, 2004. Based on the number of requests received, the Commission may not be able to accommodate all requests. The Commission may limit the time for formal presentations or group presentations into a series of panels. Time will be reserved for members of the Commission and Commission staff to pose questions to each witness concerning his or her testimony as well as other matters pertaining to the Proposing Release. The Commission has designated Jonathan G. Katz, Secretary of the Commission, as the hearing officer.

Dated: March 12, 2004.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-6070 Filed 3-17-04; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

**In the Matter of World Information Technology, Inc.; Order of Suspension of Trading**

March 16, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Information Technology, Inc. (the "Company"), trading under the stock symbol WRLT. Questions have been raised regarding: (i) The accuracy and completeness of information about the Company in filings with the Commission and in press releases concerning, among other things, the Company's financial condition, the Company's funding arrangements, and the resignations of the Company's former auditor and Chairman; and (ii)

<sup>1</sup> Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004).