## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51277/February 28, 2005]

## Order Making Fiscal 2005 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

## I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission. ${ }^{1}$ Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange. ${ }^{2}$ Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange. ${ }^{3}$

Sections 31(j)(1) and (3) require the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal year 2012 and beyond. ${ }^{4}$ Section 31(j)(2) requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal 2002 through fiscal 2011. ${ }^{5}$ The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section

[^0]31 equal to the "target offsetting collection amount" specified in Section 31(l)(1) for that fiscal year. ${ }^{6}$ For fiscal 2005, the target offsetting collection amount is $\$ 1,220,000,000 .{ }^{7}$

Congress established the target offsetting collection amounts in the Investor and Capital Markets Fee Relief Act ("Fee Relief Act") by applying reduced fee rates to the Congressional Budget Office’s ("CBO") January 2001 projections of dollar volume for fiscal years 2002 through 2011. ${ }^{8}$ In any fiscal year through fiscal 2011, the annual, and in certain circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

## II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2005

Under Section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under Sections 31(b) and (c) in fiscal year 2005 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate ( $\$ 37,902,443,515,254$ ) is reasonably likely to be $10 \%$ (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2005. ${ }^{9}$ To make this

[^1]7 Id.
8 The target offsetting collection amounts for fiscal 2002 through 2006 were determined by applying a rate of $\$ 15$ per million to the CBO's January 2001 projections of dollar volume for those fiscal years. The target offsetting collection amounts for fiscal 2007 through 2011 were determined by applying a rate of $\$ 7$ per million to the CBO's January 2001 projections of dollar volume for those fiscal years. For example, CBO’s January 2001 projection of dollar volume for fiscal 2005 was $\$ 81,300,000,000,000$. Applying the initial rate under the Fee Relief Act of $\$ 15$ per million to that projection produces the target offsetting collection amount for fiscal 2005 of $\$ 1,220,000,000$.

9 The amount $\$ 37,902,443,515,254$ is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2005 calculated by the Commission in its Order Making Fiscal 2005 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33-8418 (April 30, 2004), 69 FR 25632 (May 7, 2004).
determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2005.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section $31,{ }^{10}$ the actual aggregate dollar volume of sales during the first four months of fiscal 2005 was $\$ 10,211,172,018,628 .{ }^{11}$ Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal 2005 (developed after consultation with the CBO and the OMB ), ${ }^{12}$ the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2005 to be $\$ 24,166,536,269,237$. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2005 will be $\$ 34,377,708,287,865$.

Because the baseline estimate of $\$ 37,902,443,515,254$ is more than $10 \%$ greater than the \$34,377,708,287,865 estimated actual aggregate dollar volume of sales for fiscal 2005, Section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under Sections 31(b) and (c).

## III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal
2005. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount

[^2]of sales for the remainder of [fiscal 2005], is reasonably likely to produce aggregate fee collections under Section 31 (including fees collected during such 5-month period and assessments collected under [Section 31(d)]) that are equal to $[\$ 1,220,000,000] .{ }^{13}$ In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under Section 31(d) during all of fiscal 2005 from $\$ 1,220,000,000$, which is the target offsetting collection amount for fiscal 2005. That difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect $\$ 438,149,779$ in fees for the period prior to the effective date of the mid-year adjustment ${ }^{14}$ and $\$ 20,973$ in assessments on round turn transactions in security futures products during all of fiscal 2005. Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal 2005 following the effective date of the new rate will be

[^3]$\$ 18,708,485,344,202$. Based on these estimates, the uniform adjusted rate is $\$ 41.80$ per million of the aggregate dollar amount of sales of securities. ${ }^{15}$

The Commission recognizes that this fee rate is higher than the current fee rate of \$32.90 per million. However, the new fee rate is established by the statutory mid-year adjustment mechanism and is a direct consequence of more recent information on the dollar amount of sales of securities. The aggregate dollar amount of sales of securities subject to Section 31 fees is illustrated in Appendix A.

## IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. Therefore, the exchanges and the national securities association that are subject to Section 31 fees must pay fees under Sections 31(b) and (c) at the uniform adjusted rate of $\$ 41.80$ per million for sales of securities transacted on April 1, 2005, and thereafter until the annual adjustment for fiscal 2005 is effective. ${ }^{16}$

15 The calculation is as follows: (\$1,220,000,000-\$438,149,779-\$20,973)/\$18,708,485,344,202= $\$ 0.0000417901$. Consistent with the system requirements of the exchanges and the NASD, the Commission rounds this result to the seventh decimal point, yielding a rate of $\$ 41.80$ per million.

16 Section 31(j)(1) and Section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2005, adjusting the fee rates applicable under Sections 31(b) and (c) for fiscal 2006. These fee rates for fiscal 2006 will be effective on the later of October 1, 2005 or thirty days after the enactment of the Commission’s regular appropriation for fiscal 2006.

## V. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act, ${ }^{17}$
IT IS HEREBY ORDERED that each of the fee rates under Sections 31(b) and (c) of the Exchange Act shall be $\$ 41.80$ per $\$ 1,000,000$ of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2005.

By the Commission.

Margaret H. McFarland
Deputy Secretary
$17 \quad 15$ U.S.C. 78ee.

## APPENDIX A

## A. Baseline estimate of the aggregate dollar amount of sales.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 1995 - January 2005). The data obtained from the exchanges and NASD are presented in Table A. The monthly aggregate dollar amount of sales from all exchanges and the NASD is contained in column C.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.016 and the standard deviation 0.118 . Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 2.4 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January $2005(\$ 128,432,971,367)$ to forecast ADS for February 2005 ( $\$ 131,460,417,421=\$ 128,432,971,367 \times 1.024) .{ }^{18}$ Multiply by the number of trading days in February 2005 (19) to obtain a forecast of the total dollar volume for the month ( $\$ 2,497,747,931,005$ ). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).
2. For each month $t$, calculate the change in ADS from the previous month as $\Delta_{\mathrm{t}}=\log \left(\mathrm{ADS}_{\mathrm{t}} / \mathrm{ADS}_{\mathrm{t}-1}\right)$, where $\log (\mathrm{x})$ denotes the natural logarithm of x .
3. Calculate the mean and standard deviation of the series $\left\{\Delta_{1}, \Delta_{2}, \ldots, \Delta_{120}\right\}$. These are given by $\mu=0.016$ and $\sigma=0.118$, respectively.
4. Assume that the natural logarithm of ADS follows a random walk, so that $\Delta_{\mathrm{s}}$ and $\Delta_{\mathrm{t}}$ are statistically independent for any two months $s$ and $t$.
5. Under the assumption that $\Delta_{t}$ is normally distributed, the expected value of $\mathrm{ADS}_{\mathrm{t}} / \mathrm{ADS}_{\mathrm{t}-1}$ is given by $\exp \left(\mu+\sigma^{2} / 2\right)$, or on average $\mathrm{ADS}_{t}=1.024 \times \mathrm{ADS}_{t-1}$.
6. For February 2005, this gives a forecast ADS of $1.024 \times \$ 128,432,971,367=$ $\$ 131,460,417,421$. Multiply this figure by the 19 trading days in February 2005 to obtain a total dollar volume forecast of $\$ 2,497,747,931,005$.
7. For March 2005, multiply the February 2005 ADS forecast by 1.024 to obtain a forecast ADS of $\$ 134,559,227,001$. Multiply this figure by the 22 trading days in March 2005 to obtain a total dollar volume forecast of $\$ 2,960,302,994,030$.

[^4]8. Repeat this procedure for subsequent months.

## B. Using the forecasts from A to calculate the new fee rate.

1. Determine the aggregate dollar volume of sales between $10 / 1 / 04$ and $1 / 6 / 05$ to be $\$ 8,143,963,787,852$. Multiply this amount by the fee rate of $\$ 23.40$ per million dollars in sales during this period and get $\$ 190,568,753$ in actual fees collected during 10/1/04 and $1 / 6 / 05$. Determine the actual and projected aggregate dollar volume of sales between $1 / 7 / 05$ and $3 / 31 / 05$ to be $\$ 7,525,259,155,811$. Multiply this amount by the fee rate of $\$ 32.90$ per million dollars in sales during this period and get an estimate of $\$ 247,581,026$ in actual and projected fees collected during 1/7/05 and 3/31/05.
2. Estimate the amount of assessments on security futures products collected during 10/1/04 and $9 / 30 / 05$ to be $\$ 20,973$ by summing the amounts collected through January of $\$ 5,845$ with projections of a $2.4 \%$ monthly increase in subsequent months.
3. Determine the projected aggregate dollar volume of sales between 4/1/05 and 9/30/05 to be \$18,708,485,344,202.
4. The rate necessary to collect the target $\$ 1,220,000,000$ in fee revenues is then calculated as: (\$1,220,000,000 - \$190,568,753-\$247,581,026-\$20,973) $\div \$ 18,708,485,344,202=$ . 000041790 .
5. Consistent with the system requirements of the exchanges and the NASD, round the rate to the seventh decimal point, yielding a rate of .0000418 (or $\$ 41.80$ per million).

Table A. Estimation of baseline of the aggregate dollar amount of sales.
(Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.)

Fee rate calculation.

| a. Baseline estimate of the aggregate dollar amount of sales, $10 / 1 / 04$ to $1 / 6 / 05$ (\$Millions) | $8,143,964$ |
| :--- | ---: | ---: |
| b. Baseline estimate of the aggregate dollar amount of sales, $1 / 7 / 05$ to $3 / 31 / 05$ (\$Millions) | $7,525,259$ |
| c. Baseline estimate of the aggregate dollar amount of sales, $4 / 1 / 05$ to $9 / 30 / 05$ (\$Millions) | $18,708,485$ |
| d. Estimated collections in assessments on security futures products in FY 2005 (\$Millions) | 0.021 |
| e. Implied fee rate (( $\$ 1,220,000,000-0.0000234 * a-0.0000329 *$ b - d) $/$ c) | $\$ 41.79009$ |


| (A) <br> Month | (B) <br> \# of Trading Days in Month | (C) <br> Aggregate Dollar Amount of Sales | (D) Average Daily Dollar Amount of Sales (ADS) | (E) <br> Change in LN of ADS | (F) Forecast ADS | (G) <br> Forecast Aggregate Dollar Amount of Sales |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Jan-95 | 21 | 379,051,209,771 | 18,050,057,608 | - |  |  |
| Feb-95 | 19 | 389,060,886,035 | 20,476,888,739 | 0.126 |  |  |
| Mar-95 | 23 | 491,872,609,718 | 21,385,765,640 | 0.043 |  |  |
| Apr-95 | 19 | 435,327,633,818 | 22,911,980,727 | 0.069 |  |  |
| May-95 | 22 | 531,855,060,379 | 24,175,230,017 | 0.054 |  |  |
| Jun-95 | 22 | 574,332,213,609 | 26,106,009,710 | 0.077 |  |  |
| Jul-95 | 20 | 576,049,335,831 | 28,802,466,792 | 0.098 |  |  |
| Aug-95 | 23 | 570,638,726,060 | 24,810,379,394 | -0.149 |  |  |
| Sep-95 | 20 | 578,133,939,676 | 28,906,696,984 | 0.153 |  |  |
| Oct-95 | 22 | 642,190,178,035 | 29,190,462,638 | 0.010 |  |  |
| Nov-95 | 21 | 596,424,550,565 | 28,401,169,075 | -0.027 |  |  |
| Dec-95 | 20 | 624,610,441,037 | 31,230,522,052 | 0.095 |  |  |
| Jan-96 | 22 | 687,599,091,854 | 31,254,504,175 | 0.001 |  |  |
| Feb-96 | 20 | 687,232,471,273 | 34,361,623,564 | 0.095 |  |  |
| Mar-96 | 21 | 714,836,120,093 | 34,039,815,243 | -0.009 |  |  |
| Apr-96 | 21 | 704,410,318,022 | 33,543,348,477 | -0.015 |  |  |
| May-96 | 22 | 768,379,507,489 | 34,926,341,250 | 0.040 |  |  |
| Jun-96 | 20 | 631,098,780,223 | 31,554,939,011 | -0.102 |  |  |
| Jul-96 | 22 | 688,428,728,384 | 31,292,214,927 | -0.008 |  |  |
| Aug-96 | 22 | 570,109,772,036 | 25,914,080,547 | -0.189 |  |  |
| Sep-96 | 20 | 617,243,881,688 | 30,862,194,084 | 0.175 |  |  |
| Oct-96 | 23 | 764,269,441,454 | 33,229,106,150 | 0.074 |  |  |
| Nov-96 | 20 | 748,494,700,419 | 37,424,735,021 | 0.119 |  |  |
| Dec-96 | 21 | 764,479,496,753 | 36,403,785,560 | -0.028 |  |  |
| Jan-97 | 22 | 957,432,637,586 | 43,519,665,345 | 0.179 |  |  |
| Feb-97 | 19 | 837,174,183,446 | 44,061,799,129 | 0.012 |  |  |
| Mar-97 | 20 | 839,192,728,788 | 41,959,636,439 | -0.049 |  |  |
| Apr-97 | 22 | 862,799,213,315 | 39,218,146,060 | -0.068 |  |  |
| May-97 | 21 | 925,733,852,647 | 44,082,564,412 | 0.117 |  |  |
| Jun-97 | 21 | 930,409,085,859 | 44,305,194,565 | 0.005 |  |  |
| Jul-97 | 22 | 1,085,682,706,898 | 49,349,213,950 | 0.108 |  |  |
| Aug-97 | 21 | 1,031,344,138,751 | 49,111,625,655 | -0.005 |  |  |
| Sep-97 | 21 | 1,036,460,244,602 | 49,355,249,743 | 0.005 |  |  |
| Oct-97 | 23 | 1,329,653,432,718 | 57,811,018,814 | 0.158 |  |  |
| Nov-97 | 19 | 926,017,878,587 | 48,737,783,084 | -0.171 |  |  |
| Dec-97 | 22 | 1,046,220,806,199 | 47,555,491,191 | -0.025 |  |  |
| Jan-98 | 20 | 1,037,925,292,902 | 51,896,264,645 | 0.087 |  |  |
| Feb-98 | 19 | 1,081,705,333,396 | 56,931,859,652 | 0.093 |  |  |
| Mar-98 | 22 | 1,259,994,685,467 | 57,272,485,703 | 0.006 |  |  |
| Apr-98 | 21 | 1,298,494,359,253 | 61,833,064,726 | 0.077 |  |  |
| May-98 | 20 | 1,110,221,658,995 | 55,511,082,950 | -0.108 |  |  |
| Jun-98 | 22 | 1,243,779,791,913 | 56,535,445,087 | 0.018 |  |  |
| Jul-98 | 22 | 1,399,011,433,748 | 63,591,428,807 | 0.118 |  |  |
| Aug-98 | 21 | 1,307,501,463,442 | 62,261,974,450 | -0.021 |  |  |
| Sep-98 | 21 | 1,352,428,235,083 | 64,401,344,528 | 0.034 |  |  |
| Oct-98 | 22 | 1,460,835,397,598 | 66,401,608,982 | 0.031 |  |  |
| Nov-98 | 20 | 1,298,403,768,065 | 64,920,188,403 | -0.023 |  |  |
| Dec-98 | 22 | 1,442,697,787,306 | 65,577,172,150 | 0.010 |  |  |



| May-04 | 20 | $2,253,135,847,669$ | $112,656,792,383$ | -0.019 |  |  |
| ---: | ---: | ---: | ---: | ---: | ---: | :--- |
| Jun-04 | 22 | $2,106,449,803,404$ | $95,747,718,337$ | -0.163 |  |  |
| Jul-04 | 21 | $2,203,895,014,681$ | $104,947,381,651$ | 0.092 |  |  |
| Aug-04 | 22 | $2,027,596,448,411$ | $92,163,474,928$ | -0.130 |  |  |
| Sep-04 | 21 | $1,987,599,548,361$ | $94,647,597,541$ | 0.027 |  |  |
| Oct-04 | 21 | $2,407,510,364,975$ | $114,643,350,713$ | 0.192 |  |  |
| Nov-04 | 21 | $2,569,602,996,944$ | $122,362,047,474$ | 0.065 |  |  |
| Dec-04 | 22 | $2,665,399,229,376$ | $121,154,510,426$ | -0.010 |  |  |
| Jan-05 | 20 | $2,568,659,427,333$ | $128,432,971,367$ | 0.058 |  |  |
| Feb-05 | 19 |  |  |  | $131,460,417,421$ | $2,497,747,931,005$ |
| Mar-05 | 22 |  |  |  | $134,559,227,001$ | $2,960,302,994,030$ |
| Apr-05 | 21 |  |  |  | $137,731,082,301$ | $2,892,352,728,325$ |
| May-05 | 21 |  |  |  | $140,977,705,168$ | $2,960,531,808,532$ |
| Jun-05 | 22 |  |  |  | $144,300,858,037$ | $3,174,618,876,824$ |
| Jul-05 | 20 |  |  |  | $147,702,344,889$ | $2,954,046,897,770$ |
| Aug-05 | 23 |  |  |  | $151,184,012,225$ | $3,477,232,281,168$ |
| Sep-05 | 21 |  |  |  | $154,747,750,075$ | $3,249,702,751,583$ |


[^0]:    15 U.S.C. 78ee.
    ${ }^{2} \quad 15$ U.S.C. 78ee(b).
    $3 \quad 15$ U.S.C. 78ee(c).
    415 U.S.C. 78ee(j)(1) and (j)(3).
    $5 \quad 15$ U.S.C. 78ee(j)(2).

[^1]:    ${ }^{6} 15$ U.S.C. $78 \mathrm{ee}(\mathrm{l})(1)$.

[^2]:    10 The NASD, Inc. ("NASD") and each exchange is required to file a monthly report on Form R31 containing dollar volume data on sales of securities subject to Section 31 . The report is due on the $10^{\text {th }}$ business day following the month for which the exchange or association provides dollar volume data.
    ${ }^{11}$ Although Section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2005 "based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year," data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, i.e., March 1, 2005. Dollar volume data on sales of securities subject to Section 31 for February 2005 will not be available from the exchanges and the NASD for several weeks.

    12 See Appendix A.

[^3]:    ${ }^{13} 15$ U.S.C. $78 \mathrm{ee}(\mathrm{j})(2)$. The term "fees collected" is not defined in Section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of Section 31 fees for fiscal 2005 until March 15, the Commission will not "collect" any fees in the first five months of fiscal 2005. See 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in Section 31(j)(2) that the "uniform adjusted rate . . . is reasonably likely to produce aggregate fee collections under Section 31 . . . that are equal to [ $\$ 1,220,000,000]$," intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

    14 This calculation is based on applying a fee rate of $\$ 23.40$ per million to the aggregate dollar volume of sales of securities subject to Section 31 through January 6, 2005, and a rate of $\$ 32.90$ for the period from January 7, 2005 to March 31, 2005. Because the Commission's regular appropriation for fiscal year 2005 was not enacted prior to the end of fiscal year 2004, Exchange Act Section 31(k), the "Lapse of Appropriation" provision, required that the fee rate in use at the end of fiscal year 2004, $\$ 23.40$ per million, remain in effect until 30 days after the appropriation was enacted. See also Order Making Fiscal 2005 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33-8418 (April 30, 2004), 69 FR 25632 (May 7, 2004). The Commission's regular appropriation for fiscal year 2005 was enacted on December 8, 2004, and the $\$ 32.90$ per million rate went into effect 30 days later, by operation of the statute. See Exchange Act Section 31(j)(4)(A)(ii).

[^4]:    ${ }^{18}$ The value 1.024 has been rounded. All computations are done with the unrounded value.

