

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64373 / April 29, 2011]

Order Making Fiscal Year 2012 Annual Adjustments to the Fee Rates Applicable under Section 31(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

The Investor and Capital Markets Fee Relief Act (“Fee Relief Act”)⁴ amended Section 31 of the Exchange Act to require the Commission to make annual adjustments to the fee rates applicable under this section for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates under these sections for fiscal year 2012 and beyond.⁵

¹ 15 U.S.C. 78ee.

² 15 U.S.C. 78ee(b).

³ 15 U.S.C. 78ee(c).

⁴ Pub. L. No. 107-123, 115 Stat. 2390 (2002).

⁵ See 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5), 78n(g)(6), 78ee(j)(1), and 78ee(j)(3). Section 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in specified circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal years 2002 through 2011.

II. Fiscal Year 2012 Annual Adjustment to the Fee Rates Applicable under Sections 31(b) and (c) of the Exchange Act

Section 31(b) of the Exchange Act requires each national securities exchange to pay the Commission a fee at a rate, as adjusted by our order pursuant to Section 31(j)(1),⁶ which currently is \$19.20 per million of the aggregate dollar amount of sales of specified securities transacted on the exchange. Similarly, Section 31(c) requires each national securities association to pay the Commission a fee at the same adjusted rate on the aggregate dollar amount of sales of specified securities transacted by or through any member of the association otherwise than on an exchange. Section 31(j)(1) requires 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 2011.⁷ Section 31(j)(3) requires the Commission to make one final adjustment for fiscal year 2012.⁸

Section 31(j)(3) specifies the method for determining the annual adjustment for fiscal year 2012. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a “uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012, is reasonably likely to produce

⁶ Order Making Fiscal Year 2011 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. 33-9122 (April 29, 2010), 75 FR 24757 (May 5, 2010).

⁷ The annual adjustments, as well as the mid-year adjustments required in specified circumstances under Section 31(j)(2) in fiscal years 2002 through 2011, 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 31 equal to the “target offsetting collection amount” specified in Section 31(l)(1) for that fiscal year.

⁸ The final adjustment for fiscal year 2012 is designed to adjust the fee rate in 2012 and subsequent years so that, when applied to the aggregate dollar volume of sales for fiscal year 2012, it is reasonably likely to produce total fee collections under Section 31 equal to the “target offsetting collection amount” for fiscal year 2011. Note, however, that Section 31 will be amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) effective on the later of October 1, 2011 or the date of enactment of an Act making a regular appropriation to the Commission for fiscal year 2012. Once the amendments become effective, the Commission will be required to make a new adjustment to the fee rates under Section 31 for fiscal year 2012 and subsequent fiscal years.

aggregate fee collections under [Section 31] in fiscal year 2012 (including assessments collected under [Section 31(d)]) that are equal to the target offsetting collection amount for fiscal year 2011.”

Section 31(l)(1) specifies that the “target offsetting collection amount” for fiscal year 2011 is \$1,321,000,000. Section 31(l)(2) defines the “baseline estimate of the aggregate dollar amount of sales” as “the baseline estimate of the aggregate dollar amount of sales of securities . . . to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during fiscal year 2012 as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget”

To make the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012, the Commission is using the same methodology it developed in consultation with the CBO and OMB to project dollar volume for purposes of prior fee adjustments.⁹ Using this methodology, the Commission calculates the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012 to be \$85,673,432,736,834. Based on this estimate, and an estimated collection of \$27,453 in assessments on security futures transactions under Section 31(d) in fiscal year 2012, the uniform adjusted rate for fiscal year 2012 is \$15.10 per million.¹⁰

⁹ Appendix A explains how we determined the “baseline estimate of the aggregate dollar amount of sales” for fiscal year 2012 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2012 annual adjustment based on that estimate. The appendix also includes the data used by the Commission in making its “baseline estimate of the aggregate dollar amount of sales” for fiscal year 2012.

¹⁰ The calculation of the adjusted fee rate assumes that the current fee rate of \$19.20 per million will apply through October 31, 2012, due to the operation of the effective date provision contained in Section 31(j)(4)(A) of the Exchange Act.

III. Effective Dates of the Annual Adjustments

Section 31(j)(4)(A) of the Exchange Act provides that the fiscal year 2012 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2011, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

It is important to note, however, that Section 991 of the Dodd-Frank Act amends Section 31 of the Exchange Act effective on the later of October 1, 2011 or the date of enactment of an Act making a regular appropriation to the Commission for fiscal year 2012. Once, the amendments become effective, new lapse in appropriations provisions will apply such that, if a regular appropriation to the Commission for fiscal year 2012 is not enacted on or before October 1, 2011, the new fee rates will not become effective until 60 days after the date such a regular appropriation is enacted.

Moreover, once the amendments to Section 31 become effective, the Commission will be required to make a new adjustment to the fee rates under Section 31 for fiscal year 2012. The new fee rates will be determined no later than 30 days after the date on which an Act making a regular appropriation to the Commission for fiscal year 2012 is enacted,¹¹ and they will become effective on the later of October 1, 2011 or 60 days after the date such a regular appropriation is enacted.

As a result of these amendments, if a regular appropriation to the Commission for fiscal year 2012 is not enacted on or before October 1, 2011, the fee rate adjustments

¹¹ In the event an Act making a regular appropriation to the Commission for fiscal year 2012 is enacted more than 30 days prior to October 1, 2011, the Commission will need to defer making a new adjustment until October 1, 2011, because the amendments requiring the new adjustment will not be effective until that date.

under this order will never become effective. Rather the fee rate adjustments for fiscal year 2012 will be determined in accordance with the amendments to Section 31 made by the Dodd-Frank Act and will become effective 60 days after the date such a regular appropriation is enacted.

IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,¹²

IT IS HEREBY ORDERED that, if a regular appropriation to the Commission for fiscal year 2012 is enacted on or before October 1, 2011, the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be \$15.10 per million effective on the later of October 1, 2011, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

By the Commission.

Cathy H. Ahn
Deputy Secretary

¹² 15 U.S.C. 77f(b), 78m(e), 78n(g), and 78ee(j).

APPENDIX A

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to investors based on the value of their transactions. This appendix provides the formula for determining such fees, which the Commission adjusts annually, and may adjust semi-annually.¹³ In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected dollar transaction volume on the securities exchanges and certain over-the-counter markets over the course of the year. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected dollar transaction volume.

For 2012, the Commission has estimated dollar transaction volume by projecting forward the trend established in the previous decade. More specifically, dollar transaction volume was forecasted for months subsequent to March 2011, the last month for which the Commission has data on transaction volume.

The following sections describe this process in detail.

A. Baseline estimate of the aggregate dollar amount of sales for fiscal year 2012.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (March 2001 - March 2011). The monthly aggregate dollar amount of sales (exchange plus certain over-the-counter markets) is presented in column C of Table B.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.0074 and the standard deviation is 0.123. Assuming the monthly percentage change in ADS follows a random walk,

¹³ Congress requires that the Commission make a mid-year adjustment to the fee rate if four months into the fiscal year it determines that its forecasts of aggregate dollar volume are reasonably likely to be off by 10% or more.

calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 1.5 %.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for March 2011 (\$282,580,668,926) to forecast ADS for April 2011 (\$286,849,029,708 = \$282,580,668,926 x 1.015).¹⁴ Multiply by the number of trading days in April 2011 (20) to obtain a forecast of the total dollar volume for the month (\$5,736,980,594,157). 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 $\Delta_t = \log (ADS_t / ADS_{t-1})$, where $\log (x)$ denotes the natural logarithm of x .
3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \dots, \Delta_{120}\}$. These are given by $\mu = 0.0074$ and $\sigma = 0.123$, respectively.
4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t .
5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t / ADS_{t-1} is given by $\exp (\mu + \sigma^2/2)$, or on average $ADS_t = 1.015 \times ADS_{t-1}$.

¹⁴ The value 1.015 has been rounded. All computations are done with the unrounded value.

6. For April 2011, this gives a forecast ADS of $1.015 \times \$282,580,668,926 = \$286,849,029,708$.

Multiply this figure by the 20 trading days in April 2011 to obtain a total dollar volume forecast of \$5,736,980,594,157.

7. For May 2011, multiply the April 2011 ADS forecast by 1.015 to obtain a forecast ADS of \$291,181,863,773. Multiply this figure by the 21 trading days in May 2011 to obtain a total dollar volume forecast of \$6,114,819,139,242.

8. Repeat this procedure for subsequent months.

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

1. Use Table A to estimate fees collected for the period 10/1/11 through 10/31/11. The projected aggregate dollar amount of sales for this period is \$6,590,802,501,369. Projected fee collections at the current fee rate of 0.0000192 are \$126,543,408.

2. Estimate the amount of assessments on securities futures products collected during 10/1/11 and 9/30/12 to be \$27,453 by projecting a 1.5% monthly increase from a base of \$1,960 in March 2011.

3. Subtract the amounts \$126,543,408 and \$27,453 from the target offsetting collection amount set by Congress of \$1,321,000,000 leaving \$1,194,429,139 to be collected on dollar volume for the period 11/1/11 through 9/30/12.

4. Use Table A to estimate dollar volume for the period 11/1/11 through 9/30/12. The estimate is \$79,082,630,235,466. Finally, compute the fee rate required to produce the additional \$1,194,429,139 in revenue. This rate is \$1,194,429,139 divided by \$79,082,630,235,466 or 0.0000151036.

5. Round the result to the seventh decimal point, yielding a rate of .0000151 (or \$15.10 per million).

Table A. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/11 to 10/31/11 (\$Millions)	6,590,803
b. Baseline estimate of the aggregate dollar amount of sales, 11/1/11 to 9/30/12 (\$Millions)	79,082,630
c. Estimated collections in assessments on securities futures products in FY 2012 (\$Millions)	0.027
d. Implied fee rate ($(\$1,321,000,000 - 0.0000192^*a - c) / b$)	\$15.10

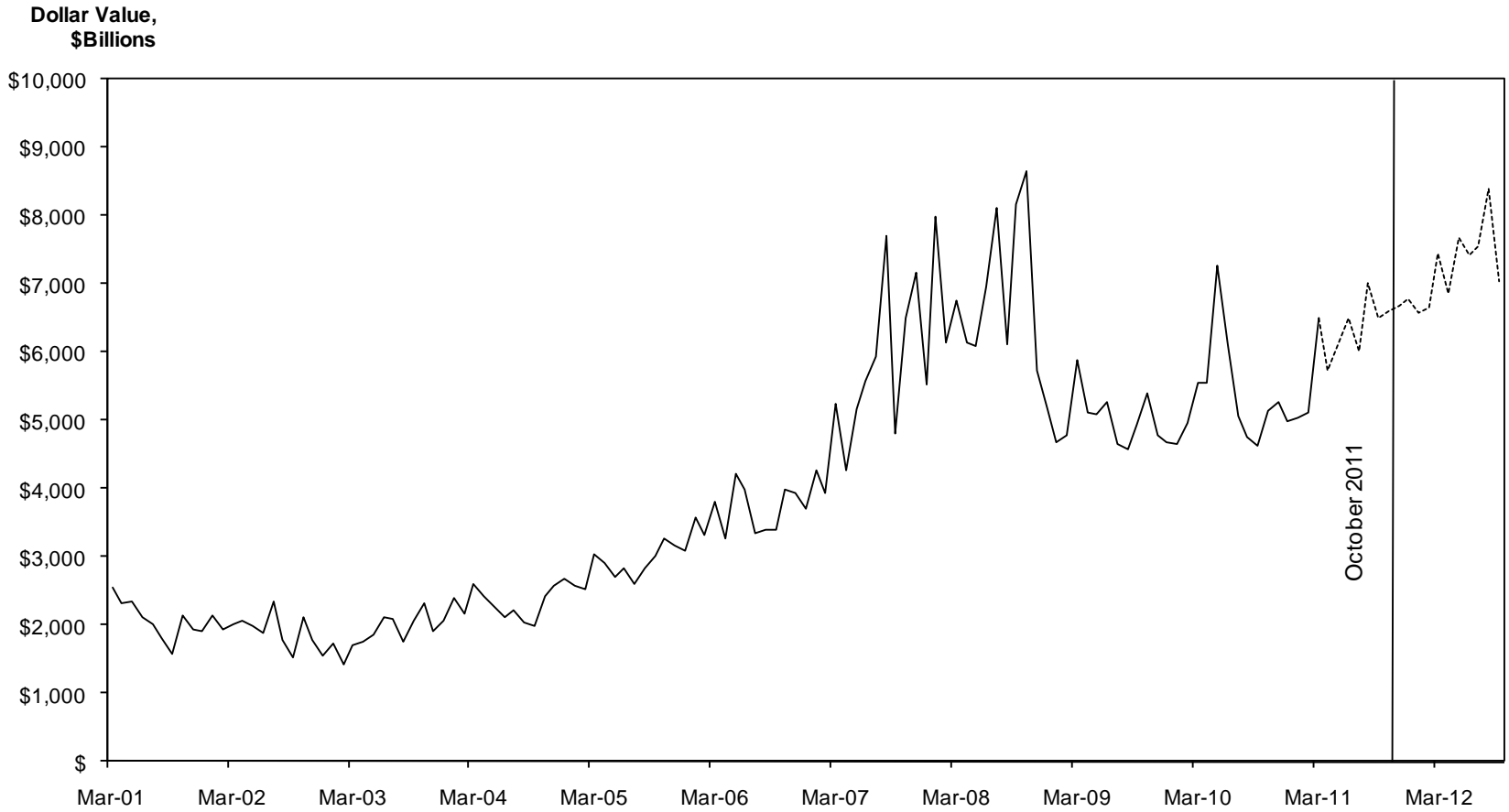
Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Mar-01	22	2,554,419,085,113	116,109,958,414	-		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,847,200,448	129,092,360,022	0.060		
Feb-05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar-05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr-05	21	2,906,386,944,434	138,399,378,306	0.005		
May-05	21	2,697,414,503,460	128,448,309,689	-0.075		

Jun-05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul-05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug-05	23	2,846,115,585,965	123,744,155,912	-0.051		
Sep-05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct-05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov-05	21	3,163,453,821,548	150,640,658,169	-0.036		
Dec-05	21	3,090,212,715,561	147,152,986,455	-0.023		
Jan-06	20	3,573,372,724,766	178,668,636,238	0.194		
Feb-06	19	3,314,259,849,456	174,434,728,919	-0.024		
Mar-06	23	3,807,974,821,564	165,564,122,677	-0.052		
Apr-06	19	3,257,478,138,851	171,446,217,834	0.035		
May-06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun-06	22	3,995,113,357,316	181,596,061,696	-0.052		
Jul-06	20	3,339,658,009,357	166,982,900,468	-0.084		
Aug-06	23	3,410,187,280,845	148,269,012,211	-0.119		
Sep-06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct-06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb-07	19	3,946,799,860,532	207,726,308,449	-0.026		
Mar-07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr-07	20	4,274,665,072,437	213,733,253,622	-0.109		
May-07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun-07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul-07	21	5,938,330,480,139	282,777,641,911	0.061		
Aug-07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep-07	19	4,805,676,596,099	252,930,347,163	-0.282		
Oct-07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov-07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec-07	20	5,512,903,594,564	275,645,179,728	-0.215		
Jan-08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb-08	20	6,139,080,448,887	306,954,022,444	-0.216		
Mar-08	20	6,767,852,332,381	338,392,616,619	0.098		
Apr-08	22	6,150,017,772,735	279,546,262,397	-0.191		
May-08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun-08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul-08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug-08	21	6,106,057,711,009	290,764,652,905	-0.237		
Sep-08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct-08	23	8,644,538,213,244	375,849,487,532	-0.033		
Nov-08	19	5,727,998,341,833	301,473,596,939	-0.221		
Dec-08	22	5,176,041,317,640	235,274,605,347	-0.248		
Jan-09	20	4,670,249,433,806	233,512,471,690	-0.008		
Feb-09	19	4,771,470,184,048	251,130,009,687	0.073		
Mar-09	22	5,885,594,284,780	267,527,012,945	0.063		
Apr-09	21	5,123,665,205,517	243,984,057,406	-0.092		
May-09	20	5,086,717,129,965	254,335,856,498	0.042		
Jun-09	22	5,271,742,782,609	239,624,671,937	-0.060		
Jul-09	22	4,659,599,245,583	211,799,965,708	-0.123		
Aug-09	21	4,582,102,295,783	218,195,347,418	0.030		
Sep-09	21	4,929,155,364,888	234,721,684,042	0.073		
Oct-09	22	5,410,025,301,030	245,910,240,956	0.047		
Nov-09	20	4,770,928,103,032	238,546,405,152	-0.030		
Dec-09	22	4,688,555,303,171	213,116,150,144	-0.113		
Jan-10	19	4,661,793,708,648	245,357,563,613	0.141		
Feb-10	19	4,969,848,578,023	261,570,977,791	0.064		

Mar-10	23	5,563,529,823,621	241,892,601,027	-0.078		
Apr-10	21	5,546,445,874,917	264,116,470,234	0.088		
May-10	20	7,260,430,376,294	363,021,518,815	0.318		
Jun-10	22	6,124,776,349,285	278,398,924,967	-0.265		
Jul-10	21	5,058,242,097,334	240,868,671,302	-0.145		
Aug-10	22	4,765,828,005,840	216,628,545,720	-0.106		
Sep-10	21	4,640,722,344,586	220,986,778,314	0.020		
Oct-10	21	5,138,411,712,272	244,686,272,013	0.102		
Nov-10	21	5,279,700,881,901	251,414,327,710	0.027		
Dec-10	22	4,998,574,681,208	227,207,940,055	-0.101		
Jan-11	20	5,043,391,121,345	252,169,556,067	0.104		
Feb-11	19	5,114,631,590,581	269,191,136,346	0.065		
Mar-11	23	6,499,355,385,307	282,580,668,926	0.049		
Apr-11	20				286,849,029,708	5,736,980,594,157
May-11	21				291,181,863,773	6,114,819,139,242
Jun-11	22				295,580,144,987	6,502,763,189,725
Jul-11	20				300,044,861,925	6,000,897,238,491
Aug-11	23				304,577,018,091	7,005,271,416,102
Sep-11	21				309,177,632,153	6,492,730,275,209
Oct-11	21				313,847,738,160	6,590,802,501,369
Nov-11	21				318,588,385,785	6,690,356,101,486
Dec-11	21				323,400,640,553	6,791,413,451,608
Jan-12	20				328,285,584,084	6,565,711,681,687
Feb-12	20				333,244,314,338	6,664,886,286,769
Mar-12	22				338,277,945,858	7,442,114,808,879
Apr-12	20				343,387,610,022	6,867,752,200,434
May-12	22				348,574,455,297	7,668,638,016,529
Jun-12	21				353,839,647,499	7,430,632,597,469
Jul-12	21				359,184,370,052	7,542,871,771,086
Aug-12	23				364,609,824,257	8,386,025,957,901
Sep-12	19				370,117,229,559	7,032,227,361,619

Figure A.
 Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)¹
 Methodology Developed in Consultation With OMB and CBO
 (Dashed Line Indicates Forecast Values)



¹Forecasted line is not smooth because the number of trading days varies by month.