

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47425/February 28, 2003]

Order Making Fiscal 2003 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. 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 31 equal to the "target offsetting collection amount" specified in section 31(l)(1) for that fiscal year.⁵ For fiscal 2003, the target offsetting collection amount is \$849,000,000.⁶

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 2011.⁷ 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 2003

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 2003 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 (\$33,158,519,250,001) is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2003.⁸ To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2003.

Based on data provided by the national securities exchanges and the national securities association that are subject to section 31,⁹ the actual aggregate dollar volume of sales during the first four months of fiscal 2003 was \$7,073,980,109,231.¹⁰ Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal 2003 (developed

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 2003 was \$56,600,000,000,000. Applying the initial rate under the Fee Relief Act of \$15 per million to that projection produces the target offsetting collection amount for fiscal 2003 of \$849,000,000.

⁸ The amount \$33,158,519,250,001 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2003 calculated by the Commission in its Order Making Fiscal 2003 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. 34-45842 (April 29, 2002), 67 FR 22126 (May 2, 2002).

⁹ Each exchange is required to file a monthly report on Form R-31 containing dollar volume data on sales of securities subject to section 31 on the exchange. The report is due by the end of the month following the month for which the exchange provides dollar volume data. The NASD Inc. ("NASD") provides data separately.

¹⁰ Although section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2003 "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, 2003. Dollar volume data on sales of securities subject to section 31 for February 2003 will not be available from the exchanges and the NASD for several weeks.

after consultation with the CBO and the OMB),¹¹ the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2003 to be \$14,847,347,328,783. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2003 will be \$21,921,327,438,013.

Because \$33,158,519,250,001 is more than 10% greater than the \$21,921,327,438,013 estimated actual aggregate dollar volume of sales for fiscal 2003, 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 2003. 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 of sales for the remainder of [fiscal 2003], 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 [\$849,000,000]." ¹² 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 2003 from \$849,000,000, which is the target offsetting collection amount for fiscal 2003. 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 \$311,031,169 in fees for the period prior to the effective date of the mid-year adjustment ¹³ and \$22,100 in

¹¹ See Appendix A.

¹² 15 U.S.C. 78ee(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 2003 until March 15, the Commission will not "collect" any fees in the first five months of fiscal 2003. 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 [\$849,000,000]," 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.

¹³ This calculation is based on applying a fee rate of \$30.10 per million to the projected aggregate

¹ 15 U.S.C. 78ee.

² 15 U.S.C. 78ee(b).

³ 15 U.S.C. 78ee(c).

⁴ 15 U.S.C. 78ee(j)(1) and (j)(3).

⁵ See 15 U.S.C. 78ee(l)(1).

⁶ *Id.*

⁷ 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