

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8225 and 34–47768/April 30, 2003]

Order Making Fiscal Year 2004 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

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (“Securities Act”) requires the Commission to collect fees from issuers on the registration of securities.¹ Section 13(e) of the Securities Exchange Act of 1934 (“Exchange Act”) requires the Commission to collect fees on specified repurchases of securities.² Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.³ Finally, sections 31(b) and (c) of the Exchange Act require national securities exchanges and national securities associations, respectively, to pay fees on transactions in specified securities to the Commission.⁴

The Investor and Capital Markets Fee Relief Act (“Fee Relief Act”) ⁵ amended section 6(b) of the Securities Act and sections 13(e), 14(g), and 31 of the Exchange Act to require the Commission to make annual adjustments to the fee rates applicable under these sections 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.⁶

II. Fiscal Year 2004 Annual Adjustment to the Fee Rates Applicable Under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Paragraph 6(b)(5) of the Securities Act requires the Commission to make an

annual adjustment to the fee rate applicable under paragraph 6(b) of the Securities Act in each of the fiscal years 2003 through 2011.⁷ In those same fiscal years, paragraphs 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under section 6(b). In other words, the annual adjustment to the fee rate under section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under sections 13(e) and 14(g) of the Exchange Act.

On April 29, 2002, the Commission issued an Order setting the fiscal year 2003 fee rate under paragraph 6(b) of the Securities Act at a rate of \$80.90 per \$1,000,000 of the maximum aggregate offering price at which securities are proposed to be offered.⁸ This same fee rate applies to specified repurchases of securities under section 13(e) of the Exchange Act and proxy solicitations and statements in corporate control transactions under section 14(g) of the Exchange Act.

Paragraph 6(b)(5) sets forth the method for determining the annual adjustment to the fee rate under section 6(b) for fiscal year 2004. Specifically, the Commission must adjust the fee rate under section 6(b) to a “rate that, when applied to the baseline estimate of the aggregate maximum offering prices for (fiscal year 2004), is reasonably likely to produce aggregate fee collections under (section 6(b)) that are equal to the target offsetting collection amount for (fiscal year 2004).” That is, the adjusted rate is determined by dividing the “target offsetting collection amount” for fiscal year 2004 by the “baseline estimate of the aggregate maximum offering prices” for fiscal year 2004.

Paragraph 6(b)(11)(A) specifies that the “target offsetting collection amount” for fiscal year 2004 is \$467,000,000.⁹

⁷ The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the “target offsetting collection amount” specified in section 6(b)(11)(A) for that fiscal year.

⁸ 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. 33–8095 (April 29, 2002), 67 FR 22126 (May 2, 2002).

⁹ Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO’s January 2001 projections of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal year 2011, the annual adjustment mechanism will result in additional fee rate reductions if the CBO’s January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too

Paragraph 6(b)(11)(B) defines the “baseline estimate of the aggregate maximum offering price” for fiscal year 2004 as “the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during (fiscal year 2004) 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 maximum offering price for fiscal year 2004, the Commission is using the same methodology it developed in consultation with the Congressional Budget Office (“CBO”) and Office of Management and Budget (“OMB”) for making projections of aggregate offering price for purposes of the fiscal year 2003 annual adjustment. Using this methodology, the Commission determines the “baseline estimate of the aggregate maximum offering price” for fiscal year 2004 to be \$3,684,909,630,358.¹⁰ Based on this estimate, the Commission calculates the annual adjustment for fiscal 2004 to be \$126.70 per million. This adjusted fee rate applies to section 6(b) of the Securities Act, as well as to sections 13(e) and 14(g) of the Exchange Act.

III. Fiscal Year 2004 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 paragraph 31(j)(2), which currently is \$46.80 per million of the aggregate dollar amount of sales of specified securities transacted on the exchange.¹¹ 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

low, and fee rate increases if the CBO’s January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too high.

¹⁰ Appendix A explains how we determined the “baseline estimate of the aggregate maximum offering price” for fiscal year 2004 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2004 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its “baseline estimate of the aggregate maximum offering price” for fiscal year 2004.

¹¹ 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, Rel. No. 34–47425 (February 28, 2003), 68 FR 10926 (March 6, 2003).

¹ 15 U.S.C. 77f(b).

² 15 U.S.C. 78m(e).

³ 15 U.S.C. 78n(g).

⁴ 15 U.S.C. 78ee(b) and (c). In addition, Section 31(d) of the Exchange Act requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures. 15 U.S.C. 78ee(d).

⁵ Pub. L. No. 107–123, 115 Stat. 2390 (2002).

⁶ 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). Paragraph 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.