

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-66495/March 1, 2012]

Order Making Fiscal Year 2012 Mid-year Adjustments to Transaction Fee Rates

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

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate, and in some circumstances, to also make a mid-year adjustment. The Dodd-Frank Act amendments to Section 31 of the Exchange Act establish a new method for annually adjusting the fee rates applicable under Sections 31(b) and (c) of the Exchange Act. Specifically, the Commission must now adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.⁴ For fiscal year 2012, the regular appropriation to the

¹ 15 U.S.C. 78ee.

² 15 U.S.C. 78ee(b).

³ 15 U.S.C. 78ee(c).

⁴ *See* 15 U.S.C. § 78ee(j)(1) (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 such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments

Commission is \$1,321,000,000.⁵ On January 20, 2012 the Commission issued an order under Section 31(j)(1) of the Exchange Act setting the fee rates applicable under Sections 31(b) and (c) for fiscal year 2012.⁶

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2012

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 2012 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 \$71,646,369,036,088 is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal year 2012.⁷ To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal year 2012.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section 31,⁸ the actual aggregate dollar volume of sales during the first four months of fiscal year 2012 was \$21,401,568,899,359.⁹ Using these data and a

collected under [Section 31(d)] that are equal to the regular appropriation to the Commission by Congress for such fiscal year.”).

⁵ Id.

⁶ Order Making Fiscal Year 2012 Annual Adjustments to Transaction Fee Rates, Rel. No. 34-66202 (January 20, 2012).

⁷ The amount \$71,646,369,036,088 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012 calculated by the Commission in its Order Making Fiscal Year 2012 Annual Adjustments to Transaction Fee Rates, Rel. No. 34-66202 (January 20, 2012).

⁸ The Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 10th business day following the month for which the exchange or association provides dollar volume data.

⁹ Although Section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2012 “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

methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year 2012 (developed after consultation with the Congressional Budget Office and the OMB),¹⁰ the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal year 2012 to be \$42,485,082,013,879. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal year 2012 will be \$63,886,650,913,238.

Because the baseline estimate of \$71,646,369,036,088 is more than 10% greater than the \$63,886,650,913,238 estimated actual aggregate dollar volume of sales for fiscal year 2012, 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 2012. 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 year 2012, 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 \$1,321,000,000.”¹¹ In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of

required to issue this order, i.e., March 1, 2012. Dollar volume data on sales of securities subject to Section 31 for February 2012 will not be available from the exchanges and FINRA for several weeks.

¹⁰ See Appendix A.

¹¹ 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 2012 until March 15, the Commission will not “collect” any fees in the first five months of fiscal 2012. 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 [\$1,321,000,000],” 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.

the new rate and assessments collected under Section 31(d) during all of fiscal year 2012 from \$1,321,000,000, which is the amount to be collected for fiscal year 2012. 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 \$597,429,581 in fees for the period prior to the effective date of the mid-year adjustment and \$16,425 in assessments on round turn transactions in security futures products during all of fiscal year 2012. Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal year 2012 following the effective date of the new rate will be \$32,330,785,567,489. This amount reflects more recent information on the dollar amount of sales of securities than was available at the time of the setting of the initial fee rate for fiscal year 2012, and indicates a significant reduction in sales. Based on these estimates, and employing the mid-year adjustment mechanism established by statute, the uniform adjusted rate must be adjusted to \$22.40 per million of the aggregate dollar amount of sales of securities.¹² 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 \$22.40 per million for sales of securities transacted on April 1, 2012, and thereafter until the annual adjustment for fiscal 2013 is effective.

¹² The calculation is as follows: $(\$1,321,000,000 - \$597,429,581 - \$16,425) / \$32,330,785,567,489 = 0.0000223797$. Round this result to the seventh decimal point, yielding a rate of \$22.40 per million.

V. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,¹³

IT IS HEREBY ORDERED that each of the fee rates under Sections 31(b) and (c) of the Exchange Act shall be \$22.40 per \$1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

¹³ 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 2002 - January 2012). The data obtained from the exchanges and FINRA are presented in Table A. The monthly aggregate dollar amount of sales from all exchanges and FINRA 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 0.007 and the standard deviation 0.126. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 1.5 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January 2012 (\$236,326,110,324) to forecast ADS for February 2012 (\$239,879,615,120 = \$236,326,110,324 x 1.015).¹⁴ Multiply by the number of trading days in February 2012 (20) to obtain a forecast of the total dollar volume for the month (\$4,797,592,302,406). 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 $\mu = 0.007$ and $\sigma = 0.126$, 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 $ADS_t = 1.015 \times ADS_{t-1}$.
6. For February 2012, this gives a forecast ADS of $1.015 \times \$236,326,110,324 = \$239,879,615,120$. Multiply this figure by the 20 trading days in February 2012 to obtain a total dollar volume forecast of \$4,797,592,302,406.
7. For March 2012, multiply the February 2012 ADS forecast by 1.015 to obtain a forecast ADS of \$243,486,551,999. Multiply this figure by the 22 trading days in March 2012 to obtain a total dollar volume forecast of \$5,356,704,143,984.

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

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 10/1/11 and 2/20/12 to be \$24,520,003,895,923. Multiply this amount by the fee rate of \$19.20 per million dollars in sales during this period and get \$470,784,075 in actual and projected fees collected during 10/1/11 and 2/20/12. Determine the projected aggregate dollar volume of sales between 2/21/12 and 3/31/12 to be \$7,035,861,449,826. Multiply this amount by the fee rate of \$18.00 per million dollars in sales during this period and get an estimate of \$126,645,506 in projected fees collected during 2/21/12 and 3/31/12.
2. Estimate the amount of assessments on security futures products collected during 10/1/11 and 9/30/12 to be \$16,425 by summing the amounts collected through January 2012 of \$5,716 with projections of a 1.5% monthly increase in subsequent months.
3. Determine the projected aggregate dollar volume of sales between 4/1/12 and 9/30/12 to be \$32,330,785,567,489.
4. The rate necessary to collect \$1,321,000,000 in fee revenues is then calculated as:
$$(\$1,321,000,000 - \$470,784,075 - \$126,645,506 - \$16,425) \div \$32,330,785,567,489 = 0.0000223797.$$
5. Round the result to the seventh decimal point, yielding a rate of 0.0000224000 (or \$22.40 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, 10/1/11 to 2/20/12 (\$Millions)	24,520,004
b. Baseline estimate of the aggregate dollar amount of sales, 2/21/12 to 3/31/12 (\$Millions)	7,035,861
c. Baseline estimate of the aggregate dollar amount of sales, 4/1/12 to 9/30/12 (\$Millions)	32,330,786
d. Estimated collections in assessments on security futures products in FY 2012 (\$Millions)	0.016
e. Implied fee rate (($\$1,321,000,000 - 0.0000192^*a - 0.0000180^*b - d$) / c)	\$22.40

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
Jan-02	21	2,149,243,312,432	102,344,919,640	-		
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	4,765,828,263,463	216,628,557,430	-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	4,975,954,868,765	248,797,743,438	-0.127	
May-11	21	5,717,905,621,053	272,281,220,050	0.090	
Jun-11	22	5,820,079,494,414	264,549,067,928	-0.029	
Jul-11	20	5,189,681,899,635	259,484,094,982	-0.019	
Aug-11	23	8,720,566,877,109	379,155,081,613	0.379	

Sep-11	21	6,343,578,147,811	302,075,149,896	-0.227		
Oct-11	21	6,163,272,963,688	293,489,188,747	-0.029		
Nov-11	21	5,493,906,473,584	261,614,593,980	-0.115		
Dec-11	21	5,017,867,255,600	238,946,059,790	-0.091		
Jan-12	20	4,726,522,206,487	236,326,110,324	-0.011		
Feb-12	20				239,879,615,120	4,797,592,302,406
Mar-12	22				243,486,551,999	5,356,704,143,984
Apr-12	20				247,147,724,390	4,942,954,487,796
May-12	22				250,863,947,801	5,519,006,851,628
Jun-12	21				254,636,050,005	5,347,357,050,113
Jul-12	21				258,464,871,221	5,427,762,295,633
Aug-12	23				262,351,264,299	6,034,079,078,884
Sep-12	19				266,296,094,918	5,059,625,803,434