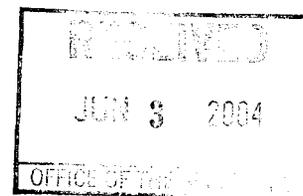


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June 2, 2004



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Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 5th Street, NW
Washington, DC 20549-0609

Re: Collection Practices Under Section 31 of the Securities Exchange Act of 1934; Release No. 34-49104; File No. S7-05-04

Dear Mr. Katz:

The Philadelphia Stock Exchange, Inc. ("Phlx") welcomes the opportunity to offer our comments to the Securities and Exchange Commission ("Commission") on File No. S7-05-04, Collection Practices Under Section 31 of the Exchange Act ("the Release"),¹ which proposes new procedures that would govern the calculation, payment and collection of fees and assessments on self-regulatory organizations ("SROs") pursuant to Section 31 of the Securities Exchange Act of 1934 ("Exchange Act").

Timing

The Commission has not previously mandated a formal procedure whereby the SROs must calculate and pay their Section 31 fees, instead permitting the SROs to develop their own procedures. In the Release, the Commission has proposed that the National Securities Clearing Corporation ("NSCC") and The Options Clearing Corporation ("OCC") provide Phlx, and other SROs, with the data regarding transactions subject to Section 31 fees that are required to be reported on Part I of proposed Form R31.

In complying with proposed Rule 31 using data obtained from a designated clearing agency, the Phlx believes that we must be given the opportunity to reconcile this data before submitting the information to the Commission. As proposed, ten business days is not a reasonable time period for the Phlx and other SROs to prepare and submit proposed Form R31. Second, even though daily reconciliation is anticipated, we are concerned that the Release does not impose a specific time period by which the designated clearing agencies must report the data to the SROs; it merely states that if a SRO did not submit its Form R31 in a timely manner and the delay was caused by the designated clearing agency, the designated clearing agency would be in violation of proposed Rule 31. Instead, the Phlx proposes that the current time periods for reporting equity securities, which allows that Form R31 be submitted *within one month* after the close of business on the last day of each month, be continued. In addition, the Phlx proposes that there be a deadline for designated clearing agencies to supply the required

¹ See Securities Exchange Act Release No. 49104 (January 20, 2004), 69 FR 4018 (January 27, 2004).

data to the SRO in the appropriate format,² perhaps ten days. In this way, especially during the transition period, the Phlx should have adequate time to verify (i.e. 20 days, as outlined in this proposal) the accuracy of the data received from the NSCC and OCC and reconcile any discrepancies, particularly those that take more than one day to resolve.

Retroactivity

The Commission is also proposing to adopt temporary Rule 31T. Rule 31T would require SROs, within one month of the effective date of proposed Rule 31, to submit to the Commission a Form R31 for each month from September 2003 to the month immediately before the initial month for which Rule 31 would require the SRO to submit Form R31. We believe that this is unreasonable in two respects. First, one month from the effective date of the new Rule is too burdensome, particularly if the final rules differ from the proposed version significantly, because the analysis and preparation of system and procedure changes is time-consuming. Moreover, we believe that the Exchange's system, which is currently used to calculate Section 31 fees owed to the Commission produces accurate, reliable, and controlled billing statistics. If NSCC's calculations differ from the Exchange's past calculations, not only will reconciliation be extremely difficult due to the magnitude of the covered trading period contemplated under Rule 31T, but it would severely impact the Exchange's own pass-through fee because it may be virtually impossible to bill or credit Exchange members (some of whom may no longer be in business or Exchange members) for any billing discrepancies. In addition, the SROs will be focused on preparing for compliance with the new Rule *going forward*, such that there should be more time to comply with retroactive application. Second, gathering data and making calculations retroactively may be difficult to accomplish, particularly without a deadline for when the designated clearing agency is required to provide the data to the SRO to perform the retroactive calculation. Accordingly, the Phlx believes that a separate deadline for designated clearing agency submission of data would also be appropriate and necessary respecting Rule 31T.

Calculation

At this time, the Phlx has concerns relating to the actual calculation of Section 31 fees. The Stock Clearing Corporation of Philadelphia ("SCCP")³ offers limited clearance services through an Omnibus Account at NSCC. In light of this, NSCC does not have the ability to identify or calculate the Section 31 fees for each Phlx specialist's covered sales in SCCP's account at NSCC, because the individual specialist is not an NSCC member nor contra party to the transaction at NSCC. Given this inability to calculate the Section 31 fees per specialist, it would be extremely difficult to reconcile any potential billing discrepancies between the number calculated by the NSCC and the number calculated by Phlx. This may lead to inaccurate or incorrect billing of Section 31 fees. Therefore, the Exchange proposes that the SCCP Omnibus Account at NSCC not be subject to the

² The Phlx believes that interposing a deadline for designated clearing agency data is not necessary where the designated clearing agency is also performing the billing, collection and payment on behalf of such SRO, as the Phlx supports respecting option transactions.

³ SCCP is a registered clearing agency and a subsidiary of Phlx. We note that SCCP is not identified as a designated clearing agency for purposes of the Release.

retroactivity requirement of Rule 31T and that this account be dependent upon NSCC's calculations only after a reconciliation and control process is implemented between the Exchange and the NSCC in order to verify calculations.

Options

With respect to options reporting, the Phlx believes that OCC, the designated clearing agency, should be allowed to pay Section 31 bills on behalf of the Phlx and other SROs. Currently, OCC collects and bills Section 31 fees on behalf of the Phlx and wire transfers the appropriate payment to the Commission as required. Continuing to utilize OCC's automated systems would be an efficient use of available resources. The Phlx has submitted, along with the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., OCC, and the Pacific Exchange, Inc. a comment letter that proposes to continue the OCC's current system of collection and payment of Section 31 fees on options.⁴

Please do not hesitate to contact the undersigned at (215) 496-1467 or Cynthia Hoekstra, Counsel, at (215) 496-5066, to further discuss the Phlx's views regarding the release.

Very truly yours,



Joseph Jennings
First Vice President and
Chief Financial Officer

cc: Michael Gaw, Esq.
Christopher Solgan, Esq.

⁴ See letter dated March 1, 2004.