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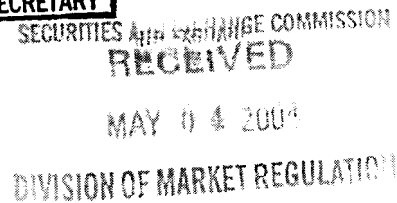
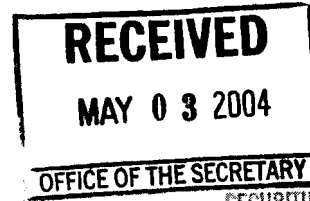
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April 30, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549



Re: File No. S7-05-04

Dear Mr. Katz:

The National Association of Securities Dealers, Inc. ("NASD") welcomes the opportunity to provide the Securities and Exchange Commission ("SEC" or "Commission") with comments on proposed rule changes to collection practices under Section 31 of the Securities Exchange Act of 1934 ("Exchange Act"). NASD understands that it is the Commission's goal to create a more streamlined approach to the collection of Section 31 fees while ensuring the accuracy and integrity of the data. As further described below, NASD believes that certain changes to the rule will unnecessarily create additional administrative burdens and costs. Specifically, NASD does not believe it is efficient or useful to require NASD to act as intermediary to submit Section 31 fees from the sale of securities resulting from the exercise of physical delivery exchange-traded options to the SEC. Further, NASD does not believe it is necessary or cost effective to require that the proposed rule be retroactively implemented back to September 2003. NASD also believes it would be more prudent to allow Self-Regulatory Organizations ("SROs") additional time to submit Form R31 (by the 12th business day of each month instead of the 10th business day of each month). Lastly, NASD urges the Commission to address the concerns related to Section 31's requirement of aggregate collections versus industry practices of billing on individual transactions.

Physical Delivery Exchange-Traded Options

Currently, the Options Clearing Corporation ("OCC") submits Section 31 fees resulting from the sale of securities resulting from the exercise of physical delivery exchange-traded options to the Commission on behalf of NASD. This arrangement has been in place with the OCC since the inception of the Section 31 fee and has proven to be a reliable and efficient process for the calculation, billing, collection, and subsequent submission of fees to the SEC.

The proposed rule would require the OCC to forward transactional information related to these transactions to NASD, which in turn would forward data, via the R31 form, to the SEC. The SEC would then send a bill to NASD, which would calculate the amount of fees due. NASD, as the SRO, would then be required to submit these funds to the SEC.

NASD recommends that the Commission continue to allow OCC to collect Section 31 fees on behalf of NASD related to these transactions. As NASD does not operate or clear for an options market, it is logical that the OCC, which currently has a centralized billing system with its members that allows for maximum efficiency in the collection process without undue administrative burden, continue to maintain this function. Adding NASD as an intermediary to the process, will create inefficiencies in the collection of Section 31 fees and unnecessarily impose new burdens on both NASD and the options exchanges.

Retroactive Implementation and Submission Timing

The Commission is proposing that the proposed rule be retroactively implemented back to September 2003. NASD believes that the benefits of retroactive implementation do not outweigh the costs of the work necessary to recertify the September through December 2003 submission. For example, NASD would be required to obtain seven months of historical OCC data (September 2003 through March 2004) in order to complete the retroactive compliance requirements. NASD recommends to the Commission that any changes to Section 31 collection procedures be implemented at the next funding cutoff date (*i.e.*, beginning with transactions occurring on September 1, 2004, for payment to the SEC on or before March 15, 2005).

The Commission also is proposing that SROs prepare and submit Form R31 by the 10th business day of each month. NASD believes if the proposed rule is implemented as written, this may not provide a sufficient amount of time for NASD to collect, consolidate, review, and submit Form R31 to the SEC in all instances. NASD would propose that the monthly filing time frame be extended to the 12th business day of each month.¹

Funding of Section 31 Fees

There are no provisions in the proposal that address how an SRO should fund SEC Section 31 fees. As has been the case since the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 and Section 31 of the Exchange Act as amended by the National

¹ NASD currently requires members to report their odd-lot transactions and OTC exercise options by the 10th day of each month. If the time frame is not extended, NASD may not have sufficient time to compile this information for reporting purposes on the R31 forms. Extending the time period would ensure that the current month's activity is included in the current month's billing process.

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Securities Markets Improvement Act of 1996² extended the requirement to the over-the-counter market, NASD will continue to fund its Section 31 fees by assessing its membership. NASD currently generates a monthly bill for its members for the collection of the Section 31 fees for Section 31-subject transactions reported to the Automated Confirmation Transaction Service. These monthly bills will continue to be generated and submitted to NASD's clearing member firms to fund the Section 31 fees based on "aggregate dollar amount of sales." As discussed in the Securities Industry Association ("SIA") letter submitted in connection with this rule proposal, Section 31 fees are frequently passed down by the broker-dealer to its customers. However, reconciling the amounts billed by NASD and the amounts collected by member firms has been extremely difficult from a member firm perspective. Moreover, the SIA reports that overages have been accumulated at many broker-dealer firms. Accordingly, NASD strongly urges the Commission to work hand-in-hand with NASD and representatives from the industry to address this issue.

Again, NASD would like to thank the Commission for providing us this opportunity to share our views with you. If you would like to discuss any of the above issues noted in this letter, please contact me at 202-728-8071.

Sincerely,



Kathleen A. O'Mara
Associate General Counsel

² Pub. L. No. 104-290, 110 Stat. 3416 (1996).