

## Securities and Exchange Commission

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in Section 3(a)(47) of the Act) or the Commission's Rules of Practice, 17 CFR Part 201, or otherwise, where such trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice;

(7) A bar association, state accountancy board or other federal, state, local or foreign licensing or oversight authority, or a professional association or self-regulatory authority to the extent that it performs similar functions; or

(8) A duly authorized agent, employee or representative of any of the above persons.

(c) Nothing contained in this section shall affect:

(1) The Commission's authority or discretion to provide or refuse to provide access to, or copies of, nonpublic information in its possession in accordance with such other authority or discretion as the Commission possesses by statute, rule or regulation; or

(2) The Commission's responsibilities under the Privacy Act of 1974 (5 U.S.C. 552a), or the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401-22) as limited by section 21(h) of the Act.

[58 FR 52419, Oct. 8, 1993]

### § 240.31 Section 31 transaction fees.

(a) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Assessment charge* means the amount owed by a covered SRO for a covered round turn transaction pursuant to section 31(d) of the Act (15 U.S.C. 78ee(d)).

(2) *Billing period* means, for a single calendar year:

(i) January 1 through August 31 ("billing period 1"); or

(ii) September 1 through December 31 ("billing period 2").

(3) *Charge date* means the date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to section 31 of the Act (15 U.S.C. 78ee). The charge date is:

(i) The settlement date, with respect to any covered sale (other than a covered sale resulting from the exercise of an option settled by physical delivery or from the maturation of a security future settled by physical delivery) or covered round turn transaction that a covered SRO is required to report to the Commission based on data that the covered SRO receives from a designated clearing agency;

(ii) The exercise date, with respect to a covered sale resulting from the exercise of an option settled by physical delivery;

(iii) The maturity date, with respect to a covered sale resulting from the maturation of a security future settled by physical delivery; and

(iv) The trade date, with respect to all other covered sales and covered round turn transactions.

(4) *Covered association* means any national securities association by or through any member of which covered sales or covered round turn transactions occur otherwise than on a national securities exchange.

(5) *Covered exchange* means any national securities exchange on which covered sales or covered round turn transactions occur.

(6) *Covered sale* means a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.

(7) *Covered round turn transaction* means a round turn transaction in a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through a member of a national securities association otherwise than on a national securities exchange.

(8) *Covered SRO* means a covered exchange or covered association.

(9) *Designated clearing agency* means a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) that clears and settles covered sales or covered round turn transactions.

(10) *Due date* means:

(i) March 15, with respect to the amounts owed by covered SROs under section 31 of the Act (15 U.S.C. 78ee) for

covered sales and covered round turn transactions having a charge date in billing period 2; and

(ii) September 30, with respect to the amounts owed by covered SROs under section 31 of the Act (15 U.S.C. 78ee) for covered sales and covered round turn transactions having a charge date in billing period 1.

(11) *Exempt sale* means:

(i) Any sale of a security offered pursuant to an effective registration statement under the Securities Act of 1933 (except a sale of a put or call option issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder;

(ii) Any sale of a security by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(iii) Any sale of a security pursuant to and in consummation of a tender or exchange offer;

(iv) Any sale of a security upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security;

(v) Any sale of a security that is executed outside the United States and is not reported, or required to be reported, to a transaction reporting association as defined in §242.600 of this chapter and any approved plan filed thereunder;

(vi) Any sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security index);

(vii) Any sale of a bond, debenture, or other evidence of indebtedness; and

(viii) Any recognized riskless principal sale.

(12) *Fee rate* means the fee rate applicable to covered sales under section 31(b) or (c) of the Act (15 U.S.C. 78ee(b) or (c)), as adjusted from time to time by the Commission pursuant to section 31(j) of the Act (15 U.S.C. 78ee(j)).

(13) *Narrow-based security index* means the same as in section 3(a)(55)(B) and (C) of the Act (15 U.S.C. 78c(a)(55)(B) and (C)).

(14) *Recognized riskless principal sale* means a sale of a security where all of the following conditions are satisfied:

(i) A broker-dealer receives from a customer an order to buy (sell) a security;

(ii) The broker-dealer engages in two contemporaneous offsetting transactions as principal, one in which the broker-dealer buys (sells) the security from (to) a third party and the other in which the broker-dealer sells (buys) the security to (from) the customer; and

(iii) The Commission, pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), has approved a proposed rule change submitted by the covered SRO on which the second of the two contemporaneous offsetting transactions occurs that permits that transaction to be reported as riskless.

(15) *Round turn transaction in a security future* means one purchase and one sale of a contract of sale for future delivery.

(16) *Physical delivery exchange-traded option* means a securities option that is listed and registered on a national securities exchange and settled by the physical delivery of the underlying securities.

(17) *Section 31 bill* means the bill sent by the Commission to a covered SRO pursuant to section 31 of the Act (15 U.S.C. 78ee) showing the total amount due from the covered SRO for the billing period, as calculated by the Commission based on the data submitted by the covered SRO in its Form R31 (§249.11 of this chapter) submissions for the months of the billing period.

(18) *Trade reporting system* means an automated facility operated by a covered SRO used to collect or compare trade data.

(b) *Reporting of covered sales and covered round turn transactions.* (1) Each covered SRO shall submit a completed Form R31 (§249.11 of this chapter) to the Commission within ten business days after the end of each month.

(2) A covered exchange shall provide on Form R31 the following data on covered sales and covered round turn transactions occurring on that exchange and having a charge date in that month:

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(i) The aggregate dollar amount of covered sales that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency;

(ii) The aggregate dollar amount of covered sales resulting from the exercise of physical delivery exchange-traded options or from matured security futures, as reflected in the data provided by a designated clearing agency that clears and settles options or security futures;

(iii) The aggregate dollar amount of covered sales that it captured in a trade reporting system but did not report to a designated clearing agency;

(iv) The aggregate dollar amount of covered sales that it neither captured in a trade reporting system nor reported to a designated clearing agency; and

(v) The total number of covered round turn transactions that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency.

(3) A covered association shall provide on Form R31 the following data on covered sales and covered round turn transactions occurring by or through any member of such association otherwise than on a national securities exchange and having a charge date in that month:

(i) The aggregate dollar amount of covered sales that it captured in a trade reporting system;

(ii) The aggregate dollar amount of covered sales that it did not capture in a trade reporting system; and

(iii) The total number of covered round turn transactions that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency.

(4) *Duties of designated clearing agency.* (i) A designated clearing agency shall provide a covered SRO, upon request, the data in its possession needed by the covered SRO to complete Part I of Form R31 (§249.11 of this chapter).

(ii) If a covered exchange trades physical delivery exchange-traded options or security futures that settle by physical delivery of the underlying securities, the designated clearing agency that clears and settles such transactions shall provide that covered ex-

change with the data in its possession relating to the covered sales resulting from the exercise of such options or from the matured security futures. If, during a particular month, the designated clearing agency cannot determine the covered exchange on which the options or security futures originally were traded, the designated clearing agency shall assign covered sales resulting from exercises or maturations as follows. To provide Form R31 data to the covered exchange for a particular month, the designated clearing agency shall:

(A) Calculate the aggregate dollar amount of all covered sales in the previous calendar month resulting from exercises and maturations, respectively, occurring on all covered exchanges for which it clears and settles transactions;

(B) Calculate, for the previous calendar month, the aggregate dollar amount of covered sales of physical delivery exchange-traded options occurring on each covered exchange for which it clears and settles transactions, and the aggregate dollar amount of covered sales of physical delivery exchange-traded options occurring on all such exchanges collectively;

(C) Calculate, for the previous calendar month, the total number of covered round turn transactions in security futures that settle by physical delivery that occurred on each covered exchange for which it clears and settles transactions, and the total number of covered round turn transactions in security futures that settle by physical delivery that occurred on all such exchanges collectively;

(D) Determine for the previous calendar month each covered exchange's percentage of the total dollar volume of physical delivery exchange-traded options ("exercise percentage") and each covered exchange's percentage of the total number of covered round turn transactions in security futures that settle by physical delivery ("maturity percentage"); and

(E) In the current month, assign to each covered exchange for which it

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clears and settles covered sales the exercise percentage of the aggregate dollar amount of covered sales on all covered exchanges resulting from the exercise of physical delivery exchange-traded options and the maturation percentage of all covered sales on all covered exchanges resulting from the maturation of security futures that settle by physical delivery.

(5) A covered SRO shall provide in Part I of Form R31 only the data supplied to it by a designated clearing agency.

(c) *Calculation and billing of section 31 fees.* (1) The amount due from a covered SRO for a billing period, as reflected in its Section 31 bill, shall be the sum of the monthly amounts due for each month in the billing period.

(2) The monthly amount due from a covered SRO shall equal:

(i) The aggregate dollar amount of its covered sales that have a charge date in that month, times the fee rate; plus

(ii) The total number of its covered round turn transactions that have a charge date in that month, times the assessment charge.

(3) By the due date, each covered SRO shall pay the Commission, either directly or through a designated clearing agency acting as agent, the entire amount due for the billing period, as reflected in its Section 31 bill.

[69 FR 41078, July 7, 2004, as amended at 70 FR 37619, June 29, 2005]

### § 240.31T Temporary rule regarding fiscal year 2004.

(a) *Definitions.* (1) For the purpose of this section, the following definitions shall apply:

(i) *FY2004 adjustment amount* means the FY2004 recalculated amount minus the FY2004 prepayment amount.

(ii) *FY2004 prepayment amount* means the total dollar amount of fees and assessments paid by a covered SRO pursuant to the March 15, 2004, due date for covered sales and covered round turn transactions having a charge date between September 1, 2003, and December 31, 2003, inclusive.

(iii) *FY2004 recalculated amount* means the total dollar amount of fees and assessments owed by a covered SRO for covered sales and covered round turn transactions having a charge date be-

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tween September 1, 2003, and December 31, 2003, inclusive, as calculated by the Commission based on the data submitted by the covered SRO in its Form R31 (§ 249.11 of this chapter) submissions for September 2003, October 2003, November 2003, and December 2003, and indicated on a Section 31 bill for these months.

(2) Any term used in this section that is defined in § 240.30(a) of this chapter shall have the same meaning as in § 240.30(a) of this chapter.

(b) By August 13, 2004, each covered SRO shall submit to the Commission a completed Form R31 for each of the months September 2003 to June 2004, inclusive.

(c) If the FY2004 adjustment amount of a covered SRO is a positive number, the covered SRO shall include the FY2004 adjustment amount with the payment for its next Section 31 bill.

(d) If the FY2004 adjustment amount is a negative number, the Commission shall credit the FY2004 adjustment amount to the covered SRO's next Section 31 bill.

(e) Notwithstanding paragraph (a)(1)(iii) of this section, any covered exchange that as of August 2003 was calculating its Section 31 fees based on the trade date of its covered sales shall not include on its September 2003 Form R31 data for any covered sale having a trade date before September 1, 2003.

(f) This temporary section shall expire on January 1, 2005.

[69 FR 41080, July 7, 2004]

### § 240.36a1-1 Exemption from Section 7 for OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§ 240.15b9-2), regular broker-dealer margin rules (§ 240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§ 240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§ 240.15a-1), specified internal risk management control systems (§ 240.15c3-4), recordkeeping obligations (§ 240.17a-3(a)(10)), and reporting responsibilities (§ 240.17a-12). They are also subject to alternative net capital treatment (§ 240.15c3-1(a)(5)).