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 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 maturity percentage of all covered sales on all covered exchanges resulting from the maturity 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 between 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)(ii) of this section, any covered exchange that as of August 2003 was
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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]

§ 240.36a1–2 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)).

(a) Except as otherwise provided in paragraph (b) of this section, transactions involving the extension of credit by an OTC derivatives dealer shall be exempt from the provisions of section 7(c) of the Act (15 U.S.C. 78g(c)), provided that the OTC derivatives dealer complies with Section 7(d) of the Act (15 U.S.C. 78g(d)).

(b) The exemption provided under paragraph (a) of this section shall not apply to extensions of credit made directly by a registered broker or dealer (other than an OTC derivatives dealer) in connection with transactions in eligible OTC derivative instruments for which an OTC derivatives dealer acts as counterparty.

[63 FR 59404, Nov. 3, 1998]