The following item was added to the closed meeting held on Wednesday, April 24, 2002: an adjudicatory matter.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: April 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10974 Filed 4–29–02; 4:53 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8095 and 34–45842/April 29, 2002]

Order Making Fiscal 2003 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) the Securities Exchange Act of 1934

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] of the Securities Exchange Act of 1934 (''Exchange Act'' requires the Commission to collect fees on certain repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3] Fiscally, sections 31(b) and (c) of the Exchange Act require the Commission to collect fees from national securities exchanges and national securities associations, respectively, on transactions.[4]

On January 16, 2002, the President signed the Investor and Capital Markets Fee Relief Act (''Fee Relief Act''). [5] The Fee Relief Act reduced that fee rates applicable under section 6(b) of the Securities 13(e), 14(g), 31(b) and 31(c) of the Exchange Act. The Fee Relief Act also amended these sections to require the Commission to make annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011, and one final adjustments to fix the fee rates under these sections for fiscal year 2012 and beyond.[6]

II. Fiscal 2002 Annual Adjustment to the Fee Rates Applicable Under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Paragraph 6(b)(2) of the Securities Act requires an issuer to pay to the Commission a fee at an initial rate of $92 per million of the maximum aggregate offering price at which securities are proposed to be offered. This same fee rate applies to certain repurchases of securities under section 13(e) of the Exchange Act and proxy solicitations and statements in corporate control transactions under section 14(g) of the Exchange Act.

Paragraph 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under paragraph 6(b)(2) of the Securities Act in each of the fiscal years 2003 through 2011.[7] In those same fiscal years, paragraphs 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under Sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under Section 6(b). In other words, the annual adjustment to the fee rate under section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under sections 13(e) and 14(g) of the Exchange Act.

Paragraph 6(b)(5) specifies the method for determining the annual adjustment to the fee rate Section 6(b) for fiscal 2003. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2003], is reasonable likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal 2003].'' That is, the adjusted rate is determined by dividing the ''target offsetting collection amount'' for fiscal 2003 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal 2003.

Paragraph 6(b)(11)(A) specifies that the ''target offsetting collection amount'' for fiscal 2003 is $435,000,000.[8] Paragraph 6(b)(11)(B) defines the ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003 as the ''baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal 2003] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget.

* * *

Using a methodology developed in consultation with the Congressional Budget Office (''CBO'') and Office of Management and Budget (''OMB''), the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003 to be $5,379,329,602,021.[9] Based on this estimate, the Commission calculates the annual adjustment for fiscal 2003 to be $80.90 per million. This adjusted fee rate applies to section 6(b) of the Securities Act, as well as to sections 13(e) and 14(g) of the Exchange Act.

III. Fiscal 2003 Annual Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Exchange Act

Section 31(b) of the Exchange Act requires each national securities exchange to pay the Commission a fee at a rate, as adjusted by our order pursuant to paragraph 31(j)(2), of $30.10 per million of the aggregate dollar amount of sales of certain securities transacted on the exchange.[10] Similarly, Section 31(c) requires each national securities association to pay the Commission a fee at the same adjusted rate on the aggregate dollar amount of

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[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] ,15 U.S.C. 78n(g).

[4] 15 U.S.C. 77ee(j)(1) and (j)(3). Section 31(d) of the Exchange Act also requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures.

[5] Pub. L. No. 107–123, 115 Stat. 2390 (2002).

[6] *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(6), 78n(g)(5) 78ee(j)(1), and 78ee(j)(3). Paragraph 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal 2002 through fiscal 2011.

[7] The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target offsetting collection amount''specified in Section 6(b)(11)(A) for that fiscal year.

[8] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projection of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal 2011, the annual adjustment mechanism will result in additional fee reductions if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too high.

[9] *Appendix A* explains how we determined the ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003 using our methodology, and then shows the purely arithmetical process of calculating the fiscal 2003 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering price'' for fiscal 2003.

[10] Exchange Act Release No. 45489 (March 1, 2002), 67 FR 10239 (March 6, 2002).

sales of certain securities transacted by or through any member of the association otherwise than on an exchange. Section 31(j)(1) requires the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011.[11]

Paragraph 31(j)(1) specifies the method for determining the annual adjustment for fiscal 2003. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjust rate that, when applied to the baseline estimate of the aggregate amount of sales for [fiscal 2003], is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the target offsetting collection amount for [fiscal 2003].''

Paragraph 31(1)(1) specifies that the ''target offsetting collection amount'' for fiscal 2003 is $849,000,000. [12] Paragraph 31(1)(2) defines the ''baseline estimate of the aggregate dollar amount of sales'' as ''the baseline estimate of the aggregate dollar amount of sales of securities * * * to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during [fiscal 2003] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget. * * *''

To make the baseline estimate of the aggregate dollar amount of sales for fiscal year 2003, the Commission is using the same methodology it developed in consultation with the CBO and OMB for making projections of dollar volume for purposes of the fiscal 2002 mid-year adjustment.[13] Using this methodology, the Commission calculates the baseline estimate of the aggregate dollar amount of sales for fiscal 2003 to be $33,158,519,250,001. Based on this estimate, and an estimated collection of $450,000 in assessments on securities futures products in fiscal 2003,[14] the uniform adjusted rate is $25.20 per million.[15]

VI. Effective Dates of the Annual Adjustments

Subparagraph 6(b)(8)(A) of the Securities Act provides that the fiscal 2003 annual adjustment to the fee rate applicable under section 6(b) of the Securities Act shall take effect on the later of October 1, 2002, or five days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted.[16] Subparagraphs 13(e)(8)(A) and 14(g)(8)(A) of the Exchange Act provide for the same effective date for the annual adjustment to the fee rates applicable under section 13(e) and 14(g) of the Exchange Act.[17]

Subparagraph 31(j)(4)(A) of the Exchange Act provides that the fiscal 2003 annual adjustments to the fee rates applicable under section 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2002, or thirty days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted.

V. Conclusion

Accordingly, pursuant to section 6(b) of the Securities Act and sections 13(e), 14(g) and 31(j) of the Exchange Act,[18]

It is hereby ordered that the fee rates applicable under section 6(b) of the Securities Act and sections 13(e) and 14(g) of the Exchange Act shall be $80.90 per million effective on the later of October 1, 2002, or five days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted; and

It is further ordered that the fee rates applicable under sections 31(b) and (c) of the Exchange Act shall be $25.20 per million effective on the later of October 1, 2002, or thirty days after the date on which a regular appropriation to the Commission for fiscal 2003 is enacted.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2003 Subject to Securities Act Section 6(b)

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (March 1992–March 2002). Next, calculate the percentage change in the AMOP from month-to-month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more ''typical'' value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the monthly aggregate maximum offering prices. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years from March 1992 to March 2002. There are 6 months in the sample for which the data are not used because of the impact of extraordinary events (*e.g.*, the 1995 government shutdown).

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software such as SAS or Eviews. Using least squares, the estimated parameter values are $\alpha = 0.01292$ and $\beta = -0.78083$.

6. For the month of April 2002, forecast $\Delta_{t=4/02} = \alpha + \beta e_{t=3/02}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for June 2002 is given by $FLAAMOP_{t=6/02} = \log(AAMOP_{t=3/02}) + \Delta_{t=4/02} + \Delta_{t=5/02} + \Delta_{t=6/02}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For June 2002, this gives a forecast AAMOP of $18.5 Billion (Column I), and a forecast AMOP of $369.9 Bilion (Column J).

[11] The annual adjustments, as well as the mid-year adjustments required in certain circumstances under paragraph 31(j)(2) in fiscal 2002 through fiscal 2011, are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the ''target offsetting collection amount'' specified in Section 31(l)(1) for that fiscal year.

[12] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projections of dollar volume for fiscal years 2002 through 2011. In any fiscal year through fiscal 2011, the annual and, in certain circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

[13] *Appendix B* explains how we determined the ''baseline estimate of the aggregate dollar amount of sales'' for fiscal 2003 using our methodology, and then shows the purely arithmetical process of calculating the fiscal 2003 annual adjustment based on that estimate. The appendix also includes the data used by the Commission in making its ''baseline estimate of the aggregate dollar amount of sales'' for fiscal 2003.

[14] This estimate is based on the CBO's August 2001 estimate of Section 31(d) collections in fiscal 2003, adjusted to reflect the Fee Relief Act's reduction in the Section 31(d) assessment.

[15] As explained in *Appendix B*, the calculation of the adjusted fee rate assumes that the current fee rate of $30,10 per million will apply through October 31st due to the operation of the effective date provision contained in subparagraph 31(j)(4)(A) of the Exchange Act.

[16] 15 U.S.C. 77f(b)(8)(A).

[17] 15 U.S.C. 78m(e)(8)(A) and 78n(g)(8)(A).

[18] U.S.C. 77f(b), 78m(e), 78n(g), and 78ee(j).

10. Iterate this process through September 2003 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2003 of $5,379,329,602,021.

B. Using the Forecasts From A To Calculate the New Fee Rate.

1. Using the data from Table A1, estimate the aggregate maximum offering prices between 10/1/02 and 9/30/03 to be $5,379,329,602,021.

2. The rate necessary to collect the target $435,000,000 in fee revenues is then calculated as: $435,000,000 ÷ $5,379,329,602,021 = 0.00008090.

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Figure A1.
Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)
(Dashed Line Indicates Forecast Values)

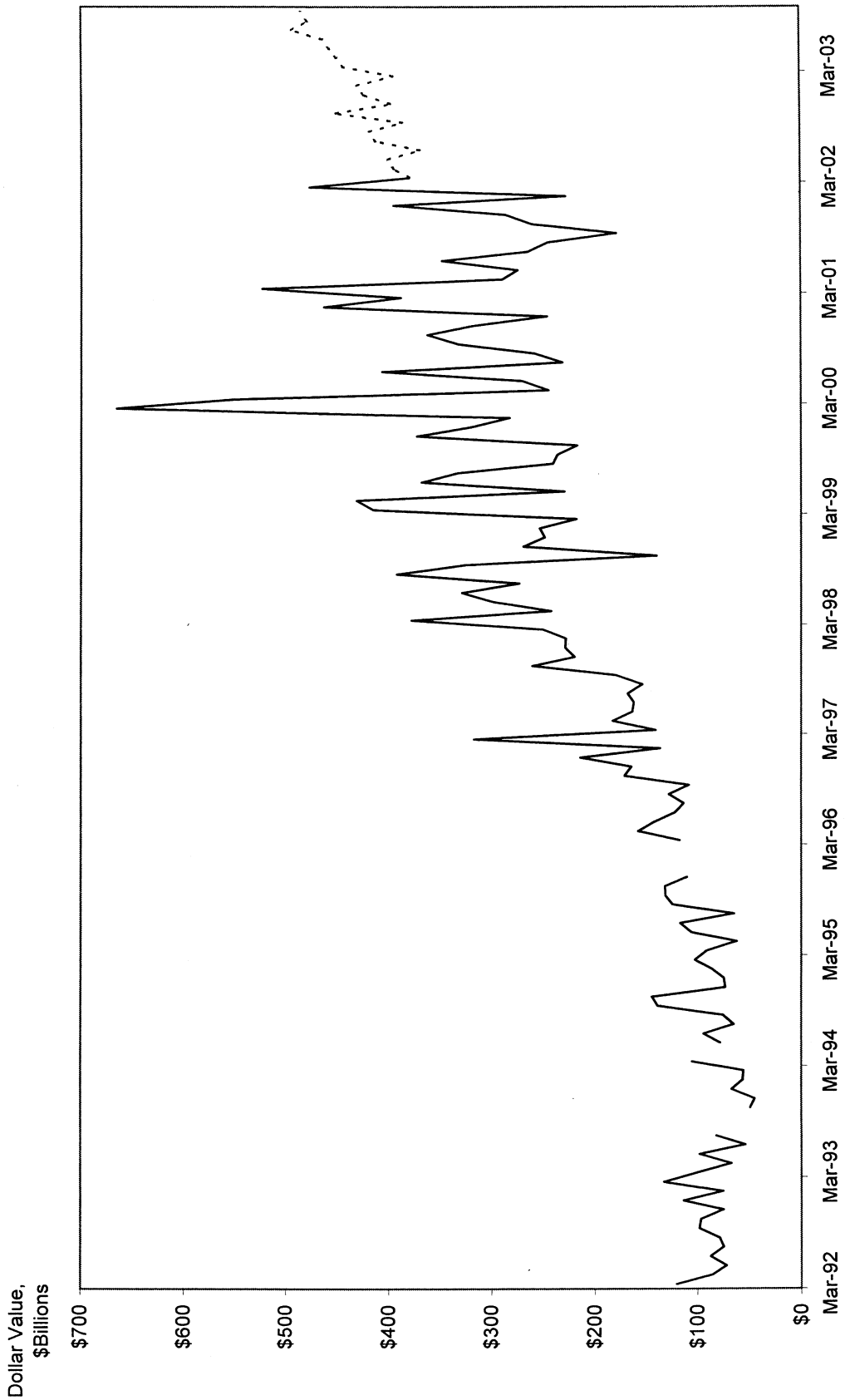

Table A1. Estimation of baseline of aggregate maximum offering prices .

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/02 to 9/30/03 ($Millions)	5,379,330
b. Implied fee rate ($435 Million / a)	$80.90

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Mar-92	22	120,702	5,486	22.426					
Apr-92	21	85,953	4,093	22.133	-0.293				
May-92	20	72,313	3,616	22.009	-0.124				
Jun-92	22	88,083	4,004	22.111	0.102				
Jul-92	22	75,000	3,409	21.950	-0.161				
Aug-92	21	79,182	3,771	22.050	0.101				
Sep-92	21	98,659	4,698	22.270	0.220				
Oct-92	22	97,136	4,415	22.208	-0.062				
Nov-92	20	75,453	3,773	22.051	-0.157				
Dec-92	22	114,268	5,194	22.371	0.320				
Jan-93	20	75,676	3,784	22.054	-0.317				
Feb-93	19	133,440	7,023	22.672	0.618				
Mar-93	23	100,585	4,373	22.199	-0.474				
Apr-93	21	67,712	3,224	21.894	-0.305				
May-93	20	98,590	4,929	22.319	0.424				
Jun-93	22	54,357	2,471	21.628	-0.691				
Jul-93	21	82,514	3,929	22.092	0.464				
Aug-93	22								
Sep-93	21								
Oct-93	21	49,664	2,365	21.584					
Nov-93	21	45,360	2,160	21.493	-0.091				
Dec-93	22	67,717	3,078	21.848	0.354				
Jan-94	21	56,998	2,714	21.722	-0.126				
Feb-94	19	56,104	2,953	21.806	0.084				
Mar-94	23	105,914	4,605	22.250	0.444				
Apr-94	19								
May-94	21	78,564	3,741	22.043					
Jun-94	22	94,814	4,310	22.184	0.141				
Jul-94	20	65,628	3,281	21.912	-0.273				
Aug-94	23	75,874	3,299	21.917	0.005				
Sep-94	21	139,422	6,639	22.616	0.699				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Oct-94	21	144,953	6,903	22.655	0.039				
Nov-94	21	73,625	3,506	21.978	-0.677				
Dec-94	21	74,903	3,567	21.995	0.017				
Jan-95	21	86,714	4,129	22.141	0.146				
Feb-95	19	102,999	5,421	22.414	0.272				
Mar-95	23	91,561	3,981	22.105	-0.309				
Apr-95	19	62,518	3,290	21.914	-0.190				
May-95	22	106,333	4,833	22.299	0.385				
Jun-95	22	117,557	5,344	22.399	0.100				
Jul-95	20	65,127	3,256	21.904	-0.495				
Aug-95	23	124,662	5,420	22.413	0.510				
Sep-95	20	131,774	6,589	22.609	0.195				
Oct-95	22	132,141	6,006	22.516	-0.093				
Nov-95	21	110,646	5,269	22.385	-0.131				
Dec-95	20								
Jan-96	22								
Feb-96	20								
Mar-96	21	117,780	5,609	22.448					
Apr-96	21	158,005	7,524	22.741	0.294				
May-96	22	142,452	6,475	22.591	-0.150				
Jun-96	20	122,598	6,130	22.536	-0.055				
Jul-96	22	113,637	5,165	22.365	-0.171				
Aug-96	22	128,154	5,825	22.485	0.120				
Sep-96	20	108,763	5,438	22.417	-0.069				
Oct-96	23	171,507	7,457	22.732	0.316				
Nov-96	20	164,574	8,229	22.831	0.098				
Dec-96	21	214,241	10,202	23.046	0.215				
Jan-97	22	136,615	6,210	22.549	-0.496				
Feb-97	19	317,624	16,717	23.540	0.990				
Mar-97	20	140,809	7,040	22.675	-0.865				
Apr-97	22	182,657	8,303	22.840	0.165				
May-97	21	163,702	7,795	22.777	-0.063				
Jun-97	21	162,111	7,720	22.767	-0.010				
Jul-97	22	168,007	7,637	22.756	-0.011				
Aug-97	21	153,705	7,319	22.714	-0.042				
Sep-97	21	179,559	8,550	22.869	0.155				
Oct-97	23	260,719	11,336	23.151	0.282				
Nov-97	19	219,618	11,559	23.171	0.020				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Dec-97	22	228,605	10,391	23.064	-0.106				
Jan-98	20	228,030	11,402	23.157	0.093				
Feb-98	19	250,266	13,172	23.301	0.144				
Mar-98	22	378,185	17,190	23.568	0.266				
Apr-98	21	242,310	11,539	23.169	-0.399				
May-98	20	298,454	14,923	23.426	0.257				
Jun-98	22	328,994	14,954	23.428	0.002				
Jul-98	22	272,957	12,407	23.242	-0.187				
Aug-98	21	392,104	18,672	23.650	0.409				
Sep-98	21	325,144	15,483	23.463	-0.187				
Oct-98	22	139,786	6,354	22.572	-0.891				
Nov-98	20	269,065	13,453	23.322	0.750				
Dec-98	22	248,596	11,300	23.148	-0.174				
Jan-99	19	253,448	13,339	23.314	0.166				
Feb-99	19	217,433	11,444	23.161	-0.153				
Mar-99	23	415,145	18,050	23.616	0.456				
Apr-99	21	431,280	20,537	23.746	0.129				
May-99	20	229,082	11,454	23.162	-0.584				
Jun-99	22	367,943	16,725	23.540	0.379				
Jul-99	21	332,623	15,839	23.486	-0.054				
Aug-99	22	240,157	10,916	23.114	-0.372				
Sep-99	21	236,011	11,239	23.143	0.029				
Oct-99	21	216,883	10,328	23.058	-0.085				
Nov-99	21	372,582	17,742	23.599	0.541				
Dec-99	22	319,846	14,538	23.400	-0.199				
Jan-00	20	282,165	14,108	23.370	-0.030				
Feb-00	20	665,367	33,268	24.228	0.858				
Mar-00	23	550,107	23,918	23.898	-0.330				
Apr-00	19	244,510	12,869	23.278	-0.620				
May-00	22	269,774	12,262	23.230	-0.048				
Jun-00	22	406,409	18,473	23.640	0.410				
Jul-00	20	230,894	11,545	23.169	-0.470				
Aug-00	23	257,797	11,209	23.140	-0.030				
Sep-00	20	332,120	16,606	23.533	0.393				
Oct-00	22	362,493	16,477	23.525	-0.008				
Nov-00	21	317,653	15,126	23.440	-0.086				
Dec-00	20	246,006	12,300	23.233	-0.207				
Jan-01	21	462,726	22,035	23.816	0.583				

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Feb-01	19	388,304	20,437	23.741	-0.075				
Mar-01	22	523,443	23,793	23.893	0.152				
Apr-01	20	289,212	14,461	23.395	-0.498				
May-01	22	274,298	12,468	23.246	-0.148				
Jun-01	21	348,268	16,584	23.532	0.285				
Jul-01	21	264,590	12,600	23.257	-0.275				
Aug-01	23	245,591	10,678	23.091	-0.165				
Sep-01	15	178,524	11,902	23.200	0.108				
Oct-01	23	260,719	11,336	23.151	-0.049				
Nov-01	21	286,199	13,629	23.335	0.184				
Dec-01	20	395,230	19,762	23.707	0.372				
Jan-02	21	227,893	10,852	23.108	-0.599				
Feb-02	19	476,837	25,097	23.946	0.838				
Mar-02	20	380,160	19,008	23.668	-0.278				
Apr-02	22					23.568	0.292	17,947	394,841
May-02	22					23.581	0.299	18,218	400,794
Jun-02	20					23.594	0.305	18,493	369,852
Jul-02	22					23.607	0.312	18,771	412,971
Aug-02	22					23.620	0.319	19,054	419,198
Sep-02	20					23.633	0.325	19,342	386,835
Oct-02	23					23.646	0.331	19,633	451,567
Nov-02	20					23.659	0.337	19,929	398,587
Dec-02	21					23.672	0.343	20,230	424,827
Jan-03	21					23.684	0.349	20,535	431,232
Feb-03	19					23.697	0.355	20,844	396,045
Mar-03	21					23.710	0.361	21,159	444,333
Apr-03	21					23.723	0.366	21,478	451,033
May-03	21					23.736	0.372	21,802	457,833
Jun-03	21					23.749	0.377	22,130	464,736
Jul-03	22					23.762	0.383	22,464	494,207
Aug-03	21					23.775	0.388	22,803	478,855
Sep-03	21					23.788	0.393	23,146	486,075

APPENDIX B

A. Baseline Estimate of the Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (March 1992–March 2002). The date obtained from the exchanges and Nasdaq are presented in Table B1. The monthly aggregate dollar amount of sales (exchange plus Nasdaq) is contained in column E.

Next, calculate the percentage change in the ADS from month-to-month. The average monthly percentage growth of ADS over the entire sample is 0.017 and the standard deviation is 0.111. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 2.4 percent.

Now, use the expected monthly percentage growth rate to forecast the aggregate dollar amount of sales. For example, one can use the ADS for March 2002 ($97,678,101,212) to forecast ADS for April 2002 ($100,007,442,449 = $97,678,101,212 × 1.024). Multiply by the number of trading days in April 2002 (22) to obtain a forecast of the aggregate dollar amount of sales for the month ($2,200,163,733,884). Repeat the method to generate forecasts for subsequent months.

The forecasts for aggregate dollar amount of sales are in column I of Table B1. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's aggregate dollar amount of sales (column E) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column F).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.017$ and $\sigma = 0.111$, 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.

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 $ADS_t = 1.024 \times ADS_{t-1}$.

6. For April 2002, this gives a forecast ADS of 1.024 × $97,678,101,212 = $100,007,442,449. Multiply this figure by the 22 trading days in April 2002 to obtain an aggregate dollar amount of sales forecast of $2,200,163,733,884.

7. For May 2002, multiply the April 2002 ADS forecast by 1.024 to obtain a forecast ADS of $102,392,331,762. Multiply this figure by the 22 trading days in May 2002 to obtain an aggregate dollar amount of sales forecast of $2,252,631,298,774.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Use Table B1 to estimate fees collected for the period 10/1/02 through 10/31/02. The projected aggregate dollar amount of sales for this period is $2,649,542,136,536. Projected fee collections at the current fee rate of 0.00003010 are $79,751,218.

2. Assume collections of $450,000 in assessments on securities futures products in fiscal 2003. This estimate is based on the CBO's August 2001 estimate of Section 31(d) collections in fiscal 2003, adjusted to reflect the Fee Relief Act's reduction in the Section 31(d) assessments.

3. Subtract the amounts $79,751,218 and $450,000 from the target offsetting collection amount of $849,000,000, leaving $768,798,782 to be collected on dollar volume for the period 11/1/02 through 9/30/03.

4. Use Table B1 to estimate dollar volume for the period 11/1/02 through 9/30/03. The estimate is $30,508,977,113,465. Finally, compute the fee rate required to produce the additional $768,798,782 in revenue. This rate is $768,798,782 divided by $30,508,977,113,465 or 0.0000251991.

5. Consistent with the system requirements of the exchanges and the NASD, round the result to the seventh decimal point, yielding a rate of $25.20 per million.

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Figure B1.
Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)
(Dashed Line Indicates Forecast Values)

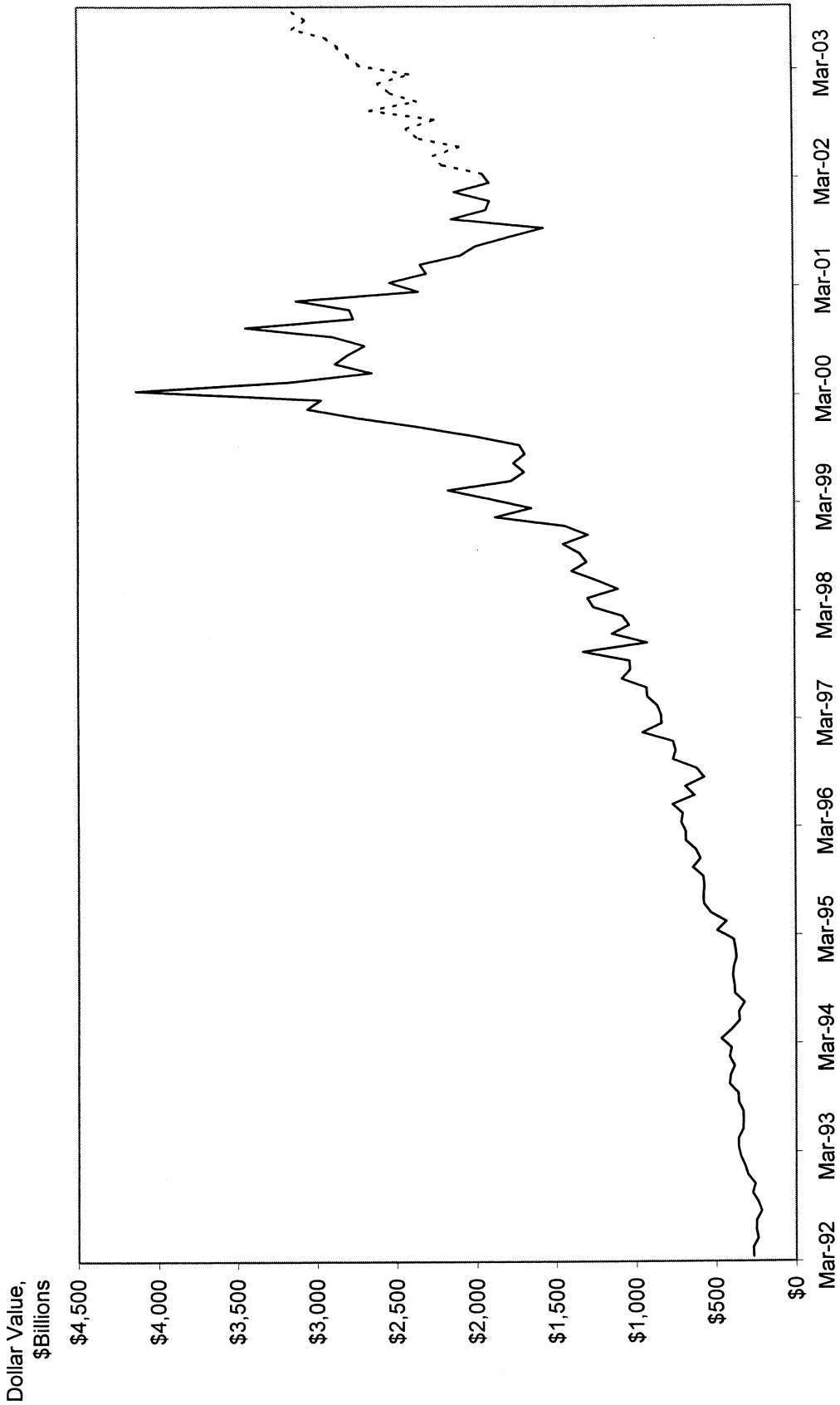

Table B1. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/02 to 10/31/02 ($Millions)	2,649,542
b. Baseline estimate of the aggregate dollar amount of sales, 11/1/02 to 9/30/03 ($Millions)	30,508,977
c. Assumed collections in assessments on securities futures products in FY 2003 ($Millions)	0.450
d. Implied fee rate (($849,000,000 - 0.00003010*a - c) / b)	$25.20

Data

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Mar-92	22	194,253,583,139	73,399,584,000	267,653,167,139	12,166,053,052	-		
Apr-92	21	192,682,981,517	78,144,178,000	270,827,159,517	12,896,531,406	0.058		
May-92	20	182,587,885,066	57,295,555,000	239,883,440,066	11,994,172,003	-0.073		
Jun-92	22	185,877,632,937	64,635,401,000	250,513,033,937	11,386,956,088	-0.052		
Jul-92	22	185,749,381,610	63,154,356,000	248,903,737,610	11,313,806,255	-0.006		
Aug-92	21	163,201,786,258	53,571,296,000	216,773,082,258	10,322,527,727	-0.092		
Sep-92	21	170,931,544,317	65,871,407,000	236,802,951,317	11,276,331,015	0.088		
Oct-92	22	197,058,901,056	75,795,245,000	272,854,146,056	12,402,461,184	0.095		
Nov-92	20	176,284,430,042	80,748,933,000	257,033,363,042	12,851,668,152	0.036		
Dec-92	22	213,194,085,523	89,348,602,000	302,542,687,523	13,751,940,342	0.068		
Jan-93	20	212,344,305,792	107,992,636,000	320,336,941,792	16,016,847,090	0.152		
Feb-93	19	238,758,759,740	107,865,220,000	346,623,979,740	18,243,367,355	0.130		
Mar-93	23	254,153,083,005	104,714,261,000	358,867,344,005	15,602,928,000	-0.156		
Apr-93	21	259,894,323,029	101,842,746,000	361,737,069,029	17,225,574,716	0.099		
May-93	20	228,370,238,902	103,225,212,000	331,595,450,902	16,579,772,545	-0.038		
Jun-93	22	223,269,586,987	105,819,661,000	329,089,247,987	14,958,602,181	-0.103		
Jul-93	21	228,189,513,167	101,802,827,000	329,992,340,167	15,713,920,960	0.049		
Aug-93	22	240,087,999,028	117,600,923,000	357,688,922,028	16,258,587,365	0.034		
Sep-93	21	243,134,952,411	117,640,918,000	360,775,870,411	17,179,803,353	0.055		
Oct-93	21	275,653,273,040	139,364,838,000	415,018,111,040	19,762,767,192	0.140		
Nov-93	21	280,909,537,581	127,345,828,000	408,255,365,581	19,440,731,694	-0.016		
Dec-93	22	268,471,426,906	114,885,343,000	383,356,769,906	17,425,307,723	-0.109		
Jan-94	21	277,615,393,351	137,551,072,000	415,166,465,351	19,769,831,683	0.126		
Feb-94	19	281,053,587,314	122,882,920,000	403,936,507,314	21,259,816,174	0.073		
Mar-94	23	316,713,498,173	151,177,373,000	467,890,871,173	20,343,081,355	-0.044		
Apr-94	19	289,365,151,226	114,834,515,000	404,199,666,226	21,273,666,643	0.045		
May-94	21	241,278,516,490	112,318,747,000	353,597,263,490	16,837,964,928	-0.234		
Jun-94	22	245,067,967,632	112,555,736,000	357,623,703,632	16,255,622,892	-0.035		
Jul-94	20	221,511,138,952	100,563,525,000	322,074,663,952	16,103,733,198	-0.009		

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Aug-94	23	255,511,795,450	127,675,353,000	383,187,148,450	16,660,310,802	0.034		
Sep-94	21	273,589,300,476	111,984,539,000	385,573,839,476	18,360,659,023	0.097		
Oct-94	21	266,363,537,805	129,089,800,000	395,453,337,805	18,831,111,324	0.025		
Nov-94	21	267,314,618,799	121,827,668,000	389,142,286,799	18,530,585,086	-0.016		
Dec-94	21	265,184,891,948	106,839,641,000	372,024,532,948	17,715,453,950	-0.045		
Jan-95	21	253,958,524,771	125,092,685,000	379,051,209,771	18,050,057,608	0.019		
Feb-95	19	263,486,075,035	125,574,811,000	389,060,886,035	20,476,888,739	0.126		
Mar-95	23	330,806,034,718	161,066,575,000	491,872,609,718	21,385,765,640	0.043		
Apr-95	19	285,586,213,818	149,741,420,000	435,327,633,818	22,911,980,727	0.069		
May-95	22	340,254,177,379	191,600,883,000	531,855,060,379	24,175,230,017	0.054		
Jun-95	22	376,703,055,609	197,629,158,000	574,332,213,609	26,106,009,710	0.077		
Jul-95	20	346,809,496,831	229,239,839,000	576,049,335,831	28,802,466,792	0.098		
Aug-95	23	327,435,391,060	243,203,335,000	570,638,726,060	24,810,379,394	-0.149		
Sep-95	20	352,176,019,676	225,957,920,000	578,133,939,676	28,906,696,984	0.153		
Oct-95	22	386,892,948,035	255,297,230,000	642,190,178,035	29,190,462,638	0.010		
Nov-95	21	340,868,134,565	255,556,416,000	596,424,550,565	28,401,169,075	-0.027		
Dec-95	20	386,356,222,037	238,254,219,000	624,610,441,037	31,230,522,052	0.095		
Jan-96	22	412,342,988,854	275,256,103,000	687,599,091,854	31,254,504,175	0.001		
Feb-96	20	432,110,721,273	255,121,750,000	687,232,471,273	34,361,623,564	0.095		
Mar-96	21	462,522,216,093	252,313,904,000	714,836,120,093	34,039,815,243	-0.009		
Apr-96	21	419,529,647,022	284,880,671,000	704,410,318,022	33,543,348,477	-0.015		
May-96	22	444,864,509,489	323,514,998,000	768,379,507,489	34,926,341,250	0.040		
Jun-96	20	364,047,300,223	267,051,480,000	631,098,780,223	31,554,939,011	-0.102		
Jul-96	22	405,998,331,384	282,430,397,000	688,428,728,384	31,292,214,927	-0.008		
Aug-96	22	347,207,351,036	222,902,421,000	570,109,772,036	25,914,080,547	-0.189		
Sep-96	20	361,752,600,688	255,491,281,000	617,243,881,688	30,862,194,084	0.175		
Oct-96	23	450,138,412,454	314,131,029,000	764,269,441,454	33,229,106,150	0.074		
Nov-96	20	468,499,807,419	279,994,893,000	748,494,700,419	37,424,735,021	0.119		
Dec-96	21	475,791,378,753	288,688,118,000	764,479,496,753	36,403,785,560	-0.028		
Jan-97	22	578,613,348,586	378,819,289,000	957,432,637,586	43,519,665,345	0.179		
Feb-97	19	500,101,991,446	337,072,192,000	837,174,183,446	44,061,799,129	0.012		
Mar-97	20	526,670,517,788	312,522,211,000	839,192,728,788	41,959,636,439	-0.049		
Apr-97	22	541,016,966,315	321,782,247,000	862,799,213,315	39,218,146,060	-0.068		
May-97	21	560,712,670,647	365,021,182,000	925,733,852,647	44,082,564,412	0.117		
Jun-97	21	590,497,004,859	339,912,081,000	930,409,085,859	44,305,194,565	0.005		
Jul-97	22	665,142,486,898	420,540,220,000	1,085,682,706,898	49,349,213,950	0.108		
Aug-97	21	646,260,997,751	385,083,141,000	1,031,344,138,751	49,111,625,655	-0.005		
Sep-97	21	636,729,800,602	399,730,444,000	1,036,460,244,602	49,355,249,743	0.005		

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Oct-97	23	795,309,593,718	534,343,839,000	1,329,653,432,718	57,811,018,814	0.158		
Nov-97	19	614,656,941,587	311,360,937,000	926,017,878,587	48,737,783,084	-0.171		
Dec-97	22	771,801,485,199	375,503,531,000	1,147,305,016,199	52,150,228,009	0.068		
Jan-98	20	664,267,640,263	375,290,271,000	1,039,557,911,263	51,977,895,563	-0.003		
Feb-98	19	672,565,048,157	408,876,474,000	1,081,441,522,157	56,917,974,850	0.091		
Mar-98	22	798,277,192,905	464,862,662,000	1,263,139,854,905	57,415,447,950	0.009		
Apr-98	21	821,022,063,854	478,804,341,000	1,299,826,404,854	61,896,495,469	0.075		
May-98	20	717,711,593,246	392,290,631,000	1,110,002,224,246	55,500,111,212	-0.109		
Jun-98	22	781,193,541,641	464,886,854,000	1,246,080,395,641	56,640,017,984	0.020		
Jul-98	22	839,132,005,554	561,429,081,000	1,400,561,086,554	63,661,867,571	0.117		
Aug-98	21	811,893,940,585	494,696,509,000	1,306,590,449,585	62,218,592,837	-0.023		
Sep-98	21	899,363,115,702	452,978,456,000	1,352,341,571,702	64,397,217,700	0.034		
Oct-98	22	934,874,788,951	519,628,635,672	1,454,503,424,623	66,113,792,028	0.026		
Nov-98	20	761,843,293,678	534,735,697,587	1,296,578,991,265	64,828,949,563	-0.020		
Dec-98	22	831,906,512,838	610,078,427,246	1,441,984,940,084	65,544,770,004	0.011		
Jan-99	19	999,043,017,550	881,762,273,376	1,880,805,290,926	98,989,752,154	0.412		
Feb-99	19	881,206,542,866	771,821,519,115	1,653,028,061,981	87,001,476,946	-0.129		
Mar-99	23	1,064,559,310,307	845,323,661,356	1,909,882,971,663	83,038,390,072	-0.047		
Apr-99	21	1,200,826,668,871	974,846,639,668	2,175,673,308,539	103,603,490,883	0.221		
May-99	20	1,052,642,277,388	728,648,483,251	1,781,290,760,639	89,064,538,032	-0.151		
Jun-99	22	968,355,845,707	728,666,375,241	1,697,022,220,948	77,137,373,679	-0.144		
Jul-99	21	968,729,547,313	795,657,683,556	1,764,387,230,869	84,018,439,565	0.085		
Aug-99	22	909,861,580,448	782,763,893,461	1,692,625,473,909	76,937,521,541	-0.088		
Sep-99	21	886,209,235,286	842,754,416,364	1,728,963,651,650	82,331,602,460	0.068		
Oct-99	21	1,075,832,673,611	938,836,857,225	2,014,669,530,836	95,936,644,326	0.153		
Nov-99	21	1,125,441,492,744	1,218,999,895,936	2,344,441,388,681	111,640,066,128	0.152		
Dec-99	22	1,260,244,827,356	1,472,542,539,476	2,732,787,366,832	124,217,607,583	0.107		
Jan-00	20	1,293,751,986,296	1,759,510,466,949	3,053,262,453,245	152,663,122,662	0.206		
Feb-00	20	1,237,324,279,941	1,730,179,962,177	2,967,504,242,118	148,375,212,106	-0.028		
Mar-00	23	1,675,729,644,521	2,460,195,052,947	4,135,924,697,468	179,822,812,933	0.192		
Apr-00	19	1,429,668,149,369	1,739,658,625,584	3,169,326,774,953	166,806,672,366	-0.075		
May-00	22	1,273,774,500,287	1,374,100,073,878	2,647,874,574,166	120,357,935,189	-0.326		
Jun-00	22	1,283,603,525,223	1,594,692,767,334	2,878,296,292,557	130,831,649,662	0.083		
Jul-00	20	1,203,862,111,445	1,594,341,902,395	2,798,204,013,840	139,910,200,692	0.067		
Aug-00	23	1,211,624,989,972	1,481,001,529,902	2,692,626,519,874	117,070,718,255	-0.178		
Sep-00	20	1,261,317,634,976	1,631,936,332,356	2,893,253,967,332	144,662,698,367	0.212		
Oct-00	22	1,517,440,783,915	1,925,128,263,471	3,442,569,047,386	156,480,411,245	0.079		
Nov-00	21	1,290,090,415,114	1,473,929,732,217	2,764,020,147,331	131,620,007,016	-0.173		

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Dec-00	20	1,367,739,635,585	1,419,735,645,693	2,787,475,281,277	139,373,764,064	0.057		
Jan-01	21	1,547,342,195,603	1,573,412,629,080	3,120,754,824,684	148,607,372,604	0.064		
Feb-01	19	1,223,669,742,059	1,130,494,302,446	2,354,164,044,505	123,903,370,763	-0.182		
Mar-01	22	1,454,524,518,242	1,080,912,409,264	2,535,436,927,506	115,247,133,068	-0.072		
Apr-01	20	1,312,755,897,784	991,843,272,797	2,304,599,170,581	115,229,958,529	0.000		
May-01	22	1,320,141,835,270	1,023,175,979,663	2,343,317,814,933	106,514,446,133	-0.079		
Jun-01	21	1,241,534,765,814	847,846,047,529	2,089,380,813,344	99,494,324,445	-0.068		
Jul-01	21	1,240,991,028,539	757,402,982,130	1,998,394,010,669	95,161,619,556	-0.045		
Aug-01	23	1,120,517,678,311	669,526,933,547	1,790,044,611,858	77,828,026,603	-0.201		
Sep-01	15	1,051,262,586,362	519,060,855,910	1,570,323,442,271	104,688,229,485	0.296		
Oct-01	23	1,361,192,584,564	787,768,976,829	2,148,961,561,392	93,433,111,365	-0.114		
Nov-01	21	1,174,815,213,621	757,448,489,572	1,932,263,703,193	92,012,557,295	-0.015		
Dec-01	20	1,170,796,337,781	738,526,447,576	1,909,322,785,357	95,466,139,268	0.037		
Jan-02	21	1,285,936,279,811	842,154,952,554	2,128,091,232,365	101,337,677,732	0.060		
Feb-02	19	1,259,357,745,469	651,569,612,254	1,910,927,357,723	100,575,124,091	-0.008		
Mar-02	20	1,349,168,451,576	604,393,572,668	1,953,562,024,244	97,678,101,212	-0.029		
Apr-02	22						100,007,442,449	2,200,163,733,884
May-02	22						102,392,331,762	2,252,631,298,774
Jun-02	20						104,834,093,813	2,096,681,876,266
Jul-02	22						107,334,084,853	2,361,349,866,758
Aug-02	22						109,893,693,474	2,417,661,256,431
Sep-02	20						112,514,341,385	2,250,286,827,705
Oct-02	23						115,197,484,197	2,649,542,136,536
Nov-02	20						117,944,612,233	2,358,892,244,666
Dec-02	21						120,757,251,357	2,535,902,278,490
Jan-03	21						123,636,963,818	2,596,376,240,179
Feb-03	19						126,585,349,123	2,405,121,633,341
Mar-03	21						129,604,044,922	2,721,684,943,354
Apr-03	21						132,694,727,916	2,786,589,286,233
May-03	21						135,859,114,793	2,853,041,410,658
Jun-03	21						139,098,963,179	2,921,078,226,756
Jul-03	22						142,416,072,612	3,133,153,597,470
Aug-03	21						145,812,285,547	3,062,057,996,483
Sep-03	21						149,289,488,373	3,135,079,255,835

[FR Doc. 02–10932 Filed 4–29–02; 2:49 pm]

BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Investco, Inc.; Order of Suspension of Trading

April 29, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Investco, Inc. (''Investco'') because of questions regarding the accuracy of assertions by Investco, and by others, in press releases to investors concerning, among other things: (1) The company's assets, (2) the company's business combinations, (3) the company's current financial condition, and (4) a tender offer for Investco's outstanding shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, April 29, 2002 through 11:59 p.m. EDT, on May 10, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10960 Filed 4–29–02; 4:48 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45828; File No. SR–Amex–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to an Increase to 2,000 Contracts for the Two Near Term Expiration Months and to 1,000 Contracts for All Other Expiration Months in the Maximum Permissible Number of Nasdaq-100 Tracking Stock (QQQ) Option Contracts Executable through AUTO–EX

April 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4)[2] thereunder, notice is hereby given that on April 12, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Exchange Rule 933 to increase to 2,000 contracts for the two near term expiration months, and to 1,000 contracts for all other expiration months, the maximum permissible number of Nasdaq-100 Tracking Stock (''QQQ'') option contracts in an order that can be executed through the Exchange's automatic execution system (''AUTO–EX'').

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deleted language is [bracketed].

* * * * *

Automatic Execution of Options Orders

Rule 933

(a)–(b) No change.

Commentary

.01 No change

.02 Auto-Ex eligible orders must be market or marketable limit orders for two hundred fifty or fewer contracts for series subject to Auto-Ex except in the case of options on the Nasdaq-100 Tracking Stock (QQQ) which is limited to [five hundred] *2,000* or fewer contracts *in the first two (2) near term expiration months and 1,000 or fewer contract for all other expiration months.* Contract limits will be established on a case by case basis for an individual option class or for all option classes upon the approval of two Floor Governors or Senior Floor Officials. Notice concerning applicable size and types of Auto-Ex eligible orders will be provided to members periodically via Exchange circulars and/or posted on the Exchange's web site.

.03 No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 22, 2002, the Commission granted approval to an Exchange proposal to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through AUTO–EX.[4] At the same time, the Commission also approved similar proposals filed by the Philadelphia Stock Exchange, Inc. (''Phlx'') and the Pacific Exchange, Inc. (''PCX''), although in the case of the Phlx proposal, the increase to 250 contracts was limited to options on the QQQ.[5]

In the interim, the Chicago Board Options Exchange, Inc. (''CBOE''), on April 4, 2002, in various press reports indicated that, effective immediately, orders in the QQQ options of up to 500 contracts were eligible for instantaneous execution on the CBOE's Retail Automated Execution System (''RAES''). Previously, the maximum order size for QQQ options on the CBOE was 100 contracts. The Exchange represents that the ability of the CBOE to increase its RAES-eligible size to 500 contracts is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 11, 2002 (''Amendment No. 1''). In Amendment No. 1, the Amex amended its initial filing to include a representation that the Amex was trading up to 500 contracts in QQQ option contracts as of April 5, 2002 (*see infra* note 8) prior to the immediate effectiveness of this filing on April 12, 2002; to include the rule text being amended; and to request that the filing be re-characterized as a ''noncontroversial'' rule change under Rule 19b–4(f)(6) of the Act, 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002).

[5] *See* Securities Exchange Act Release Nos. 45629 (March 22, 2002), 67 FR 15271 (March 29, 2002) (order approving File No. SR–Phlx-2001–89); and 45641 (March 25, 2002), 67 FR 15445 (April 1, 2002) (order approving File No. SR–PCX–2001–48).