



Securities Industry Association

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October 27, 2004

Mary L. Schapiro
Vice Chairman, NASD
President, Regulatory Policy & Oversight
1735 K Street, NW
Washington, D.C. 20006

Re: Uniform Methodology for Calculation of Section 31 Fees

Dear Ms. Schapiro:

The Securities Industry Association (“SIA”)¹ is petitioning the National Association of Securities Dealers, Inc. (“NASD”)² on behalf of its member firms to establish a uniform methodology for calculating fees collected by the Securities and Exchange Commission (“SEC” or “Commission”) under Section 31 of the Securities Exchange Act of 1934 (the “Act”).³ As you know, the SEC recently established new procedures for the calculation, payment and collection of fees and assessments on self-regulatory organizations (“SROs”) pursuant to Section 31 of the Act.⁴ Under the new procedures, the Commission calculates the amount of fees and assessments due based on the volume of transactions as reported by the SROs, and bills the SROs that amount. SROs generate funds to pay Section 31 fees and assessments by charging their members a fee based on the aggregate dollar amount of sale transactions effected on the exchange or by or through their members. Historically, SRO members have passed the fee on to

¹ The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 790,600 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated \$213 billion in domestic revenue and an estimated \$283 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

² SIA has sent a similar petition to the New York Stock Exchange, Inc. See letter to Richard G. Ketchum, Chief Regulatory Officer, NYSE, dated October 27, 2004.

³ 15 U.S.C. 78ee.

⁴ Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41059.

customers by listing the charge on each sales confirmation. In order to minimize the differences between amounts billed by the SEC and amounts collected by SRO members from their customers, SIA believes the SROs should establish the uniform methodology for calculation of such fees as discussed below.

SRO members have no alternative but to assess the fee on each separate transaction, *i.e.*, on a per transaction basis, while the Commission bills SROs on the aggregate dollar amount of securities sale transactions. Consequently, SRO members do not collect amounts identical to that of the SRO's liability to the SEC. SIA has been working diligently for many years to reduce the reconciliation problem that results from, among other things, the need to round off to whole cents amounts collected by SRO members from customers. As a result of those efforts, the NASD and the New York Stock Exchange, Inc. ("NYSE") provided guidance to members with respect to rounding when calculating the fees. Specifically, NASD members were directed to use a specific formula in the calculation of the fee applicable to each transaction.⁵

Unfortunately, in adopting the new procedures for the calculation, collection and payment of Section 31 fees, the Commission noted that Section 31 does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members or the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers. Consequently, NASD has revised the guidance previously issued, which provided a uniform methodology for rounding.⁶ The NYSE, on the other hand, withdrew its guidance.⁷

The SIA acknowledges that SRO members need not pass such fees on to their customers. Nevertheless, the current practice is long-standing and grew out of procedures prescribed by SROs and approved by the SEC. Therefore, SIA strongly believes that industry standards are required in order to achieve collections from customers that are as accurate as possible. As you can appreciate, differences in calculations for large institutional trades resulting from non-standard practices can cause differences in net monies that can affect timely affirmation and, ultimately, settlement of the trade.

We note that the Commission established a single, uniform methodology for calculation of amounts due from all SROs in order to reduce the likelihood of errors due to inconsistent interpretation of Section 31. Similarly, a single, uniform methodology is necessary to ensure that amounts collected from customers are accurate as well. Although absolute precision is not likely, in the interest of certainty, efficiency and uniformity, SIA requests that the NASD issue guidance that directs member firms, when calculating fees due from customers on a trade-by-trade basis, to use a normal rounding

⁵ http://nasdr.com/mem_alert2001_04.htm.

⁶ See NASD Notice To Members 04-63.

⁷ See Information Memo 04-42, August 5, 2004.

convention, *i.e.*, truncate at the third decimal place. If the number is five or more, round up; if four or less, round down. This calculation methodology will allow NASD members to more accurately reconcile amounts collected from customers with amounts due to the NASD.

In the release adopting the new procedures, the SEC also concluded that fees the SROs pass to their members and the fees that members pass to their customers are not “Section 31 Fees” or “SEC Fees.” Therefore, the SEC directed SRO members to take prompt action to correct any misperceptions. Firms have been reluctant, however, to change the language on their confirmations because they believe customers may be confused if firms adopt differing terminology to describe this fee. Accordingly, SIA has recommended use of the term “Regulatory Fee” or “Reg Fee.”⁸

It is our hope that the NASD will respond affirmatively to this petition so that uniform standards can be communicated to the industry for implementation by February 1, 2005. If you wish to receive additional information related to this request, please feel free to contact John Panchery at 212-618-0559 or jpanchery@sia.com.

Sincerely,

Donald D. Kittell
Executive Vice-President
(212) 618-0526

CC: Robert L.D. Colby, Deputy Director, SEC
Richard G. Ketchum, Chief Regulatory Officer, NYSE
Ira Hammerman, General Counsel, SIA
SIA Operations Committee

⁸ SIA has informed the SEC of this recommendation. See Letter to Robert L.D. Colby, Deputy Director, SEC, from Donald D. Kittell, Executive Vice President, SIA, dated October 27, 2004.