FDC date	State	City	Airport	FDC Number	Subject
06/20/02	AL	Huntsville	Madison County Executive.	2/5826	VOR/DME–B, Amdt 6.
06/20/02	AL	Troy	Troy Muni	2/5827	ILS Rwy 7, Amdt 7A.
06/20/02	AL	Huntsville	Madison County Executive.	2/5829	RNAV (GPS) Rwy 18, Orig.
06/20/02	MT	Kalispell	Glacier Park Intl	2/5847	ILS Rwy 2, Amdt 4B.
06/20/02	CT	Willimantic	Windham	2/5867	LOC Rwy 27, Amdt 2A.
06/20/02	CO	Pueblo	Pueblo Memorial	2/5873	ILS Rwy 26R, Amdt 13.
06/21/02	NC	Wilmington	Wilmington Intl	2/5908	RNAV (GPS) Rwy 35, Orig.
06/21/02	NC	Wilmington	Wilmington Intl	2/5909	RNAV (GPS) Rwy 17, Orig.
06/21/02	CO	Durango	Durango-La Plata County.	2/5910	VOR OR GPS–A, Amdt 6.
06/21/02	NC	Wilmington	Wilmington Intl	2/5917	LOC BC Rwy 17, Amdt 7B.
06/21/02	NC	Wilimington	Wilmington Intl	2/5918	Radar-1, Amdt 6B.
06/21/02	NC	Wilmington	Wilmington Intl	2/5919	TACAN–A, Orig.
06/21/02	NC	Wilmington	Wilmington Intl	2/5920	ILS Rwy 35, Amdt 20B.
06/21/02	CO	Hayden	Yampa Valley	2/6022	ILS/DME Rwy 10, Amdt 1.
06/24/02	CO	Grand Junction	Grand Junction/ Walker Field.	2/6018	LDA/DME Rwy 29, Orig.
06/25/02	CA	Oakland	Metropolitan Oakland Intl.	2/6094	RNAV (GPS) Rwy 27L, Orig.
06/25/02	NV	Las Vegas	McCarran Intl	2/6097	ILS Rwy 25R, Amdt 16F.
06/26/02	ME	Rangeley	Steven A. Bean Muni.	2/6118	NDB or GPS–A, Amdt 4. This replaces FDC 2/5693 IN TL02–15.
06/26/02	GA	Thomaston	Thomaston-Upston County.	2/6127	ILS Rwy 30, Orig.
06/26/02	GA	Thomaston	Thomaston-Upston County.	2/6128	NDB or GPS Rwy 30, Amdt 1.
06/26/02	UT	Salt Lake City	Salt Lake City Intl	2/6131	ILS Rwy 17, Amdt 12A.
06/28/02	SD	Sioux Falls	Joe Foss Field	2/6213	ILS Rwy 3, Amdt 27.
06/28/02	NH	Manchester	Manchester	2/6223	ILS Rwy 6 Orig.
07/01/02	CA	Blythe	Blythe	2/6375	VOR or GPS–A, Amdt 6A.
07/01/02	CA	Blythe	Blythe	2/6374	VOR/DME or GPS Rwy 26, Amdt 5A.
06/18/02	TX	Houston	George Bush Intercontinental Arpt/ Houston.	2/5723	ILS Rwy 15R, Orig.
06/20/02	KS	Wichita	Colonel James Jabara.	2/5876	GPS Rwy 18, Orig.
06/20/02	KS	Wichita	Colonel James Jabara.	2/5877	VOR/DME RNAV Rwy 18, Amdt 3.
06/24/02	LA	Patterson	Harry P. Williams Memorial.	2/6031	ILS Rwy 24, Orig.
06/24/02	TX	Madisonville	Madisonville Muni	2/6015	VOR/DME Rwy 18, Amdt 2.
06/25/02	OK	Lawton	Lawton-Ft Sill Regional.	2/6069	Radar-2, Amdt 1A.
06/26/02	TX	Anahuc	Chambers County	2/6133	NDB Rwy 12, Amdt 1.
07/02/02	IL	Chicago	Chicago-O'Hare Intl	2/6421	ILS Rwy 22R, Amdt 7A.

[FR Doc. 02–17582 Filed 7–11–02; 8:45 am]

BILLLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46169; File No. S7–14–02]

RIN 3235–AI49

Assessments on Security Futures Transactions and Fees on Sales of Securities Resulting from Physical Settlement of Security Futures Pursuant to Section 31 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting an amendment to a rule under the Securities Exchange Act of 1934 (''Exchange Act'') to clarify how to calculate assessments that are required to be paid by national securities exchanges and national securities associations pursuant to section 31(d) of the Exchange Act for security futures transactions. In addition, the amendment will provide guidance on how to calculate fees that are required to be paid by national securities exchanges and national securities associations pursuant to sections 31(b) and (c) of the Exchange Act, respectively, for sales of securities that result from the physical settlement of security futures.

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kelly Riley, Senior Special Counsel, at (202) 942–0752, Susie Cho, Special Counsel, at (202) 942–0748, and Geoffrey Pemble, Attorney, at (202) 942–0757, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 31 of the Exchange Act [1] requires each national securities exchange and each national securities association to pay assessments and fees based on transactions in or sales of certain securities. On May 1, 2002, the Commission proposed an amendment to Rule 31–1[2] to clarify how national securities exchanges and national securities associations should calculate: (1) Assessments for security futures transactions required to be paid pursuant to section 31(d) of the Exchange Act [3] and (2) fees for sales of securities resulting from physical settlement of security futures required to be paid pursuant to either section 31(b) or (c) of the Exchange Act.[4] The Commission received four comment letters in response to the Proposing Release.[5] As discussed further below, the Commission is adopting the amendment to Rule 31–1 regarding payment of the Section 31 assessment as proposed. In addition, the Commission is adopting an amendment to Rule 31–1 regarding how Section 31 fees are to be calculated for sales of securities that result from physical settlement of security futures, which is modified from the amendment proposed in response to comments.

[1] 15 U.S.C. 78ee.

[2] 17 CFR 240.31–1.

[3] Earlier this year, the Commission exempted futures on narrow-based security indexes from the assessment and fee requirements of section 31 of the Exchange Act. *See* Securities Exchange Act Release No. 45371 (January 31, 2002), 67 FR 5199 (February 5, 2002). Accordingly, assessments under Section 31(d) of the Exchange Act are required to be paid only on transactions in futures on single securities.

[4] *See* Securities Exchange Act Release No. 45854, 67 FR 30628 (May 7, 2002) (''Proposing Release'').

[5] *See* letters to Jonathan G. Katz, Secretary, Commission, from Kathleen M. Hamm, Senior Vice President Regulation and Compliance, Nasdaq Liffe Markets, LLC, dated June 7, 2002 (''NQLX Letter''); C. Robert Paul, General Counsel, OneChicago, dated June 6, 2002 (''OneChicago Letter''); W. Leo McBlain, Chairman, Financial Information Forum, dated June 5, 2002 (''FIF Letter''); and email to Jonathan G. Katz, Secretary, Commission, from Franc Spinelli, Refco, dated May 16, 2002 (''Refco Letter'').

II. Discussion

A. Assessments Under Section 31(d) of the Exchange Act

Section 31(d) of the Exchange Act provides that each national securities exchange and each national securities association shall pay an assessment ''for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange.''[6] The amendment to Rule 31–1 adopted by the Commission clarifies two issues with regard to the application of Section 31(d): (1) The meaning of ''round turn'' and (2) the unit of a ''transaction'' on which the assessment is based. These issues are discussed below.

1. Meaning of ''Round Turn''

Section 31(d) clarifies that a ''round turn'' transaction on a security future is ''treated as including one purchase and one sale'' of a contract for future delivery. The Commission believes that the correct interpretation of this phrase is a completed trade involving the simultaneous purchase and sale of a contract for future delivery by the two parties to the trade.[7] From the perspective of an exchange or association, there is, in fact, one purchase and one sale of a contract for future delivery in such a trade. Accordingly, this interpretation is consistent with the fact that it is the obligation of an exchange or association to pay an assessment on each round turn transaction.

2. Meaning of ''Transaction''

Exchanges and associations must pay Section 31(d) assessments for each ''round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery).'' The parenthetical makes clear that the assessment is applied on each purchase and sale of each *contract* for future delivery. Thus, the total Section 31 assessment an exchange or association must pay to the Commission will be the amount of the assessment—which is currently $0.009—multiplied by the number of contracts traded on such exchange or by or through a member of such association otherwise than on an exchange. The amendment to Preliminary Note to Rule 31–1 establishes this method of calculating the Section 31(d) assessment.[8]

[6] 15 U.S.C. 78ee(d). For fiscal year 2002, the assessment is $0.009 for each round turn transaction on a security future. For fiscal year 2007 and each succeeding fiscal year, such assessment shall be equal to $0.0042 for each round turn transaction.

[7] The Commission received one comment letter addressing the interpretation of the term ''round turn''; the commenter agreed with the Commission's interpretation. *See* NQLX Letter.

B. Fees under Sections 31(b) and (c) of the Exchange Act

In addition to the assessments paid by exchanges and associations pursuant to section 31(d) of the Exchange Act, section 31(b) of the Exchange Act requires each national securities exchange to pay a fee based on the aggregate dollar amount of sales of securities transacted on such exchange. Similarly, section 31(c) of the Exchange Act requires each national securities association to pay a fee based on the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange.[9]

1. Section 31(b) and 31(c) Fees Payable Upon Physical Settlement

Because at physical settlement of a security future a sale of the underlying security or securities occurs, each national securities exchange or national securities association is required to pay a fee to the Commission based on the dollar amount of such sale. Thus, as in the exercise of an option,[10] the fees that are required pursuant to either section 31(b) or section 31(c) of the Exchange Act are payable to the Commission only if a security future is held until settlement and settlement results in the physical delivery of the underlying security or securities. The amendment to the Preliminary Note to Rule 31–1 clarifies that the obligation to pay a Section 31(b) or (c) fee on a sale of a security underlying a physically-settled security future does not accrue until the time that physical settlement occurs.[11]

[8] The Commission received no comments on this aspect of the proposal.

[9] Sections 31(b) and (c) of the Exchange Act set forth initial rates of $15 per $1,000,000. The Commission, however, is required to make adjustments to these fee rates pursuant to section 31(j) of the Exchange Act. *See* Securities Exchange Act Release No. 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) of the Exchange Act).

[10] Section 31 fees that are paid upon an option's exercise are paid only on options that are physically-settled, not options that are cash-settled, because, upon exercise, physically-settled options result in the actual sale and delivery of the underlying securities.

[11] One commenter agreed with the Commission's interpretation by noting that, because Congress specifically excluded security futures contracts from Section 31(b) and (c) fees, the commenter believed that Congress did not intend to levy fees at the time of the formation of the contract, but rather at physical delivery of the underlying security. *See* NQLX Letter.

2. Calculation of Aggregate Dollar Amount of Sales of Securities

In the Proposing Release, the Commission proposed to amend the Preliminary Note to Rule 31–1 to clarify that the dollar amount of a sale of securities resulting from the physical settlement of a security future should be calculated based on the price at which the security future was entered into by the market participant effecting delivery of the underlying security at settlement. The Commission, however, sought comment on whether this was the appropriate price for determining the dollar amount of the sale.

All of the commenters to the Proposing Release argued that the original trade price should not be used as the benchmark for calculating fees under Sections 31(b) and (c).[12] Instead, the commenters recommended that the Commission adopt an alternative interpretation that would base the Section 31(b) and (c) fees on the final settlement price of the security futures contract. One commenter noted that its draft exchange rules define the settlement price as the price at which the securities underlying the futures contract are deliverable.[13] Several commenters further noted that the initial trade price is not the price paid by the buyer, or received by the seller, for the underlying security at expiration.[14]

The commenters further argued that using the sales price of the security future would be complicated and burdensome to implement. All of the commenters noted that neither The Options Clearing Corporation (''OCC'') nor the exchanges retain original trade price information pertaining to open positions for more than one day.[15] The commenters stated that using the sales price of the security future would require costly systems changes by market participants such as OCC because original trade price information is not readily tracked or available and would have to be obtained from the party making the delivery.[16] One of the commenters estimated that its required systems modifications would take approximately three months to complete.[17]

Finally, the commenters argued that using the initial trade price as the price upon which Section 31 fees are assessed would create verification problems.[18] Specifically, the commenters noted that because member firms are the only entities currently tracking the original transaction price, exchanges and associations that are subject to the obligation to pay the fee would not be able to verify the trade information received from the member firms.[19] One commenter argued that additional audits and reviews would have to be implemented at additional costs.[20] The commenters noted that verifying the accuracy of the information provided to a clearing organization would be impossible without extensive investigation and manual intervention involving multiple organizations.[21]

Instead, a majority of the commenters recommended that the Commission use the settlement price at expiration as the basis upon which to calculate the dollar amount of a sale of securities resulting from the physical settlement of a security future.[22] They believed that this approach would be less complicated and easier to implement because the relevant information is readily ascertainable by the exchanges and OCC, and no systems modifications would be needed for either calculation or verification of Section 31 fees.[23] Further, as noted above, two commenters noted that the settlement price is the dollar amount the buyer pays and the seller receives for delivery of the underlying security.[24]

The Commission believes that the commenters make compelling arguments as to why the Section 31(b) and (c) fees should be based on the final settlement price, rather than on the price at which the security future was entered into by the market participant effecting delivery, and has amended Rule 31–1 accordingly.

A buyer and seller enter into a futures contract at the current futures price for delivery on a specified date of an underlying asset or instrument. At the close of trading, all futures contracts open on that day are marked-to-market. The mark-to-market is a risk reduction mechanism to reduce the clearinghouse's exposure to its members. The brokers for parties with long positions pay to (or receive from) the clearing agency any decrease (or increase) in the futures contract price since the trade. Similarly, the brokers for the parties with the short positions pay to (or receive from) the clearing agency any increase (or decrease) in the futures contract price since the trade. This exchange of mark-to-market payments is referred to as variation settlement. Thus, at expiration of a futures contract, any difference between the price at which a buyer and seller may have entered into their respective positions has been bridged by the intervening mark-to-market variation settlement, *i.e.,* each party will have received (or paid) the difference between the original sale price and the final settlement price of the contract. Accordingly, physical settlement pursuant to the terms of a futures contract takes place at an invoicing price based on the final settlement price.

The amendment we are adopting to the Preliminary Note to Rule 31–1 requires that the fees paid under Sections 31(b) and (c) when physical settlement of a security future occurs be based on the price received by the seller from the buyer in exchange for delivery of the security or securities underlying such security future—*i.e.,* the final settlement price. A delivery against payment of the security or securities underlying a security future only occurs at expiration of a physically-settled contract, once the buyers electing to receive physical delivery and the sellers electing to make physical delivery have been identified. At physical delivery, the buyer pays and the seller receives the final settlement price of the underlying security. The Commission believes that this amendment specifying the price on which exchanges and associations must base Section 31(b) and (c) fees is responsive to commenters' concerns. Moreover, the Commission believes that the amount of fees collected under Sections 31(b) and (c) under this methodology will not alter the expected collection from that which would have been collected under the proposed methodology.

C. Payment of Section 31 Assessments and Fees

The obligation to pay the Section 31(d) assessment on a security futures transaction rests with national securities exchanges and national securities associations. Similarly, national securities exchanges and national securities associations have the

[12] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter.

[13] *See* NQLX Letter.

[14] *See* NQLX Letter and Refco Letter

[15] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter

[16] *Id.*

[17] *See* NQLX Letter. FIF agreed with this argument by stating that the operational and technical challenges that would result from using the initial trade price as the basis upon which the Section 31 fee calculation is made would require months of development work for multiple industry participants. *See* FIF Letter.

[18] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter.

[19] *Id.*

[20] *See* NQLX Letter.

[21] *Id.*

[22] *See* NQLX Letter; OneChicago Letter; and Refco Letter.

[23] *See* NQLX Letter and OneChicago Letter.

[24] *See supra* note 14 and accompanying text.

obligation to pay Section 31(b) and (c) fees. The amendment to the Preliminary Note to Rule 31–1 provides that OCC may pay Section 31 assessments on round turn transactions on security futures and fees for sales of securities that result from the physical settlement of security futures on behalf of national securities exchanges and national securities associations.

If a national securities exchange or national securities association chooses to levy charges upon its members to cover the Section 31(d) assessments for security futures transactions, such exchange or association would need to adopt rules requiring its members to pay such assessments.[25] In addition, national securities exchanges and national securities associations could adopt new or amend current rules to require their members to pay fees to cover the fees owed by such exchanges or associations under Section 31(b) or (c) of the Exchange Act to clarify the application of such fees to sales of securities that result from the physical settlement of security futures.[26]

III. Paperwork Reduction Act

The Paperwork Reduction Act is not applicable to the amendment because it does not impose any collection of information requirements that would require the approval of the Office of Management and Budget.

IV. Costs and Benefits of Amendment to Rule 31–1

A. Comments

In the Proposing Release, the Commission considered preliminarily the costs and benefits of the amendment to Rule 31–1 and requested comment on all aspects of its cost-benefit analysis, including identification of any additional costs or benefits of the proposed amendment to Rule 31–1. None of the commenters provided dollar-based estimates regarding the overall costs and benefits of the proposed amendment to Rule 31–1. However, several commenters discussed issues related to the costs and benefits of the proposed amendment.

Specifically, commenters raised concerns with the proposal that fees on sales of securities that result from the physical settlement of security futures be calculated based on the original sale price of the security future.[27] According to some commenters, this requirement would cause operational and technical challenges, which could result in undue costs and burdens for multiple market participants including exchanges, firms, service bureaus, and clearing organizations.[28] Several commenters noted that the futures exchanges and clearing organizations do not track initial trade price information for more than one day.[29] One commenter noted that such data would have to be obtained from the party making the delivery.[30] In addition, one commenter noted that market participants would need mechanisms to keep track of which futures transactions result in physical delivery as differentiated from those that do not.[31] Thus, a majority of the commenters suggested using the final settlement price as the basis for fee calculation.[32]

B. Costs

The amendment to Rule 31–1 is for the purpose of providing guidance on how Section 31 assessments and fees are to be calculated for transactions in security futures and sales of securities resulting from physical settlement of security futures. Specifically, the amendment is intended to clarify: (1) The method by which assessments required pursuant to section 31(d) of the Exchange Act are calculated for round turn transactions on security futures traded on national securities exchanges or by members of national securities associations; and (2) the manner in which fees required pursuant to sections 31(b) and (c) of the Exchange Act are calculated for sales of securities resulting from physical settlement of security futures.

As noted above, the Commission has modified its proposal in response to comments and is adopting an amendment to Rule 31–1 requiring that the payment of the Section 31(b) or (c) fee be based upon the price received by the seller in exchange for delivery of the security or securities underlying such security future—*i.e.,* the final settlement price. The Commission believes that this method should address the cost concerns raised by the commenters.

In addition, because the amendment to Rule 31–1 does not give rise to additional obligations on national securities exchanges, associations, or other market participants, but rather merely provides guidance on complying with existing statutory obligations, the Commission has concluded that there would be no costs imposed on market participants by the amendment to the rule.

C. Benefits

The Commission has concluded that the amendment to Rule 31–1 will benefit exchanges and associations by providing clarification on the assessments and fees payable under sections 31(b), (c) and (d) of the Exchange Act. Although these sections of the Exchange Act set forth generally the obligations of national securities exchanges and national securities associations to pay assessments and fees on security futures transactions and sales of securities resulting from physical settlement of such futures, the Commission has concluded that guidance is necessary to clarify the mechanics of the assessment and fee calculation and collection process for security futures. The Commission's guidance in the amendment to Rule 31–1 will remove any potential ambiguity in the statute about, for example, the meaning of ''round turn transaction'' and the price on which fees for sales of securities that result from the physical settlement of security futures will be based.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact of such rules on competition.[33] In addition, section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[34]

The Commission has considered the amendment to the rule in light of these standards and has concluded that it will not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, in amending Rule 31–1 the Commission is

[25] Currently, national securities exchanges and the National Association of Securities Dealers (''NASD'') charge their members fees to cover the fees owed by them to the Commission under sections 31(b) and (c) of the Exchange Act. *See, e.g.,* Schedule A to the NASD By-Laws, Section 8; New York Stock Exchange Rule 440H.

[26] National securities exchanges registered under section 6(g) of the Exchange Act would not be required to file such rules with the Commission. *See* Exchange Act Section 6(g)(4)(B), 15 U.S.C. 78f(g)(4)(B).

[27] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter.

[28] *See* NQLX Letter and FIF Letter.

[29] *See* NQLX Letter; OneChicago Letter; and FIF Letter.

[30] *See* OneChicago Letter.

[31] *See* FIF Letter.

[32] *See* NQLX Letter; OneChicago Letter; and Refco Letter.

[33] 15 U.S.C. 78w(a)(2).

[34] 15 U.S.C. 78c(f).

merely providing guidance in the rule to clarify recent amendments to section 31 of the Exchange Act. Likewise, the Commission has concluded that the amendment to the rule will not have an impact on capital formation. To the extent the amendment to the rule reduces any ambiguity regarding the application of Section 31 to security futures transactions and the physical settlement of security futures, the amendment to Rule 31–1 promotes efficiency.

VI. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[35] the Chairman of the Commission certified that the amendment to the rule would not have a significant economic impact on a substantial number of small entities. This certification was attached to the Proposing Release as Appendix A.[36] The Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

VII. Statutory Authority

For the reasons set forth above, the Commission amends Rule 31–1 under the Exchange Act pursuant to its authority under Exchange Act Sections 3(b), 23(a), and 31.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Final Rule

For the reasons set out in the preamble, the Commission is amending Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Amend § 240.31–1 by:

a. Removing the Preliminary Note;

b. Adding Preliminary Notes 1 and 2; and

c. Adding introductory text to § 240.31–1.

The additions read as follows:

[35] 5 U.S.C. 605(b).

[36] *See* Proposing Release, *supra* note 4.

§ 240.31–1 Securities transactions exempt from transaction fees.

Preliminary Notes

1. The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange (with the exception of sales of options on securities indexes) is to be paid by the exchange or the national securities association itself, respectively, or by The Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or The Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option.

2. The section 31(d) assessment on a round turn transaction on a security future traded on a national securities exchange, or by or through a member of a national securities association otherwise than on a national securities exchange, is to be paid by the exchange or the national securities association itself, respectively, or by The Options Clearing Corporation on behalf of the exchange or association, and such assessment is to be computed on the basis of the number of contracts of sale for future delivery traded on such exchange or by or through any member of such association otherwise than on an exchange. In the event of the physical settlement of a security future, a section 31 fee is to be paid by the exchange on which the round turn transaction on the security future was traded, or, if the round turn transaction on the security future was traded by or through a member of a national securities association otherwise than on a national securities exchange, by the association, or by The Options Clearing Corporation on behalf of such exchange or association. Such fee, whether paid under section 31(b) or section 31(c), is to be computed on the basis of the price received by the seller in exchange for delivery of the security or securities underlying the security future. The obligation to pay fees under section 31(b) or (c) does not accrue until the time that physical delivery occurs.

The following shall be exempt from section 31 of the Act:

* * * * *

Dated: July 8, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17494 Filed 7–11–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

22 CFR Part 11

[Public Notice 4065]

RIN 1400–AB–42

Waivers of the Worldwide Availability Requirement for Foreign Service Candidates

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This Final Rule amends the regulations on the appointment of Foreign Service Officers to allow the Director General (DG) of the Foreign Service, or the Director General's delegatee, to review the case of a Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide to determine whether or not it is in the best interest of the Service to appoint the candidate despite the medical disqualification. This decision, as to whether or not to grant a waiver of the Foreign Service worldwide availability requirement, was previously made by a committee created solely for that purpose. The shifting of this decision to the Director General, or the Director General's delegatee, in no way alters the rights or interests of any parties, nor does it alter the substantive criteria by which a decision whether or not to waive the worldwide availability requirement will be made. As with the committee's decisions at present, the decisions of the Director General, or the Director General's delegatee, will be final and will not be subject to further appeal.

In addition, while candidates must still be medically cleared for full overseas duty, the Department of State no longer considers the medical condition of eligible family members for pre-employment purposes. References to previous practices in this regard are therefore being removed as are references to the procedures of the former United States Information Agency.

DATES: This rule is effective August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Amory, Office of the Legal Adviser, 202–647–4646.