SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8916; 34–57766/May 2, 2008]

Order Making Fiscal Year 2009 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 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] Section 13(e) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission to collect fees on specified 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] Finally, Sections 31(b) and (c) of the Exchange Act require national securities exchanges and national securities associations, respectively, to pay fees to the Commission on transactions in specified securities.[4]

The Investor and Capital Markets Fee Relief Act (''Fee Relief Act'')[5] amended Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act 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 adjustment to fix the fee rates under these sections for fiscal year 2012 and beyond.[6]

II. Fiscal Year 2009 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

Section 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act in each of the fiscal years 2003 through 2011.[7] In those same fiscal years, Sections 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.

Section 6(b)(5) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2009. 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 2009], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal year 2009].'' That is, the adjusted rate is determined by dividing the ''target offsetting collection amount'' for fiscal year 2009 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2009.

Section 6(b)(11)(A) specifies that the ''target offsetting collection amount'' for fiscal year 2009 is $284,000,000.[8] Section 6(b)(11)(B) defines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2009 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 year 2009] 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 maximum offering price for fiscal year 2009, the Commission is using the same methodology it developed in consultation with the Congressional Budget Office (''CBO'') and Office of Management and Budget (''OMB'') to project aggregate offering price for purposes of the fiscal year 2008 annual adjustment. Using this methodology, the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2009 to be $5,091,289,629,574.[9] Based on this estimate, the Commission calculates the fee rate for fiscal 2009 to be $55.80 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 Year 2009 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 Section 31(j)(2),[10] which currently is $5.60 per million of the aggregate dollar amount of sales of specified securities transacted on the exchange. 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 sales of specified 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]

Section 31(j)(1) specifies the method for determining the annual adjustment

[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. 78ee(b) and (c). In addition, Section 31(d) of the Exchange Act requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures. 15 U.S.C. 78ee(d).

[5] Pub. L. 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)(5), 78n(g)(6), 78ee(j)(1), and 78ee(j)(3). Section 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in specified circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal years 2002 through 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 projections of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal year 2011, the annual adjustment mechanism will result in additional fee rate 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 year 2009 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2009 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 year 2009.

[10] Order Making Fiscal 2008 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934, Rel. No. 34–57407 (February 29, 2008), 73 FR 12228 (March 6, 2008).

[11] The annual adjustments, as well as the mid-year adjustments required in specified circumstances under Section 31(j)(2) in fiscal years 2002 through 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.

for fiscal year 2009. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for [fiscal year 2009], 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 year 2009].''

Section 31(l)(1) specifies that the ''target offsetting collection amount'' for fiscal year 2009 is $1,023,000,000.[12] Section 31(l)(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 year 2009] 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 2009, the Commission is using the same methodology it developed in consultation with the CBO and OMB to project dollar volume for purposes of prior fee adjustments.[13] Using this methodology, the Commission calculates the baseline estimate of the aggregate dollar amount of sales for fiscal year 2009 to be $113,703,210,464,919. Based on this estimate, and an estimated collection of $18,755 in assessments on security futures transactions under Section 31(d) in fiscal year 2009, the uniform adjusted rate for fiscal year 2009 is $9.30 per million.[14]

[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 year 2011, the annual and, in specified 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 year 2009 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2009 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 year 2009.

[14] The calculation of the adjusted fee rate assumes that the current fee rate of $5.60 per million will apply through October 31, 2008, due to the operation of the effective date provision contained in Section 31(j)(4)(A) of the Exchange Act.

IV. Effective Dates of the Annual Adjustments

Section 6(b)(8)(A) of the Securities Act provides that the fiscal year 2009 annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act shall take effect on the later of October 1, 2008, or five days after the date on which a regular appropriation to the Commission for fiscal year 2009 is enacted.[15] Sections 13(e)(8)(A) and 14(g)(8)(A) of the Exchange Act provide for the same effective date for the annual adjustments to the fee rates applicable under Sections 13(e) and 14(g) of the Exchange Act.[16]

Section 31(j)(4)(A) of the Exchange Act provides that the fiscal year 2009 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2008, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2009 is enacted.

V. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act,[17]

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 $55.80 per million effective on the later of October 1, 2008, or five days after the date on which a regular appropriation to the Commission for fiscal year 2009 is enacted; and

It is further ordered that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $9.30 per million effective on the later of October 1, 2008, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2009 is enacted.

By the Commission.

Nancy M. Morris,

Secretary.

Appendix A

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the ''aggregate maximum offering prices,'' which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2009, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to March 2008, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2009

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (March 1998–March 2008). 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 total dollar value of registrations. 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 1998 to March 2008.

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

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

[16] 15 U.S.C. 78m(e)(8)(A) and 78n(g)(8)(A).

[17] 15 U.S.C. 77f(b), 78m(e), 78n(g), and 78ee(j).

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 $\alpha = 0.00154$ and $\beta = -0.87424$.

6. For the month of April 2008 forecast $\Delta_{t=4/08} = \alpha + \beta e_{t = 3/08}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for June 2008 is given by $FLAAMOP_{t = 6/08} = \log(AAMOP_{t = 3/08}) + \Delta_{t=4/08} + \Delta_{t = 5/08} + \Delta_{t = 6/08}$.

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 2008, this gives a forecast AAMOP of $19.7 Billion (Column I), and a forecast AMOP of $414.1 Billion (Column J).

10. Iterate this process through September 2009 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2009 of $5,091,289,629,574.

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

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/1/08 and 9/30/09 to be $5,091,289,629,574.

2. The rate necessary to collect the target $284,000,000 in fee revenues set by Congress is then calculated as: $284,000,000 ÷ $5,091,289,629,574 = 0.00005578.

3. Round the result to the seventh decimal point, yielding a rate of .0000558 (or $55.80 per million).

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

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/08 to 9/30/08 ($Millions)	5,091,290
b. Implied fee rate ($284 Million / a)	$55.80

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, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Mar-98	22	378,185	17,190	23.568					
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				
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	401,290	19,109	23.673	-0.034				
Feb-02	19	476,837	25,097	23.946	0.273				
Mar-02	20	380,160	19,008	23.668	-0.278				
Apr-02	22	282,947	12,861	23.277	-0.391				
May-02	22	215,645	9,802	23.006	-0.272				
Jun-02	20	277,757	13,888	23.354	0.348				
Jul-02	22	208,638	9,484	22.973	-0.381				
Aug-02	22	265,750	12,080	23.215	0.242				
Sep-02	20	109,565	5,478	22.424	-0.791				
Oct-02	23	179,374	7,799	22.777	0.353				
Nov-02	20	243,590	12,179	23.223	0.446				
Dec-02	21	212,838	10,135	23.039	-0.184				
Jan-03	21	201,839	9,611	22.986	-0.053				
Feb-03	19	144,642	7,613	22.753	-0.233				
Mar-03	21	444,331	21,159	23.775	1.022				

Apr-03	21	142,373	6,780	22.637	-1.138				
May-03	21	328,792	15,657	23.474	0.837				
Jun-03	21	281,580	13,409	23.319	-0.155				
Jul-03	22	304,383	13,836	23.351	0.031				
Aug-03	21	328,351	15,636	23.473	0.122				
Sep-03	21	459,563	21,884	23.809	0.336				
Oct-03	23	285,039	12,393	23.240	-0.569				
Nov-03	19	257,779	13,567	23.331	0.091				
Dec-03	22	244,998	11,136	23.133	-0.197				
Jan-04	20	369,784	18,489	23.640	0.507				
Feb-04	19	221,517	11,659	23.179	-0.461				
Mar-04	23	448,543	19,502	23.694	0.514				
Apr-04	21	260,029	12,382	23.240	-0.454				
May-04	20	227,239	11,362	23.154	-0.086				
Jun-04	21	370,668	17,651	23.594	0.441				
Jul-04	21	305,519	14,549	23.401	-0.193				
Aug-04	22	179,688	8,168	22.823	-0.577				
Sep-04	21	357,007	17,000	23.556	0.733				
Oct-04	21	254,489	12,119	23.218	-0.338				
Nov-04	21	363,406	17,305	23.574	0.356				
Dec-04	22	570,918	25,951	23.979	0.405				
Jan-05	20	375,484	18,774	23.656	-0.324				
Feb-05	19	338,922	17,838	23.605	-0.051				
Mar-05	22	590,862	26,857	24.014	0.409				
Apr-05	21	282,018	13,429	23.321	-0.693				
May-05	21	323,652	15,412	23.458	0.138				
Jun-05	22	517,022	23,501	23.880	0.422				
Jul-05	20	457,487	22,874	23.853	-0.027				
Aug-05	23	605,534	26,328	23.994	0.141				
Sep-05	21	312,281	14,871	23.423	-0.571				
Oct-05	21	258,956	12,331	23.235	-0.187				
Nov-05	21	192,736	9,178	22.940	-0.295				
Dec-05	21	308,134	14,673	23.409	0.469				
Jan-06	20	526,550	26,328	23 994	0.585				

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adjust semi-annually.[18] In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected dollar transaction volume on the securities exchanges and certain over-the-counter markets over the course of the year. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected dollar transaction volume.

For 2009, the Commission has estimated dollar transaction volume by projecting forward the trend established in the previous decade. More specifically, dollar transaction volume was forecasted for months subsequent to March 2008, the last month for which the Commission has data on transaction volume.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Sales for Fiscal Year 2009

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (March 1998–March 2008). The monthly aggregate dollar amount of sales (exchange plus certain over-the-counter markets) is presented in column C of Table B.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.015 and the standard deviation is 0.126. 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 2.3%.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for March 2008 ($338,395,058,873) to forecast ADS for April 2008 ($346,177,695,873= $338,395,058,873 × 1.023).[19] Multiply by the number of trading days in April 2008 (22) to obtain a forecast of the total dollar volume for the month ($7,615,909,309,196). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table B. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t/ADS_{t-1})$, 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 $\mu = 0.015$ and $\sigma = 0.126$, 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.

5. 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 $ADS_t = 1.023 \times ADS_{t-1}$.

6. For April 2008, this gives a forecast ADS of 1.023 × $338,395,058,873 = $346,177,695,873. Multiply this figure by the 22 trading days in April 2008 to obtain a total dollar volume forecast of $7,615,909,309,196.

7. For May 2008, multiply the April 2008 ADS forecast by 1.023 to obtain a forecast ADS of $354,139,323,188. Multiply this figure by the 21 trading days in May 2008 to obtain a total dollar volume forecast of $7,436,925,786,952.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts from A to Calculate the New Fee Rate

1. Use Table B to estimate fees collected for the period 10/1/08 through 10/31/08. The projected aggregate dollar amount of sales for this period is $9,125,934,321,266. Projected fee collections at the current fee rate of 0.0000056 are $51,105,232.

2. Estimate the amount of assessments on securities futures products collected during 10/1/08 and 9/30/09 to be $18,755 by projecting a 2.3% monthly increase from a base of $1,173 in March 2008.

3. Subtract the amounts $51,105,232 and $18,755 from the target offsetting collection amount set by Congress of $1,023,000,000 leaving $971,876,013 to be collected on dollar volume for the period 11/1/08 through 9/30/09.

4. Use Table B to estimate dollar volume for the period 11/1/08 through 9/30/09. The estimate is $104,577,276,143,653. Finally, compute the fee rate required to produce the additional $971,876,013 in revenue. This rate is $971,876,013 divided by $104,577,276,143,653 or 0.0000092934.

5. Round the result to the seventh decimal point, yielding a rate of .0000093 (or $9.30 per million).

[18] Congress requires that the Commission make a mid-year adjustment to the fee rate if four months into the fiscal year it determines that its forecasts of aggregate dollar volume are reasonably likely to be off by 10% or more.

[19] The value 1.023 has been rounded. All computations are done with the unrounded value.

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

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/08 to 10/31/08 ($Millions)	9,125,934
b. Baseline estimate of the aggregate dollar amount of sales, 11/1/08 to 9/30/09 ($Millions)	104,577,276
c. Estimated collections in assessments on securities futures products in FY 2009 ($Millions)	0.019
d. Implied fee rate (($1023,000,000 - 0.0000056*a - c) /b)	$9.3

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Mar-98	22	1,259,994,685,467	57,272,485,703	-		
Apr-98	21	1,298,494,359,253	61,833,064,726	0.077		
May-98	20	1,110,221,658,995	55,511,082,950	-0.108		
Jun-98	22	1,243,779,791,913	56,535,445,087	0.018		
Jul-98	22	1,399,011,433,748	63,591,428,807	0.118		
Aug-98	21	1,307,501,463,442	62,261,974,450	-0.021		
Sep-98	21	1,352,428,235,083	64,401,344,528	0.034		
Oct-98	22	1,460,835,397,598	66,401,608,982	0.031		
Nov-98	20	1,298,403,768,065	64,920,188,403	-0.023		
Dec-98	22	1,442,697,787,306	65,577,172,150	0.010		
Jan-99	19	1,884,555,055,910	99,187,108,206	0.414		
Feb-99	19	1,656,058,202,765	87,160,958,040	-0.129		
Mar-99	23	1,908,967,664,074	82,998,594,090	-0.049		
Apr-99	21	2,177,601,770,622	103,695,322,411	0.223		
May-99	20	1,784,400,906,987	89,220,045,349	-0.150		
Jun-99	22	1,697,339,227,503	77,151,783,068	-0.145		
Jul-99	21	1,767,035,098,986	84,144,528,523	0.087		
Aug-99	22	1,692,907,150,726	76,950,325,033	-0.089		
Sep-99	21	1,730,505,881,178	82,405,041,961	0.068		
Oct-99	21	2,017,474,765,542	96,070,226,931	0.153		
Nov-99	21	2,348,374,009,334	111,827,333,778	0.152		
Dec-99	22	2,686,788,531,991	122,126,751,454	0.088		
Jan-00	20	3,057,831,397,113	152,891,569,856	0.225		
Feb-00	20	2,973,119,888,063	148,655,994,403	-0.028		
Mar-00	23	4,135,152,366,234	179,789,233,315	0.190		
Apr-00	19	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	2,649,273,207,318	120,421,509,424	-0.328		
Jun-00	22	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		

Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0 116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,839,174,160	129,091,958,708	0.060		
Feb-05	19	2,532,202,396,053	133,273,810,319	0.032		
Mar-05	22	3,030,474,095,010	137,748,822,500	0.033		
Apr-05	21	2,906,386,858,222	138,399,374,201	0.005		
May-05	21	2,697,406,551,792	128,447,931,038	-0.075		
Jun-05	22	2,825,792,932,509	128,445,133,296	0.000		
Jul-05	20	2,603,995,025,602	130,199,751,280	0.014		
Aug-05	23	2,846,109,434,770	123,743,888,468	-0.051		
Sep-05	21	3,009,608,583,531	143,314,694,454	0.147		
Oct-05	21	3,279,930,784,463	156,187,180,213	0.086		
Nov-05	21	3,163,288,362,669	150,632,779,175	-0.036		
Dec-05	21	3,090,218,506,716	147,153,262,225	-0.023		
Jan-06	20	3,573,306,111,973	178,665,305,599	0.194		
Feb-06	19	3,313,973,129,190	174,419,638,378	-0.024		
Mar-06	23	3,807,374,752,084	165,538,032,699	-0.052		
Apr-06	19	3,257,448,631,999	171,444,664,842	0.035		
May-06	22	4,206,452,683,345	191,202,394,697	0.109		
Jun-06	22	3,993,966,132,543	181,543,915,116	-0.052		
Jul-06	20	3,339,657,248,277	166,982,862,414	-0.084		
Aug-06	23	3,410,343,285,403	148,275,795,018	-0.119		
Sep-06	20	3,407,481,301,776	170,374,065,089	0.139		
Oct-06	22	3,980,061,341,623	180,911,879,165	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,264,337,570,190	213,216,878,510	0.138		
Feb-07	19	3,947,307,855,865	207,753,045,046	-0.026		

Mar-07	22	5,245,976,330,691	238,453,469,577	0.138			
Apr-07	20	4,274,660,745,896	213,733,037,295	-0.109			
May-07	22	5,173,409,122,483	235,154,960,113	0.096			
Jun-07	21	5,589,955,070,604	266,188,336,695	0.124			
Jul-07	21	5,941,510,339,617	282,929,063,791	0.061			
Aug-07	23	7,715,893,065,459	335,473,611,542	0.170			
Sep-07	19	4,806,887,798,516	252,994,094,659	-0.282			
Oct-07	23	6,501,037,858,934	282,653,819,954	0.111			
Nov-07	21	7,175,404,886,442	341,685,946,973	0.190			
Dec-07	20	5,499,256,804,407	274,962,840,220	-0.217			
Jan-08	21	7,996,757,181,265	380,797,961,013	0.326			
Feb-08	20	6,139,476,764,099	306,973,838,205	-0.216			
Mar-08	20	6,767,901,177,467	338,395,058,873	0.097			
Apr-08	22				346,177,695,873	7,615,909,309,196	
May-08	21				354,139,323,188	7,436,925,786,952	
Jun-08	21				362,284,057,360	7,607,965,204,556	
Jul-08	22				370,616,109,602	8,153,554,411,244	
Aug-08	21				379,139,787,982	7,961,935,547,615	
Sep-08	21				387,859,499,645	8,145,049,492,554	
Oct-08	23				396,779,753,099	9,125,934,321,266	
Nov-08	19				405,905,160,536	7,712,198,050,182	
Dec-08	22				415,240,440,227	9,135,289,684,986	
Jan-09	20				424,790,418,954	8,495,808,379,080	
Feb-09	19				434,560,034,511	8,256,640,655,702	
Mar-09	22				444,554,338,252	9,780,195,441,544	
Apr-09	21				454,778,497,708	9,550,348,451,868	
May-09	20				465,237,799,255	9,304,755,985,096	
Jun-09	22				475,937,650,848	10,470,628,318,662	
Jul-09	22				486,883,584,820	10,711,438,866,042	
Aug-09	21				498,081,260,738	10,459,706,475,501	
Sep-09	21				509,536,468,333	10,700,265,834,990	

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57738; File No. SR–Amex–2007–129]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to an Exchange Member's Conduct in Doing Business With the Public

April 29, 2008.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], as amended, and Rule 19b–4 thereunder,[2] on November 29, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change relating to the Exchange's rules governing doing business with the public. On March 19, 2008, the Commission issued a release noticing the proposed rule change, which was published for comment in the **Federal Register** on March 25, 2008.[3] The comment period expired on April 15, 2008. The Commission did not receive any comment letters in response to the proposed rule change. On April 17,

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57527 (Mar. 19, 2008), 73 FR 15810 (Mar. 25, 2008).