

REGULATORY CIRCULAR (04-02)

To: All BSE Member Firms
From: Maura Looney, Regulation & Enforcement
Date: December 2, 2004
Re: Regulatory Fee

The Securities & Exchange Commission established new procedures governing the calculation, payment and collection of fees and assessments owed by national securities exchanges under Section 31 of the Securities Exchange Act of 1934. (*See* Securities & Exchange Commission Release No. 34-49928). As will be described below, the Commission and the Exchange are requiring that: (1) the pass through fees should not be labeled as SEC Fees or Section 31 fees, and (2) an analysis be done to determine if there has been an over collection of such fees.

The Commission stated that Section 31 fees that the SROs pass to their members and the fees that the members pass to their customers "are not 'Section 31 fees' or 'SEC fees' and should not be labeled as such." Accordingly, as of February 1, 2005, the Exchange prohibits its members from characterizing the pass through charges as a Section 31 Fee or SEC Fee. The Exchange suggests that, as recommended by the SIA, either the term "Regulatory Fee" or "Reg Fee" be used.

The Commission also expressed concern about the broker-dealers rounding up the amount of the customers' charges and over collecting for the fees assessed. Regarding this, the Commission realized that:

It is customary for a customer who sells a security to see an "SEC Fee" ... [The] broker-dealer typically rounds up the amount of the customer's charges to the next whole cent. The accumulation of extra fractional cent amounts often results in broker-dealers having "over-collected" for the fees assessed by their SROs for Section 31 purposes.

(*See* Release 34-49928).

In light of this, the Exchange requests that its members review their collection practices. Pursuant to a request by the Division of Market Regulation, the Exchange requests that each broker-dealer determine if the amount, if any, of such accumulated "over-collected" funds. The Exchange also requests that each broker-dealer provide an explanation regarding the manner in which the fee was calculated. Please provide the requested information on or before December 17, 2004, to:

Maura Looney
Assistant Vice President
Regulation & Enforcement
Boston Stock Exchange
100 Franklin Street
Boston, MA 02110

Once we have received the information, the Division of Market Regulation has also requested that we find a fair and equitable means for broker-dealers to dispose of any existing accumulated funds.

Finally, the given the new procedures, the Exchange has reviewed its rule regarding the Regulatory Transaction Fee (formerly called Fee under Securities Exchange Act). After the review, the Exchange filed a proposed rule change with the Commission. The language of the proposal reads as follows (New language, [deleted language]):

Chapter XXIII

Stamp Taxes – Transaction Fee

Sec. 1 *no change*

Regulatory Transaction Fee [Under Securities Exchange Act of 1934]

Sec. 2. So long as the Exchange shall be registered as a national securities exchange, there shall be paid to the Exchange by each member or member-organization monthly in such manner and at such time as the Exchange shall direct, a regulatory transaction fee. The monthly regulatory transaction fee shall equal the member's aggregate dollar amount of covered sales occurring in that month (other than covered sales in options or covered sales resulting from an options exercise) divided by the Exchange's aggregate dollar amount of covered sales occurring in that month, multiplied by the Section 31 fees payable by the Exchange to the Commission for that month [the sum of one cent for each \$300 or fraction thereof of the dollar volume of the sales of securities upon the Exchange (whether or not cleared through the Boston Stock Exchange Clearing Corporation) by such member or member-organization during the preceding month].

[Any such member or member-organization required by the foregoing Rule to pay any sum to the Exchange in respect of any sale upon the Exchange shall charge and collect from the person for whom he or it was acting in making such transaction, the sum of one cent for each \$300 or fraction thereof of the dollar amount involved in such transaction.]

If there are any questions, please contact me at 617-235-2073.