



Regulatory Circular 09-012

Date: December 17, 2009

To: ETP Holders

From: James C. Yong
Chief Regulatory Officer

Re: SEC's Section 31 Transaction Fee Rate Reduction
NSX Regulatory Transaction Fee

The Investor and Capital Markets Relief Act (the "Fee Relief Act") amended Section 31 of the Securities Exchange Act of 1934 (the "Act") to change the fee rates applicable under subparagraphs (b) and (c) of Section 31. The Fee Relief Act requires the Securities and Exchange Commission ("Commission") to make annual adjustments to the fee rates applicable under Section 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal 2012 and beyond. Section 31(j) of the Act requires the Commission to make a Mid-Year adjustment under certain circumstances.

Pursuant to these sections, on April 30, 2009, the Commission announced that "effective Oct. 1, 2009, or 30 days after the date on which the Commission receives its fiscal year 2010 regular appropriation, **whichever date comes later**, the Section 31 fee rate applicable to securities transactions on the exchanges and certain over-the-counter markets will decrease from \$25.70 per million dollars to \$12.70 per million dollars." (Emphasis added.) See, *Fee Rate Advisory #1 for Fiscal Year 2010, Rel. 2009-100; NSX Regulatory Circular 09-002*.

The Commission recently announced that the appropriations bill was signed into law on December 16, 2009. Therefore, effective January 15, 2010, the Section 31 fee rate applicable to securities on the exchanges and over-the-counter transactions will be set at \$12.70 per million dollars. Until that date, the current rate of \$25.70 per million dollars will remain in effect. The Commission's release is attached to this Regulatory Circular for your convenience. See, *Fee Rate Advisory #4 for Fiscal Year 2010, Rel. 2009-270*.

As a result, for transactions with settlement dates on and after January 15, 2010, the National Stock Exchange, Inc. (the "Exchange" or "NSX") will adjust its Regulatory Transaction Fee assessed to ETP Holders under NSX Rule 16.1(b) accordingly. This is the fee the Exchange uses to help fund the Exchange's Section 31 fee obligations to the Commission.

If you have any questions, please call me at 312.786.8893.

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U.S. Securities and Exchange Commission

Fee Rate Advisory #4 for Fiscal Year 2010

FOR IMMEDIATE RELEASE 2009-270

Washington, D.C., Dec. 17, 2009 — Yesterday President Obama signed H.R. 3288, the appropriations bill that includes funding for the Securities and Exchange Commission. Accordingly, effective Dec. 21, 2009, the Section 6 (b) fee rate applicable to the registration of securities, the Section 13(e) fee rate applicable to the repurchase of securities, and the Section 14(g) fee rate applicable to proxy solicitations and statements in corporate control transactions will increase to \$71.30 per million dollars. The Section 6(b) rate is also the rate used to calculate the fees payable with the Annual Notice of Securities Sold Pursuant to Rule 24f-2 under the Investment Company Act of 1940.

All filings submitted to the SEC before 5:30 p.m., ET, and filings pursuant to Rule 462(b) (17 C.F.R. 230.462(b)) submitted to the SEC before 10:00 p.m., ET, on Dec. 18, 2009, will be subject to the current fee rate of \$55.80 per million dollars. Rule 462(b) filings submitted after 10:00 p.m., ET, and all other filings submitted after 5:30 p.m., ET, on Dec. 18, 2009, shall be deemed filed as of the next business day, Dec. 21, 2009, under Section 232.13 of Regulation S-T (17 C.F.R. 232.13), and be subject to the new fee rate of \$71.30 per million dollars. Filers with questions about the new Section 6(b), Section 13(e), or Section 14(g) fee rates should call the SEC at (202) 551-8900.

In addition, effective Jan. 15, 2010, the Section 31 fee rate applicable to securities transactions on the exchanges and over-the-counter markets will decrease to \$12.70 per million dollars. Until that date, the current rate of \$25.70 per million dollars will remain in effect. The Section 31 assessment on security futures transactions will remain unchanged at \$0.0042 per round turn transaction. The Office of Interpretation and Guidance in the Commission's Division of Trading and Markets is available for questions regarding Section 31 and may be reached at (202) 551-5777 or by e-mail at tradingandmarkets@sec.gov.

Under the Investor and Capital Markets Fee Relief Act, the Commission is required to adjust the filing and securities transaction fee rates on an annual basis to levels the SEC estimates will generate collections equal to numeric targets set in the statute. A copy of the Commission's April 30, 2009, order regarding fee rates under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), and 31 of the Securities Exchange Act of 1934 for fiscal year 2010 is available at <http://www.sec.gov/rules/other/2009/33-9030.pdf>.

The adjusted fee rates will not affect the amount of funding available to the Commission. The Commission will announce the new fee rates for fiscal

year 2011 no later than April 30, 2010. These fee rates will become effective Oct. 1, 2010, or after the Commission's fiscal year 2011 appropriation is enacted, whichever is later.

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<http://www.sec.gov/news/press/2009/2009-270.htm>

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Modified: 12/17/2009