

CCMR STAFF REPORT: REFORMING THE SECTION 31 FEE FRAMEWORK



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I. Introduction

Since its foundation the Securities and Exchange Commission (the “SEC”) has collected fees from securities market transactions according to a framework established by Section 31 of the Securities Exchange Act (“Section 31 fees”). The Section 31 fee framework is intended to allow the SEC to recover its cost of operations from securities market participants. Section 31 fees are paid by national securities exchanges and FINRA to the SEC based on the dollar amount of listed equity and equity-options transactions, with those organizations recouping the fees from their broker-dealer members, who in turn typically pass them through to investors as a per-transaction fee. Section 31 fee collections are classified as “offsetting receipts” that finance the SEC’s Congressionally appropriated budget, meaning that the agency’s cost of operations does not add to the federal deficit.

This staff report by the Committee on Capital Markets Regulation (“CCMR”) evaluates the SEC’s funding structure under Section 31 of the Securities Exchange Act and assesses potential reforms.¹ We find that the Section 31 fee framework suffers from significant flaws. In particular, (1) it prevents the SEC from adjusting the fee rate frequently enough to avoid over-collections or under-collections and unpredictable changes in fee rates, and (2) it requires the SEC to collect fees exclusively from listed equity and equity-options transactions, such that the SEC’s costs are not shared proportionately across the markets that the SEC regulates. These flaws result in an unpredictable and inequitable allocation of the fee burden across market participants. For example, investors who trade during periods when fee rates are high pay high fees, whereas investors who trade during periods when fee rates are low (as a result of prior rates being too high for too long) pay lower or no fees. Moreover, the SEC’s operational costs extend well beyond the regulation of equities and options, underscoring the mismatch between the sources of SEC funding and the breadth of its regulatory responsibilities. The allocation of the entire Section 31 fee burden to equity transactions also disproportionately affects retail investors, who constitute a significant percentage of transaction volume in equities markets.

More fundamentally, the use of a transaction fee-based funding model for the SEC raises important policy questions regarding the appropriate relationship between the agency’s funding and its regulatory responsibilities. In this staff report, we examine the costs and benefits of potential alternative funding models. A comprehensive overhaul of the SEC’s funding model would require legislative action that is beyond the scope of this report, and we do not endorse or reject any specific alternative model here. However, we consider the costs and benefits of alternative approaches to highlight key trade-offs and frame a more informed debate about potential long-term reforms. We then identify targeted changes that Congress can enact within the current framework through budget reconciliation to promote a more predictable and equitable allocation of the Section 31 fee burden, pending a more fundamental review of the SEC’s funding model. Specifically, we recommend that Congress amend Section 31 to require the SEC to adjust its fee rates more frequently, and to consult with market intermediaries in estimating future market

¹ CCMR staff reports represent the work and views of CCMR staff and do not necessarily represent the views of CCMR members.

activity, in order to reduce excess collections and fee volatility. We then explain why Congress can pass this reform through budget reconciliation.

II. The Section 31 fee framework

Section 31 of the Securities Exchange Act of 1934 (“Exchange Act”) requires the SEC to collect transaction fees from the sales of listed equity securities and options on listed equity securities “that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress.”²

The SEC collects Section 31 fees from the national securities exchanges and national securities associations (currently only the Financial Industry Regulatory Authority (“FINRA”)) based on the dollar amount of covered sales transacted on each exchange or, in the case of FINRA, transacted off-exchange by or through its members.³ The statute neither prohibits nor requires the pass-through of these fees to broker-dealer members or by broker-dealers to customers. The exchanges and FINRA have established their own rules to recoup these fees from their broker-dealer members.⁴ When a broker-dealer has sold a security acting as an agent for a customer, the broker-dealer typically passes these fees on to the customer.

Originally, Section 31 authorized the collection of these fees from national securities exchanges with respect to on-exchange sales only.⁵ In 1975, Congress extended the fee to require the SEC to collect Section 31 fees from broker-dealers with respect to off-exchange sales of listed securities, in order to broaden the fee base and equalize the treatment of exchange and off-exchange transactions.⁶ However, since its enactment in 1934, Section 31 fees have applied only to listed equities and options on listed equities and not to transactions in other markets that the SEC regulates. The statute expressly carves out “bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes.”⁷ And because digital asset securities are not currently listed on national securities exchanges or subject to post-transaction reporting, sales of digital asset securities are also exempt from Section 31 fees. Congress’ policy rationale for its limitation on Section 31 fees is unclear. One potential reason is that until the introduction of the Trade Reporting and Compliance Engine (“TRACE”) in 2002, which mandates post-trade reporting of certain transactions in corporate fixed income securities and U.S. Treasury securities, the United States only had post-trade reporting in exchange-listed equities, making a dollar-value transaction fee for other asset classes much harder to administer.

² SECURITIES EXCHANGE ACT OF 1934 § 31 (15 U.S.C. § 78ee); SECURITIES ACT OF 1933 § 6(b) (15 U.S.C. § 77f(b)).

³ 15 U.S.C. § 78ee(b)&(c).

⁴ *See, e.g.*, FINRA, REGULATORY NOTICE 08-72 (2008).

⁵ SECURITIES EXCHANGE ACT OF 1934, Pub. L. No. 73-291, 48 Stat. 881 (1934) <https://tile.loc.gov/storage-services/service/ll/uscode/uscode1934-00101/uscode1934-001015002b/uscode1934-001015002b.pdf>.

⁶ SECURITIES ACTS AMENDMENTS OF 1975 (Pub. L. 94-29), <https://www.congress.gov/bill/94th-congress/senate-bill/249>.

⁷ 15 U.S.C. § 78ee(b)&(c)

Until 2002, the rate for Section 31 fees was fixed by statute and could thus only be amended by Congress. However, during the 1990s and early 2000s market activity increased so significantly that the SEC began to collect fees that far exceeded its annual operating cost, resulting in higher than necessary transaction costs in U.S. securities markets. In 2002, Congress attempted to address this issue by amending Section 31 to allow the SEC to adjust the Section 31 fee rate in order to match anticipated fee collections with the SEC’s yearly budget.⁸

More specifically, Section 31 now requires the SEC to set a new fee rate each fiscal year based on the SEC’s budget for that year and its projection of market activity.⁹ The fiscal year is the same as the federal government’s fiscal year, and thus begins on October 1.¹⁰ Critically, Section 31 provides that the SEC can only make its annual rate adjustment after Congress has made a “regular appropriation” to the SEC. A “regular appropriation” is legislation providing funding for the entirety of the fiscal year.¹¹ However, Congress frequently does not complete the regular appropriations process on time. In fact, in the past four decades, Congress has succeeded in enacting a regular appropriations bill before the start of the fiscal year in only four instances (fewer than 10 percent of the years since fiscal year 1977). On average, when regular appropriations are delayed, final enactment occurs roughly three to four months after the beginning of the fiscal year.¹² In such cases, Congress typically enacts a continuing resolution, which provides temporary funding at prior-year levels to keep agencies, including the SEC, operating until full-year appropriations are enacted. However, the SEC must still continue to collect fees at the prior year’s fee rate until Congress passes a regular appropriation, and the new rate cannot take effect until 60 days after the effective date of the regular appropriation.

III. Alternative funding models

The current transaction fee-based model finances the SEC’s cost of operations by levying a fee on a subset of the markets it regulates, creating an uneven distribution of costs among market participants. As a result, the current Section 31 fee framework results in disproportionately high transactions costs in U.S. public equity markets. The current allocation of the entire Section 31 fee burden to equity securities transactions also disproportionately affects retail investors, who constitute a disproportionately large portion of transaction volume in equity markets relative to other SEC-regulated asset classes.¹³ Moreover, retail investors may often be unaware that these fees constitute the primary source of SEC funding and that transactions in other asset classes are exempt from such charges. In this section, we examine alternative funding models for the SEC and consider certain costs and benefits of each approach. We begin by discussing how the Section 31

⁸ Investor and Capital Markets Fee Relief Act (Pub. L. 107-123).

⁹ 15 U.S.C. § 78ee(j)(2).

¹⁰ *Id.* § 78ee(j)(1).

¹¹ 15 U.S.C. § 78ee(k).

¹² PETER G. PETERSON FOUNDATION, *How Fixing the Appropriation Process Can Help Avoid a Shutdown* (last updated Nov. 6, 2023), <https://www.pgpf.org/article/how-fixing-the-appropriation-process-can-help-avoid-a-shutdown>.

¹³ See, e.g., COALITION GREENWICH, *Understanding Fixed-Income Markets in 2023* 15 (2023), <https://www.sifma.org/wp-content/uploads/2023/05/Understanding-Fixed-Income-Markets-2023-23-2007.pdf>

fee framework could be redesigned to more equitably allocate the fee burden across SEC-regulated asset classes, before discussing more overarching changes to the SEC's funding model.

i. Sharing Section 31 fees across all SEC-regulated asset classes

Section 31 fees could be expanded to all asset classes that the SEC regulates. Expanding Section 31 fees to cover all securities and asset classes under the SEC's jurisdiction would substantially broaden the base of contributors. In 2024, the average daily trading volume in Treasury securities and U.S. corporate bonds was approximately \$1.3 trillion, twice that of listed equities.¹⁴ Digital asset securities represent a growing but still comparatively small segment. Including these markets within the Section 31 framework would therefore reduce the effective fee rate borne by equity investors, spreading the cost of SEC oversight more evenly across market participants. However, this approach would result in the creation of new transaction costs in U.S. securities markets that become subject to Section 31 fees. It would also entail substantial implementation costs associated with the integration of transaction reporting systems in these other markets into the Section 31 fee calculation and remittance system.

We note that the White House in its July 2025 report on digital assets recommends that Congress consider extending Exchange Act Section 31 fees to digital asset securities.¹⁵ Including digital asset securities in Section 31 fees would potentially achieve a more equitable allocation of the fee burden, as the SEC currently spends significant time and resources on the development of a regulatory framework for digital assets.¹⁶ However, because most digital asset trading volume currently occurs in instruments that are treated as commodities under the CFTC's jurisdiction, extending Section 31 fees to digital asset securities alone would likely have only a modest effect on the overall distribution of the fee burden across markets.

ii. Combined transaction and filing fee model

Congress could also broaden the fee base so that the SEC collects a greater portion of offsetting receipts from a wider range of market activities that require SEC oversight and resources. While the SEC currently collects fees with respect to securities registrations, fees could be assessed with respect to a broader range of transactions including exchange listings and required disclosures such as periodic reports, and mutual fund prospectuses.

This approach aligns the agency's funding more closely with the full scope of its responsibilities across the capital markets. By diversifying the sources of revenue, it would also distribute costs more evenly among those entities that rely on SEC registration and disclosure processes. Expanding the fee model, however, could introduce new administrative and policy challenges.

¹⁴ SIFMA, *Fixed Income Market Structure Compendium* (2025), https://www.sifma.org/wp-content/uploads/2024/04/SIFMA-Insights-Fixed-Income-Market-Structure-Compendium_2-26.pdf; CBOE, *North American Equities Year in Review* (Jan. 24, 2025), <https://www.cboe.com/insights/posts/north-american-equities-year-in-review>.

¹⁵ THE WHITE HOUSE, *STRENGTHENING AMERICAN LEADERSHIP IN DIGITAL FINANCIAL TECHNOLOGY 57* (2025), <https://www.whitehouse.gov/crypto/>.

¹⁶ Furthermore, any application of Section 31 fees to digital asset securities would need to encompass all types of trading of these securities.

Because issuers ultimately pass these costs through to investors, higher filing or listing fees may increase the cost of capital or further deter firms from entering the public markets. This would exacerbate an existing trend of contraction in U.S. public equity markets, which has already resulted in a decline in the number of publicly listed companies from a peak of 7,842 in 1997 to 5,152 as of year-end 2024.¹⁷ Any proposal to expand the fee-based model must consider the potential effects on incentives for firms to go and remain public.

iii. Membership-based fee model

Instead of relying on transaction and filing fees, Congress could adopt a supervisory assessment model that links the SEC's funding to the firms it regulates. The SEC could levy periodic assessments on broker-dealers, investment advisers, exchanges, and other market participants based on factors such as firm size, trading volume, or assets under management. This model would retain the deficit-neutral feature of the fee-based model, ensuring that entities requiring greater supervisory attention bear a proportionate share of the costs.

While this model would provide a steady and predictable funding source, it could also raise concerns about fairness and regulatory independence. Membership-based assessments could also discourage new market entrants, raising similar concerns about the impact on public markets as an expanded transaction and filing-fee based model. Implementing such a system would also require developing complex methodologies for calculating assessments across diverse market participants, which could increase administrative costs and reduce transparency. It is also unclear how these costs would be fairly distributed across registrants and equitably shared with all market participants.

iv. Traditional appropriations-based model

Under a traditional appropriations-based model, the SEC would receive its Congressionally appropriated budget directly from the Treasury, consistent with how most federal agencies are funded, instead of transaction, filing, or membership fees. This model could enhance transparency and Congressional oversight by linking the SEC's funding more explicitly to the budgetary process. It would also allow Section 31 fees to be reduced or eliminated, thus reducing transaction costs in U.S. securities markets and benefiting long-term equity investors by increasing net returns. However, without the deficit-neutralizing feature of Section 31 fee offset, securing appropriations could become more difficult politically as the SEC's budget requests would increase the deficit and compete directly with other taxpayer-funded priorities. This model could thus cause the SEC's funding levels to fluctuate more widely with broader fiscal debates and political pressures.

¹⁷ Number of Foreign and Domestic Companies Listed on Major U.S. Exchanges, 1980 – 2024, UNIVERSITY OF FLORIDA, <https://site.warrington.ufl.edu/ritter/files/number-of-listed-firms-on-US-exchanges.pdf>.

IV. Improving the Section 31 fee framework

While comprehensive structural reform of the SEC’s funding model may warrant further study, Congress can address a central flaw in the current Section 31 framework through targeted amendments that can be enacted through budget reconciliation.

In particular, the current method for adjusting Section 31 fees results in drastically different fee rates within each fiscal year, creating uncertainties for intermediaries and investors and increasing costs for investors who trade during periods of high fees within the year.

For example, fiscal year 2025 began in October 2024. However, Congress did not pass a regular appropriation until March 15, 2025.¹⁸ From October 2024, the Section 31 fee rate of \$27.80 per million from fiscal year 2024 continued to apply. Once the regular appropriation was passed on March 15, 2025, the SEC had already collected enough to offset its budget for the entire year, and the Section 31 fee rate was lowered to \$0 per million effective May 14, 2025 (60 days after the regular appropriation) through remainder of the fiscal year – i.e., through September 2025.¹⁹ This rate will also remain in effect after September 2025 until Congress passes another regular appropriation.

In other years the SEC began the year applying a fee rate that was too low and had to increase the rate once its new budget was set. For example, for fiscal year 2024, the SEC applied the prior-year Section 31 fee rate of \$8.00 per million dollars from October 2023. Once Congress enacted the regular appropriation in March 2024 the SEC increased the fee to \$27.80 effective May 22, 2024, through September 2024, to ensure total collections aligned with its newly established annual appropriation.²⁰ As noted above, this rate continued to apply until Congress passed a regular appropriation for the 2025 fiscal year.

A Section 31 fee structure that maintains more stable rates throughout the year and is better calibrated to minimize overcollections promotes fairness and predictability for investors and market participants, while ensuring the SEC’s budget is funded.

To do so, Congress should amend Section 31 to require the SEC to re-calculate the fee rate at the beginning of every fiscal year regardless of whether a regular appropriation has been passed, and then to adjust the rate again once a regular appropriation is passed. This would allow the SEC to recalculate the fee rate at the beginning of the year in view of the amount of funding it has requested from Congress for that year. Over the past twenty years, these requests have varied significantly from year-to-year: The SEC’s budget has increased by 183% from \$760 million to \$2.15 billion

¹⁸ Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 118-83, § 101, 138 Stat. 1524, 1524 (2025); Financial Services and General Government Appropriations Act, 2024, Pub. L. No. 118-47, tit. V, 138 Stat. 520, 561 (2024).

¹⁹ SEC, Order Making Fiscal Year 2025 Annual Adjustments to Transaction Fee Rates, 90 FED. REG. at 15,492, <https://www.federalregister.gov/documents/2025/04/11/2025-06214/order-making-fiscal-year-2025-annual-adjustments-to-transaction-fee-rates>.

²⁰ SEC, Order Making Fiscal Year 2024 Annual Adjustments to Transaction Fee Rates, 29 FED. REG. 29,402 (Apr. 17, 2024), <https://www.federalregister.gov/documents/2024/04/22/2024-08512/order-making-fiscal-year-2024-annual-adjustments-to-transaction-fee-rates>.

and has differed from the prior year's budget by approximately 6% each year on average.²¹ The subsequent adjustment would only be necessary to the extent of the difference between the SEC's budget request and the amount Congress grants.²²

Congress should also permit the SEC to further adjust the rate at subsequent intervals (e.g., quarterly) throughout the year in view of realized transaction volume and any changes in market conditions that impact volume for the remainder of the year. Allowing the SEC to make additional intra-year adjustments to Section 31 fee rates reduces the likelihood of large mid-year swings, such as sharp increases or a drop to zero, by keeping collections more closely aligned with the agency's annual funding target with small adjustments throughout the year. More specifically, equity and options trading volumes can diverge substantially from forecasts. For example, during the 2021 "meme stock" episode, daily U.S. equity trading volume surged to more than double typical levels. These unpredictable episodes result in significant overcollections under the current model, and the inability to correct for such episodes by quickly adjusting the rate necessitates more significant changes to the fee rate in future periods. If the SEC is instead able to moderate the prevailing rate during or immediately after such episodes, overcollections and the necessity of major adjustments in subsequent periods can be minimized. As a result, transaction costs would be distributed more evenly across investors throughout the year, rather than disproportionately borne by those transacting in periods of unexpected market activity.

In addition, Congress should require the SEC to consult with market intermediaries that pay Section 31 fees when projecting future market activity. This would incorporate industry expertise into the forecasting process, improving the accuracy of projections and thereby reducing the likelihood of significant over- or under-collections.

V. Budget reconciliation

Congress could use budget reconciliation to increase the frequency of the SEC's Section 31 fee rate adjustments. The Byrd Rule defines the scope of permissible budget reconciliation provisions. It requires that (1) each provision of a reconciliation bill have an effect on the federal budget by producing "a change in outlays or revenues" and (2) that the provision's budgetary effects not be "merely incidental" to its non-budgetary effects. "Non-budgetary" refers to policy changes that do not primarily alter federal spending or revenues.²³

With regard to the first requirement, Section 31 fees are collected as offsetting receipts, because they directly reduce the amount of the SEC's appropriated budget that it receives from Congress. The Byrd Rule specifies that changing the amounts collected as offsetting receipts and the

²¹ CCMR calculations based on SEC historical budget authority data, <https://www.sec.gov/foia-services/frequently-requested-documents/budget-history-ba-vs-actual-obligations-000s>.

²² CCMR calculations based on SEC historical budget authority data, <https://www.sec.gov/foia-services/frequently-requested-documents/budget-history-ba-vs-actual-obligations-000s>.

²³ GIBSON DUNN, *Flying Right: Avoiding Byrd Rule Challenges in Budget Reconciliation* (Feb. 11, 2025), <https://www.gibsondunn.com/flying-right-avoiding-byrd-rule-challenges-in-budget-reconciliation>.

procedures for collecting those amounts constitute a change in outlays.²⁴ Therefore increasing the frequency of Section 31 fee rate adjustments has a budgetary effect. The fact that Section 31 fees offset Congress' appropriation to the SEC and thus have a neutral effect on federal expenditures is not an issue as the Byrd Rule also specifies that "a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases" satisfies the requirement of budgetary effect.²⁵

Modifying the Section 31 fee rate setting procedures would also be consistent with the requirement that the budgetary effects of the provision not be incidental to its non-budgetary effects. That is because the non-budgetary (i.e., policy) effects of this reform are minimal. The SEC simply does not establish regulatory policy by allocating Section 31 fees. Thus, reforming the volatility of Section 31 fees would not affect SEC policy.

Furthermore, there are prior examples of legislation passed through reconciliation that changed an agency's methodology for determining fee and assessment rates. In particular, the Omnibus Budget Reconciliation Act of 1990 (the "1990 Act") authorized the FDIC to raise deposit insurance assessment rates, make mid-year adjustments to those rates, and set the designated reserve ratio.²⁶ This authority is functionally analogous to the SEC's authority to set transaction fees under Section 31. In both cases, the agency imposes assessments directly on industry participants to fund government costs. The proposed adjustments to the SEC's fee-setting process would similarly change the fees and procedure by which the government funds its costs. The 1990 Act serves as a clear precedent that supports the permissibility of modifying agency fee-setting authority through reconciliation.

²⁴ *Id.* § 3(2)(A)(iv). *See also*, Joint Explanatory Statement of the Committee of Conference on the Balanced Budget and Emergency Deficit Control Act of 1985 ("Under the new definition, legislation that decreases offsetting receipts will be treated as legislation providing budget authority.").

²⁵ *Id.*

²⁶ Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, 104 Stat. 1388, Title II, Subtitle A, <https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg1388.pdf>.

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