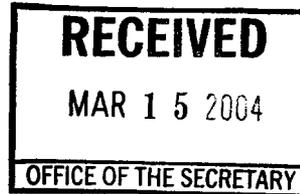




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March 8, 2004

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609  
Attention: Jonathan G. Katz, Secretary



Re: File No. S7-05-04

Ladies and Gentlemen:

Brut, LLC ("Brut")<sup>1</sup> appreciates the opportunity to provide its views to the Securities and Exchange Commission (the "Commission") in response to Exchange Act Release No. 34-49104 (the "Proposing Release"),<sup>2</sup> in which the Commission solicits comment regarding a proposal that would govern the calculation, payment, and collection of fees ("Section 31 fees") on self-regulatory organizations ("SROs") pursuant to Section 31 of the Securities Exchange Act of 1934.

Brut concurs with the Commission's statement that that "it is necessary and appropriate to propose rules to establish formal procedures"<sup>3</sup> to standardize the assessment and collection of Section 31 fees. Brut wishes to alert the Commission regarding an aspect of the proposal that, given recent changes in the competitive landscape, could potentially result in a double-billing of Section 31 fees in a manner inconsistent with the revenue-neutral intent of the proposal.

In particular, certain ECNs and other broker-dealers have modified their trade-reporting practices whereby they report transaction volume to the consolidated tape ("tape reports") through a regional stock exchange. For clearing purposes, these firms will report these transactions ("clearing reports") in one of two ways: (a) directly to the National Securities Clearing Corporation ("NSCC") acting as a qualified special representative ("QSR"); or (b) indirectly through the facility of a second SRO, principally the Automated Confirmation Transaction Service ("ACT") operated by The Nasdaq Stock Market, Inc. ("Nasdaq"). Trades are often submitted to ACT at the request of the ECN or broker-dealer's client, which utilizes the risk-management functionality that ACT offers.

<sup>1</sup> Brut operates The BRUT ECN System, one of the significant electronic communication networks ("ECNs") in the Nasdaq market. The company is headquartered in New York City.

<sup>2</sup> January 20, 2004. 69 Fed. Reg. 4018. File No. S7-05-04.

<sup>3</sup> Proposing Release, *supra* n.2., at 4018.

Under Proposed Rule 31, this usage of the facilities of two SROs would potentially result in the assessment of two separate Section 31 fees for the same transaction. Under the Proposing Release, the SRO receiving the tape report would potentially be required to report the transaction as one that it “captured in a trade reporting system but did not report to a designated clearing agency.”<sup>4</sup> The SRO receiving the clearing report would likewise potentially be required to report the transaction as one that it “reported to a designated clearing agency.”<sup>5</sup> This would ultimately cause the relevant ECN or broker-dealer to be “doubled billed.”

The remedy for this problematic ambiguity is clear – provide guidance that a transaction that is: (i) required to be submitted to the consolidated tape pursuant to the relevant provisions of the Exchange Act; and (ii) submitted to an SRO only as a clearing report for submission to NSCC, would not be considered to have “occurred” on the relevant SRO and would not be a “covered sale” reportable by the SRO under the revised rule. The SRO receiving the tape report would still be required to report the transaction as a covered sale, and the intent of the Proposing Release for a clear, fair standardization of Section 31 fee procedures would be achieved.

Please do not hesitate to contact me at (917) 637-2560 regarding this letter, or how Brut can assist the Commission and the staff in evaluating these issues in the future.

Sincerely yours,



William O'Brien  
Chief Operating Officer

cc. Michael Gaw, Special Counsel, Division of Market Regulation

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<sup>4</sup> Proposed §31(b)(2)(ii).

<sup>5</sup> Proposed §31(b)(2)(ii).