

NASD Notice to Members 99-41

NASD Announces New Electronic Filing System For Corporate Financing Filings

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☒ Corporate Finance
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Executive Summary Introduction of an Electronic Filing System

NASD Regulation, Inc. (NASD Regulation®) is announcing that it will deploy an electronic filing system that will permit National Association of Securities Dealers, Inc. (NASD®) members, their counsel, or vendors to file information electronically with the Corporate Financing Department (Department). NASD Conduct Rule 2710 (the Corporate Financing Rule or Rule) requires members to file most proposed public offerings with the Department. The Department reviews these filings prior to the commencement of an offering in order to determine whether the underwriting terms and arrangements meet the requirements of applicable NASD rules.

The new electronic filing system consists of two components: COBRA (the "Corporate Offerings Business Regulatory Analysis System") and COBRADesk. COBRA is a client-server software application and communication system, including a database, that will receive and process electronic filings of critical distribution-related information transmitted to the Department from a related external system, COBRADesk. COBRADesk is a client software application that will reside in the offices of member firms, their counsel, or vendors (filers), which they can use to transmit offering information.

Questions about this *Notice* should be directed to LaNita Tyler or Kemba Walker, Corporate Financing Department, NASD Regulation, at (202) 974-2700.

Enhancement Of Review Process

COBRA and COBRADesk should benefit members, investors, and the

Department by improving the efficiency of the review process, decreasing review time, and reducing the amount of paper correspondence and documents required to be filed. In addition, the system will provide each filer with a local electronic database of information it has filed with the Department.

The Corporate Financing Rule currently requires a member to file five copies of the offering documents. Members that file through COBRADesk will be deemed to have met this filing requirement, and will not have to file paper copies of the offering documents unless specifically requested by the Department.

The Department's staff will access the offering documents from the Securities and Exchange Commission's (SEC) EDGAR system. In addition, the system will permit electronic correspondence between the Department and filers, thereby further alleviating the need for paper correspondence. NASD members that participate in nonregistered public offerings that are not filed on EDGAR may continue to submit offering documents in paper format, while sending supplementary offering information via COBRADesk.

Deployment Of The System

The Department will deploy the system after June 30, 1999. Initially, the use of COBRADesk will be voluntary; however, the Department anticipates that most filers will use COBRADesk because it will be more efficient than the current process. The Department intends to later recommend that NASD Regulation promulgate a rule requiring members to use the system for all offerings filed with the Department.

Filers that complete the attached form and return it to the Department by June 1, 1999, will receive the

COBRA software, one printer modem, one printer, and printer paper free of charge. Each user of COBRADesk must enter into a sub-licensing agreement with NASD Regulation and have a dedicated analog phone line for the printer. **To obtain this merchandise free of charge by the July 1, 1999 launch date, complete the attached form and return it to the Department no later than June 1, 1999.**

The COBRADesk software will come with installation instructions and should be installed by the July 1, 1999 launch date. The Department will continue to accept non-electronic filings after July 1, 1999, but we encourage filers to transition to electronic filings after July 1, 1999. We will provide filers with computer-based training software after July 1, 1999, that will instruct filers how to make a filing using COBRADesk. In addition, members may contact the NASD Regulation "Help Desk" at (800) 321-NASD with technical questions regarding COBRADesk or with substantive questions regarding the proper filing of offering information.

For those filers that want more detailed information about filing offerings using COBRADesk, NASD Regulation will conduct "Train-the-Trainer" workshops at the Chase Conference Centers in New York City on July 13 and 14, 1999. Attendance at a workshop may be useful for some filers, particularly those firms with several employees who are involved in filing offerings with the Department. **To participate in one of the "Train-the-Trainer" workshops, please complete Item 4 on the attached COBRADesk Request Form.** Since space in these workshops is limited, we request that each interested filer send no more than one person. A fee of \$100 is required for each participant.

Background

NASD Regulation is announcing that it intends to deploy the COBRA and COBRADesk systems in order to improve the efficiency of its review process and to alleviate the paper-work burden on members and their counsel that file information with the Department. In April 1999, the Department began a 30-day pilot program for COBRA. In the pilot, the Department's staff and some of its most frequent filers have been able to test the system. The results of the pilot program indicate that COBRA and COBRADesk will streamline the Department's review process and enhance the speed and accuracy of communications with members and their counsel.

Current Requirements For Filing

The Corporate Financing Rule requires NASD members (usually the managing underwriter) or their counsel to file:

Five copies of:

- the registration statement;
- the amended registration statement; and
- the offering circular or memorandum.

Three copies each of:

- the underwriting agreement;
- the agreement among underwriters;
- selected dealer agreements;
- letters of intent; and
- consulting agreements, warrant agreements, and any other document that describes the underwriting or other arrangement in connection with or related to the distribution.

The Rule also requires that supplementary information be filed, such as:

- the exact amount and types of compensation to be paid in connection with distributing the securities;
- the NASD affiliation or association of all officers, directors, and principal shareholders of the issuer; and
- details of all acquisitions of securities by the underwriter or related persons.

The Department receives thousands of packages and letters each year from underwriters or their counsel, in compliance with the Department's filing requirements and in response to requests by the Department for additional information. These documents and information are sent to the Department in hard copy by regular mail, courier, or fax. The Department's analysts review these documents and enter information into the Department's database. This information is used by the Department to determine whether underwriting terms and arrangements meet the requirements of applicable NASD rules.

Filing Through COBRADesk¹

By using COBRADesk, filers will be able to make filings with the Department at any time of the day. The Department will receive the information and then be able to access the offering documents from EDGAR. Most filers will not need to send paper documents to the Department and will not have to rely on couriers, mail, or fax. Filing fees can be submitted by wire transfer (as well as check or money order). COBRADesk will automatically calculate filing fees in accordance with NASD rules based on the size of an offering.

Some filings may need to be accompanied by paper documents, if, for example, offering documents are not filed with the SEC on EDGAR or the Department needs information in certain other documents, such as underwriting agreements, that are not in electronic form. The Department intends to continue to develop its processes to minimize the need for supplementary paper filings where possible.

COBRA and COBRADesk will provide a more efficient mechanism for communications between filers and NASD Regulation. In addition, the Department anticipates that the COBRADesk filing process will reduce members' costs by reducing expenses for printing and delivery.

Costs

Filers that complete the attached form and return it to the Department by June 1, 1999, will receive the COBRADesk software, one printer modem, one printer, and printer paper free of charge. Filers that request a "network" version of COBRADesk and more than one printer will be charged a fee for the additional printers. In order to use COBRADesk, filers must have an analog phone line dedicated to the

printer. NASD Regulation will not be responsible for the cost of the phone line.

NASD Regulation also will conduct "Train-the-Trainer" workshops at Chase Conference Centers, 1 Chase Manhattan Plaza, 28th floor, New York City on July 13 and 14, 1999. A fee of \$100 is required for each participant.

Technical Requirements

COBRADesk has the following minimum workstation requirements:

- Pentium PC 166 or better
- 32 MB RAM
- Windows95/Windows98 or NT4.0
- 100 MB of Free Hard Drive Space
- 1 available Communication Port
- US Robotics Courier Modem (provided to users with the printer and paper)
- An analog phone line dedicated to the COBRA Printer

We recommend that all PCs running the COBRADesk Application have a backup procedure in place.

Endnote

¹An Application Program Interface (API) will be available to vendors that may want to develop their own COBRADesk-related client software. To ensure access compatibility, the API will provide information and instructions needed to create and transmit a properly formatted electronic file of information to COBRA. Interested vendors should forward their request on company letterhead to the Corporate Financing Department and provide a contact person name and telephone number.

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COBRADESK REQUEST FORM

To Order COBRADesk Software, Modem, Printer, and Printer Paper

1. **Firm Name:** *(please print)* _____
Address: _____
(software, printer modem, printer, and paper will be sent to this address)
City/state/zip: _____
Contact Person: _____
Daytime Phone: _____

2. **Phone Number of the**
Analog Phone Line that will be Dedicated to the Printer: _____

3. **Will your firm need a network version of the software:**

☐ Yes

☐ No

Software:

☐ 3.25" Floppy Disc

☐ CD ROM

4. **To reserve a date for participation in a training session in New York, please indicate the date you would like to attend:**

☐ July 13, 1999

☐ July 14, 1999

Name of participant: _____

Due to space limitations, we must limit participation in the workshops to one person per filer. Please include a check payable to the National Association of Securities Dealers in the amount of \$100 if a person from your firm will participate in the training.

The workshops will be conducted at Chase Conference Centers, 1 Chase Manhattan Plaza, 28th floor, New York, New York from 9:00 a.m. until 3:00 p.m.

Please mail (if a check is included) or fax this form to:

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Corporate Financing Department
1801 K Street, NW, 8th Floor
Washington, D.C. 20006
Attn: COBRADesk
Fax: (202) 974-2732