

Notice to Members

APRIL 2004

SUGGESTED ROUTING

Financial
Legal and Compliance
Senior Management

KEY TOPICS

Annual Audits
FOCUS Reports
Schedule I

GUIDANCE

Filing Requirements

NASD Reminds Member Firms of Their Obligations to File Certain Financial Reports

Executive Summary

Securities and Exchange Commission (SEC) Rule 17a-5 requires broker-dealers to file certain financial reports with NASD within a specified number of days following the end of the period for which the report is filed. This *Notice to Members* reminds members that such reports must be filed on a timely basis and that requests for extensions of time for filing may only be made in exceptional circumstances. Moreover, any request for an extension of time for filing must be submitted, in writing to and received by, the appropriate District Office no later than three business days prior to the due date of the report. Failure to file such reports by the due date, or the revised due date if an extension has been granted, will result in a late fee of \$100 per day for a maximum of 10 days, as described in Schedule A of NASD's By-Laws, as well as possible disciplinary action. This *Notice to Members* also reminds members that all reports will be considered timely filed only *when received at the appropriate time and at the required location*.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Department of Member Regulation by contacting Susan DeMando, Director, Financial Operations, at (202) 728-8411; or Vicky Berberi-Doumar, Senior Attorney, at (202) 728-8905.

Background

SEC Rule 17a-5 requires, among other things, broker-dealers to file monthly FOCUS Reports (Part II) and quarterly FOCUS Reports (Part II or IIA) within 17 business days after month- or quarter-end. Annual audits are due 60 calendar days after the end of the broker-dealers' fiscal year. SEC Rule 17a-10 requires broker-dealers to file Schedule I with their FOCUS Reports within 17 business days after calendar year-end. All reports are due by midnight, Eastern Standard Time (EST). A report is considered filed when received.¹ If the due date of an annual audit falls on a weekend or business holiday, the audit will be accepted up to the next business day following the weekend or holiday.²

When and Where Reports Should Be Filed

FOCUS Reports and Schedule I must be filed electronically with NASD at <https://regulationformfiling.nasdr.com> no later than midnight, EST, of the due date.

The annual audit must be filed in hard copy as follows: two copies of the audited report with the Principal Office of the SEC in Washington, DC; one copy with the appropriate Regional/District Office of the SEC; and one copy with the Principal Office of NASD at the following address:

NASD/Systems Support
9509 Key West Avenue, 4th Floor
Rockville, MD 20850
Attn: Eleanor Sabalbaro

The annual audit will be considered timely filed only if received by the due date, or revised due date if an extension has been granted, and at the appropriate address. In this regard, an annual audit filed with an NASD District Office, instead of NASD's Principal Office, will not be considered filed.

Requests for Extension of Time

Broker-dealers that are unable to meet the filing deadline for any of the reports mentioned above due to exceptional circumstances may request an extension of time pursuant to Schedule A of NASD's By-Laws by writing the appropriate District Office of NASD. The request for an extension of time must be received no later than three business days before the filing deadline.³ Note that NASD will consider a request for an extension of time only if it is submitted, and received, no later than three business days prior to the due date of the report. Pursuant to Schedule A of the NASD By-laws, reports that are not received by the due date, or the revised due date if an extension has been granted, are subject to a late fee of \$100 per day for a maximum of 10 days.⁴ NASD staff may pursue a disciplinary action in addition to the late fee.

Endnotes

- 1 SEC Rule 17a-5(a)(3) and 17a-5(n).
- 2 This does not apply to FOCUS Reports or Schedule I.
- 3 *NASD Notice to Members 01-54.*
- 4 The late fee is an administrative fee and as such is not a reportable event. Reports received late will be subject to the administrative fee. Note that the administrative fee will not be waived under any circumstances.

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