

Notice to Members

MARCH 2004

SUGGESTED ROUTING

Corporate Financing
Institutional
Legal & Compliance
Operations
Senior Management
Syndicate
Trading & Market Making
Training

KEY TOPICS

Free-Riding and Withholding
IPO Distribution Manager
IPOs
Retention
Rule 2790
Underwriting Commitment

GUIDANCE

IPO Distribution Manager

IPO Distribution Manager to Replace Compliance Desk; Filings Required for All New Issues as Defined in Rule 2790; **Voluntary Effective Date: March 23, 2004;**
Mandatory Effective Date: April 16, 2004

Executive Summary

To coincide with the implementation of NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings), NASD has developed a new system for members to submit new issue distribution information (*i.e.*, commitment and retention data of the syndicate members) to NASD. Beginning on March 23, 2004, members will be able to use "IPO Distribution Manager." IPO Distribution Manager, which will replace Compliance Desk, is a Web-based application that will allow members to submit new issue distribution information directly to NASD. Some of the benefits of IPO Distribution Manager are that members no longer will be required to use a third party to submit information to NASD, nor will they be required to purchase or use specialized software, printers, or paper.

Procedures concerning the registration and use of IPO Distribution Manager are provided below. IPO Distribution Manager will be available for use on a voluntary basis on March 23, 2004. Use of IPO Distribution Manager will become mandatory on April 16, 2004. During the transition period (from March 23, 2004, through April 15, 2004), members may use either IPO Distribution Manager or Compliance Desk. Distribution information from Compliance Desk will be converted to IPO Distribution Manager April 16-18, 2004, and, as a result, Compliance Desk will no longer be available to users.

To help members with the transition to IPO Distribution Manager, and to give them an opportunity to ask questions about its operation, NASD's Corporate Financing Department will hold **Web Ex training workshops on Monday, March 22, and Tuesday, March 23, 2004, from 4:30 p.m. EST to 6:00 p.m. EST.** There are 50 slots per workshop and member firms must register to occupy a slot. Each slot provides a single dial-in number and an online connection to the Web presentation, but a member may have multiple participants at their firm on the call and viewing the presentation. To register, please request a registration form via e-mail at nasdrcorpfin@nasdr.com. **Registration requests must be received by Friday, March 19, 2004.** Each contact person will receive further instructions on how to access and register on Web Ex.

Questions/Further Information

Questions regarding *IPO Distribution Manager* may be directed to LaNita A. Tyler, Manager, Corporate Financing Department, at (240) 386-4647; or Sheena Savoy, System Integrity Specialist, Corporate Financing Department, at (240) 386-4645. Questions regarding *Rule 2790* may be directed to Gary L. Goldsholle, Associate Vice President and Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight (RPO), at (202) 728-8104; or Afshin Atabaki, Attorney, Office of General Counsel, RPO, at (202) 728-8902.

Background and Discussion

Compliance Desk is a proprietary software application that facilitates the transmission of "hot issue" notification and receipt of new issue distribution information between members and NASD. NASD and an outside vendor jointly developed Compliance Desk in May 1996. Currently, NASD uses Compliance Desk to advise members distributing new issues whether an offering is a "hot issue" for purposes of complying with the Free-Riding and Withholding Interpretation (IM-2110-1), and to receive distribution information from managing underwriters. More detailed information about Compliance Desk is provided in *Notice to Members 96-18*.

In light of the changes brought about by new NASD Rule 2790,¹ NASD intends to phase out the operation of Compliance Desk and replace it with IPO Distribution Manager. Some of the functions performed by Compliance Desk no longer are necessary. In particular, because Rule 2790 applies to all "new issues" (rather than only "hot issues," as was the case under the Free-Riding and Withholding Interpretation), NASD no longer has any regulatory need to notify member firms whether an offering is a "hot issue." Accordingly, effective March 23, 2004, NASD will no longer be notifying members whether an offering is a "hot" or "cold" issue. In addition, the use of IPO Distribution Manager will no longer obligate members to use a third party to file data with NASD, nor will they be required to purchase or use specialized software, printers, or paper.

Through IPO Distribution Manager, the lead managing underwriters of offerings involving a “new issue” as defined in Rule 2790 will be required to make two filings with the Corporate Financing Department. In the initial filing, which must be filed on or before the offering date, the managing underwriter must submit the initial list of distribution participants and their commitment and retention amounts. In the final filing, which must be filed no later than three days after the offering date (T+3), the managing underwriter must submit the final list of distribution participants and their commitment and retention amounts. IPO Distribution Manager will permit members to transmit distribution information to NASD through Web COBRA, the Web-based filing system that members are required to use when filing information under the Corporate Financing Rule (Rule 2710). NASD’s examination program will use the data filed through IPO Distribution Manager to assist with examinations for compliance with the federal securities laws and NASD rules, including Rule 2790.

As noted above, IPO Distribution Manager is a Web-based application that facilitates the transmission of new issue distribution information from the managing underwriter to NASD. IPO Distribution Manager will be available via NASD’s Web Site, *www.nasd.com*, beginning on **March 23, 2004**. Prior to using IPO Distribution Manager, each member firm must obtain a member firm identification number. In addition, member firm personnel must register to use IPO Distribution Manager. Member firms may request a firm identification number beginning on **March 19, 2004**. Member firm personnel may commence registering to use IPO Distribution Manager on **March 22, 2004**. Please note that only registered users can access IPO Distribution Manager.

Obtaining a Member Firm Identification Number: The member firm identification number is a unique number that identifies the member firm and its users in IPO Distribution Manager. The member firm identification number is required before member firm personnel can register to use IPO Distribution Manager. A member must follow the steps listed below to receive a member firm identification number:

1. The person requesting the number on behalf of the firm must send an e-mail to *nasdrcorpfin@nasdr.com* to request a member firm identification number. This individual must provide his or her full name, title, member firm legal name, member firm CRD number, address, and telephone number.
2. The requestor may also submit the full name, title, and phone number of any other person who will be authorized to submit distribution information on behalf of the member firm to NASD.
3. Confirmation of the member firm identification number will be sent via e-mail to the requestor within 24 hours of receipt (business days only).
4. The requestor and/or any other authorized person will be able to register to use IPO Distribution Manager after receipt of e-mail confirmation.

User Registration: The requestor and/or any other authorized person must register as a user of the system for the member firm as set forth below:

1. To register, each user must complete the required information displayed on the screen, including member firm identification number, e-mail address, user name, and password.²
2. Confirmation of the user's registration will be sent via e-mail to the user within 24 hours of receipt (business days only).
3. Once confirmation has been received by the user, he or she may begin using IPO Distribution Manager.

As noted above, members may, on a voluntary basis, use IPO Distribution Manager beginning on March 23, 2004. Use of IPO Distribution Manager will become mandatory on Friday, **April 16, 2004**, as NASD will no longer accept filings through Compliance Desk. Moreover, during the transition period (between Tuesday, March 23, 2004, and Thursday, April 15, 2004), the Department will be unable to accommodate filing the initial list of distribution participants and data on one system and filing the final list of distribution participants and data on the other. Accordingly, during the transition period members must use either IPO Distribution Manager or Compliance Desk exclusively for initial and final filings with respect to each new issue.

To Use IPO Distribution Manager

1. Access IPO Distribution Manager via NASD's Web Site: www.nasd.com.
2. Click on **Regulation**.
3. Click on **Other Regulation Systems**.
4. Click on **IPO Distribution Manager**.
5. Click on **Log On**.
6. Enter **User Name** and **Password** (chosen on registration).
7. Click on **Open Deal** or enter the **NASD File ID** in the blank space and hit **Enter**.

To Submit the Initial Distribution on the Offering Date:

1. Choose the IPO deal from **IPO Distribution Deal List**. **Note:** Only IPOs filed with NASD via COBRADesk that meet the Rule 2790 definition of "new issue" will be displayed. The member name and CRD number will be displayed for the lead managing underwriter and co-managers (if applicable).
2. Enter the commitment and retention amounts for each member displayed.

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3. Click **Add** to display the **Members List** and to add additional syndicate and selling group members. **Note:** Do not include foreign broker-dealers—U.S. members only.
 4. Choose the participation status (**Bracket**) of each member from the drop-down list.
 5. Enter the commitment and retention amounts for each member added.
 6. Click **Submit to NASD** (displayed in red) to transmit the distribution information to NASD. (The button will gray-out after information has been submitted.) **Note:** Commitment and retention amounts must be filled in for each member.
 7. Confirmation of submission (date/time) will be displayed after **Initial Distribution Submitted**.
 8. Confirmation of NASD acceptance or rejection (date/time) will be displayed in the **Submit Log**.
 9. When the Corporate Financing Department accepts the information, a date will also be displayed in **DIR Applied** on the **IPO Distribution Deal List**.

To Submit the Final Distribution by T+3:

1. Choose the IPO deal from **IPO Distribution Deal List**.
2. Click the Commitment or Retention field to edit the commitment and/or retention amounts for existing members. **Note:** If no changes are required, click **Submit to NASD**.
3. Click **Add** to display the **Members List** and to add additional syndicate and selling group members.
4. Choose the participation status (**Bracket**) of each member from the drop-down list.
5. Enter the commitment and retention amounts for each member added.
6. Click **Submit to NASD** (displayed in red) to transmit the distribution information to NASD. (The button will gray-out after information has been submitted.) **Note:** Commitment and retention amounts must be filled in for each member.
7. Confirmation of submission (date/time) will be displayed after **Final Distribution Submitted**.
8. Confirmation of NASD acceptance or rejection (date/time) will be displayed in the **Submit Log**.
9. When the Corporate Financing Department accepts the information, a date will also be displayed in **DFR Applied** on the **IPO Distribution Deal List**.

Endnotes

- 1 Information concerning Rule 2790 is provided in *Notice to Members 03-79*.
- 2 Users should keep their user names and passwords in a secure place. Users will be prompted to change their passwords every 60 days. NASD does not maintain user passwords. If a user forgets his or her password, he or she must e-mail NASD's Corporate Financing Department at nasdrcorpfin@nasdr.com to have the password reset. A temporary password will be assigned, and the user must choose a different password when he or she logs onto the system.

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