

Notice to Members

FEBRUARY 2004

SUGGESTED ROUTING

Legal & Compliance

Operations

Senior Management

KEY TOPICS

Forms U4 and U5

Late Fees

Section 4 of Schedule A to the
NASD By-Laws

INFORMATIONAL

Amendments to Section 4 of Schedule A to the NASD By-Laws

SEC Announces Immediate Effectiveness of Amendments
to Section 4 of Schedule A to the NASD By-Laws

Executive Summary

The Securities and Exchange Commission (SEC) has announced the immediate effectiveness of amendments to Section 4 of Schedule A to the NASD By-Laws establishing a late fee of \$10 dollars per day, up to a maximum of \$300, to be assessed by NASD against members that fail timely to report a new disclosure event or a change in the status of a disclosure event previously reported on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4.¹ NASD will assess this fee starting on the day following the last date on which the event was required to be reported under NASD rules.

The amendments to Section 4 become operative on March 8, 2004. As described below, starting on March 8, 2004, there will be a six-month transition period during which NASD will waive certain fees.

The text of Section 4, as amended, is set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Ann E. Bushey, Director, Registration and Disclosure, at (240) 386-4724; and Scott Trilling, Assistant Director, Registration and Disclosure, at (240) 386-5113.

Background and Discussion

Timely and complete reporting of all information required by the NASD By-Laws and rules and the federal securities laws is critical. NASD relies on information reported by its members for, among other things, determining compliance with net capital and reporting requirements and registration requirements. Information reported by members may form the basis for examinations and investigations and, ultimately, disciplinary action. The receipt of timely and complete information about members and their registered persons is essential to NASD's fulfillment of its role as a self-regulatory organization.

Accurate disclosure information is of particular importance to investors who are or who may be interested in doing business with a registered person and are seeking information regarding that person through the NASD BrokerCheck Program. NASD has established the late filing fee discussed in this *Notice* to act as an additional disincentive to late filing and to encourage members to timely update Forms U4 and U5, as required. Of course, firms that fail timely to file amendments to Forms U4 and U5 may, in addition to paying a late fee, be subject to disciplinary action.

The amendments to Section 4 of Schedule A to the NASD By-Laws establish a late fee of \$10 dollars per day, up to a maximum of \$300, to be assessed by NASD against members that fail timely to report a new disclosure event or a change in the status of a disclosure event previously reported on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4. NASD will assess this fee starting on the day following the last date on which the event was required to be reported under NASD rules.

This late fee is an additional mechanism to help ensure that members make required disclosures on Forms U4 and U5 in a timely manner. In this context, disclosure events generally refer to events that require affirmative answers to the questions on Forms U4 and U5 that elicit information about criminal actions, regulatory disciplinary actions, civil judicial actions, customer complaints, terminations, and financial matters (currently, Questions 14A-M on the Form U4 and Questions 7A-F on the Form U5). Disclosure events must be reported either 30 days or 10 days after the triggering event, depending on the type of information to be reported.

Article V, Section 2(c) of the NASD By-Laws requires that every application for registration (Form U4) filed with NASD be kept current at all times by supplementary amendments that must be filed with NASD not later than 30 days after learning of the facts or circumstances giving rise to a reporting obligation. If such filing involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Securities Exchange Act of 1934, such amendment must be filed not later than 10 days after such disqualification occurs. Article V, Section 3(a) of the By-Laws requires a member, not later than 30 days following the termination of the association with a member of a person who is registered with it, to give notice of the termination of such association to NASD (Form U5). Article V, Section 3(b) of the By-Laws requires members to file an amendment to the Form U5 in the event that the member learns of facts

or circumstances causing any information in the Form U5 to become inaccurate or incomplete, not later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.² Under the amended schedule, when a member submits a late disclosure filing, NASD, through the Central Registration Depository (CRD® or Web CRD), will calculate the late fee and debit the firm's CRD account \$10 per day, up to a maximum charge of \$300.

March 8, 2004, Operative Date and Transition Period

The amendments to Section 4 become operative on March 8, 2004; however, there will be a six-month transition period starting on March 8, during which time NASD will waive the late fee for the first 10 days the filing is late, provided the filing is made during those 10 days. Accordingly, NASD will not assess the first \$100 (at \$10 per day) if the filing is made during those 10 days. Instead, during those six months, the member's CRD account will indicate that NASD has waived the late fee, thereby alerting the member of instances where it has not timely reported disclosure information.

NASD will **not** waive any portion of the late fee for members making filings that are between 11 and 30 days late during this transition period. Such members will be charged \$10 for each late day, up to \$300. For example, a member reporting a disclosure event eight days late during the transition period will receive a report showing the number of days late, but will not be assessed a late fee. Conversely, a member reporting a disclosure event 11 days late during these six months will be charged \$10 per late day, for a total of \$110. At the end of the six-month transition period, members will be charged the \$10 fee beginning each day the filing is late, up to a maximum of \$300.

Endnotes

1 File No. SR-NASD-2003-192; SEC Release No. 49224 (Feb. 11, 2004).

2 Some examples of events that trigger a reporting requirement include: notice of an NASD decision or order containing findings that a registered person violated NASD rules or receipt of a customer complaint or arbitration claim that meets the reporting criteria on Forms U4 or U5.

ATTACHMENT A

Additions are underlined; deletions are in brackets.

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Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

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Section 4 - Fees

(a) through (l) No change.

(m) NASD shall assess each member a fee of \$10 per day, up to a maximum of \$300, for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed as required by NASD on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4, with such fee to be assessed starting on the day following the last date on which the event was required to be reported.

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