

ACTION REQUESTED

Corporate Financing

SEC Approves Rule Change Requiring Members To File Information With The Corporate Financing Department Through Its Electronic Filing System

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Executive Representative
- Legal & Compliance
- Operations
- Senior Management
- Systems

KEY TOPICS

- Corporate Financing
- Electronic Form Filing

Executive Summary

On April 9, 2002, the Securities and Exchange Commission (SEC or Commission) approved amendments to NASD Conduct Rule 2710 (the Corporate Financing Rule or Rule) that require members that file information on public offerings of securities with the Corporate Financing Department (Department) to use the Department's electronic filing system, the Corporate Offerings Business Regulatory Analysis System (COBRA). In addition, the amendments provide that all documents that are filed with the SEC through its Electronic Data Gathering and Retrieval System (EDGAR) will be treated as filed with the National Association of Securities Dealers, Inc. (NASD® or Association). Members that participate in public offerings in which the offering documents are not required to be filed with the SEC through EDGAR would continue to be required to file the offering documents in paper format. However, such members would also have to provide certain information through COBRA.

The Department currently inputs information from manual filings into the COBRA database. On June 30, 2002, the Department will convert all of the offerings in the COBRA database into COBRADesk, the Web-based application that filers use to file with the Department. This conversion will enable filers to make amendments and revisions to filings that are under review in the Department by using COBRADesk. In addition, the conversion will provide members with access to information regarding all of their filings since January 2000, which will be included in COBRADesk. After June 30, 2002, all amendments and revisions to filings under

review in the Department must be made using COBRADesk.

The effective date of the electronic filing requirements for new offerings is July 12, 2002. Any manual filings subject to the electronic filing requirements made after the June 30 conversion date, but prior to July 12, 2002, will be accepted, but the filer will be required to re-file the offering using COBRADesk in order to make amendments or revisions to the filing, and so that the information can be stored in the COBRADesk database. The Department will not accept any manual filings that are required to be filed electronically under the Rule after July 12, 2002.

See Attachment A to view the text of the Rule amendments.

Questions about this *Notice* should be directed to LaNita Tyler or Kemba Walker, Corporate Financing Department, NASD Regulation, Inc., at (240) 386-4623.

Background

The Department receives thousands of packages and letters each year in paper format from underwriters and their counsel. In June 1999, the Department deployed COBRA to permit members and their counsel to file information electronically and to permit the staff to access any documents filed with the SEC through EDGAR. Since its implementation, COBRA has improved the efficiency of the review process, decreased review time, and reduced the amount of paper correspondence and documents that members must file with the Department. The system has operated as a faster and more efficient mechanism for communication between filers and NASD Regulation.

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On April 30, 2001, the Department converted COBRADesk to a Web-based application. Web COBRADesk was developed to provide users with an improved and technologically enhanced version of the COBRADesk application. The system is free of charge and requires no special equipment. Web COBRADesk eliminates the need for members to file registration statements with the Department if a registration statement has been filed with the SEC using EDGAR. Filers simply provide the Department with an EDGAR accession number when they file the original registration statement, subsequent amendments, and the final prospectus.

On April 9, 2002, the SEC approved amendments to NASD Conduct Rule 2710 regarding electronic filings with the Department. The NASD proposed amending the Rule to: (1) require that members file certain information on offerings subject to Rules 2710, 2720, and 2810 through COBRADesk; (2) provide that all public offering documents that are filed with the Commission through EDGAR will be treated as filed with the Association; and (3) reduce the number of offering documents that are required to be filed with the Association for members that file manually instead of electronically through EDGAR.

Accessing Web COBRADesk

Firms must be registered to access COBRADesk. To access Web COBRADesk, use the following URL:

<https://cobra.nasdr.com>

Firms that are not currently registered to access Web COBRADesk should perform the following steps:

1. Select a person to act as the coordinator for the firm.
2. The Department will issue a unique identifier (firm ID) to each firm. The firm's coordinator can request this identifier by sending an e-mail to the Department at nasdrcorpfin@nasd.com. Coordinators should provide in the e-mail the firm's name, address, coordinator's name, phone number, and e-mail address. Once the information provided has been reviewed and accepted, the Department will send an e-mail to the coordinator containing the firm's ID.
3. Individual users can register by submitting a completed registration form located at https://cobra.nasdr.com/cdsk_register.asp. The firm's ID and coordinator's name must be provided for each registration submitted. Please keep the user name and password you select in a secure place; it will be required to logon to the system.
4. A confirmation will be sent via e-mail to each user that acknowledges the Department's acceptance and the user's ability to access COBRADesk.
5. Logon to COBRADesk at <https://cobra.nasdr.com>. Enter the user name and password chosen at registration.

Submitting Filing Fees

There are two payment methods available for electronic filers. Payments may be made through a wire transfer or by submitting a check to the Department's lockbox. Checks should not be sent directly to the Department. If you are paying through a wire transfer, please use the following information:

Beneficiary Bank:

Riggs Bank NA

Beneficiary Bank Address:

808 17th Street, NW
Washington, DC 20006

Beneficiary Name:

NASD Regulation

Beneficiary Account #:

08676152

Routing Number:

054000030

Reference Number:

YOU MUST PROVIDE ISSUER NAME AS IT APPEARS ON THE OFFERING DOCUMENT OR THE ASSIGNED CORPORATE FINANCING DEPARTMENT FILING ID.

If you are paying the filing fee by check, make the check payable to NASD Regulation, Inc., and mail it to our lockbox at:

*NASD Regulation, Inc.
P.O. Box 777-W9205
Philadelphia, PA 19175-9205*

If your check is being delivered to the bank via courier or overnight mail, use the following address:

*NASD Regulation, Inc.
W9205
c/o Mellon Bank, Rm. 3490
701 Market Street
Philadelphia, PA 19106*

Non-SEC Filed Documents

Subparagraph (b)(5)(B) of Rule 2710 has been amended to provide that all documents that are filed with the SEC through the EDGAR system will be treated as filed with the Association. Members that do not file documents with the SEC through EDGAR (e.g., F-1, F-3, F-10,¹ Offering Circulars, etc.) still have a filing obligation, and are required to submit multiple copies of any requisite documents in paper format.

Underwriting documents such as the Underwriting Agreement, Letter of Intent, Selected Dealers Agreement, and other agreements describing proposed compensation and underwriting terms and arrangements may be submitted to the Department's e-mail at nasdrcorpfin@nasd.com. One copy of Non-SEC Filed Documents should be submitted in Microsoft Word format. The document name is to consist of the Department File ID, followed by the type of document (e.g., 2001-0101-001 MasterUWA). If a revised offering document is submitted to the Department, the document name should consist of the Department File ID, followed by an alphabet and type of document (e.g., 2001-0101A Master UWA). The e-mail must supply the name of the analyst assigned to review the offering. The Basic Information – Documents – Non SEC Filed Documents grid in COBRADesk must be updated in your offering and submitted electronically, prior to the e-mail being sent to the Department. Responses to comment letters must be submitted by completing the appropriate screens in COBRADesk. Letters will not be accepted by e-mail.

Browser Standards

The browser standards required for accessing Web COBRADesk are Netscape Navigator 6.0 or greater and Microsoft Internet Explorer 5.5 or greater. Browser upgrades are available free of charge through the respective Netscape and Microsoft Web Sites. An application designed for the Web must be supported by the current browsers to ensure maximum performance, reliability, flexibility, privacy, and security. Web COBRADesk's layout, screens, dialog boxes, scroll bars, list boxes, grids, and links conform to the latest browser versions.

Training

Department staff members are dedicated to assisting filers when they access and navigate Web COBRADesk. The Department will sponsor training sessions at the NASD's training facilities in Rockville, Maryland, and third-party training facilities in New York City. Training in New York will be held June 24-26, and training in Rockville, Maryland, will be held July 9-11. A nominal fee of \$75 will be charged to offset the cost of the facilities. For more information about the training session, including an online registration form, visit the Web COBRADesk Web Page at www.nasdr.com/cobradesk.asp.

The Department will also provide assistance to members and their counsel who have questions and are unfamiliar with the system. If you are interested in participating in one of the training sessions, please let us know by sending an e-mail to nasdrcorpfin@nasd.com by May 29, 2002. Preferences regarding dates and times for the training sessions will be assigned in the order that the e-mail requests are received by the Department.

Endnote

- 1 On September 28, 2001, the SEC published for comment proposed amendments that would require foreign private issuers and foreign governments to file electronically through the EDGAR system their securities documents, including registration statements under the Securities Act of 1933 and registration statements, reports and other documents under the Securities Exchange Act of 1934.

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ATTACHMENT A

Proposed new language is underlined; proposed deletions are in brackets.

2710. CORPORATE FINANCING RULE - UNDERWRITING TERMS AND ARRANGEMENTS

(a) No Change

(b) Filing Requirements

(1)-(4) No Change

(5) Documents to be Filed

(A) The following documents relating to all proposed public offerings of securities that are required to be filed under subparagraph (b)(4) above shall be filed with the Association for review:

([A]i) [Five (5)] Three copies of the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion and/or any other document used to offer securities to the public;

([B]ii) Three [(3)] copies of any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document which describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents which may be material to or part of the said arrangements, terms and conditions and which may have a bearing on the Association's review;

([C]iii) [Five (5)] Three copies of each pre-and post-effective amendment to the registration statement or other offering document, one copy marked to show changes; and three [(3)] copies of any other amended document previously filed pursuant to subparagraphs ([A]i) and ([B]ii) above, one copy marked to show changes; and

([D]iv) Three [(3)] copies of the final registration statement declared effective by the Commission or equivalent final offering document and a list of the members of the underwriting syndicate, if not indicated therein, and one [(1)] copy of the executed form of the final underwriting documents and any other document submitted to the Association for review.

(B) All documents that are filed with the Commission through the Commission's Electronic Data Gathering and Retrieval System shall be treated as filed with the Association.

(6) Information Required to be Filed

(A) Any person filing documents [pursuant to subparagraph] that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through the Association's electronic filing system:

(i) an estimate of the maximum public offering price;

(ii) an estimate of the maximum underwriting discount or commission; maximum reimbursement of underwriter's expenses, and underwriter's counsel's fees (except for reimbursement of "blue sky" fees); maximum financial consulting and/or advisory fees to the underwriter and related persons; maximum finder's fees; and a statement of any other type and amount of compensation which may accrue to the underwriter and related persons;

(iii) a statement of the association or affiliation with any member of any officer, director or security holder of the issuer in an initial public offering of equity securities, and with respect to any other offering provide such information with respect to any officer, director or security holder of five percent or more of any class of the issuer's securities, to include:

a. the identity of the person;

b. the identity of the member and whether such member is participating in any capacity in the public offering; and

c. the number of equity securities or the face value of debt securities owned by such person, the date such securities were acquired, and the price paid for such securities.

(iv) a statement addressing the factors in subparagraphs (c)(4)(C) and (D), where applicable;

(v) a detailed explanation of any other arrangement entered into during the 12-month period immediately preceding the filing of the offering, which arrangement provides for the receipt of any item of value and/or the transfer of any warrants, options, or other securities from the issuer to the underwriter and related persons; [and]

(vi) a detailed explanation and any documents related to the modification of any item of compensation subsequent to the review and approval of such compensation by the Association;¹ and

(vii) any other information required to be filed under this Rule.

(B) Any person filing documents pursuant to paragraph (b)(5) above shall [file with the Association written notice] notify the Association through its electronic filing system that the offering has been declared effective or approved by the Commission or other agency no later than one business day following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal decision to abandon the offering.

¹ Subparagraphs (i) - (vi) are proposed to be amended in SR-NASD-2000-04. See Securities Exchange Act Release Nos. 42619 (April 4, 2000), 65 FR 19409 (April 11, 2000); 44044 (March 6, 2001), 66 FR 14949 (March 14, 2001).