

NASD Notice to Members 99-50

SEC Approves Amendments To Corporate Financing Rule Filing Fees

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Executive Summary

On May 17, 1999, the Securities and Exchange Commission (SEC) approved amendments to the filing fee provisions of the National Association of Securities Dealers, Inc. (NASD[®]) applicable to public offerings filed for review with the Corporate Financing Department (Department). The amendments simplify the filing fee provisions and clarify the manner in which the Department calculates filing fees. The amendments provide that filing fees will be calculated based on the proposed maximum aggregate offering price (or other applicable value) of all securities included on a registration statement filed with the SEC or included on another type of offering document if the offering is not registered with the SEC. An additional filing fee on any amendments to the registration statement or offering document will be imposed only when there is an increase in the maximum aggregate offering price or other applicable value of all securities included on the registration statement or offering document — regardless of any increase in the amount of securities. The amendments were effective May 17, 1999.¹ The text of the amendments follows this *Notice*.

Questions about this *Notice* should be directed to Carl Sperapani, Assistant Director, or Suzanne Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, Inc. (NASD Regulation[®]), at (202) 974-2700.

Background

NASD Conduct Rule 2710 (the Corporate Financing Rule) requires NASD members to file most proposed public offerings with the Corporate Financing Department. The Department reviews these filings prior to the commencement of the offering to determine whether the underwriting terms and arrangements are fair and

reasonable under NASD rules. The NASD imposes a fee on offerings filed with the Department equal to \$500 plus .01 percent of the “gross dollar amount of the offering,” not to exceed \$30,500.

Description Of Amendments

The amendments to Section 6 of Schedule A to the NASD By-Laws simplify the fee structure for public offerings filed under the Corporate Financing Rule and NASD Conduct Rules 2720 and 2810. The amendments also delete the filing fee provision in paragraph (b)(10) of the Corporate Financing Rule because it is duplicative of Section 6 of Schedule A.

Application Of Fee To All Securities On Offering Document

The amendments delete the definition of “gross dollar amount of the offering” in paragraph (a)(1) of the Corporate Financing Rule and change Section 6(a) of Schedule A to provide that the filing fee will be calculated on the “proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC).”

The term “proposed maximum aggregate offering price” is the same term used in the fourth column of the fee table on the cover of SEC registration statement forms to identify the total of the proposed public offering price of all securities to be registered on the registration statement. The inclusion of the words “other applicable value” is intended to cover debt securities or offerings in which an issuer only registers a dollar amount of securities without specifying the type of or number of securities being offered.

Calculation Of Fee On Amendments

Section 6(b) of Schedule A required that the Department collect an additional filing fee when an amendment to the offering document increased the number of securities being registered, regardless of whether there was any increase in the aggregate value of the securities that were included on the original offering document. This additional filing fee was calculated by multiplying the number of additional securities times their new offering price and charging a fee of .01 percent of this product, but not more than \$30,500, for total filing fees for any offering filed.

The amendments to Section 6(b) of Schedule A provide that an additional fee will be imposed only if there is a net increase in the maximum aggregate offering price or other applicable value of all securities included on the offering document, subject to the \$30,500 limit on total filing fees charged for any offering. NASD Regulation will not refund fees when an amendment decreases the maximum aggregate offering price or other applicable value.

Under Section 6(b) of Schedule A, as amended, the additional fee will be imposed to take into account any net increase in the maximum aggregate offering price or other applicable value that is reflected in an SEC Rule 430A prospectus² or a related registration statement filed pursuant to SEC Rule 462(b).³

Other Changes

The amendments delete the provision in Section 6(c) of Schedule A regarding the computation of filing fees. Sections 6(a) and 6(b) of

Schedule A have been amended to delete the requirement that a filing fee accompany an initial filing and amendments. NASD Regulation recently deleted the provision in Schedule A that required filing fees to be paid in the form of a check or money order and permitted fees to be paid by wire transfer.⁴ These changes will facilitate payment of filing fees and filing public offering information electronically with the Department via COBRADesk, the new automated systems that will permit electronic filing of corporate offering information with the Corporate Financing Department. COBRADesk will automatically calculate filing fees based on the proposed maximum aggregate offering price or other applicable value. For more information on the electronic filing and the COBRADesk System, see *Notice to Members 99-41*.

Text Of Amendments

(Note: New language is underlined; deletions are bracketed.)

Schedule A To The NASD By-Laws

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

Section 1 - Section 5 No change

Section 6- Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) [The] There shall be a fee imposed for the filing of initial documents relating to any offering filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by a filing fee] equal to \$500 plus .01% of the [gross dollar amount of the offering,] proposed

maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not [to] exceed [a fee of] \$30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) [Amendments] There shall be an additional fee imposed for the filing of any amendment or other change to the [initially filed documents which increase the number of securities being offered] documents initially filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by an additional amount of filing fee] equal to .01% of the [per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered,] net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not [to] exceed \$30,500 [when aggregated with all fees previously paid].

[(c) The provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.]

Section 7 - Section 15 No change

2710. Corporate Financing Rule - Underwriting Terms and Arrangements

(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

[(1) Gross Dollar Amount of the Offering]

[Public offering price of all securities offered to the public and securities included in any overallotment option, the registration price of securities to be paid to the underwriter and related persons, and the registration price of any securities underlying other securities;]

(2) - (6) Renumbered **(1) - (5)**

(b) Filing Requirements

(1) - (9) No change

[(10) Filing Fees] Deleted entirely

(11) - (13) Renumbered **(10) - (12)**

(c) No change

Endnotes

¹SEC Release No. 34-41414 (May 17, 1999).

²SEC Rule 430A permits a registrant to reflect in the prospectus filed pursuant to SEC Rule 424(b) or SEC Rule 497(h) or in a post-effective amendment to the registration statement a change in the volume of securities offered (if the total value of securities

offered would not exceed that which was registered) or a change in the bona fide estimate of the maximum offering price range if the changes, in the aggregate, represent no more than a 20 percent change in the maximum aggregate offering price set forth in the fee table in the effective registration statement.

³SEC Rule 462(b) permits a registrant to file a registration statement that is effective upon filing if, among other things, the registration statement registers "additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission."

⁴SEC Release No. 34-40706 (November 24, 1998); 63 FR 66618 (December 2, 1998).

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