

NASD Notice to Members 99-17

SEC Approves Amendments Regarding Application Of The Corporate Financing Rule To Certain Offerings By Charitable Organizations

Suggested Routing

- Senior Management
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- Internal Audit
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- Municipal
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Executive Summary

On December 21, 1998, the Securities and Exchange Commission (SEC) approved amendments submitted by NASD Regulation, Inc. (NASD RegulationSM) to exempt certain offerings by charitable organizations from the filing requirements of National Association of Securities Dealers, Inc. (NASD[®]) Rule 2710 (the Corporate Financing Rule). The new exemption was effective on December 21, 1998.

Questions regarding this *Notice* may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, at (202) 974-2747.

Discussion

The Corporate Financing Rule requires that public offerings of securities be filed with the Corporate Financing Department of NASD Regulation (Department) so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule. Offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act of 1933 (Securities Act) have been subject to the filing requirements of the Corporate Financing Rule.

The Department has found that such public offerings by charitable organizations no longer present regulatory issues requiring pre-offering review. In particular, the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under the Corporate Financing Rule.

NASD Regulation has, therefore, amended the Corporate Financing

Rule to exempt public offerings by a church or other charitable institution from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule. In order for the new exemption to apply to an offering, the offering must qualify for the exemption from SEC registration provided by Section 3(a)(4) of the Securities Act, which requires that the securities offered by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, not be for pecuniary profit, and that no part of the net earnings inure to the benefit of any person, private stockholder, or individual. The registration exemption provided by Section 3(a)(4) is also available to any security of a fund that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940.

Text Of Amendments

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

2710. Corporate Financing Rule - Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1) - (6) No change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with

this Rule or Rule 2810, as applicable:

(A) - (C) No change.

(D) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Commission on Forms S-3, F-3 or F-10 (only with respect to Canadian issuers); [and]

(E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories; and

(F) offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A) - (E) No change.

(F) securities offered by a bank, savings and loan association, [church or other charitable institution,] or common carrier even though such offering may be exempt from registration with the Commission;

(G) - (H) No change.

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