

Notice to Members

DECEMBER 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Corporate Financing Department
Corporate Financing Fees
Rule 2710 (Corporate Financing
Rule–Underwriting Terms and
Arrangements)
Schedule A to the NASD By-Laws

GUIDANCE

Fees for Filing Documents Pursuant to Rule 2710 (Corporate Financing Rule–Underwriting Terms and Arrangements)

NASD Has Filed for Immediate Effectiveness Amendments to Section 7 of Schedule A to the NASD By-Laws Governing Fees for Filing Documents Pursuant to the Corporate Financing Rule; **Implementation Date: January 1, 2005**

Executive Summary

NASD has filed for immediate effectiveness amendments to Section 7 of Schedule A to the NASD By-Laws (Section 7). The amendments to Section 7 raise the maximum fee for filing documents pursuant to the Corporate Financing Rule from \$30,500 to \$75,500 (\$500 plus .01 percent of the proposed maximum aggregate offering price up to \$750 million).¹

The amendments to Section 7 become operative on January 1, 2005. New filings received and accepted by the Department through its electronic filing system (COBRA) by 12:00 p.m., Eastern Time, on Thursday, December 30, 2004, will be processed under the current fee structure (\$30,500 maximum fee). Any offering initially filed prior to December 30, 2004, will be subject to the current fee structure, notwithstanding that additional amendments to the filing may be made in 2005. New filings that have been rejected, however, must be corrected, re-submitted, and accepted by the Department prior to the December 30, 2004, deadline for the current fee structure to apply.

Included with this *Notice* is Attachment A, the text of amended Section 7.

Questions/Further Information

Questions concerning this *Notice* may be directed to LaNita A. Tyler, Manager, Corporate Financing Department, at (240) 386-4647.

Background and Discussion

NASD's Corporate Financing Department (Department) is responsible for reviewing the proposed underwriting terms and arrangements of proposed public offerings of securities for compliance with the requirements of Rule 2710 (Corporate Financing Rule—Underwriting Terms and Arrangements). The purpose of the Department's review is to provide members with, among other things, regulatory guidance as to what constitutes fair and reasonable underwriting terms and arrangements. Pursuant to Rule 2710, members may not participate in the offering unless certain documentation is filed with the Department for review. The fee charged to members for this review is set forth in Section 7.

Prior to this amendment, the maximum fee for filing documents pursuant to the Corporate Financing Rule was \$500 plus .01 percent of the proposed maximum aggregate offering price of \$300 million or other applicable value of all securities registered on a Securities and Exchange Commission (SEC) registration statement or included on any other type of offering document (where not filed with the SEC), with a cap of \$30,500. This fee structure was implemented in 1989 and intended to capture the maximum \$30,500 fee on 90 percent of the public offerings filed with the Department.

A recent review of the corporate financing fees showed that in 2004, the maximum \$30,500 fee was being charged on only 75 percent of the public offerings filed with the Department. The amendments to Section 7 will again enable NASD to capture the maximum fee on 90 percent of public offerings filed with the Department by raising the cap in Section 7 from \$30,500 to \$75,500 (\$500 plus .01 percent of the proposed maximum aggregate offering price up to \$750 million) as of January 1, 2005.

Implementation of the Fee Change

The fee change will be implemented on January 1, 2005. The staff plans to conduct an annual review of costs and adjust the corporate financing fee, if necessary, as of January 1 each year after appropriate consultation with the Board and rule filings with the Commission.

New filings received and accepted by the Department through its electronic filing system (COBRA) by 12:00 p.m., Eastern Time, on Thursday, December 30, 2004, will be processed under the current fee structure (\$30,500 maximum fee). Any offering initially filed prior to December 30, 2004, will be subject to the current fee structure, notwithstanding that additional amendments to the filing may be made in 2005. New filings that have been rejected, however, must be corrected, re-submitted, and accepted by the Department prior to the December 30, 2004, deadline for the current fee structure to apply.

COBRADesk will be shut down and unavailable for filings on Thursday, December 30, 2004, at 12:00 p.m., Eastern Time, to update COBRA and COBRADesk to accept the proposed new filing fee. COBRA and COBRADesk will again be available to accept filings on Monday, January 3, 2005, at 8 a.m., Eastern Time. NASD will notify NASD users of system availability on the NASD Web site beginning on December 1, 2004.

Endnote

1. SR-NASD-2004-177.

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ATTACHMENT A

Schedule A To NASD By-Laws

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Section 7 — Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with NASD pursuant to the Corporate Financing Rule equal to \$500 plus .01% of 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), but shall not exceed [~~\$30,500~~] \$75,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with NASD pursuant to the Corporate Financing Rule equal to .01% of the 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 exceed [~~\$30,500~~] \$75,500.

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