

Notice to Members

FEBRUARY 2007

SUGGESTED ROUTING

Corporate Financing
Legal and Compliance
Senior Management
Operations

KEY TOPICS

Corporate Financing
Fees
Public Offerings
Rule 2710
Rule 2720
Schedule A to NASD By-Laws
Well-Known Seasoned Issuers (WSKIs)

GUIDANCE

Corporate Financing Fee

Amendments to the Fees for Filing Offering Documents by Well Known Seasoned Issuers Pursuant to the Corporate Financing Rule; **Effective Date: February 26, 2007**

Executive Summary

On January 24, 2007, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule change to amend Section 7 of Schedule A to NASD's By-Laws to adjust the fees for filing offering documents by "well-known seasoned issuers" pursuant to Rule 2710 (Corporate Financing Rule – Underwriting Terms and Arrangements).¹

Section 7 of Schedule A to NASD's By-Laws, as amended, is set forth in Attachment A of this *Notice*. The amendments will be implemented on February 26, 2007.

Questions/Further Information

Questions regarding this *Notice* may be directed to Joani Ward, Assistant Director, Corporate Financing Department, at (240) 386-4649; or Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, at (202) 974-2974.

Background and Discussion

Under Section 7 of Schedule A to the NASD By-Laws, the fee for filing offering documents with NASD pursuant to Rule 2710 is equal to \$500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered, but not to exceed \$75,500.² However, as part of the SEC's Securities Offering Reform,³ which became effective on December 1, 2005, the rules permit, among other things, "well-known seasoned issuers" or

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“WKSI” to file automatically effective shelf registration statements without specifying the amount or value of the securities that may be offered off the registration statement for up to three years.⁴

Since the NASD filing fee is based on the proposed maximum aggregate offering price on an SEC registration statement, assessing the fee on filings by WKSI has been problematic because WKSI are not required to specify a proposed maximum aggregate offering price or other applicable value on the registration statement. In view of the fact that a WKSI shelf registration filing allows the issuer to offer registered securities for a three-year period in amounts that may exceed \$750 million, NASD is imposing the maximum filing fee on all WKSI filings.⁵

Accordingly, NASD has amended Section 7 of Schedule A to the NASD By-Laws expressly to require that the fee imposed for the filing of offering documents that are required to be filed with NASD relating to an automatically effective Form S-3 or F-3 registration statement filed with the SEC and offered pursuant to SEC Rule 415 by a WKSI shall be \$75,500.

The implementation date of the amendment will be February 26, 2007.

Endnotes

- 1 See SR-NASD-2007-006 filed on January 24, 2007. Under Section 19(b) of the Securities Exchange Act of 1934, the SEC has the authority to summarily abrogate this type of rule change within 60 days of filing.
- 2 Thus, under Section 7 of Schedule A to the NASD By-Laws, fees are capped with respect to offerings with an aggregate offering price of \$750 million or more.
- 3 See Securities Exchange Act Release No. 52056 (July 19, 2005), 70 FR 44722 (August 3, 2005).
- 4 WKSI are large issuers that generally must have either \$700 million of worldwide equity market capitalization or an aggregate of \$1 billion of non-convertible securities issued within the past three years. See SEC Rule 405.
- 5 NASD's electronic filing system does not track subsequent amendments to WKSI registration statements to determine whether new securities have been registered by an amendment, thereby increasing the size of the offering. Moreover, if multiple members participate in takedowns of securities off of a WKSI shelf registration statement over time, no one member would have the ability to track the aggregate value of the securities sold by the multiple members and ensure that the proper filing fee is paid in connection with the offerings.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

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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: (1) \$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 \$75,500; or (2) \$75,500 for an offering of securities on an automatically effective Form S-3 or F-3 registration statement filed with the SEC and offered pursuant to SEC Rule 415 by a Well-Known Seasoned Issuer as defined in SEC Rule 405. The amount of the filing fee may be rounded to the nearest dollar.

(b) No Change.