

Corporate Financing Filings

New Electronic Filing System for Public Offering Filings

Executive Summary

On June 4, 2012, FINRA will introduce a new public offering filing system for public offerings that are required to be filed under FINRA Rules 5110, 5121 and 2310 (Corporate Financing Rules). The new Public Offering System will provide operational efficiencies and useful enhancements for filers. The new system will replace COBRADesk, which has been operational since 1999 and will be retired on June 20, 2012.¹ This *Notice* provides information on the transition period to the new system and describes certain process enhancements for filing shelf offerings.

To avoid any potential inaccuracies in the translation of filings submitted through the COBRADesk application, FINRA will not migrate data from COBRADesk to the new system. COBRADesk and the data therein **will no longer be available to firms after June 20, 2012**. In addition, offerings that were filed in COBRADesk and that are under review as of this date must be refiled in the new system.

Firms may address inquiries about refiling to the staff member in the Corporate Financing Department who is reviewing the offering. No additional fees will apply to any offering that is refiled in the Public Offering System if the fees were previously paid when the offering was filed in COBRADesk.²

Questions regarding this *Notice* may be directed to:

- ▶ Joseph E. Price, Senior Vice President, Corporate Financing/Advertising Regulation, at (240) 386-4642;
- ▶ Paul M. Mathews, Director, Corporate Financing, at (240) 386-4639;
- ▶ Eugene Buchanan, Associate Director, Corporate Financing, at (240) 386-4626; or
- ▶ Joani Ward, Assistant Director, Corporate Financing, at (240) 386-4623.

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Suggested Routing

- ▶ Compliance
- ▶ Corporate Finance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ COBRADesk
- ▶ Corporate Financing
- ▶ Exemption from Timely Filing Requirements
- ▶ Public Offering Filings
- ▶ Public Offering Underwriting Terms

Referenced Rules & Notices

- ▶ FINRA Rule 2310
- ▶ FINRA Rule 5110
- ▶ FINRA Rule 5121
- ▶ Notice to Members 02-26

Background

FINRA's Corporate Financing Rules require member firms to file information about public offerings of securities in which they participate, subject to certain filing exemptions including exemptions for offerings of "seasoned issuers," investment grade securities and registered investment companies. Currently, firms file their offerings through FINRA's COBRADesk system.³ FINRA reviews the filings and issues a "no objections" opinion if the terms and arrangements governing member firms' participation and disclosure regarding those terms and arrangements appear to comply with the rules' requirements. A member firm must receive a "no objections" opinion before it may participate in a distribution of securities to investors.

FINRA's review provides firms with regulatory guidance as to what constitutes fair and reasonable underwriting arrangements and complements the SEC's registration process for issuers. The SEC defers to FINRA to establish reasonable levels of underwriting compensation and adequate disclosure of the underwriting terms and conflicts. The SEC staff generally will not declare an issuer's registration statement to be effective unless the underwriters have obtained a "no objections" opinion from FINRA.

In June 2012, FINRA will replace COBRADesk with the new system.

Public Offering System Implementation and Transition Timeline

The new Public Offering System will be available for all types of filings on June 4, 2012.

Dates	Action Required/Suggested
Through June 20, 2012	Transfer and archive data from filings submitted in COBRADesk
May 15 through June 1	Firms may request an exemption from the timely filing requirements until the new system is available on June 4
May 31	Last day to file a new public offering in COBRADesk
June 1	New public offering filings will no longer be accepted in COBRADesk Please contact Corporate Financing to make arrangements regarding any expedited offering that must be filed on June 1 (e.g., overnight "bought deals", SDCs, WKSIs) at corpfin@finra.org .
June 4	New Public Offering System available for all types of filings
June 11	End of the exemption period from the timely filing requirements
June 20	Last day to retrieve data from COBRADesk

New Features

The new Public Offering System includes features that are designed to improve the overall filing experience. Among the new features is the Deal Filing Cabinet, a dashboard-like display that lists all of a firm's filings with key information about the deal, the status of the review and the assigned FINRA staff. In addition, firms can search all their filings using a keyword search function, filter and sort results based on specific criteria, review all correspondence related to a specific filing and quickly identify outstanding regulatory issues the firm must address.

The new system makes the filing process more intuitive and user friendly by displaying new questions based on answers provided. Users can also print a list of "errors" that must be addressed before submitting the filing and can also view FINRA's Corporate Financing Rules.

The system also will improve the filing process for offerings registered with the SEC pursuant to Rule 415 under the Securities Act of 1933 (shelf offerings) and shelf takedown offerings (takedowns). The filing process for shelf offering filings in the system will expand the current "same day clearance" (SDC) process in COBRADesk to all shelf offerings except those for which a firm voluntarily elects to have the takedown filing reviewed by Corporate Financing.

COBRADesk Retirement

To facilitate an orderly transition to the new system, FINRA will not accept new filings in COBRADesk after May 31, 2012. **After June 20, 2012, COBRADesk will no longer be available in any capacity.** Firms therefore will no longer have access to any information that was filed through this system. As noted above, firms should retrieve any data that they may need access to in the future from **COBRADesk no later than June 20, 2012.**

Corporate Financing intends to work diligently to help firms avoid refiling in the new system offerings that had already been filed in COBRADesk. To ensure that refiling will not be required, a firm must file its offering in COBRADesk before May 31, 2012, **and** must have received clearance by Corporate Financing by June 20, 2012. FINRA will continue to review filings that were made on COBRADesk through June 20, 2012, when COBRADesk will be retired. While Corporate Financing will review filings as expeditiously as possible, firms that are considering whether to file in COBRADesk close to the May 31 deadline should consider the possibility that the offering will not be cleared by Corporate Financing by June 20, in which case refiling in the new system will be necessary.

Amendments and Updates

FINRA currently receives various types of updates to filings, including responses to comments issued by FINRA staff, amendments to underwriting documents, final prospectuses and post-effective amendments to registration statements. These updates are typically filed to comply with the applicable requirements of the Corporate Financing Rule.

If an offering is filed in COBRADesk before May 31, 2012, and a subsequent update would not change the underwriting terms and arrangements or the information provided to FINRA as part of its review of those arrangements, and would not change the size of the offering, then filing the update in the new system will not be necessary. Instead, firms may send the update by email to CFupdates@finra.org. FINRA will provide instructions for emailing these updates to filings submitted through COBRADesk on its website along with a user guide for the Public Offering System.

However, if a subsequent update would change the underwriting terms and arrangements, the information provided to FINRA as part of its review of those arrangements, or the offering size, unless Corporate Financing has cleared the offering with the update before June 20, the offering will have to be refiled with the update in the new system.

Shelf Offerings

On May 31, FINRA will transfer the file IDs of all base shelf prospectuses that have been cleared by that date to the new system. This will enable subsequent shelf takedowns to be filed in the new system without requiring firms to refile the base prospectuses. As most base shelf offerings receive same day clearance, Corporate Financing expects that virtually all of the base prospectuses filed by that date will be in the new system and available for takedowns once the new system is available on June 4. However if a base shelf prospectus was filed but not cleared by May 31, it must be refiled in the new system and be cleared before a takedown can be filed. All shelf takedowns must be filed in the Public Offering System after May 31.

Assistance to Firms

FINRA has provided instructions for printing filings submitted through COBRADesk and saving and exporting files in the log-in page for COBRADesk. This information will also be provided by email upon request to corpfin@finra.org.

FINRA is providing online training before the new system is implemented and will post additional information on its website. Firms may address additional inquiries about refiling to the Corporate Financing staff reviewing the offering. No additional fees will apply to any offering that is refiled in the new system if all necessary fees were paid when the offering was filed in COBRADesk.

Exemption Available From Timely Filing Requirement

The Corporate Financing Rule requires that an offering and any updates be filed with Corporate Financing within one business day of the filing with the SEC or other regulatory authority. To accommodate firms that wish to delay their filing with FINRA until the new system is available, FINRA will grant an exemption from this timely filing requirement to any member firm that elects to wait and file in the Public Offering System once it becomes available on June 4, 2012. The exemptive period begins on May 15, 2012, and filers receiving an exemption have until June 11, 2012, to enter filings in the new system.

Firms are reminded that the exemption is to assist with the transition to the new system, and will not shorten the regulatory review process.

Firms that wish to obtain an exemption should email FINRA at CFexemption@finra.org, notifying the staff and providing basic information identifying the member firm and the offering.⁴

The recently enacted JOBS Act permits emerging growth companies to file their initial public offerings confidentially with the SEC.⁵ The timely filing requirements in the Corporate Financing Rule apply to confidential filings as well as public offerings filed with the SEC through EDGAR. All filings with FINRA pursuant to the Corporate Financing Rules are nonpublic. COBRADesk has a modified filing process for offerings that have been filed confidentially with the SEC and are not yet available in EDGAR. That process will continue to be available in the Public Offering System.

Responsibility for Filing

The majority of COBRADesk filings are currently made by outside counsel on behalf of member firms. While a member firm may authorize another party to file with FINRA on its behalf, the member firm is required to ensure the accuracy and completeness of all information filed with FINRA in accordance with the rule. Member firms are reminded to review the content of all filings for which they are responsible and to ensure they have procedures in place to complete this review before submission to FINRA even if the filing is made by a third party.

Member firms will access the new system through FINRA's Firm Gateway®. Non-member filers (*e.g.*, outside counsel) must receive entitlement in order to access the new system. The entitlement process may take 48 hours from the time of the request, so filers should ensure they have access to the system before attempting to file. Entitlement information and forms are available on FINRA's website.

Endnotes

1. COBRADesk was announced in [Notice to Members 99-41](#). Rules 5110, 5121 and 2310 are interrelated and share definitions, filing provisions and other requirements.
2. Firms will be prompted for the COBRADesk file ID of the previous filing when they create the filing in the Public Offering System. While there will be no new fees associated with refiling an offering in the new system, if an update increases the size of an offering, an additional filing fee may be due pursuant to the current fee structure in Section 7 of Schedule A to the FINRA By-Laws.
3. In 2002, the SEC approved amendments to the rules to require that members file proposed public offerings using FINRA's electronic filing system. See [Notice to Members 02-26](#). The amendments also provided that documents filed with the SEC through its Electronic Data Gathering and Retrieval (EDGAR) system are treated as filed with FINRA. As a practical matter, such documents must be linked through entry of the company's accession number in COBRADesk. The requirement to link to SEC filed documents will continue in the new FINRA filing system.
4. Emailed requests for the exemption should include: (i) name of the issuer, (ii) name of the lead managing underwriter or FINRA member firm responsible for submitting the filing, (iii) SEC registration number where applicable, (iv) identity and contact information of the person requesting the exemption and their relationship to the FINRA member and (v) the anticipated effective or pricing date.
5. On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups Act (JOBS Act) which provides that "emerging growth companies" (generally issuers with less than \$1 billion in annual revenues) prior to their initial public offering may confidentially submit to the SEC a draft registration statement for nonpublic review by the SEC staff, not later than 21 days before the date the issuer conducts a road show, as that term is defined in section 230.433(h)(4) of title 17 of the Code of Federal Regulations.