

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2909]

Approval of Investment Adviser Registration Depository Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is, for five months, waiving Investment Adviser Registration Depository annual and initial filing fees for investment advisers.

EFFECTIVE DATE: The order will become effective on August 1, 2009.

FOR FURTHER INFORMATION CONTACT: Keith Kanyan, IARD System Manager, at 202-551-6737, Daniel S. Kahl, Branch Chief, at 202-551-6730, or Iarules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION:

Section 204(b) of the Investment Advisers Act of 1940 (“Advisers Act”) authorizes the Commission to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.¹ In 2000, the Commission designated the Financial Industry Regulatory Authority Regulation (“FINRA”) as the operator of the Investment Adviser Registration Depository (“IARD”) system. At the same time, the Commission approved,

¹ 15 U.S.C. 80b-4(b).

as reasonable, filing fees.² The Commission later required advisers registered or registering with the SEC to file Form ADV through the IARD.³ Over 11,000 advisers now use the IARD to register with the SEC and make state notice filings electronically through the Internet.

Commission staff, representatives of the North American Securities Administrators Association, Inc. (“NASAA”),⁴ and representatives of FINRA periodically hold discussions on IARD system finances. In the early years of operations, SEC-associated IARD revenues exceeded projections while SEC-associated IARD expenses were lower than estimated, resulting in a surplus. In 2005, FINRA wrote a letter to SEC staff recommending a waiver of annual fees for a one-year period. The Commission concluded that this was appropriate and waived the annual fees.⁵ In 2006 and 2008, FINRA wrote to the staff again, this time recommending a two-year waiver and a nine-month waiver, respectively, of all fees to continue to reduce the surplus. The Commission agreed and issued another two orders waiving all IARD fees.⁶ As a result of

² Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. FINRA was formerly known as the National Association of Securities Dealers, Inc.

³ Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

⁴ The IARD system is used by both advisers registering or registered with the SEC and advisers registered or registering with one or more state securities authorities. NASAA represents the state securities administrators in setting IARD filing fees for state-registered advisers.

⁵ Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005) [70 FR 59789 (Oct. 13, 2005)].

⁶ Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release Nos. 2564 (Oct. 26, 2006) and 2806 (Oct. 30, 2008) [73 FR 65900 (Nov. 5, 2008)].

these three waivers, the surplus was reduced from \$9 million in 2005 to approximately \$3 million today.

FINRA has again written to Commission staff, recommending that the waiver of annual IARD fees and the waiver of initial IARD filing fees for SEC-registered advisers be extended for an additional five months to December 31, 2009. Based on projections of expected SEC-associated IARD revenues and SEC-associated IARD expenses for the next five months, the Commission believes that the current SEC-associated surplus exceeds the amount needed for operations and system enhancements during this period, and accordingly believes that an extension of the current waiver of both annual and initial filing fees through December 31, 2009 is appropriate in order to continue reducing the SEC-associated surplus. This action is expected to waive approximately \$300,000 in IARD system fees that SEC-registered advisers would incur, and should reduce the SEC-associated surplus to approximately \$2 million. The fee waiver will apply to all annual updating amendments filed by SEC-registered advisers from August 1, 2009 through December 31, 2009 and to all initial applications for registration filed by advisers applying for SEC registration from August 1, 2009 through December 31, 2009.

IT IS THEREFORE ORDERED, pursuant to sections 204(b) and 206(A) of the Investment Advisers Act of 1940, that:

For annual updating amendments to Form ADV filed from August 1, 2009 through December 31, 2009, the fee otherwise due from SEC-registered advisers is waived, and for initial applications to register as an investment adviser with the SEC filed from August 1, 2009 through December 31, 2009, the fee otherwise due from the applicant is waived.

By the Commission.

Florence E. Harmon
Deputy Secretary

Dated: July 31, 2009