

SECURITIES AND EXCHANGE COMMISSION

Release No. IA-3119; File No. S7-38-10

Approval of Investment Adviser Registration Depository Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intent to charge revised IARD filing fees for advisers registering with or registered with the Commission.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is revising Investment Adviser Registration Depository annual and initial filing fees that will be charged beginning January 1, 2011.

HEARING OR NOTIFICATION OF HEARING: An order approving the IARD filing fees will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 2010. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the Commission’s Secretary.

ADDRESS: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

FOR FURTHER INFORMATION CONTACT: Keith Kanyan, IARD System Manager, at 202-551-6737, 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, Inc. (“FINRA”) as the operator of the Investment Adviser Registration Depository (“IARD”) system. At the same time, the Commission approved, 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 currently use the IARD system 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

¹ 15 U.S.C. 80b-4(b).

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 NASD.

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.

letter to SEC staff recommending a waiver of annual fees for a one-year period.⁵ The Commission concluded that this was appropriate and waived annual fees.⁶ In 2006, 2008, and 2009 FINRA wrote to the staff again, recommending a two-year, a nine-month, and a five-month waiver, respectively, of all fees to continue to reduce the surplus.⁷ The Commission agreed and issued orders waiving all IARD fees.⁸ At the conclusion of the 2009 waiver, FINRA wrote to the staff again, recommending reduced levels of fees be charged in 2010.⁹ The Commission concluded this was appropriate and issued an order reducing the level of fees charged for one year.¹⁰ As a result of the four waivers and reduced fee levels, the surplus was reduced from \$9 million in 2005 to a level of approximately \$3 million.

FINRA has again written to Commission staff, recommending revised annual and initial IARD filing fees commence on January 1, 2011.¹¹ The new recommended fee

⁵ NASD letter dated September 9, 2005, available at <http://www.sec.gov/rules/other/nasdlet090905.pdf>.

⁶ Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005) [70 FR 59789 (Oct. 13, 2005)].

⁷ NASD letter dated October 13, 2006 and FINRA letters dated October 10, 2008 and July 8, 2009 available at <http://www.sec.gov/rules/other/2006/nasdletter101306-iardfee.pdf>, <http://www.sec.gov/rules/other/2008/finraletter101008-iardfees.pdf>, and <http://www.sec.gov/rules/other/2009/finraletter070809-iardfees.pdf>, respectively.

⁸ Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2564 (Oct. 26, 2006), Investment Advisers Act Release No. 2806 (Oct. 30, 2008) [73 FR 65900 (Nov. 5, 2008)], and Investment Advisers Act Release No. 2909 (July 31, 2009) [74 FR 39352 (Aug. 6, 2009)].

⁹ FINRA letter dated September 29, 2009, available at <http://www.sec.gov/rules/other/2009/finraletter092909-iardfees.pdf>.

¹⁰ Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2959 (Dec. 10, 2009) [74 FR 66710 (Dec. 16, 2009)].

¹¹ FINRA letter dated November 12, 2010 available at <http://www.sec.gov/rules/other/2010/finraletter111210-iardfees.pdf>

levels would increase the fee for advisers with assets under management of \$100 million or higher, but would not change the fee levels for advisers with assets under management under \$100 million.¹² The recommended annual filing fees due beginning January 1, 2011 are \$40 for advisers with assets under management under \$25 million; \$150 for advisers with assets under management from \$25 million to \$100 million; and \$225 for advisers with assets under management of \$100 million or higher. The recommended initial IARD filing fees due beginning January 1, 2011 are \$40 for advisers with assets under management under \$25 million; \$150 for advisers with assets under management from \$25 million to \$100 million; and \$225 for advisers with assets under management of \$100 million or higher. Based on projections of expected revenues and expenses and taking into account an expected reduction in the number of advisers registered or reporting to the SEC as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act,¹³ the Commission believes these revised fee levels would be reasonable, as the Commission projects that they will provide adequate funding to cover IARD system expenditures.¹⁴ This reduction in fees is expected to reduce aggregate filing fees that SEC-registered advisers would incur by approximately \$2 million annually compared

¹² The revised fee level for advisers in the largest category would newly include advisers that report assets under management of exactly \$100 million (not just over \$100 million). We are making this revision to track the new mid-sized adviser category for advisers reporting assets under management of \$25 million up to, but not including, \$100 million. *See* section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, 124 Stat. 1376 (2010)).

¹³ The threshold, for most advisers, to be eligible for SEC registration will be increased from \$25 million to \$100 million in assets under management. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, 124 Stat. 1376 (2010)).

¹⁴ The fee levels for advisers with assets under management under \$100 million are not changed as the number of advisers in these categories are expected to fall as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

to the filing fees that would be collected based on the fee levels established in 2000. The revised filing fees will apply to all annual updating amendments filed by SEC-registered advisers beginning January 1, 2011 and to all initial applications for registration filed by advisers applying for SEC registration beginning January 1, 2011. The Commission will reassess the fee levels and issue orders, if necessary, to adjust these levels.

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: December 2, 2010