

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2439]

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 waiving for one year Investment Adviser Registration Depository (IARD) annual filing fees for all advisers.

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Sawin, Assistant Director, at 202-551-6787, or iarules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0506.

DISCUSSION:

Section 203A(d) of the Investment Advisers Act of 1940 (Advisers Act) authorizes us 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, we designated the NASD as the IARD system operator and approved filing fees,² and later required advisers registered or registering with us to file

¹ See 15 U.S.C. 80b-3a(d).

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)]. Following a corporate restructuring in 2002, the name of the IARD system operator was changed to “NASD.”

Form ADV through the IARD.³ Approximately 9,000 advisers now use the IARD to register with us and make state notice filings electronically through the Internet.

IARD filing fee revenues from advisers registering or registered with the SEC (SEC-associated IARD revenues) have exceeded projections made in 2000 when the current fee schedule was approved. Pursuant to that schedule, filing fees vary according to the adviser's assets under management. The number of SEC-registered advisers has grown from an estimated 8,100 in 2000 to approximately 9,000 today. More significantly, advisers' managed assets have increased, which has moved many investment advisers to higher fee categories. In 2000, the filing fees were set based on estimates that nearly half of SEC-registered advisers were in the smallest fee category. As of the end of the 2004 fiscal year, however, fully half of SEC-registered advisers were in the highest fee category. Furthermore, IARD expenses associated with SEC filings (SEC-associated IARD expenses) have been less than was projected in 2000.

As a result, SEC-associated IARD revenues have exceeded SEC-associated IARD expenses, generating a surplus. As of June 30, 2005, the cumulative surplus of SEC-associated IARD revenues over SEC-associated IARD expenses was approximately \$8.5 million (SEC-associated surplus). Following discussions among Commission staff, representatives of the North American Securities Administrators Association, Inc. (NASAA) on behalf of the state securities authorities,⁴ and NASD, NASD wrote our staff

³ Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 22, 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. State-registered advisers pay their annual system renewal fees in December each year, regardless of their fiscal year.

a letter that “recommends that the annual IARD fee for SEC-registered advisers be waived for a one-year period from November 1, 2005 to October 31, 2006.”⁵ Advisers registered with us pay their IARD annual fees when they file their annual updating amendment to Form ADV, due within 90 days of their fiscal year end.

In light of the SEC-associated surplus, we have determined to waive for one year annual filing fees for all SEC-registered advisers. This action is expected to waive approximately \$3.9 million in IARD system fees. The fee waiver will apply to all annual updating amendments filed by SEC-registered advisers from November 1, 2005 through October 31, 2006. Based on current projections of expected SEC-associated IARD revenues and SEC-associated IARD expenses in the next several years, the Commission believes that the current surplus exceeds the amount of surplus needed for system enhancements. Accordingly, the Commission believes that a one-year waiver of IARD annual updating amendment filing fees is appropriate.

In addition, we note that NASD’s letter further “recommends that annual IARD fees for SEC-registered advisers be reduced 30% beginning November 1, 2006.”⁶ In this regard, current projections of fee revenues and system expenses cause us to believe that a reduction in annual filing fees will be necessary to more closely align the IARD filing fees with the costs of those filings. Under Advisers Act section 203A(d), the

⁵ [A copy of the letter is available on our website.](#) NASD has not suggested changes to the initial IARD filing fees, which are intended to cover the costs associated with entitling new registrants on the IARD system. NASD represents that the costs per adviser have not changed substantially. We are not changing or waiving these IARD initial set-up fees, which remain \$150 for advisers with assets under management under \$25 million; \$800 for advisers with assets under management between \$25 million and \$100 million; and \$1,100 for advisers with assets under management over \$100 million.

⁶ We note that NASAA has announced a one-year waiver of annual filing fees and a subsequent reduction of 30% in annual filing fees for state registered advisers.

Commission may require advisers to pay filing fees that reflect the reasonable costs associated with filings made by SEC-registered advisers through the IARD.

Accordingly, we plan to issue shortly a notice soliciting comment on the appropriate level of IARD filing fees for the period after the expiration of the one-year waiver. Among the alternatives on which we plan to seek comment are a percentage fee reduction for annual updating amendments filed by SEC-registered advisers beginning November 1, 2006 and a second one-year waiver of annual updating amendment fees.

IT IS THEREFORE ORDERED, pursuant to sections 203A(d) and 206(A) of the Investment Advisers Act of 1940, that:

For annual updating amendments to Form ADV filed from November 1, 2005 through October 31, 2006, the fee otherwise due from SEC-registered advisers is waived.

By the Commission.

J. Lynn Taylor
Assistant Secretary

Dated: October 7, 2005