

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2806]

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 nine months, waiving Investment Adviser Registration Depository annual and initial filing fees for all advisers.

EFFECTIVE DATE: The order will become effective on November 1, 2008.

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 20549-5041.

DISCUSSION:

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 annual fees.⁵ In 2006, FINRA wrote to the staff again, this time recommending a two-year waiver of all fees to continue to reduce the surplus. The Commission agreed and issued another order waiving all IARD fees.⁶ As a result of these two waivers, the surplus was reduced from \$9 million in 2005 to \$5 million.

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 is 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.

⁵ Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005)

⁶ Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2564 (Oct. 26, 2006).

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 nine months to July 31, 2009.⁷ Based on projections of expected SEC-associated IARD revenues and SEC-associated IARD expenses for the next nine 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 July 31, 2009 is appropriate in order to continue reducing the SEC-associated surplus. This action is expected to waive approximately \$4 million in IARD system fees that SEC-registered advisers would incur, and should reduce the SEC-associated surplus to approximately \$3.7 million. The fee waiver will apply to all annual updating amendments filed by SEC-registered advisers from November 1, 2008 through July 31, 2009 and to all initial applications for registration filed by advisers applying for SEC registration from November 1, 2008 through July 31, 2009.

⁷ The recommendation to waive fees through July 2009 corresponds to the expiration of the SEC's contract with FINRA to operate the IARD.

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 November 1, 2008 through July 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 November 1, 2008 through July 31, 2009, the fee otherwise due from the applicant is waived.

By the Commission.

Florence E. Harmon
Acting Secretary

Dated: October 30, 2008