

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2959; File No. S7-29-09]

### Approval of Investment Adviser Registration Depository Filing Fees

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Order; request for comment.

**SUMMARY:** The Securities and Exchange Commission (“Commission” or “SEC”) is, for one year, reducing Investment Adviser Registration Depository annual and initial filing fees that will be charged beginning January 1, 2010 through December 31, 2010.

**DATES:** Effective Date: The order will become effective on January 1, 2010.

Comment Due Date: Comments should be received on or before February 1, 2010.

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-29-09 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-29-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all

comments on the Commission's Internet Web site

(<http://www.sec.gov/rules/other.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Keith Kanyan, IARD System Manager, at 202-551-6737, or [Iarules@sec.gov](mailto: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.<sup>1</sup> 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.<sup>2</sup> The Commission later required advisers registered

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<sup>1</sup> 15 U.S.C. 80b-4(b).

<sup>2</sup> 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.

or registering with the SEC to file Form ADV through the IARD.<sup>3</sup> 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”),<sup>4</sup> 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.<sup>5</sup> The Commission concluded that this was appropriate and waived annual fees.<sup>6</sup> 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.<sup>7</sup> The Commission agreed and issued orders waiving all IARD fees.<sup>8</sup> As a result of these four

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

<sup>4</sup> 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.

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

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

<sup>7</sup> 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.

<sup>8</sup> 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)]

waivers, which waived a total of \$18 million in filing fees, the surplus was reduced from \$9 million in 2005 to approximately \$3 million today.

FINRA has again written to Commission staff, recommending reduced annual and initial IARD filing fees for a period of one year commencing on January 1, 2010. The recommended annual filing fees due beginning January 1, 2010 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 \$200 for advisers with assets under management over \$100 million. The recommended initial IARD filing fees due beginning January 1, 2010 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 \$200 for advisers with assets under management over \$100 million. Based on projections of expected revenues and expenses, the Commission believes these reduced fee levels would be reasonable for this year, as the Commission projects that they will provide adequate funding to cover IARD system expenditures.<sup>9</sup> This action is expected to reduce aggregate filing fees that SEC-registered advisers would incur by approximately \$2 million annually compared 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, 2010 and to all initial applications for registration filed by advisers applying for SEC registration beginning January 1, 2010. The Commission will reassess the fee levels

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<sup>9</sup> The previous initial filing fees were \$150 for advisers with assets under management under \$25 million; \$800 for advisers with assets under management from \$25 million to \$100 million; and \$1,100 for advisers with assets under management over \$100 million. The previous annual filing fees were \$100 for advisers with assets under management under \$25 million; \$400 for advisers with assets under management from \$25 million to \$100 million; and \$550 for advisers with assets under management over \$100 million.

prior to the end of the one-year period and welcomes any comments on the fee levels, including whether the reduced fee levels in this Order would be appropriate as permanent fee levels.

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 January 1, 2010 through December 31, 2010, the filing fee due from SEC-registered advisers is \$40 for advisers with assets under management under \$25 million; \$150 for advisers with assets under management from \$25 million to \$100 million; and \$200 for advisers with assets under management over \$100 million.

For initial applications to register as an investment adviser with the SEC filed from January 1, 2010 through December 31, 2010, the filing fee due from SEC-registered advisers is \$40 for advisers with assets under management under \$25 million; \$150 for advisers with assets under management from \$25 million to \$100 million; and \$200 for advisers with assets under management over \$100 million.

By the Commission.

Elizabeth M. Murphy  
Secretary

Dated: December 10, 2009