

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IA- 2564]

### 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 two years, waiving Investment Adviser Registration Depository (IARD) annual and initial filing fees for all advisers.

**EFFECTIVE DATE:** The order will become effective on November 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jennifer L. Sawin, Assistant Director, at 202-551-6787, Daniel S. Kahl, Branch Chief, at 202-551-6730, 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 20549-5041.

### DISCUSSION:

Section 204(b) 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.<sup>1</sup> In 2000, we designated the NASD as the IARD system operator and approved filing fees,<sup>2</sup> and later required advisers registered or registering with us to file Form ADV

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<sup>1</sup> 15 U.S.C. 80b-4(b). Prior to enactment in 2006 of the Military Personnel Financial Services Protection Act, Public L. No: 109-290, \_\_\_ Stat. \_\_\_ (Sept. 29, 2006), this provision appeared in section 203A(d) of the Advisers Act.

<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.

through the IARD.<sup>3</sup> Nearly 10,700 advisers now use the IARD to register with us and make state notice filings electronically through the Internet.

Last year, following discussions among Commission staff, representatives of the North American Securities Administrators Association, Inc. (NASAA) on behalf of the state securities authorities,<sup>4</sup> and NASD, NASD wrote our staff a letter recommending that the annual IARD fee for SEC-registered advisers be waived for a one-year period from November 1, 2005 to October 31, 2006.<sup>5</sup>

We concluded that a one-year waiver of IARD annual filing fees for SEC-registered advisers was appropriate and the one-year waiver period began on November 1, 2005.<sup>6</sup> Advisers registered with us pay these annual fees when they file their annual updating amendment to Form ADV, due within 90 days of their fiscal year end.<sup>7</sup> We made this determination because IARD filing fee revenues from advisers registering or registered with the SEC (SEC-associated IARD revenues) had exceeded projections made in 2000 when the fee schedule was approved, while IARD expenses associated with SEC

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1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. In 2003, NASD Regulation, Inc. advised the SEC that it would be operating under the name “NASD.”

<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> A copy of NASD’s letter is available on our Web site 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)]. We will address on-going IARD fee levels at a later date, but do not believe it is appropriate to address fee levels at this time as they would not be implemented for two years.

filings (SEC-associated IARD expenses) had been less than was projected in 2000.<sup>8</sup> As a result, a surplus was generated (SEC-associated surplus) that had risen to approximately \$8.5 million as of June 30, 2005. Notwithstanding the one-year fee waiver, the SEC-associated surplus remains significant. It was \$9.1 million as of December 31, 2005, dropped to \$8.7 million as of June 30, 2006 and is projected to drop further, to \$7.9 million, by the end of this year if no further action is taken.

NASD has again written to our staff, recommending that the waiver of annual IARD fees for SEC-registered advisers be extended for an additional two years, to October 31, 2008. To further reduce the SEC-associated surplus, NASD also recommends that initial IARD filing fees, which are intended to cover the costs associated with entitling new registrants on the IARD system, be waived for the same period.<sup>9</sup> 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 SEC-associated surplus exceeds the amount of surplus needed for operations and system enhancements, and accordingly believes that an extension of the current waiver of IARD annual filing fees through October 31, 2008 is appropriate in order to continue reducing the SEC-associated surplus. We also agree that waiver, from November 1, 2006 through October 31, 2008, of the initial IARD filing fee for advisers

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<sup>7</sup> State-registered advisers pay their annual system renewal fees in December each year, regardless of their fiscal year.

<sup>8</sup> Pursuant to the fee schedule, filing fees vary according to the adviser's assets under management. Revenues have exceeded projections both because the number of SEC-registered advisers has grown (from an estimated 8,100 in 2000 to approximately 9,000 last year, to some 10,700 today), and because advisers' managed assets have increased, which has moved many investment advisers to higher fee categories.

<sup>9</sup> A copy of NASD's letter is available on our Web site.

registering with the Commission is appropriate in order to further reduce the SEC-associated surplus. This action is expected to waive approximately \$9.5 million in IARD system fees. The fee waiver will apply to all annual updating amendments filed by SEC-registered advisers from November 1, 2006 through October 31, 2008 and to all initial applications for registration filed by advisers applying for SEC registration from November 1, 2006 through October 31, 2008.

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, 2006 through October 31, 2008, 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, 2006 through October 31, 2008, the fee otherwise due from the applicant is waived.

By the Commission.

Nancy M. Morris  
Secretary

Dated: October 26, 2006