

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-3297; File No. S7-39-11]

Approval of Filing Fees for Exempt Reporting Advisers and Private Fund Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intent to approve filing fees for exempt reporting advisers filing Form ADV and private fund advisers filing Form PF.

SUMMARY: The Securities and Exchange Commission (“Commission”) is providing notice of its intent to approve filing fees for exempt reporting advisers filing Form ADV and, consistent with one of its recent rule proposals, private fund advisers filing Form PF.

DATES: The fee for exempt reporting advisers would apply starting with the date on which the order approving the fee is published in the Federal Register. If the Form PF proposal is adopted, the fees for private fund advisers would apply starting with the effective date of rule 204(b)-1 under the Investment Advisers Act of 1940 (“Advisers Act”).

HEARING OR NOTIFICATION OF HEARING: An order approving the 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 Commission by 5:30 p.m. on October 19, 2011. 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, DC 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:

Exempt Reporting Adviser Filing Fee

On June 22, 2011, the Commission adopted new rule 204-4, which requires exempt reporting advisers to file portions of Form ADV with the Commission.¹ As with registered advisers, exempt reporting advisers must file Form ADV through the Investment Adviser Registration Depository system (“IARD”) and pay the Financial Industry Regulatory Authority (“FINRA”), which operates the system, a filing fee that the Commission approves.² FINRA has submitted to Commission staff a letter recommending that the filing fee for exempt reporting advisers be set at \$150 for each initial and annual report.³ Moreover, based on projections of expected revenues and expenses (including those resulting from future system enhancements) relating to the exempt adviser reporting, the Commission believes that this fee amount would reflect costs reasonably associated with these filings and the development and maintenance of the system. This fee would apply starting with the date on which the order approving the fee is published in the Federal Register.

¹ “Exempt reporting advisers” are investment advisers relying on the exemption from registration under section 203(l) or 203(m) of the Advisers Act. *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. IA-3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (“Implementing Adopting Release”).

² *See* section 204(c) of the Advisers Act and rule 204-4(d).

³ FINRA letter dated September 28, 2011, available at <http://www.sec.gov/rules/other/2011/finraletter092811-pferafees.pdf>.

In the Implementing Adopting Release, we indicated that, at the time, we expected the filing fees for exempt reporting advisers would be the same as those charged registered investment advisers.⁴ On further consideration, we believe at this time that a tiered filing fee structure is unnecessary for exempt reporting advisers. The lowest fee charged to registered advisers is for advisers having under \$25 million in assets under management. Few exempt reporting advisers are likely to have less than \$25 million in assets under management because advisers under that threshold are generally prohibited from registering with the Commission under section 203A of the Advisers Act and, therefore, would not be relying on the applicable exemptions. In addition, although we expect that many exempt reporting advisers will have assets under management that would place them in the group of registered advisers paying the highest filing fees, we have estimated that exempt reporting advisers will use the IARD less during the year than registered advisers.⁵ We agree, therefore, that a single fee is appropriate for these advisers regardless of their assets under management.

Form PF Filing Fees

On January 26, 2011, the Commission and the Commodity Futures Trading Commission released a joint proposal that would require hedge fund advisers and other private fund advisers

⁴ See Implementing Adopting Release, *supra* note 1, at nn. 169 and 566 and accompanying text. Currently, the fees charged registered investment advisers for both initial and annual reports on Form ADV are set at \$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. See *Order Approving Investment Adviser Registration Depository Filing Fees*, Investment Advisers Act Release No. 3126 (Dec. 22, 2010), 75 FR 82097 (Dec. 29, 2010).

⁵ See Implementing Adopting Release, *supra* note 1, at nn. 708 and 741 and accompanying text (estimating that each registered adviser will, on average, file one interim amendment each year while only 20% of exempt reporting advisers will, on average, file an interim amendment during that time).

to report certain information regarding the private funds they advise.⁶ Under the proposal, registered investment advisers managing one or more private funds would periodically file all or part of the proposed Form PF. The Commission would make the information they report available to the Financial Stability Oversight Council for use in monitoring systemic risk.

The proposal would require advisers to file Form PF electronically but left the selection of the filing system and operator for later consideration. Having considered the options for such a filing system, the Commission has determined that, if Form PF is adopted, FINRA will develop and maintain the filing system as an extension of the existing IARD.⁷ The Commission believes that FINRA, as the current operator of the IARD, is uniquely situated to develop and deploy the Form PF filing system in a timely manner. Also, as discussed in the Form PF Proposing Release, the Commission believes that certain efficiencies, both for the Commission and for advisers, would be realized by having FINRA expand its existing platform to accommodate the

⁶ The Commission proposed to adopt a new rule 204(b)-1, which would require advisers that are registered with the Commission and managing private funds (“private fund advisers”) to file proposed Form PF periodically. *See* section II.C of *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*, Investment Advisers Act Release No. 3145 (January 26, 2011), 76 FR 8068 (February 11, 2011) (“Form PF Proposing Release”). “Private fund” is defined in section 202(a)(29) of the Advisers Act.

⁷ In 2000, the Commission designated FINRA as the operator of IARD, which is the electronic filing system for Form ADV. This designation was made pursuant to the Commission’s authority under section 204(c) of the Advisers Act, which allows the Commission to require investment advisers to file forms “through any entity designated [by it] for that purpose” and “to pay the reasonable costs associated with [these] filings....” (This authority was added to the Advisers Act as section 203A(d) by section 303(a) of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416; moved to section 204(b) by section 7 of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, 102 Stat. 1317 (2006); and re-designated as section 204(c), effective July 21, 2011, by section 404(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).) *See 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.)

confidential filing of Form PF.⁸ Commenters who responded to the Form PF Proposing Release and addressed this aspect of the proposal supported having FINRA develop the reporting system as an extension of the IARD platform if Form PF is adopted.⁹

Section 204(c) of the Advisers Act authorizes the Commission to require that investment advisers pay the reasonable costs associated with filings, and under the Commission's proposed rule, private fund advisers would pay fees to the operator of the Form PF filing system in connection with the filing of Form PF.¹⁰ Following discussions with Commission staff, FINRA submitted a schedule of recommended filings fees for proposed Form PF.¹¹ The recommended fees are \$150 for the proposed quarterly filings and \$150 for the proposed annual filings.¹² As the Commission indicated in the Form PF Proposing Release, because advisers filing on a quarterly basis would use the system more frequently and would report more information than advisers filing on an annual basis, total annual fees would be higher for quarterly filers. Based on projections of expected revenues and expenses (including those resulting from future system

⁸ See section II.E of the Form PF Proposing Release (discussing efficiencies of expanding existing IARD platform to accommodate filings of Form PF). See also Form PF Proposing Release at note 39 and accompanying text (discussing confidentiality of Form PF information).

⁹ See comment letter of the Alternative Investment Management Association (Apr. 12, 2011) (agreeing that using the IARD and FINRA is a "sensible solution"); comment letter of the Managed Funds Association (Apr. 8, 2011). We explained in the Form PF Proposing Release that the filing system would need to be programmed with special confidentiality protections designed to ensure the heightened confidentiality protections created for Form PF filing information under the Dodd-Frank Act. See Form PF Proposing Release at note 39 and accompanying text and section II.E. These commenters expressed the view that maintaining the confidentiality of Form PF data is an important consideration in developing the filing system. If Form PF is adopted, Commission staff will work closely with FINRA in designing procedures and systems to ensure that Form PF data is handled and used in a manner consistent with the protections established in the Dodd-Frank Act.

¹⁰ See proposed rule 204(b)-1(d).

¹¹ See note 3 above.

¹² Under the proposal, advisers managing \$1 billion or more in hedge fund assets, combined liquidity fund and registered money market fund assets or private equity fund assets would file Form PF on a quarterly basis. All other private fund advisers would file on an annual basis. See sections II.B and II.C of the Form PF Proposing Release.

enhancements) relating to the filing of the proposed Form PF, the Commission believes that these fees would reflect costs reasonably associated with these filings and the development and maintenance of the system. If the proposal is adopted, these fees would apply starting with the effective date of rule 204(b)-1.

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: September 30, 2011