

8. For each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of the Substitutions, NYLIAC will, as a condition of any Commission order approving the Substitutions, for each Policy outstanding on the date of the Substitution, adjust the Policy values to the extent necessary to effectively reimburse Policy owners invested in a MainStay Replacing Fund for their proportionate share of any amount by which the annual rate of the MainStay Replacing Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes, or for Policy riders added after December 31, 2004) deducted under the terms of the owner's Policy for that fiscal period, exceed the sum of:

(a) The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such Replaced Fund's average daily net assets, for the twelve months ended December 31, 2004; plus

(b) The annual rate of any asset-based charges (excluding any such charges that are for premium taxes), deducted under that Policy for such twelve months.

9. NYLIAC represents that the substitution and the selection of the Fidelity® VIP Mid Cap Portfolio was not motivated by any financial consideration paid or to be paid to NYLIAC or its affiliates by the Fidelity® VIP Mid Cap Portfolio, its advisor or underwriter, or their respective affiliates. In connection with assets held under Policies affected by the Substitutions, NYLIAC will not receive, for 36 months following the Substitution, any direct or indirect benefits from the Fidelity® VIP Mid Cap Portfolio, or its advisor or underwriter (or their affiliates), at a rate higher than that which they had received from the AmSouth Mid Cap Fund, its advisor or underwriter (or their affiliates), including without limitation Rule 12b-1, shareholder service, administration, or other service fees, or revenue sharing or other arrangements.

10. All affected Policy owners will be given notice of the Substitutions prior to the Substitutions, and will have an opportunity to make the following transfers of their accumulated value without the imposition of any charge or limitation (except potentially harmful transfers, as described above) and without diminishing the number of charge-free transfers that otherwise may be made in a Policy year:

- Transfers of accumulated value from a Subaccount investing in a Replaced Fund to one or more Subaccounts investing in other Funds available under the applicable Policy or the fixed account, from the date of notice until the date of Substitution, and

- Transfers of accumulated value from a Subaccount investing in a Replacing Fund as a result of a Substitution to one or more Subaccounts investing in other Funds available under the applicable Policy or the fixed account, for 30 days after a Substitution.

11. Within five days after each substitution, NYLIAC will send to the affected Policy owners written confirmation that the Substitutions have occurred and identify the shares of the Replaced Funds that have been eliminated and the shares of the Replacing Funds that have been substituted.

12. The Substitutions will in no way alter the insurance benefits to Policy owners or the contractual obligations of NYLIAC. The Substitutions will in no way alter the tax treatment of owners in connection with their Policies, and no tax liability will arise for Policy owners as a result of the Substitutions.

### Conclusion

Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the proposed Substitutions under the terms and subject to the conditions set forth herein. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, Applicants respectfully submit that the Substitutions meet the standards set forth in Section 26(c) and that the approval requested therefore, should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-5598 Filed 10-12-05; 8:45 am]

**BILLING CODE 8010-01-P**

## 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 [larules@sec.gov](mailto:larules@sec.gov), Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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.<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 through the IARD.<sup>3</sup> 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

<sup>1</sup> See 15 U.S.C. 80b-3a(d).

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

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

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,<sup>4</sup> and NASD, NASD wrote our staff 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."<sup>5</sup> 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.

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

<sup>5</sup> 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.

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."<sup>6</sup> 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 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.

Dated: October 7, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-5599 Filed 10-12-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8623; 34-52575, File No. 265-23]

### Advisory Committee on Smaller Public Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of Meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it will hold a public meeting on Monday and Tuesday, October 24 & 25, 2005, in Multi-Purpose Room L006 of the Commission's headquarters, 100 F

Street, NE., Washington, DC 20549, beginning at 9 a.m. on each day. The meeting is expected to last until approximately 4 p.m. on each day, with a lunch break from approximately noon to 1 p.m. The meeting will be audio webcast on the Commission's Web site at <http://www.sec.gov>.

The agenda for the meeting includes consideration of proposals of the Advisory Committee's four subcommittees on possible recommendations for changes to the current securities regulatory system for smaller companies. The public is invited to submit written statements for the meeting.

**DATES:** Written statements should be received on or before October 17, 2005.

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

#### Electronic Statements

- Use the Commission's Internet submission form (<http://www.sec.gov/info/smallbus/acspc.shtml>); or
- Send an e-mail message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-23 on the subject line; or

#### Paper Statements

- Send paper statements in triplicate to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File No. 265-23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (<http://www.sec.gov/info/smallbus/acspc.shtml>).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements 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:** Kevin M. O'Neill, Special Counsel, at (202) 551-3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, § 10(a), and the

<sup>6</sup> 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.