



FINRA to Introduce New Electronic Filing System for Public Offerings

On June 4, 2012, the Financial Industry Regulatory Authority (“FINRA”) will introduce a new electronic filing system for public offerings that are required to be filed under FINRA Rules 5110, 5121 and 2310 (the “Corporate Financing Rules”). The new Public Offering System is intended to provide operational efficiencies and useful enhancements for filers. The new system will replace COBRADesk, which has been operational since 1999, and which will be retired on June 20, 2012. Any data included in COBRADesk will need to be retrieved before its retirement if an underwriter wishes to have access to it. In addition, offerings that were filed in COBRADesk and that are under review as of that date must be refiled in the new system.

This alert summarizes the changes that will occur, and sets forth FINRA’s transition timetable and key dates.

Background

The Corporate Financing Rules require member firms to file information about public offerings of securities in which they participate, subject to certain filing exemptions including exemptions for offerings of “seasoned issuers,” investment grade securities and registered investment companies. Firms currently file their offerings through FINRA’s COBRADesk system. FINRA reviews the filings and issues a “no objections” opinion if the terms and arrangements governing the firms’ participation and disclosure regarding those terms and arrangements appear to comply with the rules’ requirements. A member firm must receive a “no objections” opinion before it may participate in a distribution of securities. The SEC staff generally will not declare an issuer’s registration statement to be effective unless the underwriters have obtained the “no objections” opinion.

New Features

The new Public Offering System includes features that are designed to improve the overall filing process. Among the new features are:

- “Deal Filing Cabinet,” a dashboard-like display that will list all of a firm’s filings, with key information about the offering, the status of the review and the assigned FINRA staff.
- Firms can search all their filings using a keyword search function, filter and sort results based on specific criteria, review all correspondence related to a specific filing, and identify any outstanding regulatory issues that they must address.
- The new system is intended to make the filing process more intuitive and user friendly by displaying new questions based on the answers provided.

- Users can print a list of “errors” that must be addressed before submitting the filing.
- Users can view the text of the Corporate Financing Rules.
- The system will improve the filing process for shelf offerings registered with the SEC under Rule 415 under the Securities Act of 1933 and shelf takedown offerings. The filing process for shelf offering filings in the system will expand the current “same day clearance” (“SDC”) process in COBRADesk to all shelf offerings, except those for which a firm voluntarily elects to have FINRA review the takedown filing.

COBRADesk Retirement

To facilitate the transition to the new system, FINRA has announced that it will not accept new filings in COBRADesk after May 31, 2012. After June 20, 2012, COBRADesk will no longer be available in any capacity. As a result, after June 20, 2012, firms will no longer have access to any information that was filed through this system. Firms should retrieve any data that they may need in the future from COBRADesk no later than June 20, 2012. To ensure that refiling will not be required, a firm must file its offering in COBRADesk before May 31, 2012, and must have received clearance by Corporate Financing by June 20, 2012. FINRA will continue to review filings that were made on COBRADesk through June 20, 2012, when COBRADesk will be retired. Firms that are considering whether to file in COBRADesk as May 31 approaches will need to consider the possibility that the offering will not be cleared by June 20, in which case refiling in the new system will be necessary.

Impact on Shelf Offerings

FINRA will transfer the file IDs of the base shelf prospectuses that have been cleared by May 31, 2012 to the new system. Subsequent shelf takedowns may be filed in the new system without refiling the base prospectus. FINRA expects that virtually all of the base prospectuses filed by that date will be in the new system and available for takedowns on June 4, 2012. However, if a base prospectus was filed, but not cleared, by May 31, 2012, it must be refilled in the new system and be cleared before a takedown can be filed.

Assistance and Training

In the log-in page for COBRADesk, FINRA has provided instructions for printing filings submitted through COBRADesk, and saving and exporting files. In addition, FINRA is providing online training before the new system is implemented.

Underwriters who handle their own filings, as well as the outside law firms that do so for them, will want to take advantage of these resources, and to be ready to use the new system when it goes live in June 2012.

Exemption from the Timely Filing Requirement

FINRA’s rules require the FINRA filing and any updates to be made within one business day of the related filing with the SEC. To accommodate firms that wish to file on the new system, beginning on May 15, 2012, FINRA will permit underwriters who wish to file using the new system to file on or prior to June 11, 2012. For example, an underwriter of an IPO may wish to use this exemption, so that it need not file on both COBRADesk, and then again on the new system. The request for an exemption must be made via e-mail to FINRA.

Accessing the System and Entitlements

FINRA members will be able to access the new system through FINRA's "Firm Gateway." In contrast, outside counsel must receive an entitlement from the FINRA member in order to access the new system. The required forms are available on FINRA's website. This process may take 48 hours from the time of the request, so underwriters should start the process early in order to ensure that their law firms can file any required materials on a timely basis.

Public Offering System Implementation and Transition Timeline

The new Public Offering System will be available for all types of filings on June 4, 2012.

Dates	Action Required/Suggested
Through June 20, 2012	Underwriters may transfer and archive data from filings submitted in COBRADesk
May 15 through June 1	Firms may request an exemption from the timely filing requirements until the new system is available on June 4
May 31	Last day to file a new public offering in COBRADesk
June 1	New public offering filings will no longer be accepted in COBRADesk
June 4	New Public Offering System available for all types of filings
June 11	End of the exemption period from the timely filing requirements
June 20	Last day to retrieve data from COBRADesk

For additional information, please see FINRA's recently released Regulatory Notice 12-22, which can be found at the following link:

www.finra.org/Industry/Regulation/Notices/2012/P126120?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+FinraNotices+%28FINRA+Notices%29

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