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Calculating SEC Filing Fees

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The Securities and Exchange Commission (the SEC) collects filing fees for the registration of securities and for certain other filings pursuant to the Securities Act of 1933 (the Securities Act), the Securities Exchange Act of 1934 (the Exchange Act), and the Investment Company Act of 1940 (the ICA).

This practice note provides an overview of the filing fees collected by the SEC for (a) the registration of securities pursuant to the Securities Act, (b) the repurchase of securities, proxy solicitations, tender offers, and certain other transactions pursuant to the Exchange Act, and (c) annual filings by investment companies pursuant to the Securities Act and the ICA. This practice note also provides sample calculations of each type of filing fee described herein, as well as tips for determining the most cost-effective methods of calculating filing fees in practice.

Current Fee Rate

Section 6(b) (15 USCS § 77f) of the Securities Act requires the SEC to adjust the fee rate on an annual basis. The annual adjustment also applies to fees paid under the Exchange Act (see Sections 13(e)(4) (15 USCS § 78m) and 10(g)(4) (15 USCS § 78p) of the Exchange Act). Before calculating any filing fees, counsel should always check the SEC's current fee rate, which is available at <http://www.sec.gov/ofm/Article/feeamt.html>, and the most recent annual fee rate advisory listed press release on the SEC's website. The fee rates are set October 1 of each year and are effective until September 30 of the following year. In addition, the SEC provides a registration fee estimator to assist filers in estimating fees and to provide general guidance on preparing the Calculation of Registration Fee Table and related footnotes, available at <https://www.sec.gov/ofm/registration-fee-estimator.html>. The sample calculations in this practice note all use the applicable SEC fee rate for the date indicated.

Filing Fees for Registration Statements

Issuers are required to pay filing fees for the registration of securities pursuant to Section 6(b) of the Securities Act. In general, the filing fees for registration statements are calculated as follows:

$$\text{Filing Fee} = \text{Maximum Aggregate Offering Price} \times \text{Fee Rate}$$

Issuers have the option of calculating the the registration fee based on Rule 457(a) or Rule 457(o) (17 CFR 230.457) of the Securities Act. Under Rule 457(a), an issuer will register (and pay the fee for) a specific number of shares and not a specific dollar amount. Alternatively, when an issuer utilizes Rule 457(o), the issuer will register the dollar amount of gross proceeds and the registration fee is not tied to the number of shares actually sold to generate those gross proceeds.

The choice between Rule 457(a) and Rule 457(o) is important in practice because it can have implications in the event an offering is upsized or downsized. Rule 457(a) allows the issuer to register a particular number of shares and the calculation of the fee is based on a bona fide estimate of the maximum offering price of those shares at the time of the registration statement. When using Rule 457(a), the issuer will not have to pay additional filing fees if the offering price per share later increases. However, if additional shares are also sold in an upsize, the issuer will have to register such additional shares and an additional registration fee will be due. Rule 457(a) gives the issuer flexibility at pricing and avoids the payment of additional fees in the event the offering is upsized within a certain range, as discussed below.

Rule 457(o), on the other hand, is more useful when an issuer knows the dollar amount that it wishes to raise, regardless of the number of shares it ultimately issues. When utilizing Rule 457(o), the issuer will not have to pay additional filing fees if additional shares are issued at a lower price, so long as the maximum aggregate offering price does not increase.

Rule 457(a) and Rule 457(o) are formatted differently on the Calculation of Registration Fee table that appears on most registration statements:

Rule 457(a)

Title of Each Class of Securities Being Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
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Rule 457(o)

Title of Each Class of Securities Being Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
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When securities are issued for which there is already a market, the offering price and corresponding filing fee should be calculated based on the variable market price of that security. Rule 457(c) of the Securities Act provides guidance for the calculation of the applicable market price, which should be an average of either the high/low prices of the security or the bid/ask price of the security as of a specific date within five business days of filing.

Practice Tip during IPOs

While Rule 457(a) is the better choice when the price per share may increase at the pricing of an initial public offering, many first-time issuers choose to first file their registration statements using Rule 457(o). Since the Rule 457(a) table ultimately provides the market with the issuer’s expectation of the share price, a new issuer should use the 457(o) table until the registration statement filed immediately prior to going effective so that the market is not informed of the issuer’s valuation prior to the road show. The new issuer may then switch to using Rule 457(a) and have the benefits of the pricing flexibility granted by such rule.

For additional information on IPOs, see Initial Public Offerings Resource Kit.

Amendments to Registration Statements

Under Rule 457(a), additional filing fees are required if the issuer increases the number of shares or principal amount of debt for an offering, although there are no refunds for decreases. Under Rule 457(o), additional filing fees are required if the issuer increases the aggregate amount of gross proceeds received. The additional filing fee is calculated in the same manner as the original filing fee:

$$\text{Additional Filing Fee} = [\text{New Maximum Aggregate Offering Price} - \text{Original Maximum Aggregate Offering Price}] \times \text{Fee Rate}$$

For upsizing a registered offering, keep in mind that under Rule 462(b) (17 CFR 230.462(b)), a new registration statement that increases the size of the offering is limited to 20% of the maximum aggregate offering price indicated on the Calculation of Registration Fee table in the prior registration statement when it became effective. The 20% rule is expanded on in Telephone Interpretation 92 and the SEC’s Compliance and Disclosure Interpretation 627.01 which provide that the 20% threshold can be determined from either the low range or the high range when utilizing Rule 457(a). For example, if an issuer has chosen to utilize Rule 457(a) and the bona fide estimate of the price per share is between \$8.00 and \$10.00, the issuer will be able to price each share at a high range of \$12.00 (\$10.00 + 20%) or \$6.00 (\$8.00 - (20% of \$10.00)) for purposes of the 20% rule. Telephone Interpretation 92 gives the issuer more flexibility in the event of a downsize since it allows the 20% threshold to be calculated from either the low range or the high range of the bona fide estimate.

Pay-As-You-Go Registration Fees

In general, filing fees must be paid on the date of filing. However, in certain cases, the SEC permits issuers to defer payment of filing fees. These are known as “pay-as-you-go” registration fees. A well-known seasoned issuer filing an automatic shelf registration statement may defer payment of filing fees until the date on which a prospectus supplement is required to be filed under Rule 424(b) (17 CFR 230.424). Certain issuers of asset-backed securities (ABS) may also defer payment of filing fees under Securities Act Rule 456(b) (17 CFR 230.456). Both WKSIs and ABS issuers opting to defer payment until a future takedown should indicate such election in the Calculation of Registration Fee table, by including “\$0” or a blank in the fee table on the cover page to the registration statement

for the amount of registration fee for each type of security and indicate the deferral of such fee payment in a footnote. If the SEC adjusts the fee rate after the initial registration statement has been filed, the issuer must calculate the deferred filing fee using the updated fee rate.

Calculating Filing Fees for Certain Types of Securities

When calculating SEC filing fees, certain types of securities are treated differently than more standard issuances of common stock or debt. Rule 457 of the Securities Act provides additional guidance with respect to the calculation of filing fees in these situations. You should consult Rule 457 to calculate filing fees for the following types of securities:

- derivatives and other securities priced on the basis of the changing values of underlying assets (Rule 457(d))
- warrants (Rule 457(g))
- securities offered pursuant to an employee benefit plan (Rule 457(h))
- convertible securities (Rule 457(i))
- American Depositary Receipts (Rule 457(k))
- put or call options (Rule 457(l))

Rule 457 also clarifies certain situations in which filing fees are not required, such as guarantees of other securities being registered under subsection (n), securities issued for the purpose of market-making under subsection (q), and collateral certificates underlying registered ABS under subsection (t).

Sample Calculations

(1) On October 1, 2016, Company X filed a registration statement for the issuance of five million shares of common stock with a proposed maximum offering price per unit of \$8. To calculate the filing fee, Company X multiplied the maximum aggregate offering price (\$40 million) by the fee rate (\$115.90 per \$1,000,000):

$$\text{Filing Fee} = \$40,000,000 \times .0001159 = \$4,636$$

The calculation was included in the registration statement’s Calculation of Registration Fee table:

Title of Each Class of Securities Being Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common stock, par value, \$0.01 per share	5,000,000	\$8	\$40,000,000	\$4,636

(2) Company X filed an amendment to its October registration statement on August 1, 2017, for an additional one million shares of common stock, as well as \$5,000,000 in debt securities. Company X’s shares traded at an average price of \$12 per share on the New York Stock Exchange (NYSE) on July 31, 2017.

The offer price of the additional common stock was \$12 million (\$12 share price x number of shares issued). To calculate the filing fee, Company X multiplied the maximum aggregate offering price (\$12 million of common stock plus \$5 million of debt securities) by the fee rate (\$115.90 per \$1,000,000):

$$\text{Filing Fee} = [\$12,000,000 + \$5,000,000] \times .0001159 = \$1,970.30$$

Filing Fees for Exchange Act Filings

The SEC collects fees for the following types of transactions pursuant to the Exchange Act:

- repurchases of securities under Section 13(e) (15 USCS § 78m) of the Exchange Act;
- proxy solicitations related to acquisitions, mergers, and consolidations under Section 14(g)(1)(A) (15 USCS § 78n) of the Exchange Act;

- proxy solicitations related to the disposition or sale of substantially all assets under Section 14(g)(1)(A) (15 USCS § 78n) of the Exchange Act; and
- tender offers made pursuant to Section 14(d)(1) (15 USCS § 78n) of the Exchange Act.

In general, these types of filing fees are calculated as follows:

$$\text{Filing Fee} = \text{Value of Transaction} \times \text{Fee Rate}$$

Rule 0-11 (17 CFR 240.0-11) of the Exchange Act provides additional guidance regarding the calculation of the transaction value, which typically consists of cash, securities, and/or other property. For repurchasers of securities, the fee is based on the value of the securities to be acquired. In the case of proxy solicitations for mergers, consolidations or acquisitions, the filing fee is based on the value of securities to be received by the acquiring entity. Similarly, in the case of proxy solicitations for sales or dispositions of assets, the filing fee is based on the value of securities, or other property, received for such sale.

To calculate the value of securities for which there is already a market, average either the high/low prices of the security or the bid/ask price of the security as of a specific date within five business days of filing. Under Rule 0-11(a)(4), if there is no market for certain securities, the valuation should be calculated on the basis of the most recent book value. In addition, the value of any other property should be calculated based on an estimate of its fair market value (Rule 0-11(c)(2)(ii)).

Once the initial filing fee has been paid, any increase in the value of the transaction requires payment of an additional filing fee. Filing fees, once paid, are not refundable.

Sample Calculations

(1) On August 1, 2017, Company X filed Form SC TO-T, making an all cash tender offer of \$5 billion for the shares of Company Y. To calculate the filing fee, Company X multiplied the value of the transaction (\$5 billion) by the fee rate (\$115.90 per \$1,000,000):

$$\text{Filing Fee} = \$5,000,000,000 \times .0001159 = \$579,500$$

(2) On August 3, 2017, Company X filed Form SC TO-I to repurchase certain of its outstanding shares. Company X's shares traded on the NYSE at an average price \$13 per share on August 1, 2017 and Company X planned to purchase 7,000,000 shares. To calculate the filing fee, Company X multiplied the value of the transaction (7 million shares at a market price of \$13 per share, or \$91 million) by the fee rate (\$115.90 per \$1,000,000):

$$\text{Filing Fee} = \$91,000,000 \times .0001159 = \$10,546.90$$

(3) Company X and Company Y have agreed that Company Y will merge with a subsidiary of Company X. Once the merger is completed, shareholders of Company Y will receive two (2) shares of Company X stock for each of their Company Y shares. Company Y has a total of 5,000,000 shares outstanding, which traded on the NYSE at an average price of \$5 per share on August 1, 2017.

To calculate the filing fee for its preliminary proxy solicitation filed on August 3, 2017, Company Y multiplied the value of the transaction (the value of the securities to be received by Company X, the acquiring company) by the fee rate (\$115.90 per \$1,000,000):

$$\text{Value of Transaction} = \text{Shares Outstanding} \times \text{Market Price} = 5,000,000 \times \$5 = \$25,000,000$$

$$\text{Filing Fee} = \$25,000,000 \times .0001159 = \$2,897.50$$

Offsetting Fees

The SEC collects only one fee per transaction, even if there are multiple filings associated with that transaction. Under Rule 457(b) and Rule 0-11(a)(2), required fees for filings pursuant to the Exchange Act may be reduced in an amount equal to registration fees paid pursuant to the Securities Act, and vice versa. However, no part of a filing fee is refundable.

In addition, under Rule 457(p), the filing fees from unsold securities may be carried over to offset filing fees for a subsequent offering. The subsequent registration statement, filed by the same issuer or a related entity, must be filed within five years of the original filing. Reliance on Rule 457(p) should be indicated in a note to the Calculation of Registration Fee table and the current fee rate should be used for the calculation.

Sample Calculations

(1) With respect to the merger of Company Y with a subsidiary of Company X described above, Company X filed a registration statement for the securities issued pursuant to the merger agreement on Form S-4. Because Company Y had previously paid a filing

fee for the transaction when it filed its preliminary proxy solicitation, no additional fees were required when Company X filed the registration statement.

(2) As previously described, Company X filed an amended registration statement on August 1, 2017 for an additional one million shares of common stock at a proposed maximum aggregate offering price of \$12 per share, or \$12,000,000 total. Company X paid a filing fee of \$1,390.80 for the one million shares, calculated as the value of the offer price multiplied by the applicable fee rate.

Upon completion of the offering, Company X had sold only 500,000 shares (all of the debt securities were sold). The filing fee associated with the unsold securities was \$695.40.

On August 23, 2017, Company X filed a registration statement for two million shares of common stock at a proposed maximum aggregate offering price of \$10 per unit, or \$20,000,000 total. To calculate the filing fee, Company X multiplied the maximum aggregate offering price (\$20 million) by the fee rate (\$115.90 per \$1,000,000). Company X then subtracted the filing fee associated with the unsold securities from January to calculate the amount due to the SEC:

$$\text{November Filing Fee} = [\$20,000,000 \times .0001159] - \$695.40 = \$1,622.60$$

Filing Fees for Investment Companies

Under Section 24(f)(2) (15 USCS § 80a-24) of the ICA, the SEC collects filing fees from investment companies filing an annual Form 24F-2 after the end of each fiscal year. Instructions for the calculation of these types of fees are included on the SEC's Form 24F-2, available at <https://www.sec.gov/about/forms/form24f-2.pdf>. Filing fees are calculated based on the fund's annual net sales:

$$\text{Filing Fee} = \text{Net Sales} \times \text{Fee Rate}$$

For additional information on investment companies, see Market Trends: Investment Companies, Registering Investment Companies with the SEC and Periodic Reporting Requirements of Investment Companies.

Sample Calculation

Fund X sold \$150,000,000 of securities during its fiscal year ended June 30, 2017. There was \$50,000,000 of available redemption credits. Therefore, Fund X's calculated its net sales and filing fee as follows when it filed its Form 24F-2:

$$\text{Net Sales} = \$150,000,000 - \$50,000,000 = \$100,000,000$$

$$\text{Filing Fee} = \$100,000,000 \times .0001159 = \$11,590$$

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