§ 1.02 SEC Registration Fees

In connection with filing registration statements with the SEC, a registrant is required to pay a filing fee to the SEC. Section 6(b) of the Securities Act prescribes that at the time of filing a registration statement, the applicant shall pay to the SEC a fee based on a rate set by the SEC of the maximum aggregate price at which such securities are proposed to be offered.[1] Such rate, referred to in this Section as the "SEC Rate," is established periodically by the SEC.[2]

The formula for calculating the filing fee for registration statements is as follows:

Registration Fee = (A ÷ 1 million) x B

Where:
A = **Proposed maximum aggregate offering price of the securities being registered**
B = **Current SEC Rate**

When a company registers an offering of securities, the *proposed maximum aggregate offering price* to be used in the registration fee calculation may be determined in two ways. A registrant may register a specific number of securities and calculate the *proposed maximum aggregate offering price* by multiplying the number of securities being registered by the proposed maximum offering price per security, pursuant to Rule 457(a) of the Securities Act.[3] Alternatively, a registrant may register the dollar amount of the offering and state a *proposed maximum aggregate offering price*, pursuant to Rule 457(o) of the Securities Act.[4] As discussed below, the registration method affects whether additional fees must be paid if changes occur in the offering price, in the number of securities being offered, or in the aggregate offering price after the initial registration statement has been filed.[5]

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[1] 15 U.S.C. § 77f(b).

[2] For instance, on February 16, 2007, the SEC announced that the Section 6(b) fee rate applicable to the registration of securities would be $30.70 per million effective as of February 20, 2007. See SEC Press Release en titled "SEC Chairman Cox Announces $700 Million Fee Cut to Benefit Investors" (Feb. 16, 2007), available at http://www.sec.gov/news/press/2007/2007-24.htm (last visited Aug. 17, 2007). For purposes of this discussion, the SEC Rate is assumed to be $30.70 per million.

[3] 17 C.F.R. § 230.457(a).

[4] 17 C.F.R. § 230.457(o).

[5] See § 1.02[1]-[2] *infra*.

[1]—Registration Fee Based on Number of Securities Offered

When registering securities pursuant to Rule 457(a) of the Securities Act, a company registers the number of securities offered, not the dollar amount of securities offered, and the *proposed maximum aggregate offering price* for purposes of calculating the registration fee is computed by multiplying the number of securities being registered by an estimate of the maximum offering price of the securities.[6] The following formula is used to calculate the *proposed maximum aggregate offering price* under Rule 457(a):

Proposed Maximum Aggregate Offering Price ("A") = C x D

Where:
C =   Number of securities being registered
D =   Estimate of the maximum offering price per security[7]

For example, assume that ABC Company is registering 4 million shares of its common stock. ABC Company estimates that the maximum offering price for the common stock is $20 a share. The SEC Rate is $30.70 per million of securities being registered.

Registration Fee = (A ÷ 1 million) x B

Where:
A =   Proposed maximum aggregate offering price of the securities being registered = C x D = 4 million x $20 = $80 million
B =   Current SEC Rate = $30.70
C =   Number of securities being registered = 4 million
D =   Estimate of the maximum offering price per security = $20

Registration Fee =   (A ÷ 1 million) x B
=   ($80 million ÷ 1 million) x $30.70
= $2,456
The registration fee is $2,456.

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[6] When a number of securities are registered, both the number of securities being registered and the proposed maximum offering price per security are set forth in the "Calculation of Registration Fee Table" on the cover page of the registration statement.

[7] See discussion in § 1.02[3] *infra* on how to estimate the maximum offering price per security.

[a]—Increase in Offering Price

If a registrant has filed a registration statement and calculated the fee pursuant to Rule 457(a), and subsequently the offering price per security increases so that the estimated maximum offering price used to calculate the filing fee is less than the actual offering price, no additional filing fee is required.[8]

Using the example from above, if the actual offering price of the securities is $25 a share, after estimating the maximum offering price as $20 a share for the initial filing, ABC Company does not need to pay an additional filing fee to account for the increase in the offering price.

[b]—Increase in Number of Securities Offered

If, following the filing of the initial registration statement through which a *number* of securities was registered, the registrant offers more securities than were proposed to be registered initially, then the registrant must register the additional securities and pay an additional filing fee with respect to such securities.[9] When calculating the additional filing fee to be paid to cover the additional securities being registered, the same formula set forth above is used, however, the number of securities used in the formula is the number of the *additional* securities being registered, and the offering price per security is based on the registrant's estimate of the maximum offering price per security at the time of filing the registration statement with respect to such additional securities. If the estimated offering price has increased since the time the initial registration statement was filed, the higher offering price is used to calculate the fee with respect to the additional securities being registered. The formula is as follows:

Proposed Maximum Aggregate Offering Price with Respect to the Additional Securities ("AAS") = CAS x DAS

Where:

C_{AS} = **Number of additional securities being registered**

D_{AS} = **Estimate of the maximum offering price per security at the time of filing the registration statement with respect to the additional securities being registered**

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[8] *Id.*

[9] *Id.*

Using the original example from above, assume that ABC Company registered 4 million shares of its common stock and estimated that the maximum offering price for the common stock was $20 a share. Subsequently, ABC Company decided to offer a total of 6 million shares of its common stock and at that time estimated that the maximum offering price per security was $25 a share.

Registration Fee with respect to the Additional Securities
$$= (A_{AS} \div 1 \text{ million}) \times B$$

Where:

$A_{AS} =$ *Proposed maximum aggregate offering price of the additional securities being registered = $C_{AS} \times D_{AS} = 2$ million x $25 = $50 million*

$B =$ *Current SEC Rate = $30.70*

$C_{AS} =$ *Number of additional securities being registered = 6 million - 4 million = 2 million*

$D_{AS} =$ *Estimate of the maximum offering price per security at the time of filing the registration statement with respect to the additional securities = $25*

$$
\begin{aligned}
\textit{Registration Fee} \ &= \ \textit{($A_{AS} \div$ 1 million) x B} \\
&= \ \textit{($\$50$ million $\div$ 1 million) x $\$30.70$} \\
&= \ \textit{\$1,535}
\end{aligned}
$$

The additional registration fee is $1,535.

[2]—Registration Fee Based on Proposed Maximum Aggregate Offering Price

A registrant may elect to register the total dollar amount expected to be raised in an offering of securities (as opposed to registering a specific number of securities) under Rule 457(o) of the Securities Act.[10] If a registrant chooses to register an offering of securities, then the *proposed maximum aggregate offering price* for purposes of calculating the filing fee is the proposed maximum aggregate offering price set forth in the "Calculation of Registration Fee" table on the cover page of the registration statement.[11]

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[10] See 17 C.F.R. § 230.457(o).

[11] Pursuant to Rule 457(o), the specific number of securities being registered and the proposed maximum offering price per security are not disclosed in the Calculation of Registration Fee Table. 17 C.F.R. § 230.457(o).