

**SEC APPROVES NEW NASD RULE 3013 ON DESIGNATING CCOs AND CEO
CERTIFICATION OF COMPLIANCE PROCESSES**

The Securities and Exchange Commission (“SEC”) has approved new NASD Rule 3013, which requires for the first time that NASD member firms (“Members”) designate a principal to serve as the firm’s chief compliance officer (“CCO”). It further requires that a Member’s chief executive officer (“CEO”) certify annually that the firm has in place processes to establish, maintain, review, test and modify written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules, and federal securities laws and regulations.¹

The effective date of the rule will be 30 days after publication of a Notice to Members announcing the rule, which the NASD has indicated will occur not later than November 9, 2004. Members will have to designate a CCO by the effective date. Members’ CEOs will have to execute their first certifications within one year of that effective date.

The CEO’s annual certification will have to represent that the firm’s senior executive management has in place processes to (1) establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing of which is reasonably designed to ensure continuing compliance with NASD rules, MSRB rules and federal securities laws and regulations.

Rule 3013 will also require the CEO to certify that those processes are evidenced in a report that has been reviewed by the CEO and submitted to the Member’s board of directors and audit committee.² The required processes will have to include, at a minimum, one or more meetings annually between the CEO and CCO to (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the Member’s compliance efforts as of the date of such

¹ See SEC Release 34-50347 (September 10, 2004). The rule proposed originally filed by NASD with the SEC called for both the CEO and CCO to sign the certification but in response to comments, the CCO certification requirement was removed by Amendment No. 2 to the proposal. For a history of the proposal, see Exchange Act Releases Nos. 34-48961 (Dec. 23, 2003), 34-49129 (January 27, 2004), 34-50105 (July 28, 2004), 34-50347 (September 10, 2004) and NASD Notice to Members 03-29.

² Members that do not employ a board of directors or audit committee or other similar bodies in their governance and management would not be subject to this requirement.

meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

The NASD has also added IM-3013, setting forth the language of the CEO certification and giving further guidance as to the requirements and limitations of the Rule.

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If you have any questions concerning Rule 3013, please contact Roger D. Blanc (212-728-8206, rblanc@willkie.com), or Martin R. Miller (212-728-8690, mmiller@willkie.com).

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