

NEW NASD RULE 3013 REQUIRES DESIGNATION OF CHIEF COMPLIANCE OFFICER BY DECEMBER 1, 2004, AND ANNUAL CEO CERTIFICATION OF COMPLIANCE PROCESSES

The NASD has published a Notice to Members setting a compliance date of December 1, 2004 for newly approved Rule 3013, which requires NASD member firms (“Members”) to designate on Schedule A of Form BD a principal to serve as the firm’s chief compliance officer (“CCO”). The designated CCO may hold another position within the Member, including chief executive officer (or equivalent officer) (“CEO”), as long as that person can discharge the duties of the CCO in light of his or her other responsibilities.¹

Rule 3013 also requires a Member’s CEO to certify annually that the firm has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations and that the CEO has conducted one or more meetings with the CCO in the preceding twelve months to discuss such processes.² Members’ CEOs will have to execute their first certifications within one year of the December 1, 2004 compliance date.

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

The CEO’s annual certification will have to represent that the Member 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 and extent of which are reasonably designed to ensure continuing compliance with NASD rules, MSRB rules and federal securities laws and regulations. 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

¹ NASD Notice to Members 04-79 (November 1, 2004). See also SEC Release 34-50347 (September 10, 2004) which approved Rule 3013 and IM-3013.

² The rule proposed originally filed by the NASD with the SEC called for both the CEO and the 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 SEC Release Nos. 34-48961 (December 23, 2003), 34-49129 (January 27, 2004), 34-50105 (July 28, 2004) and 34-50347 (September 10, 2004), and NASD Notice to Members 03-29 (June 2003).

certification; (2) discuss and review the Member's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plan for emerging business areas.

The certification also must include a declaration that the CEO has consulted with the CCO and such other officers, employees, outside consultants, lawyers and accountants to the extent necessary to attest to the statements in the certification.

IM-3013 requires the CEO to certify that those processes are evidenced in a report that has been produced before execution of the certification reviewed by the CEO, CCO and any other officers the Member deems necessary, and submitted to the Member's board of directors and audit committee.³ It should include the manner in which, and the frequency with which, the processes are administered and identify the officers and supervisors responsible for such administration. The report need not contain any conclusions resulting from the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory organization, provided that it meets certain requirements set forth in IM-3013.

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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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³ 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 specific requirement, but must have the report reviewed by governing bodies and committees that serve similar functions in lieu of a board of directors and audit committee.