

**NASD FILES WITH THE SEC TO EXTEND THE DEADLINES FOR RULE 3012
ANNUAL REPORTS AND RULE 3013 CEO CERTIFICATION OF COMPLIANCE
PROCESSES TO APRIL 1, 2006**

On October 14, 2005, the NASD filed rule amendments with the Securities and Exchange Commission (“SEC”) to extend to April 1, 2006 the deadlines for NASD member firms (“Members”) to submit the initial annual report required by Rule 3012 and to execute the initial annual certification required by Rule 3013 and IM-3013.¹ The Rule 3012 annual report would otherwise be due January 31, 2006 and the annual certification by December 1, 2005. The NASD has filed these amendments with the understanding they will be effective immediately.

Rule 3012 requires a Member’s designated principal or principals to submit to the Member’s senior management, not less than annually, a report detailing the Member’s system of supervisory controls procedures and summarizing the results of the testing of the supervisory procedures and significant identified exceptions and any additional or amended supervisory procedures created in response to the test results.²

Rule 3013 requires a Member’s chief executive officer (“CEO”) to 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.³ The CEO’s annual certification under Rule 3013 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.

¹ SR-NASD-2005-121. The NASD indicated that the April 1st deadline was selected not only to afford Members additional time to comply with the requirements of the NASD rules, but to also provide the same submission deadline as the similar Annual Report mandated in New York Stock Exchange (“NYSE”) Rule 342.30.

² Rule 3012 became effective on January 31, 2005, which would have required a Member’s first Rule 3012 report to be submitted by no later than January 31, 2006 and at least annually thereafter. This NASD amendment now allows a Member to elect to submit its first Rule 3012 report by not later than April 1, 2006. A Member’s first Rule 3012 report must cover the period from January 31, 2005 (the effective date of Rule 3012) up to the submission date (or a reasonable period of time immediately preceding the submission date). Each ensuing Rule 3012 report may not be for a period greater than 12 months from the date of the immediately preceding Rule 3012 report, but may be for a shorter time period if a Member elects to prepare a report more frequently than annually.

³ Rule 3013 and IM-3013 became effective on December 1, 2004, which would require a Member’s first certification to be executed by December 1, 2005 and annually thereafter. Members may now elect to execute the first certification by not later than April 1, 2006 and annually thereafter.

Rule 3013 also requires the CEO to certify that those processes are evidenced in a report produced before the execution of the certification that has been reviewed by the CEO and submitted to the Member's board of directors and audit committee.⁴ The required processes will have to include, at a minimum, one or more meetings annually between the CEO and chief compliance officer 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 meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

Members should also look to IM-3013, which sets forth the language of the CEO certification and gives further guidance as to the requirements of the report and other aspects of the Rule.

Rules 3012 and 3013 are closely related, but the NASD has stressed that Rule 3013 requires the CEO to certify that the Member has a *process*, evidenced in a report, to adopt compliance procedures, and the supervisory procedures should be a result of that process. Rule 3012 requires firms to have "supervisory control procedures" to test and verify the effectiveness of the compliance procedures, make any required changes and summarize the controls, testing, results and improvements in a report. The NASD staff has indicated that the reports required by Rules 3012 and 3013 may be combined in a single document, but they recommend that the discussion clearly indicate which sections of the report address particular items in each Rule.⁵

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If you have any questions concerning Rules 3012 and 3013, please contact Roger D. Blanc (212-728-8206, rblanc@willkie.com), Martin R. Miller (212-728-8690, mmiller@willkie.com), or the attorney with whom you regularly work.

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⁴ Members that do not employ a board of directors or audit committee or other similar bodies in their governance and management would have to have the report reviewed by governing bodies and committees that serve functions similar to those of a board of directors and audit committee.

⁵ Conversation by Martin Miller with NASD staff October 18, 2005.