

INFORMATIONAL

Registration Requirements

SEC Approves NASD Rule Proposal Relating To Registration Requirements For Limited Principals-Financial And Operations And Limited Principals-Introducing Broker/Dealer Financial And Operations; Effective Date: September 17, 2001

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Executive Representatives
- Legal & Compliance
- Operations
- Senior Management

KEY TOPICS

- Limited Principal—Financial and Operations
- Limited Principal—Introducing Broker/Dealer Financial and Operations

Executive Summary

On May 21, 2001, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) Rule 1022(b), "Limited Principal - Financial and Operations" ("FINOP"), and NASD Rule 1022(c) "Limited Principal - Introducing Broker/Dealer Financial and Operations" ("Introducing FINOP").¹ Effective September 17, 2001, these changes will require every firm approved for membership in the NASD on or after September 17, 2001, that is also subject to the requirements of the SEC's net capital rule (Exchange Act Rule 15c3-1), to have at least one associated person registered as either a Series 27 FINOP or Series 28 Introducing FINOP, depending upon the firm's net capital requirement.² Members that were specifically exempted from the requirement to employ a Series 27 FINOP or Series 28 Introducing FINOP prior to September 17, 2001, will not be subject to these requirements.³ No firm will be permitted to seek an exemption from this requirement under NASD Rule 9610(a). The amendments to NASD Rules 1022(b) and 1022(c) also clarify their applicability to NASD members by making citations in them consistent with Exchange Act Rule 15c3-1. The changes to Rules 1022(b) and 1022(c) will not affect individuals who currently are grandfathered from the Series 27 or Series 28 examinations because these individuals are considered to possess the license for which they were grandfathered.⁴

The text of the amendments as provided in Attachment A become effective on September 17, 2001.

Questions/Further Information

Questions concerning this *Notice* may be directed to Susan DeMando, Director, Financial Operations, Member Regulation, NASD Regulation, Inc., at (202) 728-8411; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8844.

Discussion

The purpose of requiring members to employ a FINOP or Introducing FINOP is to protect investors and the public interest by helping to ensure that the financial and operations personnel of broker/dealers subject to the net capital requirements of Exchange Act Rule 15c3-1 have the training and competence needed to ensure the member's compliance with applicable net capital, recordkeeping, and other financial and operational rules.

As of September 17, 2001, these rule changes will require all firms that are subject to the net capital requirements of Exchange Act Rule 15c3-1, and that have not previously been exempted from the requirement to employ a FINOP or Introducing FINOP, to have either a registered FINOP or registered Introducing FINOP. There will be no exceptions. Accordingly, the NASD has eliminated Rule 1022 from the list of rules in Rule 9160(a) from which members may seek exemptive relief.

The amended Rule 1022(b) will require members that have a minimum \$250,000 net capital requirement under Exchange Act Rule 15c3-1(a)(1)(ii) or (a)(2)(i) and municipal securities brokers' brokers that have a minimum \$150,000 net capital requirement

under Exchange Act Rule 15c3-1(a)(8) to have a registered Series 27 FINOP. All other members will be required under the amended Rule 1022(c) to have at least one associated person registered as a Series 28 Introducing FINOP.

These rule changes will not affect an exemption from the FINOP or Introducing FINOP requirement that was granted to a member prior to September 17, 2001. Nevertheless, as is current practice, NASD Regulation may require a firm that has been exempted from the requirement to have a Series 28 Introducing FINOP to employ a Series 27 FINOP if the business conducted by the firm at the time the exemption was granted changes, *i.e.*, the firm substantially increases its business or adds new lines of business, regardless of whether the firm's net capital requirement also changes. NASD Regulation will require a firm that has an exemption from the Introducing FINOP requirement to employ a FINOP if a business change causes the firm to operate under Exchange Act Rule 15c3-1(a)(1)(ii), Rule 15c3-1(a)(2)(i), or Rule 15c3-1(a)(8). Members also are reminded that NASD Regulation may impose a disciplinary sanction that requires a previously exempt firm to employ a FINOP or Introducing FINOP.

These rule changes will not affect individuals who currently are grandfathered for the Series 27 or Series 28 examinations because they are considered duly registered within the applicable registration category. Firms also may continue to seek exam waivers for qualified individuals pursuant to NASD Rule 1070(e) ("Qualification Examination and Waiver of Requirements") and NASD Rule 9610 ("Procedures for Exemptions"). Members are

reminded that NASD Regulation may impose a disciplinary sanction that requires a grandfathered individual to take the Series 27 FINOP examination or Series 28 Introducing FINOP examination.

Effective Date Of Amendments

These amendments become effective on September 17, 2001.

Endnotes

- 1 See Securities Exchange Act Release No. 44332 (May 21, 2001), 66 FR 29196 (May 29, 2001) (File No. SR-NASD-00-77).
- 2 Government securities firms that are subject only to the capital requirements imposed by the U.S. Department of the Treasury will not be subject to the requirements of Rules 1022(b) and 1022(c).
- 3 NASD Regulation, Inc. nonetheless reserves the right to require a firm to employ a FINOP or Introducing FINOP if the business conducted by the firm at the time the exemption was granted changes, *e.g.*, the firm substantially increases its business or adds new lines of business, regardless of whether the firm's net capital requirement also changes. NASD Regulation will require a previously exempt firm to employ a FINOP if a change in business requires it to operate under Exchange Act Rule 15c3-1(a)(1)(ii), Rule 15c3-1(a)(2)(i), or Rule 15c3-1(a)(8). NASD Regulation also may impose a disciplinary sanction that requires a previously exempt firm to employ a FINOP or Introducing FINOP.

The requirement under Rules 1022(b) and 1022(c) that all brokers or dealers subject to the net capital requirements of Exchange Act Rule 15c3-1 have at least one associated person registered as a FINOP or Introducing FINOP does not mean that a member must hire an additional person to be its FINOP or Introducing FINOP. An existing employee may become a FINOP or Introducing FINOP and continue to act in other registered capacities.

- 4 Again, NASD Regulation reserves the right to require a grandfathered individual to take the Series 27 or Series 28 examinations in certain instances. For example, NASD Regulation may impose a disciplinary sanction that requires a grandfathered individual to take the Series 27 or Series 28 examinations. *See supra* note 3.

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ATTACHMENT A – RULE TEXT

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

1020. Registration of Principals

1022. Categories of Principal Registration

(a) No change

(b) Limited Principal-Financial and Operations

(1) Every member of the Association, [unless exempted by subparagraph (4),] that is operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal-Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in subparagraph [(b)](2) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal-Financial and Operations with the Association and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) and (3) No change

[(4) Pursuant to the Rule 9600 Series, the Association may exempt a member or an applicant for membership in the Association from the requirement to have a Limited Principal – Financial and Operations if:]

[A] it has been expressly exempted by the Commission from SEC Rule 15c3-1(b)(1)(iii);]

[B] it is subject to the provisions of SEC Rule 15c3-1(a)(2) or to Section 402.2(c) of the rules of the Treasury Department.]

[(5)] (4) A person registered solely as a Limited Principal-Financial and Operations shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described [prescribed] in subparagraph (2) hereof.

(c) Limited Principal-Introducing Broker/Dealer Financial and Operations

(1) Every member of the Association, [which is operating pursuant to the provisions of SEC Rule 15c3-1(a)(2)(i) or (vi) and to the provisions of SEC Rule 15c3-3(k)(2)(ii),] that is subject to the requirements of SEC Rule 15c3-1, other than a member operating pursuant to SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) in which case paragraph (b) shall apply, shall designate as Limited Principal-Introducing Broker/Dealer Financial and Operations those persons associated with it, as least one of whom shall be its chief financial officer, who perform the duties described in [paragraph] subparagraph (2)[,] hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal-Introducing Broker/Dealer Financial and Operations with the Association and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) No change

(3) Except as provided in Rule 1021(c), a person designated pursuant to the provisions of subparagraph (1) hereof, shall not be required to take the Limited Principal-Introducing Broker/Dealer Financial and Operations Examination and shall be qualified for registration as a Limited Principal-Introducing Broker/Dealer Financial and Operations if such a person is qualified to be registered or is registered as a Limited Principal-Financial and Operations as defined in paragraph (b)(2) hereof.

(4) No change

(d) through (g) No change

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking [an exemption from] exemptive relief as permitted under Rules 1021, [1022,]1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) and (c) No change