

INFORMATIONAL

New Registration Category-Rules And Examination

SEC Approves Proposed Rule Change Establishing A New Limited Registration Category For Private Securities Offerings; Related Qualification Examination (Series 82) Is Effective

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.

- Continuing Education/ Testing/Qualification
- Legal & Compliance
- Operations
- Registration
- Senior Management
- Training

KEY TOPICS

- Limited Representative-Private Securities Offerings (Series 82)
- NASD Rule 1032
- Qualification Examinations

Executive Summary

On May 15, 2001, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) Rule 1032 to establish a new registration category, Limited Representative-Private Securities Offerings.¹

This new registration category is for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Registration under this new category will provide an alternative to registration as a General Securities Registered Representative (Series 7) or as a Corporate Securities Limited Representative (Series 62) for any individual who functions solely as a private securities offering representative. Persons seeking to register under this new category will need to pass a new qualification examination, the Limited Representative-Private Securities Offerings Qualification Examination (Series 82), which is now available.

The effective date of the new registration category is May 12, 2001. The SEC's extension of time for banks to comply with the broker/dealer provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA)² as set forth in the SEC's Interim Final Rule³ does not change the effective date of the new registration category.

Questions/Further Information

Questions concerning this *Notice to Members* may be directed to one of the following persons in the NASD Regulation Testing and Continuing Education Department: Karen Bescher at (240) 386-4677; Carole Hartzog at (240) 386-4678;

or Nicole Hillman at (240) 386-4681. Questions also may be directed to one of the following persons in the NASD Office of General Counsel: Gary Goldsholle at (202) 728-8104 or Kosha Dalal at (202) 728-6903.

Background/Discussion

NASD Regulation has developed a new limited registration category for persons whose securities business is limited to private securities offerings. This new limited registration category implements Section 203 of the GLBA.

GLBA, among other things, removes the barriers to affiliations among banks, insurance companies, and broker/dealers and adopts a functional approach to regulation of the activities of these entities. As part of this approach, GLBA eliminates the long-standing general exemption for banks from the definitions of "broker" and "dealer" under the Securities Exchange Act of 1934 (Exchange Act). Consequently, many of the securities-related activities currently performed by banks will be required to be performed in (or "pushed-out" to) separate registered broker/dealer affiliates or subsidiaries.

Under GLBA, private securities offerings may be effected in a bank (that is not a broker/dealer) where (a) the bank is not affiliated with a broker or dealer that is engaged in dealing, market making, or underwriting, other than with respect to exempted securities and (b) if the bank is not affiliated with any broker or dealer, the aggregate dollar amount of any private placement offering (excluding government or municipal securities) does not exceed 25 percent of the bank's capital. Banks that do not meet

this exclusion will be required to effect private securities offerings in a registered broker/dealer with appropriately licensed individuals.

To facilitate a smooth transition of private placement activities from banks to broker/dealers, GLBA mandated that the NASD, as a registered securities association, create a new limited registration category for persons engaging solely in private securities offerings.

Qualification Requirements

Persons seeking to register with the NASD under this new limited registration category must meet the eligibility criteria for associated persons of a member and pass the necessary qualification examination (Series 82).

Permissible Activities Under The Limited Registration Category

The securities activities of a person registered in this limited registration category are limited to effecting sales of private securities offerings. The Series 82 Examination does not qualify a registered representative in this category to effect sales of municipal or government securities, or equity interests in or the debt of direct participation programs (DPP securities). NASD Regulation administers the Series 52 for transactions in municipal securities, the Series 72 for transactions in government securities, and the Series 22 for transactions in DPP securities. The Series 82 Examination permits a registered representative only to effect sales of private placement securities as part of a primary offering. As such, representatives registered in this category will not be permitted to effect resales of or secondary

market transactions in private placement securities. Any person wishing to effect resales of or secondary market transactions in private placement securities will be required to register as a General Securities Representative, or, where appropriate, in another limited registration category.

Principals responsible for supervising the member's private securities offering business must be registered as General Securities Principals.

Registration Procedures

NASD members seeking to register personnel as a Limited Representative-Private Securities Offerings, must submit a complete Form U-4 application on Web CRD to request the necessary registration(s) and list of other documents required for registration. The registration fee for new applicants under this category is \$85 per individual, and the fee for the Series 82 Examination is \$75.⁴

Grandfathering

Consistent with the provisions in GLBA, the limited registration category provides that any person who engaged in effecting sales of private securities offerings as an employee of a bank from May 12, 1999 to November 12, 1999, who otherwise meets the qualifications to register as a representative, may register in the limited registration category without having to complete the Series 82 Examination. Applicants seeking an exemption from the qualification examination pursuant to this provision will be required to provide appropriate evidence to NASD Regulation demonstrating that they were engaged in effecting sales of private securities offerings at a bank during the

period from May 12, 1999 to November 12, 1999. Members seeking to register personnel under these "grandfather" provisions should:

- File a Form-U-4 on Web CRD for the candidate;
- Submit a written request for waiver from the qualification examination requirement, signed by a principal of the firm, to:

*Waiver Coordinator
NASD Regulation, Inc.
Testing and Continuing
Education Department
9509 Key West Avenue
Rockville, MD 20850*
- Provide detailed documentation of the candidate's experience in effecting sales of private securities offerings on behalf of a bank during the relevant time period; and
- Make payment of all applicable fees.

The New Series 82 Examination

A study outline has been prepared to assist member firms in preparing candidates for the new Limited Representative-Private Securities Offerings Qualification Examination (Series 82). The study outline may be used to structure or prepare training material, develop lecture notes and seminar programs, and as a training aide for the candidates themselves.

The Series 82 Examination contains 100 multiple-choice questions, and candidates are allowed 150 minutes to complete the examination. A candidate must correctly answer 70 percent of the questions to receive a passing grade. The test is administered as

a closed book exam. Scratch paper and a basic electronic calculator will be provided by the proctor. At the completion of the test, candidates will be provided with an informational breakdown of their performance on each of the sections, along with their overall score.

The outline and test are divided into the four topical sections, which are described below along with the number of questions designated to each section.

Section 1 Characteristics of Corporate Securities (14 questions)

Section 2 Regulation of The Market for Registered and Unregistered Securities (45 questions)

Section 3 Analyzing Corporate Securities (15 questions)

Section 4 Handling Customer Accounts and Industry Regulations (26 questions)

The questions used in the examination will be updated to reflect the most current interpretations of the rules and regulations on which they are based. Questions on new rules will be added to the examination within a reasonable period of their effective dates. Questions on rescinded rules will be promptly deleted from the examination. Candidates will only be asked questions pertaining to rules that are effective at the time they take their exams.

Availability Of Study Outline

The study outline for the Series 82 Examination for this category may be obtained from the NASD Regulation Web Site at www.nasdr.com.

Endnotes

- 1 See Securities Exchange Act Release No. 44281 (May 8, 2001), 66 FR 26890 (May 15, 2001) (File No. SR-NASD-00-69).
- 2 Gramm-Leach-Bliley Act of 1999, Pub.L.No. 106-102, 113 Stat. 1338 (1999).
- 3 See Securities Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).
- 4 There are additional fees associated with registration generally that are described on the NASD Regulation Web Site.

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ATTACHMENT A - RULE TEXT**Rule 1032. Categories of Representative Registration¹****(h) Limited Representative—Private Securities Offerings**

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Association as a Limited Representative-Private Securities Offerings if:

(A) such person's activities in the investment banking and securities business involve effecting sales as part of a primary offering of securities not involving a public offering, pursuant to Section 3(b), 4(2) or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, provided, however, that such person shall not effect sales of municipal securities or government securities, or equity interests in or the debt of direct participation programs as defined in Rule 1022(e)(2); and

(B) subject to subparagraph (2) hereof, such person passes an appropriate qualification examination for Limited Representative-Private Securities Offerings.

(2) The Association shall, upon such evidence as the Association determines to be appropriate, deem any person who while employed by a bank, engaged in effecting sales of private securities offering as described in paragraph (1)(A) hereof, during the period from May 12 1999 to November 12, 1999, as qualified to register as a Limited Representative-Private Securities Offerings without the need to pass the qualification examination required by subparagraph (1)(B) hereof.

(3) A person registered as a Limited Representative-Private Securities Offerings shall not be qualified to function in any area not described in subparagraph (1)(A) hereof.

¹ Certain clerical changes to Rule 1032 were also approved by the SEC, essentially replacing the word "described" for the word "prescribed" in the Rule.