

NASD Notice to Members 99-51

NASD Regulation
Requests Comment On
Requiring Chief
Compliance Officers To
Be Registered; **Comment
Period Expires July 16,
1999**

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Executive Representatives
- ☐ Government Securities
- ☐ Institutional
- ☐ Insurance
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ☒ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

The Board of Directors of NASD Regulation, Inc. (NASD Regulation®) is seeking comment on whether the National Association of Securities Dealers, Inc. (NASD®) rules should be amended to require the registration of chief compliance officers.

Questions concerning this *Notice* may be directed to Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal.

Comments should be mailed to:

Joan C. Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

or e-mailed to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted in writing or via e-mail.

Comments must be received by July 16, 1999. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission (SEC).

Background And Discussion

NASD Regulation frequently receives questions about whether various broker/dealer personnel should be registered. One frequently asked question involves whether the chief compliance officer for a

member firm should be registered as a principal.

Rule 3010(a)(8) requires each member to designate and specifically identify to the NASD one or more principals who are required to review the member's supervisory system, procedures, and inspections implemented by the member and take or recommend to the member's senior management appropriate action reasonably designed to achieve the member's compliance with applicable securities laws and regulations, including NASD rules. For some member firms, the individual who is the chief compliance officer listed on Schedule A of Form BD is one of these designated principals. For other members, the chief compliance officer also may already be registered as a principal because he or she is an officer of the member or otherwise engaged in the member's investment banking or securities business in a manner that requires principal registration under the Rule 1021.

Rule 1021(a), which sets forth the requirements for principal registration, states that a member "may" make or maintain an application for principal registration for certain personnel, including compliance personnel. The negative implication of this provision is that compliance personnel are not *required* to be registered, but rather that a member, at its election, may register an individual with compliance responsibilities.

NASD Regulation believes that the chief compliance officer for a member firm (as identified on Schedule A of the Form BD) should be registered. This position generally entails directing the advice that is provided to both registered representatives and principals about compliance issues and devising compliance systems and procedures for the firm as a whole. As such, the individual performing this function

should be able to demonstrate his or her knowledge through a qualifications examination and be subject to continuing education requirements.

There are at least two ways that a registration requirement could be imposed. NASD Regulation could require the chief compliance officer to be registered as a principal. The individual would be required to register as a General Securities Principal, unless the activities of his or her member firm are so limited that it is appropriate for the individual to apply for a more limited principal registration category as described in Rule 1022(a)(1). For example, if a member firm only sells mutual funds, it would be appropriate for the chief compliance officer to apply for registration as a Limited Principal—Investment Company and Variable Contracts Products. NASD Regulation also would issue an interpretation clarifying that a chief compliance officer would not be deemed to be supervising a

member's securities or investment banking business by virtue of being registered as a principal. NASD Regulation staff recommends this approach.

Alternatively, NASD Regulation could create a new examination and registration category for chief compliance officers. The rule language itself could be drafted in such a way that the chief compliance officer would not be deemed to be a supervisor by virtue of registration. However, this approach could be more burdensome for chief compliance officers who are already registered as principals and would have to take another examination. This problem could be mitigated by accepting either a Series 24 or the newly created examination.

NASD Regulation also invites members to comment on whether the New York Stock Exchange's Series 14 examination should be accepted in lieu of either of these examinations.

Finally, NASD Regulation would like comment from members on an interpretive issue that may arise if a registration requirement is imposed for chief compliance officers. In *Notice to Members 99-49*, NASD Regulation stated that a general counsel of a member is not required to be registered. NASD Regulation would like comment as to whether this interpretation should change if the general counsel is directly supervising a registered chief compliance officer, *i.e.*, has the power to hire and fire and direct the activities of the chief compliance officer.

Any proposed rule will include a grandfather provision for any person serving as a chief compliance officer on the effective date of the rule.

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