

# NASD Notice to Members 99-49

NASD Regulation  
Provides Interpretive  
Guidance On Registration  
Requirements

## 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

NASD Regulation, Inc. (NASD Regulation®) receives numerous inquiries regarding whether certain individuals are required to be registered with the National Association of Securities Dealers, Inc. (NASD®) under NASD Rules 1021 and 1031. The purpose of this *Notice to Members* is to provide interpretive guidance to members on some of these issues.

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

## Background And Discussion Principal Registration

NASD Rule 1021 (the Rule) requires persons who are actively engaged in the management of a member's investment banking or securities business — including supervision, solicitation, conduct of business, or the training of associated persons for any of these functions — to be registered as principals. Individuals covered by the Rule include sole proprietors, officers, partners, managers of Offices of Supervisory Jurisdiction, and directors of corporations.

*Who is considered an outside director of a member corporation? Are such outside directors required to be registered?*

The NASD considers outside directors to include directors who are not officers or employees of the member. Outside directors are not required to be registered if they are not actively engaged in the management of the member's investment banking or securities business. "Actively engaged in management" means day-to-day conduct of the member's securities business and the implementation of corporate policies related to such

business. An outside director's regular participation in board and board committee meetings, during which corporate policies may be developed or adopted, would not by itself rise to the level of being actively engaged in a member's management.

Conversely, an inside director, *i.e.*, an employee of a member who sits on its board of directors, is presumed to be involved in the day-to-day management of the member's business and therefore is required to be registered as a principal.

*Is an officer of the broker/dealer's parent corporation who sits on the board of directors of the broker/dealer required to be registered?*

Generally, if the officer is not actively engaged in the management of the broker/dealer as described above, he or she is considered an outside director and does not need to be registered. However, if this parent corporation officer, in addition to his or her duties with the parent corporation, is an employee of the broker/dealer or otherwise is engaged in the day-to-day management of the broker/dealer, then the officer must be registered as a principal of the member.

*Is a general counsel or corporate secretary of a member required to be registered?*

He or she is required to be registered if he or she sits on the member's board of directors or otherwise participates in the management of the member's securities or investment banking business. As stated above, an employee of a member who sits on its board of directors is presumed to be involved in the day-to-day management of the member's business and therefore is required to be registered as a principal. If the general counsel or

corporate secretary is not a director but has management-level responsibilities for supervising any aspect of the member's investment banking or securities business, then he or she would have to be registered as a principal. Management responsibilities in this context would include serving as a voting member of the firm's executive, management, or operations committees. A general counsel may participate in such committees' activities without triggering a registration requirement if he or she only provides counsel to the committee and does not vote.

*Is a limited or nominal partner required to be registered?*

A limited or nominal partner who is not involved in the day-to-day management of the member's business is not required to be registered.

*Is the chief compliance officer required to be registered as a principal?*

NASD Regulation is proposing to clarify that such person be required

to be registered. See *Notice to Members 99-51*.

### **Registration of Research Personnel**

*Do research personnel have to be registered?*

Any associated person who is engaged in an investment banking or securities business for a member is required to be registered. The registration determination does not depend on the individual's title, but rather on the functions that he or she performs. Functions performed by representatives include, but are not limited to, communicating with members of the public to determine their interest in making investments, discussing the nature or details of particular securities or investment vehicles, recommending the purchase or sale of securities, and accepting or executing orders for the purchase or sale of securities.

Research activity, by itself, does not require registration. However, to the extent that research personnel are involved in written or oral business

communications with the public, either alone or accompanied by registered sales personnel, then such research personnel are required to be registered because their conduct is part of the general sales effort of the member firm. Communicating with the public includes issuing and distributing research reports where the author is identified by name.

Another factor that should be considered in determining whether research personnel should be registered is the nature of their compensation. Transaction-based compensation – e.g., compensation that depends upon the sale of securities, the volume of sales, the success of a solicitation or referral, or the execution of a transaction — is an indicator that the recipient should register with the NASD.

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