

NASD NOTICE TO MEMBERS 98-4

Reminder Of Members' Obligations To Comply With Rule 15c2-4

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 RegulationSM) requests that members review their compliance procedures with respect to Securities and Exchange (SEC) Rule 15c2-4, which is applicable to public and private offerings of securities distributed on a best-efforts basis. In order to assist members in their review, attached to this *Notice* is *Notice to Members 84-7*, which sets forth in questions-and-answer format interpretations of the SEC with respect to Rule 15c2-4.

Questions concerning this *Notice* should be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, at (202) 974-2747.

Discussion

Recently, NASD Regulation has considered a number of disciplinary actions in which it found violations of SEC Rule 15c2-4, adopted under the Securities Exchange Act of 1934. This rule applies to public and private offerings of securities that are distributed by members on a best-efforts basis. Subsection (b) of Rule 15c2-4 applies to those best-efforts offerings that include a contingency that may result in the return of investors' funds if the contingency is not met.

Members are urged to review their compliance procedures with respect to Rule 15c2-4. In *Notice to Members 84-7* (January 30, 1984), the National Association of Securities Dealers, Inc. (NASD[®]) published SEC staff interpretations of Rule 15c2-4 set out in question-and-answer format.¹ NASD Regulation is attaching to this *Notice* a copy of *Notice to Members 84-7* in order to provide guidance to members in their efforts to comply with this rule. In particular, members should note the position of the SEC in Question 7, that a broker/dealer affiliated with the

issuer may only deposit investors' funds in an escrow account with a bank independent of the issuer and the broker/dealer; Question 10, that no person other than a bank may act as an escrow agent; and Question 11, that the member's attorney may not act as the "agent or trustee" of a separate bank account.²

Endnotes

¹ In that *Notice* there is a reference to net capital requirements of \$5,000 and \$25,000 to differentiate between members that are prohibited from or permitted to hold funds, securities and accounts, which have subsequently been amended. See *Notice to Members 92-72* (December 15, 1992).

² The NASD also issued *Notice to Members 84-64* (November 26, 1984) publishing an interpretive letter of the SEC with respect to the application of Rule 15c2-4 to public and private offerings of direct participation programs. In addition, the NASD issued *Notice to Members 87-61* (September 10, 1987) that contained suggested escrow agreement provisions and suggested language for the member's Selected Dealers Agreement with respect to compliance with Rule 15c2-4. Members are urged to consult with their attorney, however, with respect to the drafting of any escrow agreement or Selected Dealers Agreement.

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