

MEMO# 21427

August 3, 2007

NASD Permits Multiple CCOs and CO-CEOs to Fulfill Members' Annual Compliance Certifications Subject to Conditions

[21427]

August 3, 2007

TO: BROKER/DEALER ADVISORY COMMITTEE No. 46-07

COMPLIANCE MEMBERS No. 42-07

SEC RULES MEMBERS No. 99-07 RE: NASD PERMITS MULTIPLE CCOS AND CO-CEOS TO FULFILL MEMBERS' ANNUAL COMPLIANCE CERTIFICATIONS SUBJECT TO CONDITIONS

Effective July 16, 2007, the NASD amended Rule 3013 and Interpretive Material 3013 (IM-3013) [\[1\]](#) to permit members to utilize up to two chief executive officers (CEOs) and multiple chief compliance officers (CCOs) to conduct the required annual certification of the member's compliance and supervisory processes, subject to certain conditions that are briefly described below. [\[2\]](#)

Use of Co- CEOs

According to the amendments to IM-3013, a member may designate a second CEO as a co-CEO to provide the certification required by Rule 3013, subject to two conditions. First, each of the co-CEOs must individually discharge all of the obligations set forth in Rule 3013 and IM-3013. Second, each co-CEO must be responsible for the representations in the certification as if each were the member's only CEO. IM-3013 further provides that designation of a co-CEO applies only for purposes of Rule 3013 and IM-3013 and has no effect on any other regulatory obligation imposed on a member or its CEO.

Use of Multiple CCOs

The amendments to Rule 3013 permit a member to designate, and identify on Schedule A of Form BD, one or more principals to serve as a CCO for purposes of the rule, subject to

conditions set forth in IM-3013. These conditions are as follows:

- Each designated CCO is a principal;
- The member precisely defines and documents the areas of primary compliance responsibility assigned to each designated CCO and makes specific provisions for which of the designated CCOs has primary compliance responsibility in areas that can reasonably be expected to overlap;
- Each designated CCO satisfies all of the requirements of Rule 3013 and IM-3013 with respect to his or her defined area of primary compliance responsibility as if that individual was the firm's only CCO; and
- Collectively, the designated CCOs have the responsibilities and expertise that enable them to consult with the CEO on the totality of the subject matters required to be addressed in the certification by the CEO (or co-CEOs) under Rule 3013.

According to the Notice to Members, a member that chooses to have multiple CCOs must conduct one or more meetings annually between the CEO and each designated CCO, individually or collectively. At such meeting, the CEO is required to discuss with each CCO the topics required by Rule 3013 and IM-3013 as they relate to the particular CCO's defined area of primary compliance responsibility. Firms with multiple CCOs must have each CCO review the annual report required of the CEO by Rule 3013, and the CEO must consult with each CCO prior to certifying such report.

Tamara K. Salmon
Senior Associate Counsel

endnotes

[1] Rule 3013 requires each member to have its CEO certify annually that the member has in place processes to establish, maintain, review, test, and modify written compliance policies and supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations. The rule also requires the CEO to conduct an annual meeting with the member's CCO to discuss such processes. IM-3013 describes the details regarding the contents of the annual certification.

[2] See NASD Notice to Members 07-32 (July 2007). A copy of the Notice to Members is available at:
http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p019469.pdf. Subsequent to issuance of this Notice to Members, the NASD changed its name to the Financial Industry Regulatory Association (FINRA).

Source URL: <https://icinew-stage.ici.org/memo-21427>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.