

**MEMO# 13719**

July 11, 2001

## **SEC APPROVES NASDR RULE CHANGE REQUIRING PRINCIPAL REGISTRATION OF CHIEF COMPLIANCE OFFICERS**

[13719] July 11, 2001 TO: COMPLIANCE ADVISORY COMMITTEE No. 30-01 SEC RULES MEMBERS No. 53-01 RE: SEC APPROVES NASDR RULE CHANGE REQUIRING PRINCIPAL REGISTRATION OF CHIEF COMPLIANCE OFFICERS As you may recall, in 1999 NASD Regulation, Inc. (NASDR) solicited comment on whether to require chief compliance officers to be registered as principals.<sup>1</sup> The Securities and Exchange Commission recently approved changes proposed by NASDR to NASD Rule of Conduct 1022 to require such registration. The rule amendments, which are discussed briefly below, are effective as of January 1, 2002.<sup>2</sup> REGISTRATION REQUIREMENT In general, as amended, Rule 1022 requires the chief compliance officer designated on Schedule A of a member's Form BD to be registered as a Series 24 principal, unless the member's activities are limited to particular areas of the investment banking or securities business. In that case, the individual may apply for a limited principal registration. Acceptable limited principal categories include the Limited Principal Investment Company and Variable Contracts Products (Series 26). A chief compliance officer who is not "grandfathered" and who has not passed the requisite principal examination will have 90 days from January 1, 2002 to pass such examination. GRANDFATHERING OF CERTAIN PRINCIPALS 1 See Memorandum to Compliance Advisory Committee No. 25-99 and SEC Rules Committee No. 48-99, dated June 24, 1999. The Notice also sought comment on whether a general counsel who directly supervises a registered chief compliance officer should be required to be registered. The Institute filed a comment letter that took no position on the registration of chief compliance officers but opposed requiring the registration of any general counsel that directly supervises such person. See Memorandum to Compliance Advisory Committee No. 28-99 and SEC Rules Committee No. 55-99, dated July 19, 1999. 2 See Release No. 34-44451 (June 19, 2001), 66 Fed. Reg. 123 (June 26, 2001), a copy of which is attached. In addition to approving NASDR's proposed rule change, the Release seeks comment on Amendment No. 3 to NASDR's proposal, which relates to government securities principals, chief compliance officers for member firms limited to options activities, and calculation of the grandfathering period (discussed below) for chief compliance officers employed by more than one firm during the grandfathering period. 2The rule grandfathers from the examination requirement any chief compliance officer who has been designated as such on the member's Form BD continuously from January 1, 2000 until January 1, 2002 and who has not been subject within the last ten years to disciplinary proceedings described in proposed Rule 1022(a).3 COMPLIANCE OFFICERS WHO ALSO SERVE AS LEGAL COUNSEL With respect to those chief compliance officers who are attorneys, NASDR has stated that the attorney-client privilege and work-product doctrine "would be recognized in practice, if validly asserted." NASDR has

noted, however, that these privileges do not limit a member's obligation to comply with duties imposed by NASDR. Moreover, according to NASDR, it is incumbent upon member firms that employ attorneys who serve as legal counsel and the chief compliance officer "to appropriately separate these functions." CONTINUING EDUCATION REQUIREMENT In addition to having to be registered principals, all chief compliance officers, including those grandfathered from the examination requirement, are subject to NASDR's continuing education requirements. Tamara K. Reed Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 13719. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). Attachment (in .pdf format) 3 The disciplinary proceedings listed in Rule 1022(a) are: any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act; a suspension; or the imposition of a fine of \$5000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding.

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