



VOICE OF THE INDEPENDENT CONTRACTOR BROKER-DEALER

www.financialservic
~~ ~~~

VIA ELECTRONIC MAIL

August 24, 2004

Jonathan G. Katz, Secretary
U.S. Securities & Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

RE: File No. SR-NASD-2003-176 – NASD Proposed Rule 3013

Dear Mr. Katz:

The Financial Services Institute¹ (“FSI” or “the Institute”) appreciates the opportunity to comment in response to the filing by the NASD of changes to proposed Rule 3013 (“Rule”) and related interpretative material (“IM”) as set forth in SEC Release 34-50105 (July 28, 2004).

We support the NASD’s proposal to provide for regular and significant interaction between senior management and the chief compliance officer regarding a member’s comprehensive compliance program. Therefore, we strongly support the following aspects of the proposed Rule and IM: (i) designating a chief compliance officer; (ii) requiring at least an annual meeting between the chief compliance officer and the chief executive officer to discuss the member’s processes regarding its compliance program; and (iii) requiring an annual compliance report to be provided to a member’s board of directors and audit committee (or equivalent governing bodies or committees). We do not, however, believe that these concepts should be part of or implemented through the proposed certification.

With the designation of a chief compliance officer, meetings between the chief compliance officer and the chief executive officer and the annual report to the governing body, together with Rule 3010, as recently amended, and the recently approved Rule 3012 requiring a supervisory control system, we believe a regulatory structure is in place to achieve effective compliance programs providing for accountability of supervisory personnel, testing of the effectiveness of the compliance program, significant interaction with senior management in the compliance process and reporting to a member’s governing body. This desired increased level of compliance by members will not be achieved merely by virtue of the proposed certification by the CEO regarding the processes as required by the Rule and as set forth in the IM, but will be achieved by the diligent implementation of the member’s

¹ The Financial Services Institute, Voice of the Independent Contractor Broker-Dealer, was formed on January 1, 2004. Members of the Institute are broker-dealers and registered investment advisers that serve representatives who are independent contractors. The Institute currently has 95 member firms, with over 120,000 affiliated registered representatives and more than \$7.8 billion in total annual revenues. Our vision is for independent contractor broker-dealers to be recognized as the premier providers of comprehensive financial services in America through their growing networks of highly competent independent financial professionals.

compliance program by the responsible supervisory personnel, including the chief compliance officer, and the involvement of senior management. Certification adds nothing to this regulatory structure, and may in fact detract from it.

The NASD has indicated previously that the certification procedure is patterned after the requirement imposed by the Sarbanes-Oxley Act on CEO's of public companies. However, the certification of financial reports filed with the SEC and the certification of a "process" are radically different concepts. Under the Sarbanes-Oxley Act the CEO is merely required to certify to "the best of their knowledge". Further, the potential for unwarranted exposure of the member and the CEO because of the mere existence of the certification in connection with claims brought or threatened against the member outweighs any regulatory benefits achieved by the certification.

The proposed certification language in the proposed IM requires the CEO to certify that the member has in place "processes". Nowhere in the proposed Rule or IM does the NASD define what it means by this amorphous term. However, the NASD in footnote ii to the proposed IM states that the determination of when the member has in place appropriate "processes" to comply with the proposed Rule and IM will ultimately be a facts and circumstances test based upon the member's business activities and organization, and may be a substantially higher standard than suggested by the benign language of the certification.

Therefore, we respectfully recommend that the chief executive officer certification requirement be deleted from the Rule or, alternatively, the NASD codify the definition of the term "processes" and the concept of the "principal-based requirement" referred to in footnote ii to the proposed IM.

We wish to express our gratitude for your consideration of our comments, and we wish to assure the Commission and the NASD of our support for comprehensive and effective broker-dealer compliance programs.

Again, thank you for the opportunity to comment on the Proposed Rule. Should you have any questions, please contact us at 770 933-6846.

Respectfully submitted,



Dale E. Brown, CAE
Executive Director & CEO