



# PACIFIC SELECT DISTRIBUTORS

Submitted Via Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

August 24, 2004

Jonathon G. Katz  
Secretary  
United States Securities and Exchange Commission  
450 Fifth Street NW  
Washington DC 20549

RE: SR-NASD-2003-176

Dear SEC:

We appreciate the opportunity to provide comment on the latest proposal regarding certification of compliance procedures by Chief Executive Officers (“CEOs”). Included in that proposal is also a rule requiring that firms identify Chief Compliance Officers (“CCOs”) on their Form BD.

Pacific Select Distributors, Inc. (“PSD”) is a subsidiary of Pacific Life Insurance Company (“Pacific Life”). PSD is the distributor for Pacific Life’s registered investment products. It also has full or majority ownership interest in five registered broker-dealers engaged in retail sales activity.

We continue to question the need in the proposal regarding certification by a CEO. We base that opinion on the following:

1. Regulations already exist for the establishment of an adequate compliance system. Proper implementation of such systems requires the participation of and agreement from any number of principals associated with the firm and is not limited to only the CEO;
2. The determination of a structure and format is not in keeping with past NASD practice. The NASD has not mandated form with respect to an overall supervisory system. The mandating of a certification as to adequacy of a system that has not been defined (and let alone mandated) does not give the CEO the benefit of guidelines or a safe harbor to ensure that reasonable steps have been taken;
3. The CEO incurs additional personal liability by executing the certification. Especially in larger firms, the CEO is one of many functional officers. All of those officers have a responsibility with respect to compliance.

We also question the need, especially in the proposed form, for mandated contact between the CEO and CCO. Such activity already takes place within the vast majority of broker-dealers. Mandating the activity will have no effect on the quality of the communication. While we continue to question

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its need, at minimum and prior to including this provision within the rule, NASD should be much more specific as to the form and content of the communication that should take place. Such attention should include defining what the “Discuss(ion) and review the matters of the subject of the certification...” should be and it should be specific as to what “significant compliance problems” are defined to be.

The NASD should also reexamine the need to identify a certification by a CEO where the CCO did not think the system was adequate as a violation of NASD Rules. All firms have a disagreement among management staff. The practice the NASD should follow (assuming there is some form of certification) is that where it perceives issues, the NASD should instead focus on investigating the circumstances under which the certification took place. The requirement that the CCO agree with CEO only promotes additional liability on the part of the CEO and not among other members of senior management. Other senior management will likely (and should) have input on the design and adequacy of a supervisory system.

Finally we question the need for designation on Form BD of a CCO without specific identification of the duties NASD expects a CCO to have. CCOs or other individuals responsible for “compliance” have very different responsibilities from firm to firm. NASD should be clear as to the duties it would expect to fall to a CCO. We caution the NASD with this provision, however, in that past practice has been for firms to create supervisory systems tailored to their business. The “one size fits all” approach is counter to the unique businesses within the securities industry.

The culture of compliance is one that should be present throughout a firm. While we applaud NASD’s efforts to provide CCOs with additional access to CEOs, we believe that investors would be far better served by reinforcing within the industry that individual duties regarding compliance falls to everyone within an organization. Therefore, the duty of compliance and a certification regarding the establishment of a system should not fall to one individual. Current NASD rules require that procedures clearly define responsibilities with respect to supervision. Compliance with securities industry rules and regulations always has been and should continue to be the responsibility of all associated with the industry. Individuals not accepting that responsibility, or ignoring it, should continue to be the subject of firm and regulatory action; such liability should not instead exclusively fall to a CEO and CCO.

Again, we appreciate the opportunity to provide comments on this proposal.

Sincerely,

S. Kendrick Dunn  
Assistant Vice President

CC: Bill Robinson, CEO, PSD  
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