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*[NASD Manual & Notices to Members] -- --NASD MANUAL &NOTICES TO MEMBERS --NOTICES TO MEMBERS--1989 Notices to Members--89-49 Subject: SEC Approval of Amendment to Schedule C of NASD By-Laws to Require Members To Submit Applications for and Maintain the Registration of Only Such Persons Who Intend to Engage or Are Engaged in the Investment Banking or Securities Business*



## **89-49 Subject: SEC Approval of Amendment to Schedule C of NASD By-Laws to Require Members To Submit Applications for and Maintain the Registration of Only Such Persons Who Intend to Engage or Are Engaged in the Investment Banking or Securities Business For the Member - Effective July 17, 1989**

### **EXECUTIVE SUMMARY**

The Securities and Exchange Commission has approved amendments to Parts II and III of Schedule C of the NASD By-Laws that will require a member to submit applications for and maintain the registrations of only such persons who intend to engage or are engaged in the investment banking or securities business for the member. These amendments apply to both principal and representative registration categories.

### **BACKGROUND AND SUMMARY**

In response to certain recommendations of the NASD Regulatory Review Task Force, the Qualifications Committee of the NASD Board of Governors reviewed the NASD qualification system to consider additional means to maintain an appropriate level of knowledge and professionalism for persons associated with NASD members.

This review not only addressed the adequacy of existing NASD qualification standards, but also considered issues relating to the need to provide the investing public reasonable assurance that registered persons remain knowledgeable about products and services available to investors, as well as applicable rules, regulations, and policies governing the investment banking and securities business.

The Securities and Exchange Commission has approved an amendment to Part II, Section (1) (a) and Part III, Section (1)(a) of Schedule C to the NASD By-Laws to require that members register only persons who are engaged or will engage in the investment banking or securities business on behalf of the member in the capacities of principal and representative.

The amendments specifically prohibit members from maintaining registrations for persons who no longer function as principals or representatives of the firm and who no longer are active in the member's investment banking or securities business, or who wish to avoid the re-examination requirement applicable to persons who are not registered for more than two years.

Members are also prohibited from sponsoring an application for registration where there is no intent to maintain the applicant's employment with the member after examination. The NASD believes this amendment is fully consistent with the historic intent of the qualification and registration program and that the proposed rule change is necessary to prevent such

unacceptable practices as “parking” registrations and using NASD membership to gain a competitive advantage in operating a commercial training business.

The amendments also allow a member to maintain or make application for the registration of those persons who are engaged in the investment banking securities business of a foreign securities affiliate or subsidiary.

Questions concerning this notice should be directed to Craig L. Landauer, Senior Attorney, Office of General Counsel, at (202) 728-8291.

## **AMENDMENT TO PARTS II AND III, SCHEDULE C OF THE NASD BY-LAWS**

(Note: New text Underlined; deleted text is in brackets.)

### **II.**

#### **REGISTRATION OF PRINCIPALS**

##### **(1) Registration Requirements**

(a) All Principals Must be Registered - All persons [associated with] engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with the Corporation in the category of registration appropriate to the function to be performed as specified in Part II, Section (2) hereof. Before their registrations can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a principal registration with the Corporation for any person

(i) who is no longer active in the member’s investment banking or securities business,

(ii) who is no longer functioning as a principal, or

(iii) where the sole purpose is to avoid the examination requirement prescribed in Section (1)(c) hereof.

A member shall not make application for the registration of any person as principal where there is no intent to employ such person in the member’s investment banking or securities business. A member may, however, maintain or make application for the registration as a principal of a person who performs legal, compliance, internal audit, or similar responsibilities for the member of a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

### **III.**

#### **REGISTRATION OF REPRESENTATIVES**

## (1) Registration Requirement

(a) All Representatives Must be Registered - All persons [associated with] engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with the Corporation in the category of registration appropriate to the function to be performed as specified in Part III, Section (2) hereof. Before their registrations can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a representative registration with the Corporation for any person

(i) who is no longer active in the member's investment banking or securities business,

(ii) who is no longer functioning as a representative, or

(iii) where the sole purpose is to avoid the examination requirement prescribed in Section (2)(c) hereof. A member shall not make application for the registration of any person as representative where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, or similar responsibilities for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.



**NASD Notice to Members 01-79 - December 2001**A rectangular button with a light gray background and a thin black border, containing the word "Close" in a black, sans-serif font.**NASD Reminds Members Of Their Responsibilities Regarding Private Securities Transactions Involving Notes And Other Securities And Outside Business Activities**

NASD Regulation, Inc. (NASD Regulation) has brought a number of formal disciplinary actions against registered representatives for selling securities without prior notice to and approval from the representative's employer member firm and for engaging in outside business activities without prior notice to the employer member firm. A registered person who sells a security away from his or her firm without first obtaining written approval from the firm violates NASD Rule 3040, and a registered person who engages in an outside business activity without prior notice to his or her firm, including the sale of non-securities products, violates NASD Rule 3030.

Recently, NASD Regulation has seen an increase in selling away involving independent insurance agents registered solely as Series 6 Investment Company and Variable Contracts Products representatives. These Series 6 representatives are increasingly being targeted by issuers, promoters, and marketing agents to sell short-term promissory notes to their customers. Although in many instances these notes are securities, promoters of these products are marketing them to registered persons as non-securities products that do not have to be sold through a broker/dealer by a registered person. In a significant number of cases, associated persons have sold these notes to their customers away from their firms and without firm approval as required by Rule 3040.

Associated persons are required, either under Rule 3030 or Rule 3040, to report, in writing, any and all types of business that they plan to conduct away from their firms, whether or not it involves a security. Rule 3040 requires associated persons to obtain written approval from their firms before they sell any security, including securities in the form of promissory notes, and Rule 3030 requires prompt written notice to a member of any outside business activity for which an associated person receives compensation, including the sale of a promissory note that is not a security. Since there has been some confusion among associated persons as to whether particular financial instruments are securities, this *Notice* advises associated persons to provide written notice to their firms **before** they engage in the sale of any financial instrument.

This *Notice* also reminds members that they should: (1) review their supervisory procedures to make sure that they are reasonably designed to achieve compliance with NASD Rules 3030 and 3040 regarding outside business activities and private securities transactions; and (2) appropriately educate their associated persons regarding the requirements of Rules 3030 and 3040.

Questions concerning this *Notice* may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728- 8844.