

February 5, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: File No. SR-NASD-2003-176 – Proposed Rule: Chief Compliance Officer Annual Certification (the “Proposed Rule”)

Dear Mr. Katz:

This comment letter, in response to the above-referenced Proposed Rule, is submitted on behalf of the National Society of Compliance Professionals, Inc. (“NSCP”)

NSCP is the largest organization of securities industry professionals devoted exclusively to compliance. Since its founding in 1987, it has grown to over 1,250 members. The constituency from which its membership is drawn is unique. While compliance and legal personnel from the largest brokerage and investment management firms are counted among its ranks, the membership is more diverse than those of other similar non-profit organizations. NSCP’s membership is drawn from traditional broker-dealers, investment advisers, bank and insurance affiliated firms, as well as the Law, Accounting and Consulting firms that serve them.

The NSCP appreciates the opportunity to comment on the revised proposed regulation, insofar as it concerns the proposed Chief Compliance Officer (“CCO”) certification. Under the present formulation, the certification has been reframed to address the adequacy of the processes to establish and maintain policies and procedures designed to effect compliance, and the procedures in place to test them. While this is an improvement over the version that our prior (July 9, 2003) comment letter addressed, it does not resolve the fundamental issues we raised. We reiterate our view that it would be more prudent to delay the consideration of the imposition of a CCO certification until the effectiveness of other new and recent measures can be evaluated. The rationale, which is set out in detail in our earlier comment letter, is that the benefit of the certification is highly questionable and unlikely to improve upon the benefits already in play from other new and recent measures. The compliance costs of the CCO certification are, on the other hand, prohibitively high. Indeed, we believe the process will adversely impact both the influence of compliance officers as well as the breadth of the compliance function.

Our earlier letter, which is provided as an attachment, reviewed the role of compliance officers, and how the wide variation in the degree of their influence and the scope of their activity in different firms would make a generic certification problematic. In fact, the process would encourage compliance officers to narrowly define both their own roles and the reach of the various compliance regulations they seek to have their firms address. The ability of compliance officers to endorse novel approaches to new business or regulatory challenges would be compromised by a certification process that would only

aggravate an already unfortunate tendency for compliance personnel to be included as targets in civil litigation. We also pointed out that the large variance of what the compliance function is, from firm to firm, would preclude even the kind of uniform assessment that a CFO certification, subject to broadly employed financial standards, would offer. We need to avoid new regulations that would reduce the efficacy of the compliance function for such dubious value.

For all of these reasons, our initial comment letter applies equally to the current proposal regarding a CCO certification. However, then, as now, there are other parts of the proposal, such as the identification of the Chief Compliance Officer, that are constructive and which we support. We believe, for example, that strengthening an annual reporting process, and furthering the interaction between executive management and the Chief Compliance Officer (who may not be part of executive management) are positive steps and we fully endorse them. Similarly, the requirement that firms specifically establish the responsibility and accountability of supervisors for various parts of their businesses reflects the kind of pointed and effective measures that help the industry better effect compliance, and we similarly enthusiastically endorse those aspects of the regulatory framework.

Conclusion

We appreciate your consideration of our comments and recommendations. While we agree that strengthening the annual reporting process and furthering the interaction between executive management and the Chief Compliance Officer are positive steps, we believe that the CCO certification requirement would not be productive. We further believe that in the very least, it would be more prudent to delay the consideration of the imposition of a CCO certification until the NASD's experience with other new and recent measures can be evaluated.

Sincerely,

The National Society of Compliance Professionals, Inc.

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