

MEMO# 20900

February 26, 2007

NASD Requests Comment on Proposed Harmonization of NASD and NYSE Definition of "Branch Office"

[20900]

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TO: INTERNAL SALES MANAGERS ROUNDTABLE No. 3-07
SALES FORCE MARKETING COMMITTEE No. 3-07 RE: NASD REQUESTS COMMENT ON
PROPOSED HARMONIZATION OF NASD AND NYSE DEFINITION OF "BRANCH OFFICE"

Last year, NASD and the New York Stock Exchange (NYSE) announced plans to consolidate their member regulation operations and harmonize their regulatory rules. As part of this process, NASD has proposed to revise its current definition of "branch office" in NASD Rule 3010(g). [1] NASD's proposal is intended to resolve an inconsistency in the treatment of locations where final principal approval of research reports occurs. [2] The proposed revisions provide an opportunity for the ICI (and others) to recommend that NASD exclude from the definition of branch office the personal residences of mutual fund regional distributors and wholesalers that are not held out to the public as officers of a broker-dealer and from which no business with retail customers is conducted. In support of this recommendation, we plan to raise the same issues we raised in our June 2006 letter to NASD when we argued that such locations should not be treated as branch offices under the current definition. [3] The relevant portion of NASD's proposal is briefly discussed below.

Comments on the proposal must be filed with NASD by Monday, March 26th . Please provide any comments you have about the ICI's proposed recommendation to Tamara Salmon no later than Friday, March 9th by phone (202-326-5825), fax (202-326-5839) or e-mail (tamara@ici.org).

Summary of NASD's Proposal

NASD has proposed to replace the existing definitions in Rule 3010(g) of "office of supervisory jurisdiction" and "branch office" with definitions of "supervisory branch office," "limited supervisory branch office," "non-supervisory branch office," and "non-branch location." Of these four categories of locations, all but the last would be required to register with NASD. NASD has proposed to define a non-branch location as any of the following so long as it does not engage in any other activities that require branch office registration:

- A location that qualifies for an exclusion from the definition of "branch office" pursuant to NASD Rule 3010(g)(2);[4]
- A location that engages solely in final approval of research reports by a person registered in a principal capacity for use by persons associated with the member pursuant to Rule 2210(b)(1),[5] provided no other sales functions are conducted and the location is not held out to the public as a branch office;
- A location that engages solely in soliciting a member's "investment banking services" as defined in NASD Rule 2711,[6] provided no other sales functions are conducted and the location is not held out to the public as a branch office; or
- A location that engages solely in proprietary trading or securities lending, provided no other sales functions are conducted and the location is not held out to the public as a branch office.

As noted above, the Institute plans to recommend that NASD treat as non-branch locations the personal residences of mutual fund wholesalers and distributors who supervise the activities of registered representatives at other non-branch locations so long as no sales functions occur at the residence and it is not held out to the public as a branch office. This recommendation could be accomplished by NASD either interpreting its proposed definition of non-branch location to exclude such residences or by adding a new provision to the definition that expressly addresses them.

Tamara K. Salmon
Senior Associate Counsel

endnotes

[1] See Rule Harmonization, NASD Notice to Members 07-12 (February 2007), which is available on NASD's website at:
http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_018691.pdf.

[2] Pursuant to NASD Rule 3010(g)(1)(F), the location responsible for such review is an "office of supervisory jurisdiction" (OSJ). Under the NYSE's rules, such a location is deemed a "non-sales location."

[3] See Institute Memorandum to SEC Rules Committee No. 27-06, Chief Compliance Officer Committee No. 9-06, and Compliance Advisory Committee No. 10-06 [No. 20127],

dated June 21, 2006.

[4] Rule 3010(g)(2)(A)(ii) excludes from the definition of branch office any location that is the associated person's primary residence subject to certain conditions that mutual fund wholesalers and distributors typically satisfy. Rule 3020(g)(2)(B) provides, however, that if such personal residence is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member, the personal residence is deemed to be a branch office.

[5] NASD Rule 2210(b)(1) requires a principal of a member to approve the member's advertisements, sales literature (which includes analysts' research reports", and independently prepared research reports prior to their use or filing with NASD.

[6] NASD Rule 2711 defines "investment banking services," in relevant part as "acting as an underwriter or participating in a selling group in an offering for the issuer . . . or serving as a placement agent for the issuer."

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