

MEMO# 20143

June 29, 2006

NASD Affirms that Personal Residences of Mutual Fund Wholesalers May Be Branch Offices Under NASD Rules

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20143] June 29, 2006 TO: SEC RULES COMMITTEE No. 28-06 CHIEF COMPLIANCE OFFICER COMMITTEE No. 10-06 COMPLIANCE ADVISORY COMMITTEE No. 11-06 RE: NASD AFFIRMS THAT PERSONAL RESIDENCES OF MUTUAL FUND WHOLESALERS MAY BE BRANCH OFFICES UNDER NASD RULES By letter dated June 21, 2006, the Institute wrote to the NASD to seek clarification that the primary residences of mutual fund regional distributors are not branch offices for purposes of NASD Rule 3010(g).¹ The letter also requested clarification that the primary residences of mutual fund regional distributors and wholesalers will not be treated as non-branch locations for purposes of NASD Rule 3010(c), which requires broker-dealers to conduct regular inspections of their branch offices and non-branch locations. In a phone call, the NASD has informed the Institute that the clarification we seek regarding the definition of branch office would be inconsistent with the express wording of the NASD rule as approved by the SEC. Accordingly, it is the view of the NASD staff that when the amendments to Rule 3010(g) take effect on July 3rd, the primary residence of any associated person who supervises an associated person at another location, including at another primary residence, must be registered with the NASD as a branch office. We are still awaiting a response from the NASD regarding whether, for purposes of the internal inspection provisions of Rule 3010(c)(1), all locations at which an associated person is located are required to be treated as either a branch office or a non-branch location or whether it is possible for an associated person to conduct business from a location that is neither a branch office or a non-branch.² 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. ² location. The NASD's answer will determine a broker-dealer's responsibility for conducting internal inspections of its locations. We will let you know as soon as we hear back from the NASD on this issue. Tamara K. Salmon Senior Associate Counsel

2 Subsection (c) (1)(C) of Rule 3010, which expressly requires a member to conduct internal inspections of it of its branch offices and "non-branch locations," was added to the rule effective January 31, 2005. Prior to this revision, Rule 3010(c) required members to "review the activities of each office." According to NASD Notice to Members 99-45 and 98-38, a member's supervisory responsibility to review unregistered offices of the member under the previous version of the rule would include "implementing appropriate supervisory practices, such as records inspections and compliance audits at the associated persons' place of employment, to ensure that their methods of business and

day-to-day operations comply with applicable rules and requirements.”

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