

MEMO# 20127

June 21, 2006

ICI Seeks Clarification Regarding Treatment of Personal Residences of Wholesalers Under NASD Branch Office 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. [20127] June 21, 2006 TO: SEC RULES COMMITTEE No. 27-06 CHIEF COMPLIANCE OFFICER COMMITTEE No. 9-06 COMPLIANCE ADVISORY COMMITTEE No. 10-06 RE: ICI SEEKS CLARIFICATION REGARDING TREATMENT OF PERSONAL RESIDENCES OF WHOLESALERS UNDER NASD BRANCH OFFICE RULES Effective July 3rd, the NASD has revised the definition of “branch office” in NASD Rule 3010(g), the rule governing an NASD member’s supervisory requirements. While the revised definition excludes a registered representative’s primary residence that meet certain conditions, this exclusion does not apply if the primary residence location is responsible for supervising the activities of registered representatives at another location. This revision could result in the primary residences of mutual fund regional distributors who supervise wholesalers having to be registered with and regulated by the NASD as branch offices. To avoid this result, the Institute has sent the attached letter to the NASD seeking clarification that the primary residences of mutual fund regional distributors are not branch offices for purposes of Rule 3010(g).^{*} In support of our request for clarification, the letter describes how mutual fund regional distributors and wholesalers operate and the limited nature of the business activities that occur at their primary residences. It also notes that none of the customer protection concerns that the NASD seeks to address by treating a registered representative’s primary residence as a branch office would be present with these locations. The Institute’s letter also discusses the provisions of NASD Rule 3010(c), which requires broker-dealers to conduct regular inspections of each of their branch offices and non-branch locations. The letter requests that the NASD clarify that the primary residences of mutual fund regional distributors and wholesalers will not be treated as non-branch locations for purposes of Rule 3010(c) ^{*} Though the Institute’s letter focuses on mutual fund regional distributors and wholesalers, it notes that principal underwriters of mutual funds may utilize such persons to promote other investment products offered by the management company through the principal underwriter (e.g., 529 plans or separate accounts). The clarification we seek is intended to apply to those regional distributors and wholesalers promoting investment products in addition to mutual fund shares so long as the activities conducted at their primary residences are limited as described in the letter. 2 provided that such locations have no interaction with retail customers, no responsibility for establishing or maintaining customer accounts, and no involvement with customer funds or

securities. As discussed in the letter, if a broker-dealer were required by Rule 3010(c) to conduct an internal inspection of the primary residence of a mutual fund regional distributor or wholesaler, there would be nothing of note to inspect and such inspection would not advance any public interest. Tamara K. Salmon Senior Associate Counsel
Attachment (in .pdf format)

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