

MEMO# 20565

November 14, 2006

NASD Clarifies Treatment of Non-Branch Locations for Purposes of the Internal Inspections Required by Rule 3010

©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. [20565] November 14, 2006 TO: SEC RULES COMMITTEE No. 50-06 CHIEF COMPLIANCE OFFICER COMMITTEE No. 17-06 COMPLIANCE ADVISORY COMMITTEE No. 18-06 RE: NASD CLARIFIES TREATMENT OF NON-BRANCH LOCATIONS FOR PURPOSES OF THE INTERNAL INSPECTIONS REQUIRED BY RULE 3010 As you may recall, in June the Institute sought clarification from the NASD of the treatment of personal residences of mutual fund wholesalers under the NASD's rule requiring the registration and internal inspection of branch offices.¹ In response, the NASD staff affirmed that any location, including a personal residence of a wholesaler, that is responsible for supervising the activities of an associated person at one or more non-branch locations of the member is considered to be a branch office and must be registered with the NASD as such.² At the time the staff affirmed their view, they did not address the issue raised in the Institute's letter regarding whether, for purposes of the internal inspection provisions of Rule 3010(c), a location at which an associated person conducts business must be treated as either a branch office or a non-branch location. The NASD staff has recently informed us that, in their view, all locations from which an associated person conducts business are subject to the internal inspection provisions of Rule 3010(c). As provided in the rule, the frequency and scope of these inspections depend on whether the location is a supervisory branch office (including an office of supervisory jurisdiction), a non-supervisory branch office, or a non-branch location. Each office, however, must have one of these statuses and must be inspected as required by the rule. For non-branch locations, Rule 3010(c) permits the NASD member 1 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 See Institute Memorandum to SEC Rules Committee No. 28-06, Chief Compliance Officer Committee No. 10-06, and Compliance Advisory Committee No. 11-06 [No. 20143], dated June 29, 2006. 2 to determine the frequency of the inspections, though such frequency and how it was determined must be set forth in the member's written supervisory and inspection procedures. Tamara K. Salmon Senior Associate Counsel

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