



Securities Industry Association

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January 9, 2004

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

Re: File No. SR-NASD-2003-104 – Proposed Amendments to Branch Office Definition

The Self-Regulation and Supervisory Practices Committee of the SIA¹ is pleased to provide comments on the referenced NASD rule proposal (“Rule Proposal”), which seeks, among other things, to amend NASD Rule 3010 for purposes of adopting a uniform “branch office” definition.

The Committee commends NASD for its considerable effort over the past three years to create a uniform “branch office” definition and we applaud NASD, along with the New York Stock Exchange (NYSE) and North American Securities Administrators Association (“NASAA”) for reaching agreement on a core definition that is intended to eliminate inconsistency and duplication. Such regulatory coordination and cooperation produces effective and efficient regulation that serves the best interests of investors, regulators and member firms alike.

We therefore support the proposed amendments as significant improvements over the existing regulatory regime. Currently, the Commission, self-regulatory organizations (SROs) and state securities regulators all classify “branch office” (or similar term) differently. Consequently, a dual member firm must comply with multiple SRO definitions, as well as with definitions for each jurisdiction in which it conducts a securities business. Not only does this require tracking of and compliance with numerous definitions, it also entails filing multiple registration forms for each location and continual monitoring for changes in rules or procedures.

The Committee is particularly pleased by and supportive of the current proposal’s treatment of primary residences for purposes of branch office registration, and we urge the NYSE to adopt a similar provision. As noted in the Rule Proposal, although the NASD, NYSE and NASAA have come to an

¹ The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs more than 800,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2002, the industry generated \$222 billion in domestic revenue and \$304 billion in global revenues. (More information about SIA is available on its home page: www.sia.com)

agreement regarding the core definition, the one remaining point of difference surrounds the exclusion of private residence from the branch office definition under certain circumstances. Specifically, under the NASD proposed amendments, proposed Rule 3010(g)(2) excludes from registration as a branch office a person's primary residence provided that such location is not held out to the public as a place that conducts securities business, among other specified conditions (e.g. no handling of funds or securities at the location). By contrast, the NYSE is of the view that if an associated person engages in securities activities for more than 50 business days annually from his or her primary residence, that location must be registered as a branch office under all circumstances.

As detailed in our prior submissions,² the Committee has long maintained that branch office registration should be determined by the types of activities performed at that location and not by the number of days spent at that venue. As long as there are sufficient safeguards and limitations in place that protect investors, a primary residence should not be treated as a branch office irrespective of the amount of days a person conducts business at that location. We think the NASD definition provides the necessary substantive safeguards.

Under the NASD's proposed amendments, the primary residence exception requires, among other things, that:

- the location cannot be held out to the public as a branch office of the firm;
- neither customer funds nor securities are handled at that location;
- the associated person must be assigned to a designated branch office and such branch office is listed on all business cards, stationery, advertisements, and other communications to the public;
- the associated person's correspondence and communications with the public are subject to the firm's supervision;
- electronic communications are made through the firm's system; similarly, all orders are entered through the designated branch office or an electronic system established by the member and subject to review at such location; and
- written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member.

These limitations closely track the limitations on the use of a private residence in the Commission's Books and Records Rules, which provide that a broker dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office.

Thus, we support the NASD definition as a practical definition that takes into account technological innovations and current business practices without compromising the need for investor protection, and we urge the NYSE to reconsider the 50-business day requirement as well.

Finally, in addition to the forgoing limitations, proposed Rule 3010(g)(2)(A)(ii) contains what appears to be an absolute restriction against associated persons meeting with clients at the primary residence. This restriction also applies, by reference, to the exclusion set forth in Proposed Rule 3010(g)(2)(C), which governs non-primary-residence locations used for securities business for less than 30 business days per calendar year.

While we appreciate the need to avoid potential customer confusion, we are of the view that an absolute prohibition is overly restrictive. We believe that an associated person working from a primary

² See Letters dated October 21, 2003 to Barbara Sweeney, Senior Vice President and Corporate Secretary, NASD re: Amendment to NASD Rule 3010(g)2 (Branch Office Definition), and December 23, 2003 to Secretary, Securities Exchange Commission re: NYSE Rule 342, which we incorporate by reference herein.

residence³ or from a vacation home⁴ should be permitted to meet with clients at the location provided the other required safeguards are met (e.g. including the restriction on handling client funds or securities at the location). Under such circumstances, there appears to be little risk associated with occasional client meetings.

Indeed, in exempting offices of convenience from branch office registration⁵, NASD permits occasional client meetings exclusively by appointment, provided that the location is not held out to the public as a branch office and all other functions of the associated person are conducted and supervised through the designated branch office. Accordingly, we suggest that the NASD consider modifying the proposed 3010(g)(2)(B)(ii) to state "...the associated person does not *regularly* meet with customers at the location." Records of customer meetings could be used to monitor compliance with this requirement by the member firm.

We hope our comments have been helpful. If you have any questions, or would like to discuss our comments further, please contact the undersigned or Amal Aly, Vice President and Associate General Counsel, at 212-608-1500.

Sincerely,

John Polanin, Jr.
Chairman
Self-Regulation and
Supervisory Practices Committee

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³ Proposed Rule 3010(g)(2)(A)

⁴ Proposed Rule 3010(g)(2)(C))

⁵ Proposed Rule 3010(g)(2)(D)