

Notice to Members

MARCH 2006

SUGGESTED ROUTING

Senior Management
Continuing Education
Legal & Compliance
Operations
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KEY TOPICS

Branch Office Definition
Branch Office Registration
Central Registration Depository
(CRD® or Web CRD)
Form BR (Uniform Branch Office
Registration Form)
IM-3010-1
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GUIDANCE

Uniform Branch Office Definition

Extension of Effective Date of NASD Uniform Branch Office Definition and Certain Form BR and Form U4 Filing Requirements from May 1, 2006 to July 3, 2006

Joint Interpretive Guidance from NASD and the NYSE Relating to Uniform Branch Office Definition Under NASD Rule 3010(g)(2) and NYSE Rule 342.10

Effective Date of Uniform Definition:

NASD: July 3, 2006; NYSE: September 9, 2005

Executive Summary

On September 9, 2005, the Securities and Exchange Commission (SEC) approved (1) amendments to NASD Rule 3010(g)(2) to revise the definition of "branch office"; and (2) adoption of IM-3010-1 to provide guidelines on factors to be considered by a member in conducting internal inspections of offices (Uniform Definition).¹ The SEC simultaneously approved amendments to the New York Stock Exchange, Inc.'s (NYSE) Rule 342 (Offices – Approval, Supervision and Control) to provide a new, uniform industry definition of the term "branch office."²

The NYSE's Uniform Definition became effective on September 9, 2005. A copy of the amended rule text is attached hereto as Attachment A (NASD) and Attachment B (NYSE).

NASD has filed for immediate effectiveness an extension to July 3, 2006 of (1) the Uniform Definition; and (2) the transition deadline for compliance with Form BR (Uniform Branch Office Registration Form) and Form U4 (Uniform Application for Securities Industry Registration or Transfer) filing requirements for firms with respect to those branch offices of a firm in existence before the close of business on October 14, 2005.³ The rule change became effective on its March 14, 2006 filing date.⁴

On September 30, 2005, the SEC approved new Form BR, which replaced Schedule E of Form BD, the NYSE Branch Office Application Form, and certain state branch office forms.⁵ Form BR became effective on October 31, 2005.

The Uniform Definition contains several express exemptions from the branch office registration requirements. NASD and the NYSE (the SROs) believe these exemptions make practical sense without compromising investor protection. The SROs are issuing this Joint Interpretive Notice to address certain questions that have arisen regarding the application of these exemptions.

Questions/Further Information

Questions concerning this Joint Interpretive Notice may be directed as follows:

NASD: Chip Jones, Vice President, Registration and Disclosure, at (240) 386-4797, Richard E. Pullano, Associate Vice President/Chief Counsel, Registration and Disclosure, at (240) 386-4821; or Kosha K. Dalal, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-6903.

NYSE: Stephen Kasprzak, Principal Counsel, Rule and Interpretive Standards, at (212) 656-5226.

Extension of NASD Effective Date

NASD has extended from May 1, 2006 to July 3, 2006 (1) the effective date of the Uniform Definition; and (2) the transition deadline for compliance with Form BR (Uniform Branch Office Registration Form) and Form U4 (Uniform Application for Securities Industry Registration or Transfer) filing requirements for firms with respect to those branch offices of a firm in existence before the close of business on October 14, 2005. Firms will have until July 3, 2006 to (1) complete and file the "conversion" Form BR for each such branch; and (2) with respect to the registered persons employed by such branches, amend all applicable Forms U4 to assign these registered persons to the branch office(s) (or other locations) from which they work.⁶

Numerous members have requested an extension of the May 1, 2006 deadlines as the process for transitioning existing and new branch offices into the new centralized branch office registration system on CRD[®] has been more time consuming than originally anticipated. As a result, NASD believes this one-time extension of the deadlines until July 3, 2006 will allow for a more orderly transition by members to the new Uniform Definition and the new centralized branch office registration system on CRD.

Interpretive Questions

A “branch office” is generally defined as any location where one or more associated persons of a member⁷ regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or that is held out as such.

The Uniform Definition excludes from registration as a branch office: (1) a non-sales location that provides customer service or back office functions; (2) an associated person’s primary residence provided it is not held out to the public as a branch office and certain other conditions are satisfied; (3) a location, other than the primary residence, that is used for less than 30 business days in any calendar year for securities business, is not held out to the public as an office, and which satisfies certain of the conditions set forth in the primary residence exemption; (4) a location of convenience used occasionally and by appointment; (5) a location used primarily for non-securities business and from which no more than 25 securities transactions are effected annually; (6) the floor of a registered securities exchange; and (7) a temporary location used as part of a business continuity plan.

The SROs have received questions from broker-dealers and associated persons requesting clarification of certain exemptions under the Uniform Definition. These questions, and SRO responses, are as follows:

“Regularly Conducts the Business of Effecting Transactions”

- Q1 The Uniform Definition provides that a “branch office” is “any location where one or more associated persons of a member regularly conducts the business of effecting transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such.” What types of activities would this include?
- A1 Such activities would include, for example: (1) soliciting new accounts or orders; (2) opening new accounts; (3) accepting or executing orders; or (4) making recommendations with respect to securities transactions. NASD members should keep in mind that certain activities, such as order execution, may also require a location to be registered as an office of supervisory jurisdiction (OSJ) under NASD Rule 3010(g)(1).

Non-Sales Location/Back Office Exemption

- Q2 What types of activities at a location are considered “non-sales locations/customer services/back office” functions for purposes of NASD Rule 3010(g)(2)(A)(i) and NYSE Rule 342.10(A)?

A2 In general, to be exempt from registration as a branch office under these provisions, such locations must be established solely for customer service and/or back office functions and may not be held out to the public as a branch office. No sales activities may be conducted from a non-sales location, which is to say that associated persons conducting business on behalf of a member from such locations may not recommend the purchase or sale of securities, or otherwise communicate with the public for the purpose of accepting orders for the purchase or sale of securities or for executing such orders. Communications with the public solely in a clerical and/or ministerial capacity is permissible under this exemption.

Q3 Can an office established for the sole purpose of soliciting investment-banking services to potential clients be considered a “non-sales” location?

A3 If a location is utilized to solicit a member’s investment banking services, but such investment banking services are not performed from the location, registration as a branch office is not required, provided, of course, no other activities at the location would otherwise require branch office registration. A location from which such investment banking services are performed would require registration.

As defined in NASD Rule 2711 and NYSE Rule 472.20, “investment banking services” include, without limitation, acting as an underwriter in an offering for the issuer, acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transaction), or similar investments; or serving as placement agent for the issuer. The term also includes acting as a member of a selling group in a securities underwriting.⁸

Q4 Can an office engaging solely in proprietary trading or securities lending be considered a “non-sales” location?

A4 An office that engages solely in proprietary trading or securities lending may be considered a “non-sales” location, provided no other sales functions are conducted and the location is not held out to the public as a branch office.

Q5 Can an office where a member stations an NYSE Series 16 qualified supervisory analyst solely to review research reports be considered a “non-sales” location?

A5 The NYSE has provided interpretive guidance⁹ regarding the Uniform Definition for members registered with the NYSE, which provides that a location where a member stations a Series 16 qualified supervisory analyst in an office solely to review research reports is an example of a “non-sales” location. NASD members are advised to consult NASD Rule 3010(g)(1), which provides that such locations may be OSJs if, among other things, final approval of advertising or sales literature for use by persons associated with the member pursuant to Rule 2210(b)(1) occurs at such location. OSJs are required to register as branch offices. If the review of the research reports conducted from such location constitutes something less than final approval and final approval occurs at another location, then a firm may view such location as exempt from branch office registration, provided no other activities at such location would require branch office registration.

Primary Residences

The Uniform Definition exempts from the definition of “branch office” any location that is an associated person’s primary residence¹⁰, provided that: (a) only one associated person, or multiple associated persons who reside at the location and are members of the same immediate family, conduct business from the location; (b) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (c) neither customer funds nor securities are handled at the location; (d) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the associated person; (e) the associated person’s correspondence and communications with the public are subject to the member’s supervision in accordance with NASD Rule 3010 and NYSE Rules 342 and 472; (f) electronic communications (e.g., email) are transmitted through the member’s electronic system; (g) all orders are entered through the designated branch office or through an electronic system established by the member that is reviewable at the branch office; (h) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and (i) a list of the residence locations is maintained by the member.

- Q6 One of the conditions that must be satisfied for the “primary residence” exemption from the Uniform Definition to apply is that the associated person be assigned to a designated branch office, and that the address of such designated branch office be reflected on all business cards, stationery, advertisements and other communications to the public.¹¹ Can an associated person use the unregistered location address in telephone directories, business cards, stationery, advertising or sales literature, so long as such communication also sets forth the address and telephone number of the branch office or OSJ from which the associated person is supervised?
- A6 No. The use of the primary residence address in a telephone directory, business card, stationery, advertising or sales literature will be deemed “holding out” the location as a branch office in violation of NASD Rule 3010(g)(2)(A)(ii)(b) and NYSE Rule 342.10(B)(ii), even if such communication also sets forth the address and telephone number of the branch office or OSJ from which the associated person is supervised.
- Q7 Can an associated person use an unregistered location (e.g., primary residence) telephone number or mobile telephone number in telephone directories, business cards, stationery, advertisements and other communications with the public by such associated person?
- A7 Yes. An associated person can use the telephone number of an unregistered location or a mobile telephone number in telephone directories, business cards, stationery, advertising or other communications with the public, provided (1) the address of the unregistered location is not listed on any such communication; and (2) the communication also includes the telephone number and address of the branch office or OSJ from which the associated person is supervised.

Q8 One of the conditions that must be satisfied for the “primary residence” exemption from the Uniform Definition to apply is that “neither customer funds nor securities are handled at that location.”¹² Are there instances when an associated person may accept funds and/or securities and not violate this condition?

A8 Associated persons may not directly accept funds or securities at their primary residence since this would violate the “primary residence” exemption prohibition against meeting with customers at the residence. Likewise, accepting funds or securities mailed directly to the primary residence address would violate the prohibition against “holding out” the location as a branch office.

However, an associated person working from a primary residence may accept funds or securities at an “office of convenience,”¹³ provided the following conditions are met: (1) the funds are made payable to the member or the issuer, as the case may be; (2) the funds are not deposited by the associated person; and (3) the associated person promptly forwards such funds or securities received from the customer to the member or the issuer, as the case may be.

If an associated person subsequently brings funds and/or securities received from a customer to the primary residence location, it will not be considered a violation of the primary residence exemption provided such funds or securities are promptly forwarded to the member or issuer. However, the associated person must not exercise control over the funds or securities. Members are advised to consider the requirements of SEC Rules 15c3-1 (Net Capital Requirements for Brokers and Dealers) and 15c3-3 (Customer Protection – Reserves and Custody of Securities).¹⁴

Q9 One of the conditions that must be satisfied in order for the “primary residence” exemption to the Uniform Definition to apply is that electronic communications (e.g., email) are transmitted through the member’s electronic systems.¹⁵ Further, such communications must be entered through the designated branch office or through an electronic system established by the member that is reviewable at the branch office.¹⁶ Can an associated person use his or her personal email accounts to communicate with potential or existing customers?

A9 No. All electronic communications must be made through the member’s electronic system, and all orders must be entered through the designated branch office or through an electronic system established by the member that is reviewable at the branch office. In addition, the SEC’s Books and Records Rules (SEC Rules 17a-3 and 17a-4)¹⁷ require members to maintain records of electronic mail communications.

Locations Other than Primary Residences

The Uniform Definition exempts from branch office registration any location, other than primary residences, provided it is used for securities-related activities less than 30-business days in any calendar year.¹⁸ These would generally include vacation or second homes and other non-primary residences. Such locations are subject to most of the criteria (enumerated above) imposed upon exempted primary residences.

In the context of this exemption, the term “business day” is defined to exclude any partial day, provided the associated person spends at least four hours of such business day at his or her designated branch office during the time period such office is normally open for business. This is intended to prevent associated persons from regularly conducting business from locations other than their primary residences for the majority of a business day, without such activity being counted towards the 30-business day limit.

Q10 If a member relies on the “30-business days in one calendar year” exemption, what types of records must a member maintain to demonstrate compliance with the “business day” limitation?

A10 A member is expected to demonstrate compliance with the “business day” limitation by maintaining, at a minimum, logs identifying any such locations, “business days” spent at such locations, and the activities of the associated person conducted from such locations.

Q11 If a member relies on the “30-business days in one calendar year” exemption and the location later exceeds the 30-business day threshold in one calendar year, must the member register the location?

A11 The member’s initial reliance on this exemption must be reasonably determined based on an understanding of the use of such location. Once the 30-business days in a calendar year limit has been reached, members will have a 30 calendar-day window to register such location as a branch office.

Offices of Convenience

The Uniform Definition exempts from branch office registration “offices of convenience.”¹⁹ An office of convenience is defined as a location where an associated person occasionally and exclusively by appointment meets with customers, provided such location is not held out to the public as an office. Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of the NYSE, other self-regulatory organizations, and securities and banking regulators may be displayed and will not be deemed “holding out” for purposes of this section. NYSE Rule 342(D) prescribes that only signage required by the Interagency Statement (Statement on Retail Sales of Nondeposit Investment Products required under Banking Regulations) may be displayed at such locations. Such limited signage is allowed to prevent confusion on the part of customers who might otherwise believe that only traditional, insured bank-related investments are being offered at the location.

Q12 If an associated person works from multiple offices, (e.g., “bank circuit riders”), can a member rely on the “office of convenience” exemption to not register such locations?

A12 Yes. A member may rely on this exemption to not register multiple locations that an associated person is assigned to, provided: the associated person meets with customers only occasionally and exclusively by appointment at any such location; and no other activities occur at such location that would require branch office registration. For instance, the location may not be held out to the public, other than, in the case of a location on bank premises, displaying signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of other self-regulatory organizations, and securities and banking regulators. The associated person, however, must be assigned to at least one registered location for supervisory purposes. The exemption is not limited to bank locations. Any broker-dealer can use the exemption so long as the conditions of the exemption are satisfied.

Q13 What is the meaning of “occasionally” for purposes of “offices of convenience” exemption pursuant to NASD Rule 3010(g)(2)(A)(iv) and NYSE Rule 342.10(D)?

A13 An associated person may meet with customers at such location by appointment only; however, an associated person may not establish regular business hours at such location or hold out the location in any way (except for signage permitted at banks as discussed above). If customers or prospective customers know that an associated person can be met with regularly (or on some predetermined schedule such as the first Monday of every month) at a particular location, it would not qualify as an office of convenience. If the associated person meets with walk-in customers at such location, such location would not qualify as an office of convenience. For example, if a member has a location in a hospital, school or similar type location where an associated person(s) offers securities (such as through 403(b) type plans²⁰) and the associated person(s) is there on a regular schedule, such location would not qualify for this exemption.

Q14 Can a member provide computer terminals at an office of convenience that allows Internet access by customers to their accounts?

A14 Yes. A member may provide computer terminals at an office of convenience for the limited purposes of allowing customers to: (1) review online, publicly available materials concerning financial and business information such as market quotations, economic indicators, and annual and quarterly reports on companies; (2) make independent investment decisions to buy or sell securities for their own accounts; (3) access their accounts; and (4) enter orders through an order entry and execution system. There can be no publicly displayed signage on the computer terminals (other than permitted bank signage) or other indicia of holding out.

Location Used Primarily to Engage in Non-Securities Transactions

The Uniform Definition exempts from branch office registration locations where associated persons are primarily engaged in non-securities activities (e.g., insurance sales) and from which an associated person effects no more than 25 securities transactions in a calendar year, provided that advertisements or sales literature, including business cards, identifying such location also set forth the locations from which the associated person or persons are directly supervised.²¹

Q15 If a member relies on the non-securities transaction exemption and the location later exceeds the 25 securities transactions in a calendar year limitation, must the member register the location?

A15 A member's initial reliance on this exemption must be reasonably determined based on the use of such location (i.e., an ongoing determination must be made to determine whether the total number of securities transactions effected from the location exceeds the 25-transaction de minimis standard). Once the 25 securities transactions in a calendar year threshold is exceeded, members will be given a 30 calendar-day window to register such locations as branch offices.

Q16 Are there any transactions that do not count towards the "25 securities transactions in a calendar year" limitation?

A16 Yes. Transactions made pursuant to automatic investment plans wherein a customer provides prior written instructions to purchase a predetermined number of shares on a regular basis would not count towards the 25 transactions in one calendar year limitation, provided there is no new recommendation given by an associated person to the customer with respect to such transactions.

Temporary Location Used as Part of a Business Continuity Plan

The Uniform Definition exempts from branch office registration any temporary location established in response to the implementation of a business continuity plan.²²

Q17 If a member begins to use a temporary location as part of its business continuity plan, must it amend the Form BR for this branch office to reflect this temporary location address?

A17 No. The member should continue to use the permanent office address and telephone number if the new location is only a temporary location being used as part of a business continuity plan. If such temporary location becomes permanent, then the member must amend the Form BR for such location to reflect the new address.

Calendar Year

Q18 What is the meaning of the term “calendar year” as used in the Uniform Definition?

A18 The term “calendar year” means the period commencing January 1 and ending December 31.

Call Centers

Q19 If a member operates a call center to respond to customer questions and accept orders at the direction of the customer, without providing any advice or recommendations, must such location be a registered branch office?

A19 Yes. A call center where a member communicates with customers and enters customer orders would qualify as a branch office under NASD Rule 3010(g)(2) and NYSE Rule 342.10. Members should keep in mind that certain activities, such as order execution, may also require a location to be registered as an OSJ under NASD Rule 3010(g)(1) and NYSE Rule 342.10. See also Questions #1 and #2.

Main Offices

Q20 Must a member register its main office as a branch office?

A20 A member must register its main office as a branch office if the activities at such location satisfy the definition of “branch office.”²³

Offices That Supervise Other Offices

NASD Rule 3010(g)(2)(B) and NYSE Rule 342.10 provide that notwithstanding the exclusions provided in 3010(g)(2)(A)(i)-(vii) or 342.10(A)-(G), respectively, any location that is responsible for supervising the activities of persons associated with the member at one or more *non-branch* locations of the member is considered to be a branch office. For example, if an associated person supervises the activities of persons at one or more *non-branch* locations from his primary residence, such primary residence location must be registered as a branch office.

Q21 What is the effective date of this provision?

A21 NASD Rule 3010(g)(2)(B) became effective on January 31, 2005 as part of the Supervisory Controls Amendments.²⁴ The similar provision in NYSE Rule 342.10 became effective on September 9, 2005.

Foreign Offices

Q22 Are foreign offices subject to registration as branch offices?

A22 Yes. Members must register any foreign office that satisfies the definition of “branch office.”

NASD Rule 1017 and Safe Harbor Implications (For NASD Members Only)

Q23 Will a member be required to submit an application pursuant to NASD Rule 1017 if such member has an increase in the number of branch offices?

A23 NASD Rule 1017 requires that a member file an application with NASD for specified changes in ownership or control, or any “material change in business operations as defined in Rule 1011.” NASD IM-1011-1 creates a safe harbor for certain changes that are presumed not to be a “material change in business operations,” and therefore do not require a member to submit an application pursuant to NASD Rule 1017.

As a result of amended NASD Rule 3010, many members may now be required to register existing office locations as branch offices. Registering an office *existing at or prior to the time of the effective date of the Uniform Definition* will not, in and of itself, be considered a material change in business for purposes of NASD Rule 1017, as no increase or change in the number of offices is taking place due to the registration. Similarly, those existing offices that become branches pursuant to the amended rule will not create any new impact to a member’s safe harbor expansion allowance, as the safe harbor provision already contemplates both registered and unregistered offices.²⁵ Additionally, any member that is currently operating pursuant to a membership agreement that contains a restriction on business expansions will be able to register those existing office locations as branch locations, if required, without violating that restriction, as the number of offices to which a member is restricted already includes registered and unregistered offices.

Members are cautioned that, while the mere registration of an existing office as a branch office will not trigger a NASD Rule 1017 filing requirement, the addition and registration of new branches may constitute a material change in business, depending on facts and circumstances, and require NASD approval through the membership application process. Members are encouraged to consult with their respective district offices if they are uncertain of their filing obligations.

Endnotes

- 1 See Exchange Act Release No. 52403 (September 9, 2005); 70 FR 54782 (September 16, 2005); File No. SR-NASD-2003-104 (Order Granting Approval of Proposed Rule Change Relating to Proposed Uniform Branch Office Definition) (SEC Approval Order). *See also NASD Notice to Members 05-67* (October 2005).
- 2 See Exchange Act Release No. 52402 (September 9, 2005); 70 FR 54788 (September 16, 2005); File No. SR-NYSE-2002-34 (Order Granting Approval of Proposed Rule Change Relating to Proposed Uniform Branch Office Definition) (SEC NYSE Approval Order). *See also NYSE Information Memo 05-74* dated October 6, 2005.
- 3 See SR-NASD-2006-037 (March 14, 2006).
- 4 See SR-NASD-2006-037 (March 14, 2006).
- 5 See Exchange Act Release No. 52544 (September 30, 2005); 70 FR 58764 (October 7, 2005); File No. SR-NASD-2005-030 (Order Granting Approval of Proposed Rule Change Relating to Proposed Form BR (Uniform Branch Office Registration Form) and Conforming Changes and Technical Revisions to Form U4 and Form U5). *See also* Exchange Act Release No. 52543 (September 30, 2005); 70 FR 58771 (October 7, 2005); File No. SR-NYSE-2005-13. *See also NASD Notice to Members 05-66* (October 2005).
- 6 See SR-NASD-2006-037 (March 14, 2006).
- 7 For purposes of this Joint Interpretive Notice, the term "member" refers to NASD members and NYSE member organizations.
- 8 See *NASD Notice to Members 02-39* (July 2002); *NYSE Information Memo 02-26* dated June 26, 2002.
- 9 See *NYSE Information Memo 05-74* dated October 6, 2005.
- 10 NASD Rule 3010(g)(2)(A)(ii) and NYSE Rule 342.10(B).
- 11 NASD Rule 3010(g)(2)(A)(ii)(d) and NYSE Rule 342.10(B)(iv).
- 12 NASD Rule 3010(g)(2)(A)(ii)(c) and NYSE Rule 342.10(B)(iii).
- 13 See NASD Rule 3010(g)(2)(A)(iv) and NYSE Rule 342.10(D).
- 14 See 17 CFR 240.15c3-1 and 15c3-3. *See also NASD Notice to Members 93-30* (NASD Provides SEC-Approved Clarifications and Interpretations to Recent Net Capital Rule Amendments).
- 15 NASD Rule 3010(g)(2)(A)(ii)(f) and NYSE Rule 342.10(B)(vi).
- 16 NASD Rule 3010(g)(2)(A)(ii)(g) and NYSE Rule 342.10(B)(vii).
- 17 See 17 CFR 240.17a-3 and 17a-4.
- 18 NASD Rule 3010(g)(2)(A)(iii) and NYSE Rule 342.10(C).
- 19 NASD Rule 3010(g)(2)(A)(iv) and NYSE Rule 342.10(D).
- 20 Internal Revenue Code Section 403(b).
- 21 NASD Rule 3010(g)(2)(A)(v) and NYSE Rule 342.10(E).
- 22 NASD Rule 3010(g)(2)(A)(vii) and NYSE Rule 342.10(G). For additional information on business continuity plans, see NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information). *See also NASD Notice to Members 04-37* (SEC Approves Rules Requiring Members to Create Business Continuity Plans and Provide Emergency Contact Information) (May 2004). *See also* NYSE Rule 446 (Business Continuity and Contingency Plans) and *NYSE Information Memos* No. 04-24 dated May 3, 2004; No. 05-63 dated September 2, 2005; No. 05-71 dated September 23, 2005; and No. 05-80 dated October 13, 2005.

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- 23 Adoption of NASD's Uniform Definition supercedes any earlier statements made concerning the registration requirements applicable to members' main offices under NASD rules. NASD notes that IM-1000-4 addresses the need for members to keep their membership applications current, as well as to properly designate and register OSJs and branch offices. NASD intends to propose future amendments to IM-1000-4 to reflect the SEC's approval of the Uniform Definition and new Form BR.
- 24 See Exchange Act Release No. 498832 (June 17, 2004); 69 FR 35092 (June 23, 2004); SR.NASD-2002-162. See also *NASD Notice to Members 05-08* (January 2005). See also Exchange Act Release No. 49882 (June 17, 2004); 69 FR 35108 (June 23, 2004); SR-NYSE-2002-36.
- 25 See NASD IM-1011-1.

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ATTACHMENT A—NASD RULE

3010 Supervision

(g) Definitions

(2) (A) A “branch office” is any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(i) Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) Any location that is the associated person’s primary residence; provided that:

a. Only one associated person, or multiple associated persons, who reside at that location and are members of the same immediate family, conduct business at the location;

b. The location is not held out to the public as an office and the associated person does not meet with customers at the location;

c. Neither customer funds nor securities are handled at that location;

d. The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;

e. The associated person’s correspondence and communications with the public are subject to the member’s supervision in accordance with Rule 3010;

f. Electronic communications (e.g., e-mail) are made through the member’s electronic system;

g. All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

h. Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

i. A list of the residence locations is maintained by the member;

(iii) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of paragraph (A)(2)(ii)a. through h. above;

(iv) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;*

(v) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

(vi) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions provided in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(C) The term "business day" as used in Rule 3010(g)(2)(A) shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

* Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of the NYSE, other self-regulatory organizations, and securities and banking regulators may be displayed and shall not be deemed "holding out" for purposes of this section.

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IM-3010-1. Standards for Reasonable Review

In fulfilling its obligations pursuant to Rule 3010(c), each member must conduct a review, at least annually, of the businesses in which it engages, which review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with NASD rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the member's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, the disciplinary history of registered representatives or associated persons, etc. The procedures established and the reviews conducted must provide that the quality of supervision at remote offices is sufficient to assure compliance with applicable securities laws and regulations and with NASD rules. With respect to a non-branch location where a registered representative engages in securities activities, a member must be especially diligent in establishing procedures and conducting reasonable reviews. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations and/or may need to provide for more frequent reviews of certain locations.

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ATTACHMENT B—NYSE RULE

Rule 342. OFFICES - APPROVAL, SUPERVISION AND CONTROL

Supplementary Material:

.10 Definition of Branch Office

A “branch office” is any location where one or more associated persons of a member or member organization regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(A) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) any location that is the associated person’s primary residence; provided that: (i) only one associated person, or multiple associated persons, who reside at that location and are members of the same immediate family, conduct business at the location; (ii) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (iii) neither customer funds nor securities are handled at that location; (iv) the associated person is assigned to a designated branch office, and such branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person; (v) the associated person’s correspondence and communications with the public are subject to all supervisory provisions of the Exchange’s rules including, but not limited to, Rules 342 and 472; (vi) electronic communications (e.g., e-mail) are made through the member’s or member organization’s electronic system; (vii) all orders are entered through the designated branch office or an electronic system established by the member or member organization that is reviewable at the branch office; (viii) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member or member organization; and (ix) a list of the locations is maintained by the member or member organization;

(C) any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member or member organization complies with the provisions of (ii) through (viii) of paragraph (B) above;

(D) any office of convenience, where the associated person occasionally and exclusively by appointment meets with customers, which is not held out to the public as a branch office (where such location is on bank premises, however, only signage required by the Interagency Statement (Statement on Retail Sales of Nondeposit Investment Products required under Banking Regulations) may be displayed);

(E) any location that is used primarily to engage in non-securities activities and from which the associated person effects no more than 25 securities transactions in any one calendar year; provided that any advertisements or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person conducting business at the non-branch locations are directly supervised;

(F) the Floor of a registered national securities exchange where a member or member organization conducts a direct access business with public customers; or

(G) a temporary location established in response to the implementation of a business continuity plan.

Notwithstanding the exclusions in subparagraphs 342.10(A) - (G), any location that is responsible for supervising the activities of persons associated with a member or member organization at one or more non-branch locations of such member or member organization is considered to be a branch office.

For purposes of this Rule, the term “business day” shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

For purposes of this Rule, the term “associated person of a member or member organization” is defined as a member, allied member, or employee associated with a member or member organization.

For purposes of Rule 342.10(B)(viii), written supervisory procedures shall include criteria for on-site for cause reviews of an associated person’s primary residence. Such reviews must utilize risk-based sampling or other techniques designed to assure compliance with applicable securities laws and regulations and with NYSE rules.

For purposes of Rule 342.10(B)(viii) and (C), written supervisory procedures for such residences and other remote locations must be designed to assure compliance with applicable securities laws and regulations and with NYSE Rules.

Factors which should be considered when developing risk-based sampling techniques to determine the appropriateness of on-site for cause reviews of selected residences and other remote locations shall include, but not be limited to, the following: (i) the firm’s size; (ii) the firm’s organizational structure; (iii) the scope of business activities; (iv) the number and location of offices; (v) the number of associated persons assigned to a location; (vi) the nature and complexity of products and services offered; (vii) the volume of business done; (viii) whether the location has a Series 9/10-qualified person on-site; (ix) the disciplinary history of the registered persons or associated persons, including a review of such person’s customer complaints and Forms U4 and U5; and (x) the nature and extent of a registered person’s or associated person’s outside business activities, whether or not related to the securities business.

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