

NASD Notice to Members 98-91

NASD Alerts Members To Their Obligations Concerning Cold Calling And Advertising To Persons In The United Kingdom

Suggested Routing

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Executive Summary

The Financial Services Authority (FSA) in the United Kingdom (U.K.) has detected an increase in the frequency with which National Association of Securities Dealers, Inc. (NASD[®]) member firms have been soliciting U.K. citizens. In response to this activity, the FSA has asked NASD Regulation, Inc. (NASD RegulationSM) to alert its members to the standards governing the solicitation of U.K. citizens generally and implications of cold calling and advertising to persons in the U.K. in particular. This *Notice* briefly summarizes the legal and regulatory framework in the U.K. regarding cold calling and advertising. NASD Regulation reminds members proposing to cold call or advertise into the U.K., or any foreign country, to ensure that any such activities comply with all applicable laws.

Questions concerning this *Notice* should be directed to Gary L. Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8104, or The Authorization Enquiries Department, Financial Services Authority, at (011) 44-171-676-4704.

Conduct Of Investment Business In The U.K.

Any person who carries on investment business in the U.K. must be authorized or exempt under the Financial Services Act of 1986 (the Act). Investment business includes dealing and arranging deals in investments and giving investment advice. "Investments" include stocks, shares, and derivatives. Persons who operate from outside the U.K. are "overseas persons" under the Act and enjoy the benefit of an exclusion from the need for authorization but only if they carry on their business in such a way that they do not breach the provisions of Section 56 (unsolicited or cold calls) and Section 57 (investment advertisements) of the Act.

Unsolicited Or Cold Calls

Section 56 of the Act generally prohibits cold calling by providing that no person shall make an unsolicited call (*i.e.*, any call without an express invitation) in an attempt to make an investment agreement with a person in the U.K. Members should be aware that this general prohibition in the U.K. applies to U.S. member firms and their associated persons notwithstanding the fact that such persons may be permitted to make cold calls under the NASD rules.

The FSA's Common Unsolicited Calls Regulations (CUC Regulations) provide exemptions from the general prohibition against cold calling. Under the CUC Regulations, an "overseas person" may make unsolicited calls only to:

- (1) "existing customers," defined as persons with whom the overseas person has an existing customer relationship that was established while the customer was *resident outside the U.K.*; and
- (2) "non-private customers," or business investors, such as government or public authorities, corporations, or partnerships with substantial assets and trustees of trusts holding substantial assets.

Investment Advertisements

Section 57 of the Act generally prohibits an overseas person, as defined above, from issuing or causing the issue of an investment advertisement in the U.K. unless its contents have been approved by an authorized person under the Act. An investment advertisement includes any advertisement containing information calculated to lead directly or indirectly to a person entering into an investment agreement. Foreign advertisements are treated as issued in the U.K. if they are directed to persons in the U.K. or made available to them other than through a newspaper or other

journal that is published and circulates mainly outside of the U.K.

Consequences Of Breaching U.K. Legislation

Any person who conducts investment business in the U.K. without authorization under the Act, or any person who issues an investment advertisement without approval may

be committing a criminal offense and be liable to prosecution. Also, any agreement made by or through an unauthorized person may be unenforceable against the other party.

The information provided in this *Notice* does not describe in detail the laws applicable to solicitation in the

U.K. NASD Regulation urges members considering soliciting U.K. citizens to review the U.K. laws specifically to ensure that their conduct complies with all applicable laws.

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