

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<input type="checkbox"/> Initial	<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Withdrawal	<input checked="" type="checkbox"/> Section 19(b)(2)	<input type="checkbox"/> Section 19(b)(3)(A)	<input type="checkbox"/> Section 19(b)(3)(B)
			Rule		
<input type="checkbox"/> Pilot	<input type="checkbox"/> Extension of Time Period for Commission Action	<input type="text" value=""/> Date Expires	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<input type="checkbox"/> Exhibit 2 Sent As Paper Document	<input type="checkbox"/> Exhibit 3 Sent As Paper Document
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Kosha"/>	Last Name	<input type="text" value="Dalal"/>
Title	<input type="text" value="Associated General Counsel"/>		
E-mail	<input type="text" value="kosha.dalal@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-6903"/>	Fax	<input type="text" value="(202) 728-8264"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date	<input type="text" value="03/21/2005"/>
By	<input type="text" value="Patrice M. Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) hereby submits to the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 4 to SR-NASD-2003-104¹ (the “Proposal”) relating to proposed amendments to Rule 3010(g)(2)(A) to revise the definition of the term “branch office” and adopt IM-3010-1 to provide guidelines on factors to be considered by a member firm in conducting internal inspections of offices. In addition, NASD is hereby responding to a second comment letter on the Proposal submitted by the American Council of Life Insurers (“ACLI”), dated October 5, 2004² (“ACLI Comment Letter”).

I. Proposed Amendment

NASD hereby proposes to amend the Proposal as follows:

1. Amend the proposed definition of “branch office” in Rule 3010(g)(2)(A) to exclude a member’s main office. This change is being proposed to conform the language of the proposed definition to the language proposed by the New York Stock Exchange, Inc. (“NYSE”) in SR-NYSE-2002-34.³ The change is as follows:

(2)(A) A “branch office” is any location, other than the main office, where one or more associated persons of a member regularly conduct 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, excluding:

2. Add new subparagraph (2)(C) to Rule 3010(g) to clarify the rules and regulations applicable to a member’s main office:

(2)(C) Notwithstanding the exclusion in subparagraph (2)(A), a main office of a member that meets the definition set forth in Rule 3010(g)(1) shall be deemed an office of supervisory jurisdiction, and a main office of a member that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member shall be considered a branch

¹ See 68 FR 70059 (December 16, 2003); Securities Exchange Act Release No. 48897; File No. SR-NASD-2004-104 (“Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed New Uniform Definition of “Branch Office” under NASD Rule 3010(g)(2)) (“Notice of Filing”). Technical Amendment No. 3 was filed on December 29, 2004 to reflect the approval order issued by the SEC for SR-NASD-2002-162 (Proposed Supervisory Controls Amendments); 69 FR 35092 (June 23, 2004); Securities Exchange Act Release No. 49883.

² See comment letter from Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, ACLI, dated October 5, 2004.

³ See Securities Exchange Act Release No. 46888 (Nov. 22, 2002), 67 FR 72257 (December 4, 2002) (Notice of Filing of Proposed Rule Change and Amendment No. 1); SR-NYSE-2002-34.

office for all purposes under NASD rules and regulations, other than the registration requirements of Rule 3010(g)(2)(A).

NASD seeks to clarify that although a main office of a member will not be registered as a branch office under the proposed new CRD® branch office registration system, a main office of a member will remain subject to NASD rules and regulations relating to, among other things, supervision, inspection, and books and records. Based on the activities and functions of a main office of a member, such office will be considered an office of supervisory jurisdiction, branch office, or an unregistered office. Members will be urged to carefully review the activities at a main office to determine its designation.

3. Designate proposed new text to Rule 3010(g)(2) as being subparagraph (D):

(2)(D) 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.

For your convenience, we have included Attachment A, attached hereto, which shows the text of the proposed rule change, redlined to reflect the proposed amendments from existing NASD rule text.

II. Response to Comments

NASD hereby responds to a second comment letter on the Proposal received by the Commission from the ACLI in response to the publication in the Federal Register of Notice of Filing of SR-NASD-2003-104.⁴ The SEC published the Proposal in the Federal Register on December 16, 2003. The SEC received 846 comment letters in response to the filing. On July 29, 2004, NASD submitted a written response to comments. On October 5, 2004, the ACLI submitted a second comment letter on the Proposal.

The ACLI Comment Letter asserts that the Proposal is anti-competitive because it imposes a disproportionate burden on “limited purpose” broker-dealers affiliated with life insurers that currently operate many non-branch locations, without satisfying a legitimate regulatory purpose. In addition, the ACLI Comment Letter asserts that the Proposal will trigger significant new registration fees by transforming non-branch locations into branches, which will impose undue economic burdens on “limited purpose” broker-dealers.

Instructions to Form 19b-4⁵ of the Act require a self-regulatory organization proposing a rule change to state whether such proposed rule change will have an impact

⁴ See Notice of Filing, *supra* note 1.

⁵ See Form 19b-4 – Proposed Rule Change by a Self-Regulatory Organization; 17 CFR 249.819.

or burden on competition and, if so, why any such burden on competition is necessary or appropriate in furtherance of the purposes of the Act. As stated in our Response to Comments, dated July 29, 2004, NASD does not believe the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The ACLI Comment Letter is premised on the assumption that there is a recognized subset of broker-dealers known as “limited purpose” broker-dealers that should be treated differently for purposes of this Proposal. The ACLI’s designation of certain broker-dealers as “limited purpose” broker-dealers is not statutorily recognized under the definition of “broker” and “dealer” set forth in the Act.⁶ The Act definition of “broker” and “dealer” does not distinguish between “full service” broker-dealers and “limited purpose” broker-dealers, and does not provide a tailored framework of rules and regulations that applies to only this subset of the industry. Thus, while NASD works hard to determine the impact of any proposed rule change on its diverse membership, there is no statutory obligation under the Act to tailor proposed rule changes to this business model.

However, in developing the proposed definition of “branch office” over the last two years or more, NASD considered the evolving nature of its members’ business models. NASD sought input on the proposed uniform definition of “branch office” from all of its members, including specifically from broker-dealers affiliated with life insurers.⁷ NASD believes that the Proposal recognizes the many different business models of the entire broker-dealer community by incorporating carefully defined exceptions to the registration requirements (such as exceptions for primary residences, vacation homes, locations used primarily for non-securities activities, back office functions, etc.), and providing important safeguards and limitations.

As described in its first comment letter on the Proposal, the ACLI stated that “limited purpose” broker-dealers generally operate from one-person, geographically dispersed locations, and generally sell only mutual funds and variable contracts.⁸ According to the ACLI Comment Letter, “over 50% of the NASD’s registered representatives work for broker-dealers affiliated with life insurance companies.” The ACL Comment Letter further states, “broker-dealers affiliated with life insurers tend to have numerous ‘non-branch’ locations.”

⁶ See 15 U.S.C. §78c(a)(4) and (5).

⁷ See NASD Notice to Members 02-52 (August 2002) - NASD Requests Comment on Proposed Amendments to NASD Rule 3010(g)(2) ("Branch Office Definition").

⁸ See first comment letter on SR-NASD-2003-104 from Carl B. Wilkerson, Chief Counsel, Securities & Litigation, American Council of Life Insurers, dated December 23, 2003.

Based on discussions with members of the broker-dealers affiliated with life insurers, NASD understood that a significant number of these “non-branch” locations were primary residences. In an effort to minimize the burden on this business model type, NASD proposed an exception from branch office registration for primary residences, including supporting the elimination of the 50-business day limitation included in the original primary residence exception.⁹ In addition, the exception from registration for 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 annually was proposed largely to minimize the possible impact on competition resulting from the Proposal on life insurance agents.

The ACLI asserts that “[b]y converting the branch office definition from a functionally based approach to a crude numerical formulation, the NASD will cause an enormous number of non-branch locations to become branch offices, which will trigger profound, and unnecessary registration, filing and administrative costs.” In addition, the ACLI suggests that NASD reduce and/or waive its registration fee.

In some instances, broker-dealers operating from one person, geographically dispersed locations will be required to register previously unregistered locations. Consequently, such locations will be required to pay NASD’s annual branch office registration fee. NASD’s current registration fee for a branch office is \$75 annually. The annual registration fee for branch offices is reasonable and fair, and does not unfairly discriminate against any particular segment of our membership. NASD believes this fee should not create an undue economic burden for an active business location, and does not create an impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously stated, NASD’s registration fee for each branch office is necessary to cover NASD’s current regulatory and examination program.¹⁰ If, as the ACLI Comment Letter suggests, an enormous number of non-branch locations will become branch offices, NASD will be facing a significant increase in the number of previously unregistered locations subject to the more rigorous examination protocol of branch offices. These examinations will require NASD to devote additional staff time and resources. In addition, NASD is incurring costs related to the development of the new CRD branch office registration system and will continue to incur costs associated with the maintenance and operation of the new system. Based on these factors, NASD believes that NASD’s annual branch office registration fee is reasonable and fair.

Furthermore, NASD believes that any burden on competition that may be imposed by the proposed uniform branch office definition is necessary and appropriate in furtherance of the purposes of the Act by providing for the registration of locations from which regular securities activities are being conducted; to assure such locations are identifiable for periodic examinations by regulators, including NASD and state administrators; and to protect customers of broker-dealers.

⁹ See Notice of Filing, *supra* note 1.

¹⁰ See NASD’s Response to Comments, dated July 29, 2004.

The ACLI further asserts that NASD has not met its obligation under Rule 19b-4 of the Act by failing to identify a legitimate regulatory purpose. The ACLI further asserts that the Proposal “has not identified or hinted at substantive inadequacies in the current definition of branch office,” and that the proposed definition “would not create greater regulatory efficiency or provide enhanced consumer protection.”

NASD strongly disagrees with the assertion that the Proposal does not serve a legitimate regulatory objective. NASD, the NYSE, and state regulators have all expressed the need for a centralized registration system that can effectively identify offices within their jurisdiction, and the registered persons who work from such offices, in an effort to close gaps in their examination processes and to further investor protections. In particular, the new branch office registration system will allow NASD and other regulators to associate every registered representative with a specific branch location, a feature that is not available under the current system. NASD believes this will provide an essential tool for regulators when conducting examinations, reviewing customer complaints, or taking enforcement actions. Further, the proposed uniform definition would allow for the development of a centralized branch office registration system through CRD that will allow regulators to quickly and efficiently access this information and keep it current. Commenters on the Proposal stated that a centralized branch office registration system on CRD would provide cost savings and other efficiencies to member firms currently struggling with disparate rules and regulations regarding the classification of locations in the numerous jurisdictions from which they conduct business.¹¹ NASAA has also commented that “[i]t is critical that full information about individuals and firms be readily accessible to regulators, industry, and the investing public.”¹² Without such reporting centralization and uniformity, it is possible that broker-dealers would face a fragmented registration scheme for which broker-dealers would have to implement multiple systems and controls in order to achieve compliance.

In addition, recent enforcement actions against members for sales practice violations involving the sale of mutual funds and variable annuities underscore the valid regulatory purpose of the uniform definition. The proposed definition will allow NASD and other regulators, including the NYSE and states, to quickly and clearly identify locations (and registered persons) from which such products are sold, conduct examinations to ensure firms are in compliance with supervisory and recordkeeping rules, and protect customers of broker-dealers.

¹¹ See comment letter from Ralph A. Lambiase, The North American Securities Administrators Association (“NASAA”) President and Director, Connecticut Division of Securities, dated January 6, 2004; comment letter from Christopher Shaw, Vice President and Acting Chief Compliance Officer, Transamerica Financial Advisors, Inc., dated January 6, 2004; and comment letter from Thomas R. Moriarty, President, InterSecurities, Inc., dated January 6, 2004.

¹² See comment letter from Ralph A. Lambiase, NASAA President and Director, Connecticut Division of Securities, dated January 6, 2004.

For the reasons outlined above, NASD strongly believes that the Proposal serves a legitimate regulatory purpose and that the impact on competition to certain member firms as a result of the Proposal is both necessary and appropriate in furtherance of these legitimate regulatory purposes.

III. Accelerated Approval of Amendment No. 4

NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to approve proposed Amendment No. 4 prior to the 30th day after publication in the Federal Register. Although not previously published, the proposed rule change seeks to conform the proposed rule text of NASD Rule 3010(g)(2) to that proposed by the NYSE in SR-NYSE-2002-34 to NYSE Rule 342 to achieve uniformity.

Proposed New Text in the Rule Filing are Underscored
Proposed Deletions in the Rule Filing are [Bracketed]
Proposed New Text as a Result of Amendment No. 4 is Double Underscored
Proposed Deletions as a Result of Amendment No. 4 are ~~Strikedthrough~~

Rule 3010 Supervision

(g) Definitions

(1) No Change.

(2) [“Branch Office” means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:]

[(A) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised;]

[(B) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the nonbranch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised; or]

[(C) any location identified by address in a member’s sales literature, as this term is defined in Rule 2210, provided that the sales literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.]

[(D) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the nonbranch location is directly supervised.]

(2)(A) A “branch office” is any location, other than the main office, where one or more associated persons of a member regularly conduct 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, 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 firm'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 are 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 (B)(ii) through (viii) 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; or

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

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

(2)(B) Notwithstanding the exclusions in subparagraph (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.

(2)(C) Notwithstanding the exclusion in subparagraph (2)(A), a main office of a member that meets the definition set forth in Rule 3010(g)(1) shall be deemed an office of supervisory jurisdiction, and a main office of a member that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member shall be considered a branch office for all purposes under NASD rules and regulations, other than the registration requirements of Rule 3010(g)(2)(A).

(2)(D) 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.

[(3) A member may substitute a central office address and telephone number for the supervisory branch office or OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the Association’s District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to its business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.]

1. 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.

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 firm'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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