

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="Associate 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="08/23/2005"/>
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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 6 to SR-NASD-2003-104,¹ which proposes to (1) amend NASD Rule 3010(g)(2) to revise the definition of the term “branch office”; and (2) adopt IM-3010-1 to provide guidance on factors to be considered by a member firm in conducting internal inspections of offices. The purpose of the proposed rule change is to facilitate the creation of a branch office registration system through the Central Registration Depository (“CRD”)® to provide a more efficient, centralized method for members and associated persons to register branch office locations as required by the rules and regulations of States and self-regulatory organizations, including NASD. NASD expects centralized registration of such locations will provide efficiency, clarity, and costs savings to members. The creation of a uniform registration system for branch offices through CRD also will allow NASD and other securities regulators to effectively examine such locations to further investor protections.

In addition, the proposed rule change is part of NASD’s rule modernization initiative to streamline and update NASD rules while preserving investor protections. The proposed definition establishes a broader national standard and is the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, NASD, the New York Stock Exchange, Inc. (“NYSE”), and State securities regulators to identify locations where broker-dealers conduct securities or investment banking business.

¹ See Securities Exchange Act Release No. 48897 (December 9, 2003), 68 FR 70059 (December 16, 2003) (SR-NASD-2003-104).

This Amendment No. 6 to SR-NASD-2003-104 incorporates the changes to the proposed rule change made in Amendments No. 1 through 5 to SR-NASD-2003-104. This Amendment No. 6: (1) proposes to delete the proposed exclusion from registration as a branch office for main offices of a member; and (2) proposes to delete proposed subparagraph (2)(C) to Rule 3010(g). NASD is proposing these changes in this Amendment No. 6 to maintain a uniform proposed definition of branch office with the NYSE's proposal in SR-NYSE-2002-34.² Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

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:]

[(i) 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;]

[(ii) 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

² See Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR-NYSE-2002-34).

reference may not contain the address of the non-branch 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]

[(iii) 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.]

[(iv) 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 non-branch location is directly supervised.]

(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 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 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.

[(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.]

* 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.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on April 23, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on April 24, 2003. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. NASD currently expects that the effective date of the proposed rule change will follow the implementation of proposed Form BR, which is pending Commission approval,³ and the accompanying deployment of branch office functionality in CRD. NASD currently expects to deploy the system in the Fall of 2005. To provide members sufficient time to transition to the proposed new Form BR and associated filing protocols, NASD currently expects to make the proposed rule change effective the first quarter of 2006.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

³ See Securities Exchange Act Release No. 51742 (May 25, 2005), 70 FR 32386 (June 2, 2005) (SR-NASD-2005-030).

(a) Purpose

On July 1, 2003, NASD filed with the Commission a proposed rule change to (1) amend NASD Rule 3010(g)(2) to revise the definition of the term “branch office”; and (2) adopt IM-3010-1 to provide guidance on factors to be considered by a member firm in conducting internal inspections of offices. The purpose of the proposed rule change is to facilitate the creation of a branch office registration system through the Central Registration Depository (“CRD”)® to provide a more efficient, centralized method for members and associated persons to register branch office locations as required by the rules and regulations of States and self-regulatory organizations, including NASD.

On October 1, 2003, NASD filed Amendment No. 1 to its filing. On December 8, 2003, NASD filed Amendment No. 2 to its filing. On June 29, 2004, NASD filed a Response to Comments to its filing. On September 20, 2004, NASD filed Amendment No. 3 to its filing. On March 21, 2005, NASD filed Amendment No. 4 and Second Response to Comments to its filing. On June 1, 2005, NASD filed Amendment No. 5 to its filing. The purpose of this filing is to further amend SR-NASD-2003-104 to: (1) delete the proposed exclusion from registration as a branch office for main offices of a member; and (2) delete proposed subparagraph (2)(C) to Rule 3010(g). NASD is proposing these changes in this Amendment No. 6 to maintain a uniform proposed definition of branch office with the NYSE’s proposal in SR-NYSE-2002-34.⁴

Proposed Changes in Amendment No. 6

In Amendment No. 4 to the proposed rule change, NASD proposed amending Rule 3010(g)(2)(A) by adding an exclusion from registration as a branch office for main offices of a

⁴ See Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR-NYSE-2002-34).

member. NASD had proposed this change in an effort to conform the language of the proposed uniform definition to the language proposed by the NYSE in SR-NYSE-2002-34.⁵ However, following further discussions with the NYSE, NASD is now proposing to delete such exclusion from the proposed rule change. NASD understands that the NYSE will also be filing an amendment to its rule proposal to make a conforming change. As a result, subparagraph (2)(A) of Rule 3010(g) would read as follows:

(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 that is held out as such, excluding:

Accordingly, as a result of this Amendment No. 6, a member’s main office will be required to be registered as a branch office if it falls within the purview of the definition of branch office.⁶

Additionally, in Amendment No. 4 to the proposed rule change, NASD proposed adding new subparagraph (2)(C) to Rule 3010(g) to clarify the rules and regulations applicable to a member’s main office. The proposed subparagraph read as follows:

(2)(C) Notwithstanding the exclusion in paragraph (2)(A), a main office of a member that meets the definition set forth in Rule 3010(g)(1) shall be deemed an office

⁵ Id.

⁶ This proposed rule change would supercede 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 offices of supervisory jurisdiction and branch offices; NASD intends to propose future amendments to IM-

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).

In light of the change described above to delete the exclusion from registration for main offices, NASD believes subparagraph (2)(C) to Rule 3010(g) is no longer required. As such, NASD is proposing to delete such provision from the proposed rule change.

Response to Certain Comments

In response to the proposed rule change, certain commenters requested an exemption from branch office registration for “remote or proprietary traders.”⁷ At the request of SEC staff, NASD is clarifying its response to this comment. NASD requires additional information to fully understand the nature of the activities at such locations and the potential impact on investors of any such exemption. Therefore, NASD believes it cannot grant a general exemption. However, to the extent any particular scenario raises questions regarding the application of the rule, NASD will address such issues with members through its interpretive process on a case-by-case basis or through future rulemaking, as appropriate.

Effective Date

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. NASD

1000-4, assuming the SEC’s approval of this proposed rule change and the proposed new Form BR.

⁷ See, e.g., comment letter from Paul B. Uhlenhop, Law Offices of Lawrence, Kamin, Saunders & Uhlenhop, LLC, dated December 31, 2003.

currently expects that the effective date of the proposed rule change will follow the implementation of proposed Form BR, which is pending Commission approval,⁸ and the accompanying deployment of branch office functionality in CRD. NASD currently expects to deploy the system in the Fall of 2005. To provide members sufficient time to transition to the proposed new Form BR and associated filing protocols, NASD currently expects to make the proposed rule change effective the first quarter of 2006.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that a uniform definition will better serve the securities industry, regulators, and the public by creating a broader national standard that would allow for centralized registration of branch offices through the CRD system. In addition, the proposed new interpretive material summarizes guidance previously issued on this matter by NASD.

⁸ See Securities Exchange Act Release No. 51742 (May 25, 2005), 70 FR 32386 (June 2, 2005) (SR-NASD-2005-030).

4. **Self-Regulatory Organization's Statement on Burden on Competition**

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

A version of the proposed rule change, which included the 50-business day requirement in the primary residence exception, was published for comment in NASD *Notice to Members 02-52* (August 2002) (“*NtM 02-52*”). NASD summarized those comments in its initial rule filing, dated July 1, 2003.

In addition, NASD has previously responded to industry and SEC comments regarding this rule change. See NASD Response to Comments, filed on June 29, 2004 and Amendment No. 4 and Second Response to Comments, filed on March 21, 2005.

6. **Extension of Time Period for Commission Action**

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act for approving Amendment No. 6 to the proposed rule change prior to the 30th day after its publication in the Federal Register. Although not previously published, the proposed rule change is being made to maintain a uniform definition with the NYSE.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The NYSE has filed a substantially similar rule proposal with the Commission.⁹

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2. NASD Notice to Members 02-52 (August 2002). Previously submitted to the Commission on July 1, 2003.

Exhibit 4. Changes to Rule Text from Original Filing and Subsequent Amendments.

Exhibit 5. Text of Proposed Amendments to NASD Rule 3010(g).

⁹ See Securities Exchange Act Release No. 46888 (Nov. 22, 2002), 67 FR 72257 (December 4, 2002) (SR-NYSE-2002-34).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2003-104)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by the National Association of Securities Dealers, Inc.
Relating to Proposed Uniform Definition of “Branch Office” under NASD Rule 3010(g)(2) –
Amendment No. 6

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August __, 2005, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) and amended on -----³ the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing this Amendment No. 6 to SR-NASD-2003-104,⁴ which proposes to (1) amend NASD Rule 3010(g)(2) to revise the definition of the term “branch office”; and (2) adopt

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This Amendment No. 6 to SR-NASD-2003-104 incorporates the changes to the original rule filing made in Amendments No. 1 through 5. See Securities Exchange Act Release No. 48897 (December 9, 2003), 68 FR 70059 (December 16, 2003) (File No. SR-NASD-2003-104). Amendment No. 2 was filed on December 8, 2003. NASD Response to Comments was filed on June 29, 2004. Amendment No. 3 was filed on September 20, 2004. Amendment No. 4 and Second Response to Comments was filed on March 21, 2005. Amendment No. 5 was filed on June 1, 2005.

⁴ See Securities Exchange Act Release No. 48897 (December 9, 2003), 68 FR 70059 (December 16, 2003) (SR-NASD-2003-104).

IM-3010-1 to provide guidance on factors to be considered by a member firm in conducting internal inspections of offices. The purpose of the proposed rule change is to facilitate the creation of a branch office registration system through the Central Registration Depository (“CRD”)[®] to provide a more efficient, centralized method for members and associated persons to register branch office locations as required by the rules and regulations of States and self-regulatory organizations, including NASD. NASD expects centralized registration of such locations will provide efficiency, clarity, and costs savings to members. The creation of a uniform registration system for branch offices through CRD also will allow NASD and other securities regulators to effectively examine such locations to further investor protections.

In addition, the proposed rule change is part of NASD’s rule modernization initiative to streamline and update NASD rules while preserving investor protections. The proposed definition establishes a broader national standard and is the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, NASD, the New York Stock Exchange, Inc. (“NYSE”), and State securities regulators to identify locations where broker-dealers conduct securities or investment banking business.

This Amendment No. 6 to SR-NASD-2003-104 incorporates the changes to the proposed rule change made in Amendments No. 1 through 5 to SR-NASD-2003-104. This Amendment No. 6: (1) proposes to delete the proposed exclusion from registration as a branch office for main offices of a member; and (2) proposes to delete proposed subparagraph (2)(C) to Rule 3010(g). NASD is proposing these changes in this Amendment No. 6 to maintain a uniform proposed definition of branch office with the NYSE’s proposal in SR-NYSE-2002-34.⁵ Below is the text

⁵ See Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR-NYSE-2002-34).

of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

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:]

[(i) 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;]

[(ii) 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 non-branch 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]

[(iii) 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.]

[(iv) 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 non-branch location is directly supervised.]

(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 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 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.

[(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.]

* 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 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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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 1, 2003, NASD filed with the Commission a proposed rule change to (1) amend NASD Rule 3010(g)(2) to revise the definition of the term “branch office”; and (2) adopt IM-3010-1 to provide guidance on factors to be considered by a member firm in conducting internal inspections of offices. The purpose of the proposed rule change is to facilitate the creation of a branch office registration system through the Central Registration Depository (“CRD”)® to provide a more efficient, centralized method for members and associated persons to register branch office locations as required by the rules and regulations of States and self-regulatory organizations, including NASD.

On October 1, 2003, NASD filed Amendment No. 1 to its filing. On December 8, 2003, NASD filed Amendment No. 2 to its filing. On June 29, 2004, NASD filed a Response to Comments to its filing. On September 20, 2004, NASD filed Amendment No. 3 to its filing. On March 21, 2005, NASD filed Amendment No. 4 and Second Response to Comments to its filing. On June 1, 2005, NASD filed Amendment No. 5 to its filing. The purpose of this filing is to further amend SR-NASD-2003-104 to: (1) delete the proposed exclusion from registration as a branch office for main offices of a member; and (2) delete proposed subparagraph (2)(C) to Rule 3010(g). NASD is proposing these changes in this Amendment No. 6 to maintain a uniform proposed definition of branch office with the NYSE’s proposal in SR-NYSE-2002-34.⁶

⁶ See Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR-NYSE-2002-34).

Proposed Changes in Amendment No. 6

In Amendment No. 4 to the proposed rule change, NASD proposed amending Rule 3010(g)(2)(A) by adding an exclusion from registration as a branch office for main offices of a member. NASD had proposed this change in an effort to conform the language of the proposed uniform definition to the language proposed by the NYSE in SR-NYSE-2002-34.⁷ However, following further discussions with the NYSE, NASD is now proposing to delete such exclusion from the proposed rule change. NASD understands that the NYSE will also be filing an amendment to its rule proposal to make a conforming change. As a result, subparagraph (2)(A) of Rule 3010(g) would read as follows:

(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 that is held out as such, excluding:

Accordingly, as a result of this Amendment No. 6, a member’s main office will be required to be registered as a branch office if it falls within the purview of the definition of branch office.⁸

Additionally, in Amendment No. 4 to the proposed rule change, NASD proposed adding new subparagraph (2)(C) to Rule 3010(g) to clarify the rules and regulations applicable to a member’s main office. The proposed subparagraph read as follows:

⁷ Id.

⁸ This proposed rule change would supercede 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 offices of supervisory jurisdiction and branch offices; NASD intends to propose future amendments to IM-1000-4, assuming the SEC’s approval of this proposed rule change and the proposed new Form BR.

(2)(C) Notwithstanding the exclusion in paragraph (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).

In light of the change described above to delete the exclusion from registration for main offices, NASD believes subparagraph (2)(C) to Rule 3010(g) is no longer required. As such, NASD is proposing to delete such provision from the proposed rule change.

Response to Certain Comments

In response to the proposed rule change, certain commenters requested an exemption from branch office registration for “remote or proprietary traders.”⁹ At the request of SEC staff, NASD is clarifying its response to this comment. NASD requires additional information to fully understand the nature of the activities at such locations and the potential impact on investors of any such exemption. Therefore, NASD believes it cannot grant a general exemption. However, to the extent any particular scenario raises questions regarding the application of the rule, NASD will address such issues with members through its interpretive process on a case-by-case basis or through future rulemaking, as appropriate.

⁹ See, e.g., comment letter from Paul B. Uhlenhop, Law Offices of Lawrence, Kamin, Saunders & Uhlenhop, LLC, dated December 31, 2003.

Effective Date

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. NASD currently expects that the effective date of the proposed rule change will follow the implementation of proposed Form BR, which is pending Commission approval,¹⁰ and the accompanying deployment of branch office functionality in CRD. NASD currently expects to deploy the system in the Fall of 2005. To provide members sufficient time to transition to the proposed new Form BR and associated filing protocols, NASD currently expects to make the proposed rule change effective the first quarter of 2006.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that a uniform definition will better serve the securities industry, regulators, and the public by creating a broader national standard that would allow for centralized registration of branch offices through the CRD system. In addition, the proposed new interpretive material summarizes guidance previously issued on this matter by NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

¹⁰ See Securities Exchange Act Release No. 51742 (May 25, 2005), 70 FR 32386 (June 2, 2005) (SR-NASD-2005-030).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

A version of the proposed rule change, which included the 50-business day requirement in the primary residence exception, was published for comment in NASD *Notice to Members 02-52* (August 2002) (“*NtM 02-52*”). NASD summarized those comments in its initial rule filing, dated July 1, 2003.

In addition, NASD has previously responded to industry and SEC comments regarding this rule change. See NASD Response to Comments, filed on June 29, 2004 and Amendment No. 4 and Second Response to Comments, filed on March 21, 2005.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2003-104 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD- 2003-104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-

NASD-2003-104 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Secretary

¹¹ 17 CFR 200.30-3(a)(12).

Exhibit 4

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. 6 is Double Underscored

Proposed Deletions as a Result of Amendment No. 6 are ~~Strikedthrough~~

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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:]

[(i) 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;]

[(ii) 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 non-branch 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]

[(iii) 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.]

[(iv) 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 non-branch location is directly supervised.]

(A) A “branch office” is any location, other than the main office, 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 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 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) Notwithstanding the exclusion in paragraph (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).~~

~~(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.]

* 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 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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[(ii) 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 non-branch 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]

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

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