

September 3, 2004

**ADVANCE COPY BY ELECTRONIC MAIL (pubcom@nasd.com)**

Ms. Barbara Sweeney  
NASD  
Office of the Corporate Secretary  
1735 K Street, NW  
Washington, DC 20006-1500

Re: Notice to Members 04-55—Branch Office Registration (August 2004)

Dear Ms. Sweeney:

Northwestern Mutual Investment Services, LLC ("NMIS") appreciates the opportunity to comment on NASD's proposed rule governing the purchase, sale or exchange of deferred variable annuities. NMIS was organized in 1968 and is wholly owned by The Northwestern Mutual Life Insurance Company. It offers a full range of securities products and services and is registered as a broker-dealer in all 50 states and the District of Columbia. NMIS has over 7,900 registered representatives, most of whom are also full-time insurance agents of Northwestern Mutual who sell traditional insurance products including life insurance, annuities, disability income insurance and long-term care insurance. Our registered representatives are independent contractors who may also represent other affiliated or unaffiliated insurance companies, investment advisers, employee benefits administrators or consultants. NMIS currently has some 348 registered branch offices and some 1059 unregistered business locations. Many of the unregistered business locations are used by a single registered representative.

We strongly support the use of the CRD to register branch offices with NASD and the states for all the reasons stated in Notice to Members 04-55. We believe the CRD enhancements described, if successfully implemented, could offer significant cost savings by reducing the variety of forms and procedures in use by self-regulatory organizations, the states and other jurisdictions to register branch offices.

We understand the implementation of Form BR is one of many related changes to branch office registration requirements. The details of all of these related changes are not yet available. Consequently, while we value the opportunity to comment early in the rulemaking process, our ability to comment is constrained to some degree by the limited information currently available about these other changes.

But even at this stage we have some reservations about the scope of information collected on the proposed Form BR and the clarity of the instructions associated with it. For example,

Form BR appears to us to have been designed primarily with a large, full-service, bricks-and-mortar branch office operation in mind. We do not fit this mold, and because of expansive jurisdictional interpretations and the modernization of financial services regulation over the years, this kind of operation might not even be predominant in the "securities" industry anymore.

NASD and other regulators have proposed to change the definition of "branch office" in a way that would dramatically increase the number of branch offices we would be required to register. At the same time, Form BR represents a significant increase in the amount of information that must be collected to register a branch office. The additional number of branch office registrations we would be required to file, along with the additional amount of information that must be collected and updated on a current basis, together will impose a substantial and costly additional administrative burden.

This burden could be significantly mitigated by a different kind of registration strategy for business locations used by only a single registered representative. In particular, we urge NASD to explore whether a short form registration as part of Form U-4, rather than a lengthy standard filing on Form BR, would accomplish its regulatory objectives more efficiently for such locations.

We are also concerned about the extent to which items 3 and 4 of Form BR may be deemed to require broker-dealer firms to supervise the outside business activities of their associated persons. Form BR seems to represent a significant and perhaps unappreciated expansion of requirements of Rules 3010 and 3030, and could have the effect of requiring member firms and securities regulators to take responsibility for all financial services activities conducted anywhere a registered representative is located.

Notice to Members 04-55 contains virtually no explanatory material that would be helpful in interpreting Form BR. The definitions and instructions on the proposed form are helpful as far as they go, but we believe this particular rule-making process could benefit from a more detailed Notice to Members explaining NASD's rationale for collecting the various kinds of information on the proposed Form BR, and how NASD intends to use the information.

For example, an associated person licensed as an insurance producer is very likely to also be appointed as an agent for multiple insurance companies. Often these insurance appointments are required to sell health insurance or other forms of insurance that are not regulated by NASD or any other securities regulator. There are thousands of such insurance companies and an agent's list of insurance company appointments can change on a daily basis. Sometimes an appointment is obtained to sell just one policy, and then is dropped or becomes inactive.<sup>1</sup>

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<sup>1</sup> We also assume, although it is not made clear anywhere on the form, that member firms would not list in response to Item 3 the names of individual registered representatives who are also licensed insurance producers in their own right. For insurance products that are not regulated as securities, this business could be conducted as an outside business activity under the insurance producer's own name and not under the name of any "applicant."

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We doubt NASD has a routine regulatory interest in the names of each of these insurance companies, yet Section 3 Form BR might be read as requiring this information to be compiled and kept up-to-date for each person doing business at a particular location. We doubt NASD is prepared to give any actual attention to the large volume of irrelevant (from a securities-selling standpoint) information which could result if the form is interpreted in this way. We doubt NASD intends this result because it will impose unnecessary burdens on regulators and member firms with no apparent benefits. But it is impossible to tell from the proposed form or the Notice to Members.

We also are concerned that the record-keeping requirements for Form BR could be unnecessarily oppressive, particularly if it elicits information that must be updated very frequently. If Form BR replaces Schedule E of Form BD, Rule 17a-4(d) under the Exchange Act could require the Forms to be maintained for the life of the enterprise. Consideration should be given to a more realistic retention period using Rule 17a-4(e)(1), which requires Forms U-4 to be kept until at least three years after the termination of a representative's association with a member, as a model.

Finally, we do not believe any consideration should be given to implementing Form BR except as a replacement for Schedule E of Form BD, which is used for the same purpose. We doubt this point requires elaboration. In addition, while we believe NASD Notice to Members 04-55 might have some value as a practical matter in soliciting industry comments, we do not believe it should serve as a substitute for the SEC's usual notice-and-comment procedure, or that it would be appropriate for Form BR to become effective upon filing with the SEC under Section 19 of the Exchange Act. Further consideration should be given to this proposed form once more details about other related regulatory changes become available.

Thank you for the opportunity to comment. If you have any questions, please call me at (414) 665-5034.

Very truly yours,

Mark A. Kaprelian  
Secretary