

INFORMATIONAL

Soliciting Business Internationally

NASD Alerts Members To Their Obligations Concerning Soliciting Business In Foreign Jurisdictions

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal & Compliance
- Registered Representatives
- Senior Management
- Training

KEY TOPICS

- Foreign Regulators
- Soliciting Business

Executive Summary

Foreign regulators have informed the National Association of Securities Dealers, Inc. (NASD®) that persons associated with member firms may be soliciting business in the regulators' jurisdictions in violation of local foreign laws. NASD Regulation, Inc. (NASD RegulationSM) reminds members considering soliciting business in foreign jurisdictions to ensure that such activities comply with all applicable laws.¹

Questions/Further Information

Questions regarding this *Notice* may be directed to Eric Moss, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8982.

Discussion

In *NASD Notice to Members 98-91 (NtM 98-91)*, the NASD alerted members to their obligations concerning cold calling and advertising to persons in the United Kingdom. In *NtM 98-91*, the NASD also reminded members considering cold calling or advertising in any foreign jurisdiction to ensure that such activities comply with all applicable laws. Since issuing *NtM 98-91*, foreign regulators have informed the NASD that persons associated with member firms are continuing to cold call and advertise in their jurisdictions in violation of local foreign laws. Accordingly, the NASD is publishing this *Notice* to remind members and persons associated with members of their obligations to comply with applicable U.S. laws and foreign laws when soliciting business in any foreign jurisdiction.

In considering their obligations under local foreign laws, member firms should keep in mind that the term "solicitation" generally has been viewed as an expansive, fact-specific, and variable concept.² Depending on the laws of the applicable foreign jurisdiction, a wide variety of firm activities may constitute solicitation of business for purposes of foreign local law. For instance, solicitation of business may occur through newspaper ads, Internet postings, e-mails, telephone calls, or facsimile transmissions. It is not the intent of this *Notice* to describe any specific foreign laws applicable to the solicitation of business in any foreign jurisdiction. Rather, NASD Regulation urges members proposing to solicit business in foreign jurisdictions to carefully review and comply with all applicable U.S. and foreign laws. The consequences of breaching applicable foreign laws can be far-reaching, and member firms in violation of particular foreign laws may be committing a criminal offense and be liable to prosecution.³

Endnotes

¹This *Notice* does not address whether soliciting business in a foreign jurisdiction in violation of that jurisdiction's laws may constitute a violation of NASD rules.

²See, e.g., Exchange Act Release No. 27017 (July 11, 1989) (adopting SEC Rule 15a-6).

³See *NtM 98-91*.

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