

NASD NOTICE TO MEMBERS 97-25

NASD Interpretive Position—NASD Rule 3050—Transactions For Or By Associated Persons

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Executive Summary

The Office of General Counsel, NASD Regulation, Inc. (NASD RegulationSM) is issuing this *Notice* to provide interpretive guidance to members regarding NASD[®] Rule 3050 and, in particular, paragraph (d) of the Rule. Rule 3050 was designed to obligate members to use reasonable diligence in determining whether executed transactions in the accounts of associated persons of another member firm, or accounts in which the associated person has discretionary authority, will adversely affect the interests of the employer member.

Paragraph (d) of the Rule sets forth requirements of associated persons that maintain accounts with nonmembers. As to paragraph (d), the staff has provided interpretive guidance to make clear that accounts of associated persons, or accounts in which associated persons maintain discretionary authority, held with nonmember foreign broker/dealers, are subject to this paragraph. Therefore, associated persons are obligated to follow the provisions of paragraph (d) and provide written notification of such accounts to their employer member firm, and assure that the organization maintaining the accounts will provide the employer member the specific information as set forth in paragraph (d)(2) of the Rule.

Background

Recently, NASD Regulation's Office of General Counsel (OGC) was presented with an interpretive question regarding paragraph (d) of Rule 3050. The interpretive question involved the issue of whether accounts maintained by associated persons of a member firm at a foreign broker/dealer were subject to the

Rule and, in particular, paragraph (d) of the Rule. The staff of the OGC issued its interpretive opinion that accounts maintained at nonmember foreign broker/dealers by associated persons would be subject to paragraph (d) of the Rule.

Paragraph (c) of the Rule sets forth requirements of associated persons that maintain accounts with other member firms. Paragraph (d) of the Rule governs the requirements that apply when associated persons maintain accounts with nonmembers. Specifically, it provides that associated persons must notify their member firms and receive assurances from organizations maintaining the accounts that the employer member will receive certain information regarding the accounts. The organizations identified in paragraph (d) include domestic or foreign investment advisers, banks, and other financial institutions. The staff has determined that paragraph (d) of the Rule was intended to cover nonmember financial services entities. In particular, the staff believes that the term "financial institutions" in this context should be broadly interpreted to cover various types of financial service providers that may maintain securities accounts. This interpretation best effectuates the intent of the Rule to provide prompt notification to member firms of the securities activities of their associated persons and also recognizes that in foreign countries a variety of integrated financial services often are provided by a single entity.

Questions regarding this *Notice* may be directed to John Ramsay or David A. Spotts, Office of General Counsel, NASD Regulation, at (202) 728-8071.

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