

## Office of Supervisory Jurisdiction Definition

### SEC approves amendments to NASD Rule 3010(g)(1) to Exempt Locations that Solely Conduct Final Approval of Research Reports

Effective Date: December 19, 2007

#### Executive Summary

Effective December 19, 2007, locations that solely conduct final approval of research reports are exempt from the definition of Office of Supervisory Jurisdiction.<sup>1</sup> NASD Rule 3010(g)(1), as amended, is set forth in Attachment A.

Questions concerning this *Notice* should be directed to Rachael Grad, Counsel, Office of General Counsel, at (202) 728-8290.

#### Background & Discussion

The SEC has approved an amendment to NASD Rule 3010(g)(1) to exempt from the definition of Office of Supervisory Jurisdiction (OSJ) those locations that solely conduct final approval of research reports.<sup>2</sup> The amendment allows FINRA to classify such locations consistently under both NASD and the incorporated NYSE rules.

In July 2006, amendments to the branch office definition under NASD Rule 3010(g)(2) went into effect (Uniform Branch Office Definition).<sup>3</sup> The Uniform Branch Office Definition was developed by FINRA (then NASD), the NYSE and the North American Securities Administrators Association (NASAA) to establish a broad national standard. In conjunction with the new Uniform Branch Office Definition, a new Form BR was introduced to provide a more efficient, standardized method for member firms to register branch office locations.

December 2007

#### Notice Type

- Rule Amendment

#### Suggested Routing

- Corporation Finance
- Legal
- Registration
- Senior Management
- Branch Office

#### Key Topic(s)

- Office of Supervisory Jurisdiction
- Research Reports
- Supervision
- Uniform Branch Office Definition

#### Referenced Rules & Notices

- NTM 07-12
- NASD Rule 3010
- NYSE Information Memo 05-74
- NYSE Information Memo 06-13

While FINRA and the NYSE sought to adopt consistent interpretations of the new Uniform Branch Office Definition, they classified differently locations where final approval by a principal of research reports occurs. Under NASD rules, final review of advertising or sales literature (which includes research reports) makes a location an OSJ, and therefore a branch office. The NYSE rules, however, do not include an OSJ definition, and NYSE stated in *Information Memos 05-74* and *06-13* that it deems a location where a member firm stations a Series 16 qualified supervisory analyst solely to review research reports as a “non-sales” location, which is an express exclusion from the Uniform Branch Office Definition.<sup>4</sup> Because of the definition of OSJ set forth in NASD Rule 3010(g)(1), FINRA could not classify such locations as “non-sales” locations under NASD rules, unless the review of the research reports conducted from such locations constituted something less than final approval.<sup>5</sup>

The SEC recently approved the amendment to NASD Rule 3010(g)(2) to exclude locations that solely conduct final approval of research reports from the definition of OSJ. As a result of this amendment, FINRA is of the view that a location where a member firm conducts final approval of research reports may be considered a “non-sales” location for purposes of NASD Rule 3010(g)(2), the Uniform Branch Office Definition, provided no other activities at such location would require branch office registration.

## Endnotes

- 1 See Securities Exchange Act Release No. 56585 (October 1, 2007) 72 FR 57081 (October 5, 2007) (Notice of Filing of Proposed Rule Change Relating to Amending the Definition of Office of Supervisory Jurisdiction in NASD Rule 3010(g)(1) to Exempt Locations that Solely Conduct Final Approval of Research Reports; SR-FINRA-2007-008).
- 2 NASD Rule 3010(g)(1) defines the term OSJ to mean any office of a member at which any one or more of the following functions take place: (a) order execution and/or market making; (b) structuring of public offerings or private placements; (c) maintaining custody of customers' funds and/or securities; (d) final acceptance (approval) of new accounts on behalf of the member; (e) review and endorsement of customer orders, pursuant to NASD Rule 3010(d); (f) final approval of advertising or sales literature for use by persons associated with the member, pursuant to NASD Rule 2210(b)(1); or (g) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.
- 3 See Securities Exchange Act Release No. 52403 (September 9, 2005); 70 FR 54782 (September 16, 2005) (Order Granting Approval of Proposed Rule Change Relating to Proposed Uniform Branch Office Definition; SR-NASD-2003-104).
- 4 See NYSE *Information Memo 05-74* (October 6, 2005) (Branch Office Definition) ("An example of a non-sales location would be where a member or member organization stations a Series 16 qualified supervisory analyst in an office of a foreign affiliate, solely to review research reports") and NYSE *Information Memo 06-13* (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5).
- 5 Compare NYSE *Information Memo 06-13* (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5) with *NASD Notice to Members 06-12* (March 2006) (Uniform Branch Office Definition, Question and Answer #5).

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## Attachment A

New language is underlined.

### 3010 Supervision

#### (g) Definitions

(1) “Office of Supervisory Jurisdiction” means any office of a member at which any one or more of the following functions take place:

- (A) order execution and/or market making;
- (B) structuring of public offerings or private placements;
- (C) maintaining custody of customers’ funds and/or securities;
- (D) final acceptance (approval) of new accounts on behalf of the member;
- (E) review and endorsement of customer orders, pursuant to paragraph (d) above;
- (F) final approval of advertising or sales literature for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or
- (G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.