

December 8, 2003

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **File No. SR-NASD-2003-104, Amendment No. 2 – Proposed Amendments to Proposed New Uniform Definition of “Branch Office” under NASD Rule 3010(g)(2)**

Dear Ms. England:

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) hereby submits to the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 2 to SR-NASD-2003-104 (the “Rule Filing”) relating to proposed amendments to Rule 3010(g)(2) to revise the definition of the term “branch office” and adopt IM-3010-1 to provide guidelines on factors to be considered by a member firm in conducting internal inspections of offices.

Pursuant to discussions with Commission staff, NASD hereby proposes to make the following amendments to the Rule Filing:

1. On Pages 5 and 38 of the Rule Filing, amend proposed Rule 3010(g)(2)(B)(i) to add the word “associated” as underlined below:

(i) 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.

2. On Pages 6 and 40 of the Rule Filing, replace the reference in proposed Rule 3010(g)(2)(C) to read “provisions of paragraph (B)(ii) through (viii)”, instead of “provisions of paragraph (B)(ii) through (ix).”

(C) 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 (B)(ii) through (viii) above.

3. On Pages 7 and 41, in the bracketed paragraph (3), add a parentheses around the reference to paragraph g(2), to read as “paragraph (g)(2).”

4. On Pages 12 and 45 of the Rule Filing, delete the paragraph below that discusses the Economic Advisory Board (“EAB”). NASD is proposing to delete this paragraph because it believes that a detailed discussion of the activities of the EAB is not necessary for purposes of this rule change. While the EAB made a formal recommendation to the NASD Board, it did not prepare a formal report summarizing its conclusions. Therefore, NASD proposes to delete the following:

NASD analyzed the proposed branch office definition with the assistance of the Economic Advisory Board (“EAB”). NASD established the EAB in connection with its rule modernization initiative to help ensure that NASD rules are as streamlined as possible, and impose the least burden to accomplish their objectives while achieving investor protection. Along with NASD staff, the EAB conducted a cost/benefit analysis of the proposed definition taking into account, among other things, (i) the benefits of a broader national standard; (ii) the potential cost savings to firms as a result of a centralized registration system for branch offices through the CRD® system; (iii) the potential cost impact to members of registering a greater or lesser number of locations; and (iv) the potential cost savings to members resulting from fewer resources being allocated to complying with numerous state requirements. In addition, the EAB considered the different business models of NASD members. For example, a majority of the NYSE’s membership consists of large wirehouses with centralized functions. By contrast, a significant portion of NASD’s members operate in small firms or as independent dealers. The EAB also considered the changing life/work issues of members and associated persons that require many to work from home for a variety of reasons, including providing childcare and eldercare for certain family members. After participating in numerous meetings with representatives from NASAA and the NYSE, and conducting a review of the proposal, the EAB recommended the proposed rule change.

In addition, on Pages 17 and 50 of the Rule Filing, revise the first two sentences in the second paragraph on such pages by deleting the text indicated by brackets below and combining the two sentences as follows:

NASD reached its conclusions as to the significant negative impact of the 50-business day requirement on members, without any added corresponding regulatory benefit or investor protection, [with the assistance of the EAB. The conclusions were reached]after considering comments received in response to *NASD Notice to Members 02-52*.

5. On Pages 17 and 50 of the Rule Filing, in the first sentence of the first paragraph on such pages, delete the following sentence “As noted above, in addition to limitations on the primary residence exception, the NYSE believes that under no circumstances should associated persons be permitted to engage in securities activities from their primary residence for more than 50 business days without requiring members to register such location as a branch office.” Replace the sentence with the following text:

“As noted above, in addition to limitations on the primary residence exception, the NYSE believes that if an associated person works primarily from his or her home, such location should be registered as a branch office.⁷”

Include new footnote number 7 to read as follows and renumber existing footnotes 7 through 37 to be 8 through 38, respectively:

⁷ See NYSE Response to Comments to File No. SR-NYSE-2002-34, dated March 27, 2003.

In Exhibit 1, the above footnote will be number 8, and all footnotes thereafter will be renumbered.

Pursuant to discussions with SEC staff, we have not included a revised Exhibit 1 or updated disk containing the rule filing.

If you have any questions, please contact me at (202) 728-6903; e-mail: kosha.dalal@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Kosha K. Dalal
Assistant General Counsel

Enclosures

cc: Ann Leddy