

September 20, 2004

Via Hand Delivery and Facsimile

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, Technical Amendment No. 3 – 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”) technical Amendment No. 3 to SR-NASD-2003-104¹ (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.

Amendment No. 3 is a technical amendment intended to reflect the approval order issued by the SEC for SR-NASD-2002-162 (Proposed Supervisory Controls Amendments),² which among other things, amended Rule 3010(g)(2) to add a new section 3010(g)(2)(B). As a result of such addition, proposed rule changes to Rule 3010(g)(2) need to be renumbered. Rule 3010(g)(2) as revised by SR-NASD-2002-162 is attached hereto as Exhibit 1. Rule 3010(g)(2) as proposed to be changed, incorporating the changes approved by SR-NASD-2002-162, is attached hereto as Exhibit 2.

¹ 68 FR 70059 (December 16, 2003); Securities Exchange Act Release No. 48897; File No. SR-NASD-2004-104 (“Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed New Uniform Definition of “Branch Office” under NASD Rule 3010(g)(2)).

² 69 FR 35092 (June 23, 2004); Securities Exchange Act Release No. 49883; File No. SR-NASD-2002-162 (June 17, 2004) (“Approval Order”).

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If you have any questions, please contact me at (202) 728-8014; e-mail: patrice.gliniecki@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Patrice Gliniecki
Senior Vice President and
Deputy General Counsel

Enclosures

cc: Ann Leddy

Exhibit 1

- Approved Additions to Rule 3010(g) as a result of the approval of SR-NASD-2002-162 are underlined.
- Approved Deletions to Rule 3010(g) as a result of the approval of SR-NASD-2002-162 are in [brackets].

Note: This Exhibit does NOT include proposed amendments to Rule 3010(g) as proposed by SR-NASD-2003-104.

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3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES

3010. Supervision

(a) through (f) No change.

(g) Definitions

(1) No Change.

(2) (A) "Branch Office" means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

(A) through (D) renumbered as (i) through (iv).

([A]i) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised;

([B]ii) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the non-branch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised; or

([C]iii) any location identified by address in a member's sales literature, as this term is defined in Rule 2210, provided that the sales

literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.

([D]iv) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the non-branch location is directly supervised.

(B) Notwithstanding the exclusions provided in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the members is considered to be a branch office.

(3) A member may substitute a central office address and telephone number for the supervisory branch office or OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the Association's District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to its business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.

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Exhibit 2

- Proposed Additions to Rule 3010(g) incorporating changes approved by SR-NASD-2002-162 are underlined
- Proposed Deletions to Rule 3010(g) incorporating changes approved by SR-NASD-2002-162 are in [brackets].

* * * *

3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES

3010. Supervision

(a) through (f) No change.

(g) Definitions

(1) No Change.

(2) [(A) "Branch Office" means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:]

[(A) through (D) renumbered as (i) through (iv).]

[(i) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised;]

[(ii) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the non-branch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised; or]

[(iii) any location identified by address in a member's sales literature, as this term is defined in Rule 2210, provided that the sales

literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.]

[(iv) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the non-branch location is directly supervised.]

(A) A "branch office" is any location where one or more associated persons of a member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such, excluding:

(i) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) any location that is the associated person's primary residence; provided that

(a) 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;

(b) the location is not held out to the public as an office and the associated person does not meet with customers at the location;

(c) neither customer funds nor securities are handled at that location;

(d) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;

(e) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3010;

(f) electronic communications (e.g., e-mail) are made through the member's electronic system;

(g) all orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

(h) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

(i) a list of the residence locations are maintained by the member;

(iii) 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)(b) through (h) above;

(iv) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office¹;

(v) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; or

(vi) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; and

(vii) a temporary location established in response to the implementation of a business continuity plan.

The term "business day" as used in Rule 3010(g)(2) shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(B) Notwithstanding the exclusions provided in paragraph (2)(A), any

location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the members is considered to be a branch office.

[(3) A member may substitute a central office address and telephone number for the supervisory branch office or OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the Association's District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to its business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.]

1 Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules, and regulations, and applicable rules and regulations of NASD, other self-regulatory organizations, and securities or banking regulators may be displayed and shall not be deemed "holding out" for purposes of this section.

IM-3010-1 - Standards for Reasonable Review

In fulfilling its obligations pursuant to Rule 3010(c), each member must conduct a review, at least annually, of the businesses in which it engages, which review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with NASD Rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, the disciplinary history of registered representatives or associated persons, etc. The procedures established and the reviews conducted must provide that the quality of supervision at remote offices is sufficient to assure compliance with applicable securities laws and regulations and with NASD Rules. With respect to a non-branch location where a registered representative engages in securities activities, a member must be especially diligent in establishing procedures and conducting reasonable reviews. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations and/or may need to provide for more frequent reviews of certain locations.

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