



April 9, 2007

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, D.C. 20006-1500

**Re: NASD Notice to Members 07-12
Proposed Amendments to Rules 3010(g) and 2711 in connection
with the Rule Harmonization Project with the NYSE**

Dear Ms. Sweeney:

The Self-Regulation and Supervisory Practices Committee of the Securities Industry and Financial Markets Association (“SIFMA”)¹ is pleased to offer comment in response to the above-referenced Notice to Members (“*Notice*”), which seeks input on proposed amendments to Rule 3010(g) to eliminate the definition of Office of Supervisory Jurisdiction (“OSJ”). The *Notice* also seeks comment on proposed amendments to Rule 2711 to define the term “initial public offering” consistent with the definition contained within NYSE Rule 472. The *Notice* indicates that NASD is considering these amendments in continuation of the rule harmonization project that it has been coordinating with the New York Stock Exchange (“NYSE”) since early 2006, and which began prior to the NASD and NYSE’s November 2006 announcement to consolidate their member regulation operations into a single self-regulatory organization.

SIFMA commends and greatly appreciates the considerable effort by the NYSE and NASD over the past year to identify, rationalize and eliminate duplicative and inconsistent rules through the rule harmonization project. This regulatory coordination

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

and cooperation produces effective and efficient regulation that serves the best interests of investors, regulators and member firms alike.²

SIFMA supports the proposed amendments, which we believe constitute a critical step in reducing regulatory inefficiency and unnecessary cost burdens to member firms. We especially support the proposed elimination of the OSJ definition, and indeed believe that the proposed OSJ amendments are necessary to realize fully the underlying objectives of the uniform branch office definition amendments, which were approved by the Securities and Exchange Commission (“SEC”) on September 9, 2005 (hereinafter “Uniform Branch Office Definition”). The Uniform Branch Office Definition was developed collectively by NASD, the NYSE and North American Securities Administrators Association (“NASAA”) to establish a broad national standard for identifying locations where broker-dealers conduct securities or investment banking business.

Prior to the adoption of the Uniform Branch Office Definition, various regulatory bodies, including NASD, NYSE and state securities regulators defined the term “branch office” differently. The conflicting requirements that resulted from the differing definitions imposed substantial regulatory burdens on member firms, such as the need to file different application forms with multiple regulatory organizations in order to register or renew the registration of branch office locations, as well as having to coordinate differing registration and notification filing deadlines. The Uniform Branch Office Definition alleviated these burdens by standardizing the criteria to be applied when determining whether or not a business location requires registration as a branch office.³ NASD, NYSE and NASAA also collaborated on standardizing the branch office application process through a new Form BR to provide a more efficient, standardized method for members to register branch office locations.

Since then, NASD and NYSE (collectively, the “SROs”) have sought to adopt consistent interpretations of the new Uniform Branch Office Definition. However, as identified in the rule harmonization project, the NYSE and NASD currently utilize different classifications for supervisory structures, which has led to disparate treatment of certain locations under the Uniform Branch Office Definition.⁴ This differing treatment

² Notably, on February 27, 2007, NYSE filed with the SEC a comprehensive proposal to reconcile several NYSE rules with corresponding NASD requirements, including proposed amendments to NYSE Rule 342. Specifically, NYSE proposes to Rule 342 and its Interpretation to do away with the current metric-based system of branch office classification, adopt NASD’s function-based classification model, and to work with NASD to ensure that our respective branch office classification terminology is consistent going forward. File No. SR-2007-22 (pp 10-13)

³ See *NASD Notice to Members 05-67*.

⁴ In addition, the SROs have two fundamentally different approaches to the supervisory structure of a given location. The NASD has taken a “functional” approach, either an office is an OSJ based on a list of enumerated activities, or is not an OSJ. In Rule 342, the NYSE uses a “size” approach based on the number of registered representatives in a particular location (e.g., a “small” office) or a combination of size

was recognized by the SROs in *NASD Notice to Members 06-12* and *NYSE Information Memorandum 06-13* wherein they reached opposite conclusions as to whether firms must register as a branch office location where a member firm maintains a Series 16 qualified supervisory analyst solely to review and approve research reports.⁵ Specifically, when asked whether such location is considered a “non-sales” location that would not require registration as a branch office, NYSE and NASD provided the following conflicting guidance:

The NYSE has provided interpretive guidance regarding the Uniform Definition for members registered with the NYSE, which provides that a location where a member stations a Series 16 qualified supervisory analyst in an office solely to review research reports is an example of a “non-sales” location. NASD members are advised to consult NASD Rule 3010(g)(1), which provides that such locations may be OSJs if, among other things, final approval of advertising or sales literature for use by persons associated with the member pursuant to Rule 2210(b)(1) occurs at such location. OSJs are required to register as branch offices.⁶

Thus, while NASD took the position that such a location is an OSJ and therefore must be registered as a branch office, NYSE stated that the location is a “non-sales location” that is *not* required to be registered as branch office since non-sales locations are expressly excluded from the Uniform Branch Office Definition. As noted in the *Notice*, this inconsistency led the rule harmonization industry committee to recommend that NASD consider eliminating its OSJ definition to prevent such locations from being treated differently by the two SROs.⁷

SIFMA supports the proposed amendments and commends NASD for the expeditious manner in which NASD has sought to address the industry’s concerns about the current OSJ definition.⁸ In particular, we would like to acknowledge the SROs’ staff for their continued commitment to work with industry representatives to identify and address regulatory inconsistencies that create unnecessary hardships for dual member firms. This constructive interaction and dialogue serve as an excellent example of positive working relationships that ultimately yield well-informed, cost-effective regulation. Indeed, it is our sincere hope that the rule harmonization project will operate

and function (e.g., “limited purpose office”). The current rule proposals eliminate this difference between the two rules as well.

⁵ *NASD Notice to Members 06-12* and *NYSE Information Memorandum 06-13*

⁶ *Id.*

⁷ *Notice*, p. 3

⁸ It is our understanding that other groups have raised potential implementation concerns with the proposed four branch office classifications. SIFMA would be happy to discuss these implementation issues with the NASD and explore potential alternatives if necessary

as a precursor to the single rulebook and that the newly formed SRO will embrace this type of consultative process in the new regulatory regime.

Once again, we thank the SROs for their efforts during the rule harmonization project and for taking steps to implement the recommendations developed during that process. In addition, we thank NASD for the opportunity to provide comments on this important proposal. If you have any questions or require further information, please contact Amal Aly, SIFMA Vice President and Associate General Counsel.

Sincerely,

Jill Ostergaard
Co-Chair
SIFMA Self Regulation and
Supervisory Practices Committee

Christopher Mahon
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CC: Elisse B. Walter, NASD, Senior Executive Vice President
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