



January 6, 2004

Jonathan G. Katz, Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street NW  
Washington DC 20549-0609

Sent via e-mail to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Release No. 34-48897; File No. SR-NASD-2003-104  
Proposed New Definition of “Branch Office” Under NASD Rule 3010(g)(2)**

Dear Mr. Katz:

The North American Securities Administrators Association, Inc. (NASAA)<sup>1</sup> appreciates the opportunity to comment on Release No. 34-34-4887, File No. SR-NASD-2003-104, which proposes to amend that portion of the NASD Supervision rule, Rule 3010(g), that defines what constitutes a “branch office.”

### **Highlights of The Proposed Amendment and Interpretive Material**

#### *The Revised “Branch Office” Definition*

The NASD proposal actually consists of two parts. The first would amend the definition of “branch office” under Rule 3010(g) to read as follows:

A “branch office” is any location where one or more associated persons of a member regularly conduct the business of effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such.

Exclusions to the definition would include:

Customer service/back office locations;

An associated person’s primary residence, as long as it is not held out to the public as an office, or used for meetings with customers, and provided certain other restrictions are observed;

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<sup>1</sup> The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

- A location other than the primary residence used for less than 30 business days annually, provided that restrictions similar to those on use of a residence are followed;
- A location used primarily for non-securities activities, from which no more than 25 securities transactions are effected in any calendar year, providing the actual supervising office of the associated person is identified;
- An "office of convenience" not held out to the public as an office, where business is exclusively by appointment;
- The Floor of a national securities exchange where a member conducts a direct access business with public customers; and
- A temporary location established in response to implementation of a business continuity plan.

#### *IM-3010-1—Standards of Reasonable Review*

The second part of the NASD proposal consists of "Interpretive Material" that instructs NASD members to conduct a review, at least annually, designed to assure compliance with applicable securities laws, rules and regulations. NASD members also are to establish and maintain supervisory procedures that must take into consideration, among other things the nature of the business locations of associated persons and their disciplinary histories. The procedures are to be designed to assure sufficient quality of supervision of remote offices.

This additional, non-rule language, according to the proposal, has been included because "certain state regulators have expressed concern about their ability to cite [NASD] members for violating the inspection and review standard set forth in NASD Rule 3010(c) where a registered person operates from his or her primary residence." Thus, "members would be required to be especially diligent in establishing procedures and conducting reasonable reviews with respect to non-branch locations."

### **NASAA's Interests in the Proposal**

#### *A Uniform System of Registration*

Effective securities regulation is a partnership among the states, the Commission, and the SROs. Securities regulators must consult and work closely together to leverage limited resources and minimize the regulatory burden on the legitimate securities industry.

The number of firms and individuals holding themselves out as investment professionals has grown significantly in the past twenty years. It is critical that full information about individuals and firms be readily accessible to regulators, industry, and the investing public. One of the more notable success stories in accomplishing this accessibility has been the Central Registration Depository (CRD). Started by NASAA and NASD in 1981, multiple paper-based licensing and regulatory processes have been consolidated into a single national computer system. The CRD system has become the cornerstone of our ability not only to register firms and their agents, but to allow investors to access information concerning those who would solicit their savings.

While the CRD has evolved over the years to the point where it is an essential tool that facilitates registration and enforcement, that does not mean it can remain static. The CRD must adapt as the tools and methods of the investment industry change. Furthermore, it is critically important that the Commission, the states, and the SRO's administer this system in concert, reaching consensus on decisions important to all regulators together.

NASAA therefore is pleased that a primary purpose of the proposed NASD change to the branch office definition is "to provide a more efficient, centralized method to register branch office locations as required by the rules and regulations of states and self-regulatory organizations, including NASD."

### *Effective Supervision and Compliance*

North America in general, and the United States in particular, have the most efficient and stable capital markets in the world. Companies have ready access to these markets to obtain the financing necessary to start or expand their operations. Among the reasons for this has historically been the acceptance by the general public that the markets are a safe place to invest over the long term, as well as the public availability of information.

The number of individuals investing in stocks has grown steadily over the past 50 years, with the result that the breadth of securities ownership is the greatest ever.<sup>2</sup> This breadth, however, also has meant a higher percentage of inexperienced, unsophisticated and less knowledgeable investors.<sup>3</sup> U.S. citizens have been comfortable investing in part because of the safeguards that exist. While they may be subject to the vagaries of the market, they rightly expect that they will not be defrauded by the regulated enterprises to which they have entrusted their funds, or if they are, there will be adequate legal recourse.

NASAA members have an interest in protecting investors by assuring that brokerage firms are held properly accountable for assuring *all* of their employees – no matter where they are located – comply with all applicable legal requirements. This interest stems from a simple fact: Even "a few unscrupulous brokers can cause serious financial harm to investors and have the potential to damage public confidence in the securities industry."<sup>4</sup>

Under Federal and state law, as well as SRO rules, brokerage firms must implement specific measures designed to supervise their employees and prevent misconduct. Development of a uniform branch office definition will make it easier for firms to put necessary protective measures into effect, and enable regulators to better monitor compliance.

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<sup>2</sup> See U.S. Congress, Joint Economic Committee, *The Roots of Broadened Stock Ownership*, Apr. 2002, <http://www.house.gov/jec/tax/stock/stock.htm>.

<sup>3</sup> See generally James A. Fanto, *We're all Capitalists Now: The Importance, Nature, Provision and Regulation of Investor Protection*, 49 CASE L. REV. 105 (1998).

<sup>4</sup> U.S. General Accounting Office, *Securities Markets: Actions Needed to Better Protect Investors Against Unscrupulous Brokers*, No. GAO/GCD-34-208, Sept. 14, 1994.

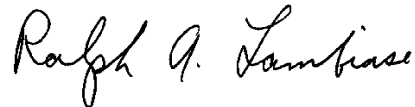
## Conclusion

Securities industry business practices have changed significantly over the past decade. Advances in technology also have expanded the opportunities for working arrangements at other-than-traditional locations, including home offices. Regulators must take cognizance of these trends, while maintaining true to the underlying principle of protecting investors.

Adoption of an updated and uniform definition of "branch office" that can be delivered and monitored through CRD is consistent with these principles. It will facilitate continued effectiveness of the uniform system of registration that has evolved over the past twenty-plus years. It also will promote more effective supervision and compliance. NASAA supports the concept and applauds the efforts of the Commission to facilitate this endeavor.

Should you have questions about this matter, please feel free to contact Tanya Solov, Chair of the NASAA Broker-Dealer Section and Director of the Illinois Securities Department, Don Saxon, Vice-Chair of the Broker-Dealer Section and head of the Florida Department of Financial Services, or Melanie Senter Lubin, Chair of NASAA's CRD/IARD Steering Committee and Maryland Securities Commissioner. Mark Davis of NASAA's Legal Department also stands ready to provide any assistance necessary.

Sincerely,

A handwritten signature in cursive script that reads "Ralph A. Lambiase".

Ralph A. Lambiase  
NASAA President and  
Director, Connecticut Division of Securities