June 09, 2005

RE: File Number SR-NASD-2005-066

Dear Mr... Katz:

This letter is in response to the NASD's proposal to amend Rule 3011 on anti-money laundering (AML) compliance program, and the proposed adoption of new related Interpretive Material (IM), IM-3011-1 and IM-3011-2.

The proposed amendment to NASD Rule 3011 provides for annual independent AML Program testing for broker/dealers, except those which do not "execute transactions for customers or hold customer accounts or act as an introducing broker with respect to customer accounts." Under the proposed amendment, the latter may have their AML program tested every two years.

Examples given in the NASD proposal of those broker/dealers not required to undertake annual testing are those which "engage solely in proprietary trading or conduct business only with other broker-dealers).

From the outset, this is unclear, in that many broker/dealers engaged "solely" in proprietary trading trade with customers, as well as with other broker/dealers. So, the example given would itself need clarification..

NRS further strongly recommends that it be made clear exactly "types" of broker/dealers fall within the annual requirement and which are permitted to have their AML program tested every two years.

So often, NASD rules are less than clear as to where each different type of broker/dealer falls. It is important that every broker/dealer be able to easily understand what rules, or portions thereof, are applicable to them, without having to spend a great deal of time or expense in "interpreting" the rule. There are already too many such rules requiring a great deal of internal discussion and outside legal interpretations resulting in instances where a broker/dealer believes it is doing the right thing, only to be advised during an NASD audit that it has misinterpreted a Rule.

For instance, under which requirement would a private placement broker/dealer, acting solely as a placement agent, fall?

Another example would be broker/dealers who offer mutual funds and/or variable insurance products on a "check and app" basis. There is no real "execution" in such a broker/dealer, but the NASD may well consider the submission of the check and application to the fund complex or insurance agency to be "executing" the transaction, or (at a minimum) to be part of the execution process. Would such a broker/dealer fall under the one-year or two-year requirement?

A further example would be those broker/dealers which maintain k(2)(i) accounts for their mutual fund and/or variable insurance sales. Where would such a firm fall?

Finally, NRS strongly recommends that upon final SEC approval of the amendment it be made very clear to the NASD's membership where each broker/dealer falls. This could be accomplished by adding specific language to the Rule, or by the NASD issuing a detailed FAQ with its Notice to Members, providing specifics.

Thank you for allowing NRS to make these comments.

Sincerely,

Marianne Czernin, Senior VP
Director, Broker/Dealer Client Services