

## VIA E-MAIL DELIVERY

March 20, 2006

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: SR-NASD-2006-11 ("Principal Pre-Use Approval of Member Correspondence")

Dear Ms. Morris:

Edward D. Jones & Co., LP ("Edward Jones" or "the Firm") hereby submits its comments on the above-referenced rule proposal ("the NASD Proposal"). The Firm greatly appreciates the opportunity to both voice its support and share its observations on the NASD Proposal.

The Proposal would amend NASD Rule 2211 to require pre-use approval of all substantive correspondence "distributed by a member to 25 or more existing retail customers within any 30 calendar-day-period," and thus obligate firms to have communications (that are "not solely and exclusively clerical or ministerial in nature") with 25 or more individuals reviewed by a supervisory principal prior to dissemination.

### Background

The Firm is a full-service, self-clearing broker dealer, headquartered in St. Louis and registered with NASD, the Chicago Stock Exchange, and the New York Stock Exchange ("NYSE"). Edward Jones services over 6 million customer accounts, operates over 8,500 branch offices throughout the 50 States,<sup>1</sup> and employs over 8,900 registered representatives, called Investment Representatives ("IRs"). The overwhelming majority of the Firm's offices are staffed by a sole IR and a non-registered sales assistant titled a "branch office administrator" ("BOA").

Generally speaking, customer correspondence can emanate either from Firm headquarters (*e.g.*, a "verification letter" confirming a request for a third party check) or from the branch office (*e.g.*, an invitation to a lecture by a local CPA). Individual pieces of sales correspondence prepared by IRs are required by Firm procedures to be approved by teams within the Compliance Division, which is based at headquarters in St. Louis.

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<sup>1</sup> Industry rankings consistently place the Firm first in terms of number of branch offices. *See, for example*, "Edward Jones Continues Office Growth," The State Journal Register (February 2001); "The Jones Financial and Service Companies, L.L.P.," Hoover's Company Profiles (2005); and The Securities Industry Yearbook, 2004-2005.

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IRs and BOAs are increasingly being granted e-mail capabilities, and the Firm expects that virtually all of its branch offices will have commenced using e-mail by the end of the year. Prior review of such e-mails also depends on whether such are sales-oriented.

#### Comment

The NASD Proposal, as amended, continues a policy of flexibility inherent in the NASD's framework for review of outgoing customer correspondence. At its core, that policy recognizes that a membership exceeding 5,000 in number will employ a wide variety of approaches in shielding customers and prospects from misleading or otherwise improper communications. For example, in 1998, NASD amended its Rule 2210 ("Communications with the Public") so as to require pre-use review only where communications rose to the level of "sales literature" or "advertisement;" concurrently, member firms were obligated to develop written supervisory procedures for *correspondence* that were appropriate to their "business, size, structure and customers."<sup>2</sup>

Further, in 2003 NASD announced the expected standard for review of instant messaging communications, and again discretion was accorded to member firms - this time in imposing the obligation to discern between sales-related and lesser, ministerial communications.<sup>3</sup> Thus, while the NASD Proposal expands the current definition of *correspondence* to include group communications to existing customers, the concurrent distinction between communications of a sales nature and those communications flowing from the administration of a branch office works to further and solidify the NASD communications policies announced in recent years.

Additionally – and more specifically - the NASD proposal is in lock step with other self regulatory organizations that have long recognized the distinction between sales-oriented and administrative correspondence. The NYSE employs a content-oriented definition of *sales literature*<sup>4</sup> that has proven to be a ready resource in the battle against improper e-communications.<sup>5</sup> Moreover, in 2002 the MSRB announced a

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<sup>2</sup> See NASD Notice to Members #98-83 ["SEC Approves Rule Changes Relating to Standards for Individual Correspondence," quoting from Rule 3010(d)(2)].

<sup>3</sup> See NASD Notice to Members #03-33 ("Members should evaluate instant messaging according to the 'content and audience' of the instant messaging communications."), at pages 344-345.

<sup>4</sup> NYSE Rule 472.10(5) defines sales literature as written or electronic communications "discussing or promoting the products, services, and facilities offered by a member organization."

<sup>5</sup> See, for example, Arnold Alan Winters, NYSE Hearing Panel Decision ["HPD"] 04-112 (Rule 472 violation found since e-mails "constituted sales literature because they discussed services such as cash management, corporate lending, and stock ownership), Thomas E. Kaplan, HPD 04-84 (472 violation caused by the issuance of public communications via the internet that were "unapproved research reports"), and Bruce Emory Carlson, HPD 02-233 (speculative Internet postings).

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guideline for supervisory reviews which acknowledged that online communications “of a generalized or administrative nature” might not require supervisory review.<sup>6</sup>

E-mail and mass communications are becoming part of a broker's livelihood. Experience shows that these tools serve as the quickest and most efficient means of providing to blocks of customers details on a stock dividend, of communicating extended office hours, or of advising that the markets have closed in observance of a holiday. The means of such efficiency depends on a firm's ability to allocate its resources; that task approaches the unmanageable should every communication from a broker be subject to pre-use review. Accordingly, firms must be provided some latitude in fashioning internal supervisory procedures, with the concomitant understanding that a failure in this regard could result in disciplinary action. Concurrently, the NASD proposal recognizes that discretion without sacrificing customer protections.

In sum, Edward Jones expresses its unqualified support for the NASD Proposal. The Firm thanks the Commission for its consideration of these comments. If further elaboration is required, please contact the undersigned at (314) 515- 9737.

Sincerely,

Tim Kelly  
Partner  
Field Supervision

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<sup>6</sup> See “MSRB Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Application of Rule G-19, on Suitability of Recommendations, to Online Communications,” S.E.C. Release No. 34-46639 (October 10, 2002), at 21.