



August 29, 2003

Secretary  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0606

Re: File #SR-NASD-2002-162

Dear Sir or Madam:



MML Investors Services, Inc. ("MMLISI") appreciates this opportunity to comment on the NASD's amendments to its earlier proposed new Rule 3012 and other proposed amendments to selected NASD supervisory rules. We believe that these amendments move towards clarifying the original proposal and creating a more workable regulatory regime. We believe, however, that two provisions of the proposed amendments need to be further articulated.

**1. With respect to satellite offices, clarify the requirement in proposed Rule 3010(c) that inspections may not be conducted by the branch office manager.** The proposed amendments prohibit office inspections from being "conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s)."

As we noted in our comments to the original rule proposal, many firms such as MMLISI conduct business from numerous small or single person satellite offices. Typically these offices report to a registered branch office which may also be an Office of Supervisory Jurisdiction ("OSJ"). The branch office manager is normally resident in the registered branch responsible for supervising the satellite location. The language in the proposal is ambiguous and can be read as prohibiting the branch office manager of the registered location (or his or her subordinates) from conducting the inspection of the satellite location since he or she may be viewed as the satellite office's "branch office manager".

Such an interpretation would, in effect, cause the same disruption that many commenters pointed out in response to the original proposal's requirement that an "independent" person conduct office inspections. For firms such as MMLISI, the result would be that hundreds of satellite locations could not be inspected by the off-site managers to whom they report.

As we noted in our earlier comment letter, preventing field-based supervisory personnel from conducting such reviews would have serious consequences for firms such as MMLISI that conduct business through numerous one and two person locations. Not only would there be a considerable strain on the firm's existing compliance resources, removing such personnel from the inspection process could actually decrease the quality of supervision associated with such locations. To address these concerns, we strongly believe that the proposal should be clarified so it is clear that the prohibition against branch office managers conducting inspections is not extended to their review of subordinate satellite locations. Without such a clarification, the NASD's removal of the "independent" inspection requirement would have little effect.

**2. Clarify that the new content and frequency requirements for non-supervising branch office inspections under proposed Rule 3010(c) does not limit the flexibility of a firm to conduct additional inspections.** The proposed rule requires that at least every three years, members inspect each branch office that does not supervise non-branch locations. During such an inspection the firm is required to test and verify policies and procedures in specific areas such as the safeguarding of customers' funds, the maintenance of books and records and other internal control matters.

Over the last several years, many firms with numerous satellite offices such as MMLISI have developed supervisory procedures to address the concerns expressed by the SEC and NASD regarding the level of oversight of such offices.<sup>1</sup> Among these procedures are requirements that detached locations be inspected multiple times during the year to ensure that supervisors maintain "regular and frequent professional contact" with producers at those locations, as required by NASD Notice to Members 98-38.

It should be recognized that with the advent of the new branch office rule, most satellite locations will be required to register as branches. Despite their change in registration status, these offices will continue to require additional inspections and the other types of oversight discussed in Notice to Members 98-38. It should be made clear, therefore, that firms which conduct branch inspections more frequently than every three years will not be violating the new rule if such additional inspections are not designed to comply strictly with the new requirements. Without such clarification, the proposed rule may actually lower supervisory standards since some firms may hesitate to conduct additional inspections that focus on issues other than internal controls.

While some broker-dealers may determine that the type of inspection required by the proposal should be conducted more than every three years, firms should retain the flexibility to design supervisory procedures that are appropriate for the unique

---

<sup>1</sup> See, e.g., NASD Notice to Members 98-38 (May 1998); *In the Matter of Royal Alliance, Inc.*, Rel. No. 34-38174 (Jan. 15, 1997); *In the Matter of NYLIFE Securities, Inc.*, Rel. No. 34-40459 (Sept. 23, 1998).

Secretary, Securities and Exchange Commission  
August 29, 2003  
Page 3

characteristics of their organizations. For example, during such an additional inspection, a firm should have the ability to focus on sales practice issues rather than customer address changes without fear that such an inspection would be in violation of Rule 3010(c). The proposal should contain specific guidance that once a broker-dealer meets the new rule's requirements in terms of frequency and content, additional inspections may be conducted in a manner that the firm itself deems is appropriate for reasonable supervision.

We appreciate your attention to our comments. Please contact me directly if you would like further information concerning our views.

Very truly yours,



Robert S. Rosenthal  
Second Vice President and  
Associate General Counsel

---