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September 30, 2003

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Re: File No. SR-NASD-2002-162

Dear Sir or Madam:

Thank you for the opportunity to provide comments to Amendments No. 1 and 2 to the NASD's proposal to adopt new Conduct Rule 3012 and to amend certain provisions of other Conduct Rules, including Rule 3010.

One of the concerns voiced by commentators in the first round of comments was that the NASD should have notified its membership through a Notice To Members of its intent to make changes to the Conduct Rules before it filed its proposed changes with the SEC. By filing the proposed rule changes directly with the SEC the NASD ensured that its members would not detect the proposed rule changes unless they consistently monitor the Federal Register. Most NASD members do not retain government affairs staff to monitor various government publications in order to detect activities that may affect the member. The NASD dismissed this concern in its response by stating that in fact the SEC gave members additional time to respond. The NASD missed the point of the comments. Members fully realize that they are responsible for knowing about and acting upon rule and policy changes issued by the NASD (and other self-regulatory organizations to which the firm is a member) and included in a Notice To Members or other NASD publication. We recognize that there may be times when the NASD believes that it must file rule changes initially with the SEC pursuant to Rule 19b-4. However, even in such cases the NASD should simultaneously publish the proposed rule changes in a Notice To Members and either provide the full text of the proposed changes with instructions on how to make comments or include a link to the Federal Register. It seems that the NASD has forgotten that it is a member-owned association and not a government agency. By denying its members access to information that directly impacts the member's business operations the NASD is clearly ignoring its mandate as a self-regulatory organization governed by its members.

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The NASD eliminated the proposed “independence” requirement in its proposed changes to Rule 3010. The applicable provisions of the amended version of Rule 3010(c) prohibits a “branch office manager” or any person within that office who has supervisory responsibilities or any individual who is supervised by such persons from conducting the required inspections of OSJ and branch offices and non-branch locations. The NASD in its effort to eliminate the “independence” requirement would permit office inspections to be conducted by persons who report to the “branch office manager’s” supervisor or who works in an office supervised by the “branch manager’s” supervisor, where the “branch office manager” generates 20% or more of the income of the “branch office manager’s” supervisor unless the member adopts heightened inspection procedures. The NASD attempts to clarify this supervisory scheme by stating that it allows “OSJ managers” to conduct office inspections in any location where the “OSJ manager” is senior to the office’s branch manager. In our opinion the NASD’s attempt to simplify the concept of independence adds additional uncertainty and needs additional clarification. The NASD does not define the terms “branch office manager” and “OSJ manager”. These terms are not defined or used in the current version of Rule 3010 or any other Conduct Rule. How does this system work in an office of supervisory jurisdiction that is supervised by a producing OSJ manager and that has no separate and distinct “branch office manager”? It is clear that the NASD will not permit the “branch office manager” to inspect their own branch office. It is unclear whether the NASD will permit a producing OSJ manager to conduct the office inspection of their office of supervisory jurisdiction and any non-branch location associated with their office where there is no “branch office manager”. The amended version of Rule 3010(c)(3) clearly states that an office inspection may not be conducted by “any person within that office who has supervisory responsibilities”. It appears that this may be permitted if the person conducting the inspection “reports to the branch office manager’s supervisor or works in an office supervised by the branch manager’s supervisor” and the member uses “heightened office inspections”. The NASD appears not to contemplate that an OSJ manager will conduct the office inspection. However, the language of Section (c)(3) is so convoluted that it is impossible to be certain. If the NASD will not permit such an inspection by the OSJ manager then they have essentially retained the “independence” requirement.

The foregoing discussion applies equally to the supervisory provisions of proposed Rule 3012 (a)(2). For example, Section (2)(C) of Rule 3012 provides that members must adopt procedures that are reasonably designed to “provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the income of the producing manager’s supervisor. Assuming that the “producing manager” is a general securities principal who is the OSJ manager and who is supervised directly by the member’s compliance department, how does the member determine whether the “producing manager” is responsible for generating 20% or more of the income of the producing manager’s supervisor? In this

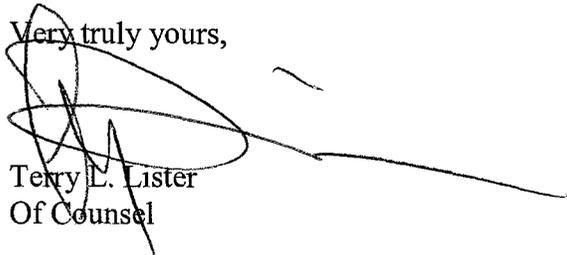
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scenario, is the producing manager's supervisor the member or is it the individual principal in the member's compliance department assigned to supervise the producing manager? If the NASD intends for these proposed rules to apply to every conceivable supervisory scenario then the staff needs to recognize that the language they use in the proposed amendments describe the typical branch office structure used by most wirehouse broker-dealers. This language cannot without additional clarification be applied to the structure used by most independent broker-dealers.

We recommend that the **NASD** specifically provide in Rules 3010 and 3012 that members will be considered to have complied with the requirements in those rules to validate and notify customers with respect to changes of address and investment objectives if the member follows the procedures set forth in SEC Rule 17a-3(a)(17)(i).

Thank you again for providing the opportunity for us to comment on these proposed rule changes. If you have any questions, please feel free to contact the undersigned.

Very truly yours,



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