

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56742; File No. SR-FINRA-2007-008)

November 5, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Amend the Definition of Office of Supervisory Jurisdiction in NASD Rule 3010(g)(1) to Exempt Locations that Solely Conduct Final Approval of Research Reports

I. Introduction

On August 30, 2007, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a the National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the definition of Office of Supervisory Jurisdiction (“OSJ”) in NASD Rule 3010(g)(1) to exempt locations that solely conduct final approval of research reports. The proposed rule change was published for comment in the Federal Register on October 5, 2007.³ The Commission received two comment letters in support of the proposal.⁴ This order approves the proposed rule change.

II. Description of the Proposal

NASD Rule 3010(g)(1) currently defines OSJ to mean any office of a member at which any one or more of the following functions takes place: (a) order execution and/or market making; (b) structuring of public offerings or private placements; (c) maintaining custody of customers’ funds and/or securities; (d) final acceptance (approval) of new accounts on behalf of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56585 (October 1, 2007), 72 FR 57081.

⁴ See letters to Nancy M. Morris, Secretary, Commission, from Marian H. Desilets, President, Association of Registration Management, Inc., dated October 25, 2007, and Jill Ostergaard and Christopher Mahon, Co-Chairs, Securities Industry and Financial Markets Association Self Regulation and Supervisory Practices Committee, dated October 30, 2007.

the member; (e) review and endorsement of customer orders, pursuant to paragraph (d) above; (f) final approval of advertising or sales literature for use by persons associated with the member, pursuant to NASD Rule 2210(b)(1); or (g) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

In July 2006, amendments to the branch office definition under NASD Rule 3010(g)(2) went into effect (“Uniform Branch Office Definition”).⁵ The Uniform Branch Office Definition was developed collectively by FINRA (then known as NASD), the New York Stock Exchange LLC (“NYSE”) and the North American Securities Administrators Association to establish a national standard. In conjunction with the new Uniform Branch Office Definition, a Form BR was introduced to provide a more efficient, standardized method for members to register branch office locations.

Although FINRA and NYSE sought to adopt consistent interpretations of the new Uniform Branch Office Definition, there were nevertheless different classifications of a location where final approval of research reports by a principal occurs. Under NASD’s current rules, final review of advertising or sales literature (which includes research reports) makes a location an OSJ, and therefore a branch office. NYSE’s rules, however, do not include an OSJ definition,⁶ and NYSE stated in an Information Memo that it deems a location where a member

⁵ See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR-NASD-2003-104) (order approving Uniform Branch Office Definition).

⁶ See NYSE Rule 342 (Offices – Approval, Supervision and Control), which contains the Uniform Branch Office Definition.

stations a qualified supervisory analyst solely to review research reports as a “non-sales location,” which is an express exclusion from the Uniform Branch Office Definition.⁷

Due to this inconsistency, NASD published Notice to Members 07-12 in February 2007 seeking comment on a rule harmonization proposal to eliminate the definition of OSJ from the NASD manual. After reviewing the twenty comments received on the original proposal set forth in its Notice to Members 07-12, FINRA determined not to move forward with the broad proposal to eliminate the definition of OSJ and adopt new classifications for office locations. Instead, consistent with many of its commenters’ recommendation, FINRA proposed to amend the definition of OSJ in the NASD rules to exclude locations that solely conduct final approval of research reports, thereby enabling FINRA to deem such locations to be “non-sales locations.”

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁹ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will resolve the conflicting provisions in NASD and NYSE rules over the classification of locations that solely conduct final

⁷ See NYSE Information Memo 06-13 (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5).

⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3(b)(6).

approval of research reports, and promote greater consistency in the application of the Uniform Branch Office Definition. The Commission also believes that providing an exemption from the definition of OSJs to such locations will reduce regulatory inefficiencies and eliminate unnecessary costs to member firms.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2007-008), be, and hereby is, approved. FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be the date of publication of the Regulatory Notice announcing Commission approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).