

NASD Changes to Branch Office Definitions for Broker-Dealers

Overview

The NASD has changed its definition of “branch office” and has enacted filing requirements in connection with branch offices and firm personnel. A **deadline of July 3, 2006** has been established for compliance by all member firms with the Form BR (Uniform Branch Office Registration Form) and Form U-4 (Uniform Application for Securities Industry Registration or Transfer) filing requirements. Specifically, member firms must complete and file a Form BR for each branch office and must amend the Form U-4 of each registered person to indicate the branch office or other location where the individual works. **Note that under the new definition, most member firms’ main office locations will need to be registered as branch offices on Form BR if the office activities satisfy the new definition of branch office.**

Uniform Definition of Branch Office; Change from Existing Definition

NASD Rule 3010(g)(2), effective July 3, 2006, revises the definition of the term “branch office” in a manner consistent with the branch office definition to be used by the New York Stock Exchange. Amended Rule 3010(g)(2) defines a branch office as “any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such.” The Rule also sets forth a number of exclusions, which are listed below. The prior definition only covered locations which were held out to the public as an office of the broker-dealer. Many locations not previously deemed to be branch offices will now require registration.

Rule 3010(g)(2) provides a number of exclusions from the definition of “branch office.” Member firms should consult the text of the amended rule for the specific conditions applicable to each of the following excluded locations:

- Back office location
- Private residence
- Location for short-term use
- Office of convenience used for occasional customer meetings
- *De minimis* use of office used for non-securities sales activities
- Securities exchange location
- Temporary location

Form BR (Uniform Branch Office Registration Form)

The new Form BR is used by member firms to register branch offices with the NASD, with the NYSE and with any relevant states. The Form is filed electronically via the CRD system and replaces Schedule E of Form BD. The Form is also used to report amendments to existing information and closings of branch offices. The NASD has automatically

converted certain existing information about branch offices to the new form. By July 3, member firms are responsible for reviewing the converted information, if any, to ensure the accuracy of that information, filing Form BR for any additional branch offices, and determining that all registered personnel are Linked to (that is, located at or supervised by) a branch office. Note that a NASD member firm can obtain a list from the CRD of any registered personnel who are not linked with an office. A registered individual may be linked to an office by listing that person on an initial Form BR filing or by completing the necessary information on Form U-4 (discussed below).

State filings: While many states have adopted the Form BR for use in registering or completing notice filings of branch offices in the state, the states may or may not have adopted the uniform definition of branch office. Therefore, for all branch offices, a member firm should review the relevant state requirements to determine if an office must be registered with the state and to determine what mechanism the state will use to effect that registration. We would be happy to provide assistance in completing any necessary review of state law requirements.

Form U-4 Changes

As discussed above, member firms must determine that all registered representatives are linked to at least one branch office (or the firm's main office). In addition, the Form U-4 requires the firm to indicate the address where each registered representative actually works, even if that address is a non-branch office location (such as the individual's residence). Therefore, for each registered person, member firms should review address information contained on the existing Form U-4. For an individual who works from a non-branch office location, the form will need to contain at least two addresses: (1) the location at which the individual works, and (2) the branch office which is responsible for supervising the individual.

Implications of Registering a Branch Office

Under the prior definition of "branch office," a member firm may have determined that a location from which a registered person performed securities sales activities did not need to register as a branch office (because the location was not held out to the public or otherwise identified as an office of the member firm). Nevertheless, the member firm was responsible for supervising the activities of the registered personnel at that non-branch location. Under the new definition, it is possible that the same location will now be deemed a branch office. The obligation to supervise the activities being performed at the location should not change significantly as a result of the new designation. However, additional supervisory requirements apply to a registered branch office location. Each branch office location must have a registered representative or principal designated as the person-in-charge of the office. A copy of a member firm's written supervisory procedures should be maintained at each branch office location. Any branch office that supervises one or more other branch offices must be inspected at least annually, and a branch office which does not supervise other branch offices must be inspected at least every three years, with a written report of any inspection maintained by the member for a minimum of three years.

Summary of Steps to Take

Prior to July 3, each member firm should do the following:

- Determine whether any location might be deemed to be a branch office under the new definition
- Verify that branch office information, if any, that was automatically transitioned on the CRD system is accurate and complete
- File Form BR for any location within the new definition of branch office

- Verify that the Form U-4 for each registered person accurately reflects the location where the person works and the office responsible for supervising that person's activities
- Review the firm's written supervisory procedures to determine whether any changes are required as a result of any change in the branch office status of any location

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