

**Reference Material regarding
New Broker-Dealer CEO Certification and
Supervisory Control Rules**

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I. INTRODUCTION¹

In 2004, the SEC approved rule proposals by the NYSE and the NASD to require broker-dealers to strengthen controls over their supervisory systems and producing sales managers.² The NASD and NYSE rule proposals were designed to address concerns brought to light by an SEC investigation into the activities of Frank Gruttadauria, a branch office manager who, over a 15 year period, misappropriated more than \$100 million from over 40 of his clients.³ The SEC determined that Mr. Gruttadauria was able to engage in his fraudulent activities by, among other things, providing falsified account statements to clients and by forwarding brokerage statements to alternative addresses under his control without the knowledge or authorization of these clients.

II. CEO CERTIFICATION AND CHIEF COMPLIANCE OFFICER DESIGNATION

A. CEO Annual Certification

1. CEO's of NASD member firms and NYSE member organizations must certify annually that:
 - a. The member, or member organization, has in place processes to:
 - (1) Establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable federal securities laws, regulations and SRO rules;
 - (2) Modify such policies and procedures as business, regulatory and legislative changes and events dictate; and
 - (3) Test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure

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² See SEC Rel. No. 34-49882, 69 Fed. Reg. 35108 (June 23, 2004); SEC Rel. No. 34-50477, 69 Fed. Reg. 59972 (Oct. 6, 2004).

³ See *In re SG Cowen Securities Corporation*, 80 SEC Docket 3154 (Sept. 9, 2003), SEC Rel. No. 34-48335 (Aug. 14, 2003); see also *In the Matter of Lehman Brothers, Inc.*, 80 SEC Docket 3173 (Sept. 9, 2003), SEC Rel. No. 34-48336 (Aug. 14, 2003).

continuing compliance with federal securities laws, regulations and NASD rules;

- b. The CEO has conducted one or more meetings with the chief compliance officer in the preceding 12 months to discuss the matters subject to the certification, discuss and review the member's compliance efforts, and identify and address significant compliance problems and plans for emerging business areas;
- c. The member's supervisory processes are evidenced in a report reviewed by the CEO, chief compliance officer, and other officers as the member deems necessary to make the certification and was submitted to the member's board or directors and audit committee⁴; and
- d. The CEO has consulted with the chief compliance officer, other officers as applicable and such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate, in order to attest to the statements made in the certification. NASD Rule 3013; NASD IM-3013; NYSE Rule 342.30(e).

B. Chief Compliance Officer Designation

- 1. NASD member firms and NYSE member organizations must designate on Schedule A of Form BD a principal to serve as chief compliance officer. NASD Rule 3013; NYSE Rule 342.30(d).
- 2. The individual designated as chief compliance officer may also hold other positions within the member, including the position of CEO, provided that the other responsibilities do not impede the person from executing his responsibilities as chief compliance officer. NASD NTM 04-79; NYSE Information Memo 05-101.

III. INTERPLAY OF RULE CHANGES

- A. Given the relationship among the new NASD rules and rule amendments, each firm should be familiar with the rules to avoid unnecessary duplication of efforts. The policies and procedures required by NASD Rule 3012 will naturally impact a CEO's ability to make the certification required by NASD Rule 3013. Practically speaking, the only way a firm can satisfy this requirement is by establishing, maintaining and enforcing a

⁴ The requirement to submit the report to the board of directors and audit committee does not apply to members that do not use such governing bodies and committees in the conduct of their business. NASD NTM 04-79; NYSE Information Memo 05-101.

system of supervisory control policies and procedures (in accordance with NASD Rule 3012) that test and verify that the firm's policies and procedures are reasonably designed to achieve compliance with applicable regulatory requirements. By satisfying the requirements of NASD Rule 3012, a firm should be in a good position to certify that it has processes in place that are reasonably designed to comply with applicable NASD and MSRB rules and federal securities laws and regulations.

IV. SUPERVISORY CONTROL RULE AMENDMENTS

- A. Independent Testing And Verification Of Supervisory Procedures
 - 1. Designation Of Responsible Principal Or Principals.
 - a. Members must designate and identify in their supervisory control procedures one or more principals who will establish, maintain, and enforce supervisory control procedures that will *test and verify* that the member's supervisory procedures are sufficient and amend or create additional supervisory procedures where the need is identified by such testing and verification. NASD Rule 3012(a)(1); NYSE Rules 342(b) and 342.23.
 - 2. Responsible Principal Or Principals Must Not Have Conflicting Business Interests.
 - a. The designated principal or principals must test and verify the adequacy of the supervisory control procedures in a manner that is independent of any business considerations that are countervailing to full compliance with applicable securities laws, regulations and SRO rules. NASD NTM 04-71.
 - b. Persons who regularly perform the activities under review will not be considered sufficiently independent to test and verify the supervisory systems and procedures for those business activities. NYSE Information Memorandum 04-38.
 - 3. Guidelines For Preparing Supervisory Control Procedures To Test And Verify Supervisory Procedures
 - a. The NASD has provided the following guidelines for members to consider when designing their supervisory control policies and procedures to test and verify their supervisory procedures adequacy. **Note: The NASD's**

Guidance Does Not Constitute A Safe Harbor. NASD
NTM 05-29.

- (1) Conduct an inventory of the businesses in which you engage and applicable securities laws, regulations and NASD rules.
- (2) Determine the requirements of the applicable securities, laws regulations and NASD rules and any conduct that may be prohibited, compelled, limited or conditioned. Also determine who is responsible for supervising the conduct and how compliance with such requirements is monitored.
- (3) Determine if internal firm policies further curtail conduct.
- (4) Compare the information gathered above to the current supervisory procedures to determine if there are any gaps, deficiencies or inaccuracies in the existing supervisory procedures.
- (5) Analyze how to address identified gaps, deficiencies or inaccuracies by using the same analysis as set forth in steps (1) through (3) above. In this regard, firms should review whether the launch of new business lines or products call into question the sufficiency of existing supervisory procedures; whether changes in the securities laws, regulations and NASD rules require revisions to the supervisory procedures; or whether customer complaints, litigation, branch office exams, other internal audits or regulatory issues reported in the media necessitate revisions to existing supervisory procedures.
- (6) The information gleaned from this analysis should be developed into new or amended supervisory procedures and supervisory control procedures that resolve any identified gaps, deficiencies or inaccuracies. NASD NTM 05-29.

4. Required Annual Report To Senior Management On Supervisory Controls Procedures.
 - a. The designated principal or principals must submit, no less than annually, a report to the member's senior management that details the firm's system of supervisory controls, a summary of the test results, and any additional or amended supervisory controls procedures that have been created. NASD Rule 3012(a)(1); NYSE Rule 342.30.
 - (1) NYSE annual reports regarding supervision and compliance efforts must be submitted to the member's senior management by April 1 of each year. NYSE Rule 342.30.
5. NYSE Exemption From Independent Testing and Verification Requirement.
 - a. An exemption from the independent testing and verification requirement is available only for NYSE members that:
 - (1) Do not conduct a public business;
 - (2) Have a capital requirement of \$5,000 or less; or
 - (3) Employ 10 or fewer registered representatives. NYSE Rule 342.23.

B. Supervision Of Producing Managers.

1. Supervisory Control Procedures For Day-To-Day Review of Producing Managers.
 - a. Member's supervisory control policies and procedures must include procedures to review and supervise on a day-to-day basis the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function. NASD Rule 3012(a)(2)(A); NYSE Rule 342.19.
 - b. Dual members of the NASD and NYSE may choose to comply with either NASD Rule 3012(a)(2)(A) or NYSE Rule 342.19. NASD 3012(b); NYSE Information Memorandum 05-07.

2. Definition Of “Producing Manager”.

- a. A “producing manager” refers to a branch office manager, a sales manager, a regional or district sales manager or any person who performs a similar supervisory function and who services customer accounts in a capacity requiring registration. NASD NTM 05-08; NYSE Information Memorandum 05-07.
- (1) Registered Representatives Entering Orders On Behalf of Producing Manager On Accommodation Basis. A registered person that occasionally enters client orders on behalf of a producing manager that is out of the office due to vacation or illness is not deemed to be a producing manager. NASD NTM 05-08; NYSE Information Memorandum 05-07.
 - (2) Servicing Institutional v. Retail Accounts. There is no distinction under the SRO rules between producing managers that service retail accounts and producing managers that service institutional accounts. NASD NTM 05-08; NYSE Information Memorandum 05-07.
 - (3) No De Minimus Exception. Any associated person is considered a producing manager regardless of the volume of customer account activity the producing manager conducts. NASD NTM 04-71; NASD NTM 05-08; NYSE Information Memorandum 05-07.
 - (4) No Senior Management Exception. Senior management, including the president of a member, that manage only a few accounts on behalf of their family or friends, will be considered “producing managers” for purposes of these SRO rules. NASD NTM 04-71.

3. Persons Eligible To Supervise Producing Managers.

- a. A person who is senior to or “otherwise independent” of the producing manager must perform these day-to-day supervisory reviews. NASD Rule 3012(a)(2)(A)(i); NYSE Rule 342.19(a).

b. Seniority.

- (1) A person is senior to a producing manager if:
 - (a) The person does not report to the producing manager;
 - (b) The person's compensation is not determined in whole or part by the producing manager;
 - (c) The person is not in the same chain of authority; and
 - (d) The person has the authority to oversee, direct, and correct the activities of the producing manager and take all necessary remedial actions, including termination, if and when necessary. NASD Supervisory Control Amendments Workshop (Dec. 2004).

c. "Otherwise Independent".

- (1) A person is "otherwise independent" of a producing manager if:
 - (a) The person does not report either directly or indirectly to the producing manager;
 - (b) The person is situated in a different office than that of the producing manager;
 - (c) The person must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing from those activities); and
 - (d) The person alternates such review responsibility with another qualified person every two years or less. NASD Rule 3012(a)(2)(A)(i); NYSE Rule 342.19(a).

- (2) An independent consultant hired to perform the reviews of a producing manager would not be considered to be “otherwise independent” if the independent consultant could be hired or fired by the producing manager, such as a firm’s CEO. NASD Supervisory Control Amendments Workshop (Dec. 2004).

4. NASD’s “Heightened Supervision” And NYSE’s “Alternate Independent Supervision” Requirements

- a. An NASD member must have procedures that are reasonably designed to provide “heightened supervision” and an NYSE member must have procedures to provide “alternate supervision” over the activities of the producing manager if the producing manager is responsible for generating a threshold percentage of the revenue of the business units supervised by the producing manager’s supervisor over the course of a rolling, 12 month period. For NASD firms the revenue percentage threshold amount is 20%, whereas the threshold for NYSE firms is 10%. NASD Rule 3012(a)(2)(C); NYSE Rule 342.19(a).

b. The 10% / 20% Threshold Tests.

- (1) Revenue Attributed to Producing Manager’s Supervisor.
 - (a) For purposes of determining the percentage threshold, a member must look at all revenue generated by or credited to the producing manager or the producing manager’s office and that amount shall be included as part of the overall revenues of the business units supervised by the producing manager’s supervisor regardless of a member’s internal allocation of such revenue. NASD NTM 04-71.
 - (b) Revenue means the “total dollar payment for goods and services before any deductions or offsets.” NASD Supervisory Control Amendments Workshop (Dec. 2004).

- (2) Calculation Required On Rolling 12 Month Basis. NASD Rule 3012(a)(2)(C); NYSE Rule 342.19(a).
- (3) The Threshold Test Does Not Create A Negative Safe Harbor.
 - (a) Even if a producing manager’s office does not generate the threshold percentage of the revenue attributed to the producing manager’s supervisor, heightened supervisory procedures may be required based upon other facts and circumstances. NASD NTM 04-71.

c. Definition Of “Heightened Supervision”

- (1) Heightened supervision means those procedures designed to avoid conflicts of interest that may undermine complete and effective supervision because of economic, commercial, or financial interests that the supervisor holds in the associated persons and businesses being supervised. NASD NTM 04-71.
- (2) NASD Examples Of Heightened Supervisory Procedures:
 - (a) Unannounced supervisory reviews;
 - (b) Increased number of supervisory reviews by different reviewers within a certain period;
 - (c) Broader scope of activities reviewed;
 - (d) Having one or more principals approve the supervisory review of producing managers. NASD NTM 04-71.

d. Heightened Supervision Not Required If “Otherwise Independent” Person Is Conducting Reviews. NASD NTM 04-71.

e. “Alternate Independent Supervision”

- (1) Alternate independent supervision means that the supervisory reviews of a producing manager’s customer activities must be conducted by a qualified supervisor that does not receive an override or other income derived from that producing manager’s customer activity representing more than 10% of his gross income on a rolling 12 month basis. NYSE Information Memorandum 04-38.

5. “Limited Size And Resources” Exception

- a. A principal who is sufficiently knowledgeable of the member’s supervisory control procedures may conduct the required reviews if a member is so limited in size and resources that the member does not otherwise have associated persons who can conduct supervisions and are senior or “otherwise independent” from the producing managers. NASD Rule 3012(a)(2)(A)(ii); NYSE Rule 342.19(b).
- b. Appropriate Use Of Exception:
 - (1) Determination of whether “limited size and resources” exception applies is based upon the facts and circumstances of each member. NASD NTM 04-71.
 - (2) Examples:
 - (a) Sole proprietor; or
 - (b) One office firm. NASD NTM 04-71.
- c. Partial Exception Users
 - (1) A member may be able to use the “limited size and resources exception for part, but not all, of its supervisory obligations. NASD NTM 04-71.
 - (2) Example:
 - (a) A member may have a senior or “otherwise independent” person to conduct reviews for

all producing managers but need to use the exception to supervise executive producing managers, including the CEO. NASD NTM 04-71.

- d. Document Use Of Exception In Supervisory Control Procedures
 - (1) A member using the exception must document in its supervisory control procedures:
 - (a) The factors used to determine that complete compliance with all of the provisions of the general supervisory requirement is not possible; and
 - (b) How the supervisory system and procedures in place comply, to the extent practicable, with the general supervisory requirements. NASD NTM 04-71; NYSE Information Memorandum 04-38.

- e. Notice Requirement For NASD Exception Users
 - (1) The SEC approved amendments to NASD Rule 3012 to require members relying on the “limited size and resources” exception to notify NASD of their use of the exception. NASD NTM 06-04.
 - (2) The reporting requirement effective date will coincide with the completion of an electronic reporting process and system designed for that purpose which will be February 14, 2006. NASD NTM 06-04.
 - (3) Firms must notify the NASD of their reliance on the “limited size and resources” exception by March 16, 2006. NASD NTM 06-04.

C. Supervisory Control Procedures For Particular Activities

1. Member firms must establish and implement supervisory control policies and procedures that are reasonably designed to review and monitor the following activities:
 - a. transmittals of customer funds;
 - b. customer changes of address and the validation of such changes of address;
 - c. customer changes of investment objectives and the validation of such changes of investment objectives. NASD Rule 3012(a)(2)(B); NYSE Rule 401(b).
2. Member firms must include within such procedures a means or method of customer confirmation, notification, or follow-up that can be documented. NASD Rule 3012(a)(2)(B); NYSE Rule 401(b).
3. “Transmittal of customer funds” *does not* include transmission of funds from a customer to purchase shares directly from a mutual fund, unless those funds are coming from a customer’s brokerage account. NASD Supervisory Control Amendments Workshop (Dec. 2004).
4. If the member does not engage in activities involving customers funds, securities or accounts, it must include a statement in its written supervisory control policies and procedures that it does not engage in such activities and document that additional supervisory policies and procedures will be put in place prior to engaging in them. NASD Rule 3012(a)(2)(B).

D. Internal Inspections

1. Mandatory Inspection Cycles.
 - a. A member must set forth in its written supervisory and inspection procedures the examination cycle and an explanation of the factors the member used in determining the frequency of the cycle. The mandatory inspection cycles set forth in the SRO rules are minimum frequencies required and members must determine whether more frequent cycles are necessary based upon the facts and circumstances relating to the office to be inspected. NASD Rule 3010(c); NYSE Rule 342(a)(b)/03.

b. Annual Inspections Of Offices of Supervisory Jurisdiction and Supervisory Branch Offices

- (1) A member must inspect, at least annually, each office of supervisory jurisdiction and supervisory branch office, which includes any location that is responsible for supervising the activities of persons associated with a member at one or more of a member's non-branch office locations. ***Please note that the NYSE requires annual inspections of all branch offices, whether or not the branch office supervises another office.*** NASD Rule 3010(c)(1)(A); NYSE Rule 342(a)(b)/03.

c. Inspections Every Three Years Of Non-Supervisory Branch Offices

- (1) A member must inspect all non-supervisory branch offices at a minimum, every three years.
- (2) A more frequent inspection cycle may be required based upon an evaluation of the following:
 - (a) Nature and complexity of the branch office's securities activities;
 - (b) The branch office's volume of business; and
 - (c) The number of associated persons assigned to the branch office. NASD Rule 3010(c)(1)(B).

2. Periodic and Regular Inspections Of Non-Branch Locations

- a. Members must inspect non-branch business locations on a regular periodic cycle. Members should consider the following factors in determining the frequency of the cycle:
 - (1) The nature and complexity of the location's securities activities; and
 - (2) The nature and extent of contact with customers. NASD Rule 3010(c)(1)(C).

- b. Non-Branch Locations include “offices of convenience”, which refers to any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the customer’s convenience, are deemed to be non-branch business locations and as such must be inspected on a regular, periodic basis. NASD NTM 04-71.

3. Inspection Report Content and Recordkeeping Requirements

- a. Members must reduce each office inspection to a written report and maintain it for a minimum of three years, unless the inspection is being conducted pursuant to a regular periodic cycle for non-branch locations that is greater than three years, in which case the report must be maintained until the next inspection report has been written. NASD 3010(c)(2); NYSE Rule 342.30 and NYSE Rule 342(a)(b)/03.

- b. Content Requirements For Written Inspection Reports.

- (1) The written inspection report must include the testing and verification of the member’s policies and procedures, including the member’s supervisory policies and procedures, in the areas of:
 - (a) Safeguarding customer funds and securities;
 - (b) Maintaining books and records;
 - (c) Supervising customer accounts serviced by branch office managers;
 - (d) Transmitting funds between customers and registered representatives and between customers and third parties;
 - (e) Validating customer address changes; and
 - (f) Validating changes in customer account information. NASD 3010(c)(2); NYSE Rule 342.30 and NYSE Rule 342(a)(b)/03.
 - (g) If the member does not engage in activities involving customers funds, securities or

accounts, it must include a statement in its written supervisory control policies and procedures that it does not engage in such activities and document that additional supervisory policies and procedures will be put in place prior to engaging in them. NASD 3010(c)(2); NYSE Rule 342.30 and NYSE Rule 342(a)(b)/03.

4. NASD's "Heightened Inspection" And NYSE's "Independent Inspection" Requirements
 - a. NASD's Heightened Inspection Requirements: A member must have in place procedures that are reasonably designed to provide heightened office inspections if:
 - (1) 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
 - (2) The branch office manager generates 20% or more of the revenue of the business units supervised by the branch office manager's supervisor. NASD Rule 3010(c)(3).
 - (a) 20% Test.
 - (i) Revenue Attributed to Producing Manager's Supervisor.
 - (ii) For purposes of determining the 20% threshold, a member must look at all revenue generated by or credited to the producing manager or the producing manager's office and that amount shall be included as part of the overall revenues of the business units supervised by the producing manager's supervisor regardless of a member's internal allocation of such revenue. NASD NTM 04-71.

- (b) Calculation Required On Rolling 12 Month Basis. NASD Rule 3010(c)(3).
- (c) 20% Test Does Not Create A Negative Safe Harbor.
 - (i) Even if a producing manager’s office does not generate 20% or more of the revenue attributed to the producing manager’s supervisor, heightened supervisory procedures may be required based upon other facts and circumstances. NASD NTM 04-71.

(3) Definition Of “Heightened Inspection”

- (a) Heightened inspection means those inspection procedures designed to avoid conflicts of interest that may undermine complete and effective inspection because of economic, commercial, or financial interests that the branch manager’s supervisor holds in the associated persons and businesses being inspected. NASD Rule 3010(c)(3).
- (b) Examples Of Heightened Inspection Procedures:
 - (i) Unannounced office inspections;
 - (ii) Increased frequency of inspections;
 - (iii) Broader scope of activities reviewed; and/or
 - (iv) Having one or more principals review and approve the office inspections. NASD NTM 04-71.

- b. NYSE’s “Independent Inspection” Requirement. All required inspections must be conducted by a person who is independent of the direct supervision or control of the branch office (*i.e.*, not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports). NYSE Rule 342(a)(b)/.03.

5. NASD “Limited Size and Resources” Exception
 - a. A principal who has the requisite knowledge to conduct an office inspection may perform such required inspections if a member is so limited in size and resources that the member does not otherwise have associated persons who can conduct inspections.
 - b. Appropriate Use Of Exception:
 - (1) Determination of whether “limited size and resources” exception applies is based upon the facts and circumstances of each member. NASD NTM 04-71.
 - (2) If a member has insufficient human resources to conduct office inspections, but has sufficient financial resources to bolster its ranks to be able to meet the general requirement, the firm *may not* be able to rely on the exception. NASD Supervisory Control Amendments Workshop (Dec. 2004).
 - (3) Examples:
 - (a) One office firm; or
 - (b) Independent Contractor Model, which refers to a business model where small or single-person offices report directly to an office of supervisory jurisdiction manager who is also considered the offices’ branch office manager. NASD Rule 3010(c)(3); NASD NTM 04-71.
 - c. Document Use Of Exception In Inspection Reports
 - (1) A member using the exception must document in its inspection reports the factors it has relied upon in determining that it is so limited in size and resources that it has no other alternative than to comply in this manner. NASD Rule 3010(c)(3).

E. Discretionary Authority Limitations

1. One Day Limit For Time/Price Discretionary Authority Without Written Authorization.
 - a. A member may exercise time and price discretion on orders for the purchase or sale of a definite amount of a specified security during the day such discretion is granted without prior written customer authorization or prior written approval by the member. NASD Rule 2510(d); NYSE Rule 408(d).
2. Written Authorization Required For Greater Discretionary Authority.
 - a. In order to provide greater discretionary authority to a registered representative, a customer may do so only pursuant to a fully executed trading authorization. NASD Rule 2510(b); NYSE Rule 408(a).
 - b. Written Authorization Not Required For Discretion Exercised On Behalf Of Institutional Accounts' Good-Till-Cancelled Instructions Issued On "Not Held" Basis. NASD Rule 2510(d); NYSE Rule 408(d).
 - (1) "Institutional Account" means the account of a:
 - (a) bank;
 - (b) savings association, the deposits of which are insured by the FDIC;
 - (c) an insurance company;
 - (d) an SEC-registered investment company;
 - (e) a state or a political subdivision thereof;
 - (f) a pension or profit sharing plan, subject to ERISA, with more than \$25,000,000 total assets under management or of an agency of the United States government or any political subdivision thereof;

- (g) any person that has a net worth of at least \$45,000,000 and financial assets of at least \$40,000,000; or
- (h) an SEC-registered investment adviser.
NASD Rule 3110(c)(4); NYSE Rule 408.11.

F. Customer Account Supervision

1. Approval Requirements for Changes to Customer Account Name/Designation
 - a. Designation Of Customer For Each Transaction.
 - (1) Before a customer order is executed, the account name or designation must be placed upon the order ticket or other memorandum of the transaction.
NASD Rule 3110(d); NYSE Rule 410.
 - b. Principal Approval Requirement For Changes In Customer Designation On Orders.
 - (1) Only a designated person who has passed a qualifying principal examination appropriate to the business of the firm may approve any changes in account names or designations. NASD Rule 3110(d); NYSE Rule 410.
 - (2) The principal must document the essential facts relied upon in approving the changes and maintain the record in a central location. NASD Rule 3110(d); NYSE Rule 410.
 - c. Recordkeeping Requirement
 - (1) A member must preserve any account designation change documentation for a period of not less than three years, the first two of which shall be in a readily accessible location. NASD Rule 3110(d); NYSE Rule 410.
2. Time Limits For Holding Customer Mail
 - a. NASD members, upon a customer's written instructions, may hold mail for a customer who will not be at his or her usual address for a period no longer than:

- (1) Two months if the customer is vacationing or traveling domestically; or
- (2) Three months if the customer is vacationing or traveling outside of the United States. NASD IM-3110.

REFERENCE MATERIALS

CEO Certification And CCO Designation Materials

NASD CEO Certification and CCO Designation Materials

- *Supervisory Controls and Annual CEO Certification – Amendments Regarding Deadlines for Submission of Initial Annual Report under Rule 3012 and Execution of the Initial Annual Certification under Rule 3013 and IM-3013, NASD Notice to Members 05-75 (Nov. 3, 2005), available at http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_015378.pdf.*
- *Annual Compliance Certification and Designation Of Chief Compliance Officer – SEC Approves New Chief Executive Officer Compliance Certification and Chief Compliance Officer Designation Requirements, NASD Notice to Members 04-79 (Nov. 1, 2004), available at http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_011955.pdf.*
- *Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Chief Executive Officer Certification and Designation of Chief Compliance Officer, SEC Rel. No. 34-50347, 69 Fed. Reg. 56107 (Sept. 17, 2004), available at <http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=5626731165+1+0+0&WAISaction=retrieve>.*
- *Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Chief Executive Officer Certification and Designation of Chief Compliance Officer, SEC Rel. No. 34-48961, 68 Fed. Reg. 75704 (Dec. 31, 2003), available at <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=562822485091+1+0+0&WAISaction=retrieve>.*

NYSE CEO Certification and CCO Designation Materials

- *Amendments to NYSE Rule 342.30 – Annual Report; Chief Compliance Officer Designation; Chief Executive Officer Certification, NYSE Information Memo 05 101 (Dec. 16, 2005), available at [http://apps.nyse.com/commdata/PubInfoMemos.nsf/AllPublishedInfoMemosNysCom/85256FCB005E19E8852570D80056EDA1/\\$FILE/Microsoft%20Word%20-%20Document%20in%202005-101.pdf](http://apps.nyse.com/commdata/PubInfoMemos.nsf/AllPublishedInfoMemosNysCom/85256FCB005E19E8852570D80056EDA1/$FILE/Microsoft%20Word%20-%20Document%20in%202005-101.pdf).*

- *Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to Exchange Rule 342 (“Offices – Approval, Supervision and Control”)*, SEC Rel. No. 34-52780, 70 Fed. Reg. 71354 (Nov. 28, 2005), available at <http://frwebgate2.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=938840328227+1+0+0&WAISaction=retrieve>.
- *Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Proposed Changes to Exchange Rule 342 (“Offices – Approval, Supervision and Control”)*, SEC Rel. No. 34-52259, 70 Fed. Reg. 48997 (Aug. 22, 2005), available at <http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=93884916604+1+0+0&WAISaction=retrieve>.

SRO Supervisory Control Rules

NASD Supervisory Control Rule Materials

- *Supervisory Controls – SEC Approves Amendments to NASD Rule 3012 to Require Members Relying on Rule 3012’s “Limited Size and Resources” Exception to Notify NASD of their Reliance; **Effective Date: February 14, 2006***, NASD Notice to Members 06-04 (Jan. 13, 2006), available at http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_015854.pdf.
- *Supervisory Controls – Guidance Regarding Rule 3012(a)(1) Requirement to Test and Verify a Member’s Supervisory Policies and Procedures*, NASD Notice to Members 05-29 (Apr. 14, 2005), available at http://nasd.complinet.com/file_store/pdf/rulebooks/nasd_0529.pdf.
- *Supervisory Controls – Guidance Regarding the Application of the Supervisory Control Amendments to Members’ Securities Activities, Including Members’ Institutional Securities Activities*, NASD Notice to Members 05-08 (Jan. 28, 2005), available at http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_013192.pdf.
- *NASD Supervisory Control Amendments Workshop*, Telephone Transcript (Dec. 16, 2004), available at https://www.nasd.com/web/groups/educ_progs/documents/education_phone_workshop/nasdw_012809.pdf
- *Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Supervisory Control and Inspection Procedures*, SEC. Rel. No. 34-50477, 69 Fed. Reg. 59972 (Oct. 6,

2004), available at <http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=560936475390+2+0+0&WAISaction=retrieve>.

- *Supervisory Controls – SEC Approves New Rules and Rule Amendments Concerning Supervision and Supervisory Controls*, NASD Notice to Members 04-71 (Oct. 4, 2004), available at http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_011633.pdf.
- *Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1 and 2 by National Association of Securities Dealers, Inc. Relating to Internal Controls and Supervisory Control Amendments and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3*, SEC Rel. No. 34-49883, 69 Fed. Reg. 35092 (June 23, 2004), available at <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=561823482235+1+0+0&WAISaction=retrieve>.
- *Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Supervisory Control Amendments*, SEC Rel. No. 34-48298, 68 Fed. Reg. 48421 (Aug. 13, 2003), available at <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=56406321082+2+0+0&WAISaction=retrieve>.
- *Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Supervisory Control Amendments*, SEC Rel. No. 34-46859, 67 Fed. Reg. 70990 (Nov. 27, 2002), available at <http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=561860303279+1+0+0&WAISaction=retrieve>.

NYSE Supervisory Control Rule Materials

- *Amendments to Rules 342, 401, 408 and 410 Relating to Supervision and Internal Controls*, NYSE Information Memo 04-38 (July 26, 2004), available at <http://www.nyse.com/Frameset.html?displayPage=http://apps.nyse.com/commda/ta/PubInfoMemos.nsf/AllPublishedInfoMemosNyseCom?openview&count=250&RestrictToCategory=currentyear>.
- *Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1, 2, and 3 by New York Stock Exchange, Inc. Relating to Internal Controls and Supervisory Control Amendments and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4*, SEC Rel. No. 34-49882, 69 Fed. Reg. 35108 (June 23, 2004), available at <http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=561463475342+1+0+0&WAISaction=retrieve>.
- *Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt*

Amendments to Exchange Rule 342 (“Offices-Approval, Supervision and Control”) and its Interpretation, Rule 401 (“Business Conduct”), Rule 408 (“Discretionary Power in Customers’ Accounts”), and Rule 410 (“Records of Orders”), SEC Rel. No. 34-48299, 68 Fed. Reg. 48431 (Aug 13, 2003), available at <http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=561538475718+1+0+0&WAISaction=retrieve>.

- *Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 (“Offices-Approval, Supervision and Control”) and its Interpretation, Rule 401 (“Business Conduct”), Rule 408 (“Discretionary Power in Customers’ Accounts”), and Rule 410 (“Records of Orders”), SEC Rel. No. 34-46858, 67 Fed. Reg. 70994 (Nov. 27, 2002), available at <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=562383484383+1+0+0&WAISaction=retrieve>.*