

part, that the “essential facts relied upon by the person approving an account designation change must be documented in writing and maintained in a central location.”

A.G. Edwards seeks clarification that such documentation be maintained “in a location where the determination and approval occurs, not in the Home Office” so as to avoid “duplicate record.”

The determination of where such documentation should be retained would depend on the supervisory structure of the firm. Typically, the “central location” would be where the account designation change was approved. However, the proposed rule amendments should not be construed to be determinative of where such records should be maintained, nor discourage maintenance of records in more than one location if regulatory purposes are well served by doing so.

Accordingly, the requirement that relevant documentation be maintained in “a central location” has been deleted and replaced with the requirement that such documentation be maintained for three years, the first two in an “easily accessible place,” consistent with the meaning of that term under SEC Rule 17a-4.<sup>11</sup>

#### Independent Branch Office Inspections

Two related issues have been raised regarding proposed amendments to the Interpretation of NYSE Rule 342 (“Offices—Approval, Supervision, and Control”). The amendments originally required that branch office visits be conducted by a person “independent of the ongoing supervision, control, or performance evaluation of the branch office (*i.e.*, not the Branch Office Manager, Sales Manager, District/Regional Manager assigned to the office, or any other person performing a similar supervisory function).”

Commenters have raised concerns that the amendments may result in economically burdensome and counter-productive supervisory structures. Also, clarification is sought as to who would be sufficiently “independent” to conduct such visits. A more flexible standard is sought that would prohibit supervisors from inspecting their own offices but would allow other supervisory personnel in a hierarchical supervisory system, sufficiently outside of the day-to-day chain of command, to meet the “independence” standard.

The Exchange believes that in order for a branch inspection program to be effective, reasonable guidelines must be in place to minimize conflicts of

interest. While these guidelines need not exclude all participants at every level of a branch office’s hierarchical supervisory structure, the Exchange believes it is reasonable that they exclude the branch manager, any person to whom the branch manager directly reports, and any person who reports to the branch manager. The proposed amendments have been revised accordingly.

#### Number of Annual Branch Office Inspections

A.G. Edwards raised the concern that the proposed amendments, in conjunction with pending NYSE rule proposals that amend the definition of “branch office,” will create a “huge burden” with respect to annual inspections for firms with far-reaching branch networks.

The Exchange currently requires, absent a specific waiver, annual inspections of each branch office location.<sup>12</sup> Pending NYSE Rule amendments relating to the definition of a “branch office”<sup>13</sup> would significantly *reduce* the types of locations required to be registered as branch offices; therefore, the number of branch office inspections required of each member organization would either be reduced or remain the same.

#### Effective Date

Commenters expressed concern has been raised that the effective date of any new requirements allow adequate time to enable firms to make necessary systems changes in an efficient and cost-effective manner. Accordingly, the Exchange intends to establish an effective date six months from Commission approval of the proposed rule amendments to allow members and member organizations sufficient time to address any necessary procedural or systems changes.

#### 2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act,<sup>14</sup> which requires, among other things, that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market and, in general, to protect investors and the public interest. The proposed rule

amendments are intended to foster the strengthening of NYSE members’ and member organizations’ internal controls and supervisory systems

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

SR-NYSE-2002-36 and Amendment No. 1 were published in the **Federal Register** on November 20, 2002.<sup>15</sup> Commenters included Cadaret, Grant & Co., A.G. Edwards & Sons, Inc., Charles Schwab & Co., and the SIA. Their comments and the Exchange’s response appear above.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment Nos. 2 and 3, are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

<sup>11</sup> See 17 CFR 240.17a-4.

<sup>12</sup> See NYSE Rule 342(a)(b)/03 in the *NYSE Interpretation Handbook*.

<sup>13</sup> See Securities and Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) SR-NYSE-2002-34.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See note 4, *supra*.