

Commission's Books and Records Rules' definition of "office."⁸ The proposed rule change does not alter or affect the obligations of a firm to comply with the minimum requirements of the Books and Records Rules which specifies the records broker/dealers must make, and how long those records and other documents relating to a broker/dealer's business must be kept.⁹

The proposed rule change would define a "branch office" as any location where one or more associated persons of a member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such.

The proposed rule change would exclude from registration as a branch office: (1) A location that operates as a back office; (2) a representative's primary residence provided it is not held out to the public and certain other conditions are satisfied; (3) a location, other than the primary residence, that is used for less than 30 business days annually for securities business, is not held out to the public as an office, and satisfies certain of the conditions set forth in the primary residence exception; (4) a location of convenience used occasionally and by appointment; (5) a location used primarily for non-securities business and from which less than 25 securities transactions are effected annually; (6) the floor of an exchange; and (7) a temporary location used as part of a business continuity plan.

In developing the proposed definition, NASD understands the need to provide reasonable exceptions from branch office registration that take into account technological innovations and current business practices without compromising the need for investor protection. NASD believes the proposed exceptions from branch office registration are practically based while still containing important safeguards and limitations to protect investors. For example, the exception from branch office registration for customer service/back office locations would require that no sales activities would be able to be conducted from such locations and such locations would not be able to be held out to the public.

Further, the primary residence exception contains significant safeguards, including that: the location cannot be held out to the public; only one associated person or associated persons who are members of the same immediate family and reside at the

location may conduct business at such location; the associated person does not meet with customers at the location; neither customer funds nor securities are handled at that location; the associated person must be assigned to a designated branch office; and such branch office is used on all business cards, stationery, advertisements, and other communications to the public; the associated person's correspondence and communications with the public are subject to the firm's supervision; electronic communications are made through the firm's system; all orders are entered through the designated branch office or an electronic system established by the member and reviewable at such location; written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and the member maintains a list of the locations. These limitations closely track the limitations on the use of a private residence in the Commission's Books and Records Rules which provide that a broker/dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office.¹⁰

As noted above, in addition to these limitations on the primary residence exception, the NYSE believes that if an associated person works primarily from home, such location should be registered as a branch office.¹¹ Given the different business models used by NASD members that are not also NYSE members, NASD concluded that the 50-business day limitation on the use of a primary residence would not be practical for small firms and independent dealers, and would not provide any added regulatory benefit. NASD represents that NASAA representatives have committed to recommending to their members (state securities regulators) adoption of the proposed branch office definition outlined in this rule filing (thus omitting the 50-business day limitation).¹²

¹⁰ 17 CFR 240.17a-4(k).

¹¹ See NYSE Response to Comments to File No. SR-NYSE-2002-34, dated March 27, 2003.

¹² Letter dated April 17, 2003, from Christine A. Bruenn, NASAA President, to Marc Menchel, Senior Vice President and General Counsel, Regulatory Policy and Oversight, NASD. NASAA has stated that it supports the proposed uniform definition of "branch office" proposed herein and has stated that it will encourage its members (state

NASD reached its conclusions as to the significant negative impact of the 50-business day requirement on members, without any added corresponding regulatory benefit or investor protection, after considering comments received in response to NASD Notice to Members 02-52. As discussed below, numerous firms asserted that the 50-business day requirement in the primary residence exception to the branch office definition would be burdensome, time consuming, and difficult to enforce. NASD concluded that limited member compliance resources could be more effectively directed to supervising activities at all locations, rather than tracking the number of days and hours an associated person works from his or her primary residence. NASD strongly believes that the numerous other safeguards that would need to be satisfied to qualify for the primary residence exception serve its regulatory needs and protect investors.

The proposed definition also would exempt from branch office registration a temporary location, other than a primary residence, that is used for securities business less than 30-business days in any calendar year. The limitations on the use of a primary residence described above also would apply to use of a temporary location for conducting securities business.¹³ For purposes of calculating the number of days for this exception, the proposed rule provides that a "business day" would not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during normal business hours.

In exempting offices of convenience from branch office registration, NASD believes that it again has imposed important safeguards for the public. At such offices of convenience, associated persons would be limited to meeting customers occasionally and exclusively by appointment, and the location would not be permitted to be held out to the public as a branch office. The proposed rule notes, however, that where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations, and applicable rules and regulations of NASD, other self-regulatory organizations, and securities or banking regulators would

securities administrators) to adopt the proposed uniform definition.

¹³ For purposes of satisfying condition (a) to the temporary location exception, an associated person would be deemed to "reside" at such temporary location.

⁸ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

⁹ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.