

for such increases.<sup>29</sup> Several commenters said that they could not accurately gauge cost increases until they know how states will amend their definitions. Several commenters suggested that NASD consider reducing its registration fees so that the rule change is revenue neutral for NASD and the financial burden on firms is minimized.<sup>30</sup> Commenters stated that they would realize certain cost efficiencies through centralized registration, provided the states also adopted the proposed definition.<sup>31</sup> NASD believes that the removal of the 50-business day requirement from the primary residence exception would alleviate some of the burdens that the original proposal raised regarding members' supervisory systems.

As noted earlier, the proposed definition as set forth in NtM 02-52 provided an exception from branch office registration for a primary residence that is used for securities business for less than 50-business days in any one calendar year and that satisfies, among other things, conditions similar to those found in the Commission's Books and Records Rules definition for "office." An overwhelming majority of the commenters stated that they could not support the proposed definition with a 50-business day requirement because it would be too burdensome, time consuming, and difficult to enforce.<sup>32</sup> Commenters argued that no added investor protection would be gained for this restriction.<sup>33</sup> Commenters stated that branch office registration should be based on the types of activities conducted at a location and not based on the number of days logged at a given

location.<sup>34</sup> In addition, several commenters stated that they view the proposal to be unenforceable because just as firms are unable to track the number of times representatives are involved in securities transactions for their clients from a certain location, NASD will similarly be unable to track such usage.<sup>35</sup>

Commenters, small firms in particular, stated that tracking the 50-business day requirement would introduce a tremendous compliance burden.<sup>36</sup> Commenters said the 50-business day limitation would require firms to closely monitor where work has been performed and for how long, and such monitoring would be prone to error. Commenters stated that the proposed definition provides sufficient restrictions on the use of a primary residence office and, so long as the activities are substantially limited (e.g., no holding out of the residence as a place to conduct securities business, and no handling of funds or securities at the location) and the location is properly supervised, the number of days logged at such residential location should not trigger registration of such location as a branch office.<sup>37</sup> Commenters also stated that the resulting increase in supervisory costs would cause firms to act contrary to all employment trends by prohibiting people from working outside the office.

Commenters also noted that elimination of the 50-business day restriction would be consistent with the Books and Records Rules. They asserted that since the Books and Records Rules do not require records to be kept at these sites for examinations, there should be no reason to register a representative's primary residence regardless of the number of days it is used for securities business, provided the other conditions to the exception are satisfied.<sup>38</sup>

Based on the comments to NtM 02-52, NASD is proposing to retain the definition described in NtM 02-52, without the 50-business day restriction contained in the primary residence

exception. The elimination of the 50-business day requirement contained in the primary residence exception should mitigate the additional registration and supervisory burdens on firms that would result from the proposed rule change. In addition, NASD believes these modifications would not disrupt the business model used by many NASD member firms.

Commenters also expressed concern that the temporary location exception in the proposed definition is too restrictive. The proposed definition provides an exception from branch office registration for a location, other than a primary residence, that is used for securities business less than 30 business days in any one calendar year and that satisfies the other conditions set forth in the primary residence exception. Certain commenters asked that the 30-business day limitation be eliminated for many of the same reasons described above with respect to the 50-business day requirement in the primary residence exception. NASD, however, believes that limiting the number of days such location can be used is consistent with the intent of this exception. The exception from registration is for a temporary location, as opposed to a primary residence, and a bright-line test of what constitutes "temporary" is intended to make the application of this exception consistent.

Commenters also sought clarification as to the application of the office of convenience exception. The proposed definition provides an exception from branch office registration for any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, and that is not held out to the public. Commenters sought clarification on whether this exception applies to associated persons generally or is limited strictly to bank circuit riders.<sup>39</sup> In numerous discussions with members and others, NASD has made clear that this exception is applicable to all members that satisfy the conditions, not just bank circuit riders.

Commenters also raised concerns about the non-securities business location exception. The proposed definition provides an exception from branch office registration for any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year so long as the address/phone number of the supervising office is set forth on all

<sup>29</sup> See, e.g., Signator Investors, Inc. comment letter, dated October 16, 2002; and Granite Securities, LLC comment letter, dated September 20, 2002.

<sup>30</sup> See, e.g., Equity Services, Inc. comment letter, dated September 19, 2002; 1st Global Securities, Inc. comment letter, dated September 4, 2002; Moloney Securities Co., Inc. comment letter, dated October 19, 2002; Safeco Investment Services, Inc. comment letter, dated October 11, 2002; State Farm Insurance Companies comment letter, dated October 18, 2002; Sunset Financial Services comment letter, dated October 21, 2002; and The O.N. Equity Sales Company comment letter, dated October 15, 2002.

<sup>31</sup> See, e.g., The O.N. Equity Sales Company comment letter, dated October 15, 2002; and Metropolitan Life Insurance Company comment letter, dated September 30, 2002.

<sup>32</sup> See, e.g., Empire Securities Corporation of Southern California comment letter, dated September 17, 2002; INVEST Financial Corporation comment letter, dated September 4, 2002; and Securian Financial Services, Inc. comment letter, dated September 6, 2002.

<sup>33</sup> See, e.g., Securities Industry Association comment letter, dated October 21, 2002; and International Money Management Group, Inc. comment letter, dated September 26, 2002.

<sup>34</sup> See, e.g., AM&M Investment Brokers comment letter, dated September 23, 2002.

<sup>35</sup> See Keystone Capital Corporation comment letter, dated September 7, 2002; and XCU Capital Corporation comment letter, dated September 16, 2002.

<sup>36</sup> See, e.g., Pashley Financial comment letter, dated September 23, 2002; and Vasilou & Company, Inc. comment letter, dated October 1, 2002.

<sup>37</sup> See, e.g., GWR Investments, Inc. comment letter, dated October 25, 2002; and A.G. Edwards, Inc. comment letter, dated October 11, 2002.

<sup>38</sup> See, e.g., Securian Financial Services, Inc. comment letter, dated September 6, 2002; and A.G. Edwards & Sons, Inc. comment letter, dated October 11, 2002.

<sup>39</sup> See, e.g., BB&T Investment Services, Inc. comment letter, dated September 18, 2002.