

advertisements. Commenters said that the non-securities business exception, which limits securities activities to no more than 25 securities transactions annually, is vague and that the threshold number is too low.⁴⁰ Commenters asked that the number of securities transactions allowed in any one-year be increased, or that certain systematic (automatic) payments not count towards the 25 securities transactions limit.⁴¹ In this regard, NASD intends to provide interpretive guidance to members on a case-by-case basis regarding specific application of the exception.

Commenters also stated that the proposed rule is not in step with the prevalent use of modern communications technology to effect transactions from remote locations because it continues to use a "bricks and mortar" approach to the definition.⁴² Commenters stated that modern communications technology, such as mobile telephones, laptop computers, and personal digital assistants (PDAs), is diminishing the need for branch offices to be in a physical location. With such technology, registered representative can effect transactions anywhere. These commenters asserted that consumers and investors now accept such means of conducting business and the proposed definition is outdated.⁴³ Several commenters also stated that the proposal, which would require the listing of branch office locations, including primary residences, might invade the privacy of registered representatives. The commenters stated that addresses of primary residence offices should not be made publicly available.⁴⁴

Based on the comments to NtM 02-52, NASD is proposing changes to the original proposal as described above. NASD believes that these modifications would address a majority of concerns raised by commenters to the original proposal. Overall, NASD believes that the proposed definition would establish

a broader national standard for classifying such locations and would provide administrative and cost efficiencies to members through the creation of a centralized registration system on CRD®. In addition, NASD believes that the proposed rule change would allow regulators to effectively monitor and audit locations and the activities conducted there without compromising investor protection. Each exception to the proposed branch office definition contains important safeguards and limitations. In particular, the primary residence exception contains the same safeguards provided in the Commission's Books and Records Rules exception for private residences (which also does not contain any restrictions on the number of business days an associated person may operate from his or her residence). NASD determined to remove the 50-business day requirement from the primary residence exception because NASD believes it does not serve any added regulatory benefit and, instead, imposes substantial costs and burdens to the industry. Based on the extensive comments from the industry, NASD, on balance, does not believe that the costs of such provision outweigh the benefits.

NASD would announce the effective date of the proposed definition of the term "branch office" in a Notice to Members. NASD expects the effective date of the proposed rule change would correspond with the commencement date of the centralized branch office registration system on CRD®.

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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. In particular, the Commission seeks commenters' specific views on the primary residence exception and the

divergent proposals by NASD and the NYSE with respect to the NYSE's proposed annual 50-business day limitation on engaging in securities activities from a primary residence.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-104 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48887; File No. SR-NASD-2003-110]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

December 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

⁴⁵ 17 CFR 200.30-3(a)(12).

⁴⁰ See, e.g., Northwestern Mutual Investment Services, LLC comment letter, dated September 20, 2002; and Carillon Investments, Inc. comment letter, dated September 16, 2002.

⁴¹ See, e.g., Equity Services, Inc. comment letter, dated September 19, 2002.

⁴² See, e.g., Associated Securities Corporation comment letter, dated September 13, 2002.

⁴³ See, e.g., Lincoln Financial Advisors comment letter, dated October 17, 2002; and Source Capital Group comment letter, dated September 19, 2002.

⁴⁴ See, e.g., Keystone Capital Corporation comment letter, dated September 7, 2002; Mission Securities Corporation comment letter, dated September 17, 2002; and West America Securities Corp. comment letter, dated September 17, 2002; and National Planning Holdings, Inc. comment letter, dated September 3, 2002.