

clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By authorizing NSCC to accept trade data from registered DCOs, the proposed rule change will allow NSCC to accept trade relating to expiration obligations of security futures from CME or any other DCO with such information. As a result, the proposed rule change promotes the prompt and accurate clearance and settlement of security futures.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission funds good cause for approving the rule change prior to the thirtieth day after publication because by so approving NSCC will be able to accept trade data from the CME on these physically-settled, narrow-based security index futures once they begin trading in the near future.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is 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 related 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR-NSCC-2002-09 and should be submitted by December 26, 2002.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

NSCC-2002-09) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46888; File No. SR-NYSE-2002-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Amendment of Rule 342 (Offices—Approval, Supervision, and Control)

November 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 22, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed amendment to NYSE Rule 342 ("Offices—Approval, Supervision, and Control") providing for a new definition of the term "branch office." The proposed amendment to the rule would limit the requirement to register certain business locations as "branch offices" to account for advances in technology used to conduct and

monitor business, changes in the structure of broker-dealers and in the lifestyles and work habits of broker-dealers. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 342. Offices—Approval, Supervision, and Control

(a)–(e) No Change.

Supplementary Material

.19 [10] Annual fee.—Each office of a member organization (including any foreign branch office), other than the main office of the member organization, shall be subject during its existence to a registration fee as determined by the Exchange for each calendar year or part thereof, unless specifically exempted by the Exchange.

.10 Definition of Branch Office

A "branch office" is any location, other than the main office, where one or more associated persons of a member or member organization ("associated person") regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(A) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) any location that is the associated person's primary residence; provided that: (i) the location is used for less than 50 business days in any one calendar year; (ii) only one associated person, or multiple associated persons, who reside at that location and are members of the same immediate family, conduct business at the location; (iii) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (iv) neither customer funds nor securities are handled at that location; (v) the associated person is assigned to a designated branch office, and such branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person; (vi) the associated person's correspondence and communications with the public are subject to the firm's supervision; (vii) electronic communications (i.e., e-mail) are made through the member organization's electronic system; (viii) all orders are entered through the designated branch office; (ix) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member or member organization; and

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (October 21, 2002) ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected the reference to the provision of the Act under which the proposal was filed. The original filing was incorrectly marked as having been filed pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), while Amendment No. 1 was marked as having been filed pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

(x) a list of the locations is maintained by the member or member organization;

(C) any location, other than a primary residence, that is used for less than 30 business days in any one calendar year, provided the member organization complies with the provisions of (iii) through (ix) of paragraph (B) above;

(D) any office of convenience, where the associated person occasionally and exclusively by appointment meets with customers, which is not held out to the public as a branch office (where such location is on bank premises, however, only signage required by the Interagency Statement (Statement on Retail Sales of Nondeposit Investment Products required under Banking Regulations) may be displayed);

(E) any location that is used primarily to engage in non-securities activities and from which the associated person effects no more than 25 securities transactions in any one calendar year; provided that any advertisements or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person conducting business at the non-branch locations are directly supervised;

(F) the Floor of a registered national securities exchange where a member or member organization conducts a direct access business with public customers; or

(G) a temporary location established in response to the implementation of a business continuity plan.

The term "business day" as used herein shall 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 the hours that such office is normally open for business. The term an "associated person of a member" for purposes of this Rule means member, allied member or employee associated with a member or member organization.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose⁴

Background

Currently, Exchange Rule 342(c) broadly requires that a member or member organization obtain the Exchange's prior written consent for each office established other than a main office. Continued advances in technology used to conduct and monitor business, changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce have caused the Exchange to reexamine whether all business locations continue to need to be registered as branch offices of broker-dealer members and member organizations.

The definition of the term "branch office" under various self-regulatory organizations' ("SROs") and states' rules in this regard differ significantly. Further, they differ in the registration, notification and approval process as well. Recently, the Exchange has worked with the NASD and states' regulators to develop a definition, which recognizes the industry changes noted above, while meeting regulatory objectives.

Proposed Definition

As proposed, the term "branch office" means any location, other than the main office, where one or more associated persons of a member or member organization ("associated person") regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such. The definition provides for exceptions noted below. The core definition is consistent with the term "office" as it is defined in the SEC's new amendments⁵ to its books and records rules (Rules 17a-3 and 17a-4),⁶ which were enacted to provide

timely access to broker-dealers' books and records and to help expedite SEC, SRO and state examinations and investigations.

In developing a definition, the NYSE considered the evolving nature of its members' and member organizations' business models. For example, bank-owned members and member organizations often establish small offices on bank premises, whereby a registered representative would be designated to a parent branch for supervision but would visit different bank branches occasionally, and by appointment only, to meet with customers. Under the proposed definition such locations would be exempt from registering as branch offices, where the bank location is not held out as a branch office.

In exempting such offices of convenience from branch office registration, the NYSE has imposed important safeguards for the public. In this regard, at such offices of convenience, associated persons would be limited to meeting customers occasionally and exclusively by appointment. Further, at bank locations, the only permitted signage such offices of convenience may display, under regulations promulgated by the Office of the Comptroller of the Currency, will be ones advertising to the public that "non-deposit investment products" are being offered at such locations. This signage will prevent confusing customers who might otherwise believe that traditional riskless investments, such as deposits, are being offered by associated persons at such offices located on bank premises. In addition, other than meeting customers at these offices of convenience, all other functions of the associated person will be conducted and supervised through the designated branch office.

Changing life/work issues of members' and member organizations' associated persons is also recognized in the new definition. In this regard, associated persons are often forced to work occasionally from home to provide childcare and eldercare for certain family members. Moreover, illness forces work at home as well. Further, the development of technology, and advanced electronic communications, have necessitated rethinking traditional views of what constitutes a branch office and the supervision of such offices.

In excepting primary residences from the definition of branch office, important safeguards and limitations have been imposed on such locations to provide for monitoring and oversight of activities. Limitations include, in part,

⁴ The NYSE requested that the Commission change certain language submitted by the NYSE in the purpose section of the filing to clarify that the instant filing pertains to the NYSE's proposed rule filing alone. While the Commission believes that other SROs will submit similar filings, such similar filings have not yet been submitted and it is not certain that other SROs' filings will be uniform. Telephone discussion between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Katherine England, Assistant Director, Elizabeth Badawy, Sr. Policy Liaison, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (November 21, 2002).

⁵ Securities Exchange Act Release No. 44992 (October 26, 2001), 66 FR 55818 (November 2, 2001).

⁶ 17 CFR 240.17a-3 and 240.17a-4.

that: The location is used for less than 50 business days in one calendar year; the location is not held out as a branch office; the associated person is assigned to a designated branch office for supervision and such office is reflected on all business cards, stationery, advertisements and communications to the public; the associated person does not meet with customers at his or her residence; the associated person's correspondence and communications with the public are subject to the firm's supervision; electronic communications, including e-mails, are made through the firm's electronic system; all orders are entered through the designated branch office; and written procedures relating to the supervision of sales activities conducted at the residence are maintained by the member or member organization.

The definition also exempts from branch office registration any temporary location, other than the primary residence discussed above, provided it is used less than 30 business days in any calendar year. In granting this exemption, the NYSE has imposed the same safeguards noted above for the exemption granted for primary residence. The Exchange believes that effective supervision can be achieved because of the use of advanced and sophisticated technology in the supervision and review of associated persons in such exempt locations.

In addition, under both exceptions noted above, the NYSE has defined "business day" to include any partial day, provided the associated person spends less than four hours on such business day at his or her designated branch office during the hours such office is normally open for business.⁷ In doing so, it will prevent associated persons from regularly conducting business from their primary or other residences for the majority of a business day, without such activity being counted towards the 30 and 50 day limitations.

Where the 50 business day (primary residence) and 30 business day (other location) exemptions are utilized by associated persons, members and member organizations are expected to maintain records adequate to demonstrate compliance with the "business day" limitations.

⁷ The NYSE requested that the Commission make a clarifying correction of language in the purpose section of the NYSE's filing with regard to the definition of "business day." Telephone discussion between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Katherine England, Assistant Director, Elizabeth Badawy, Sr. Policy Liaison, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (November 21, 2002).

In addition, the definition exempts from registration locations where associated persons are primarily engaged in non-securities activities (e.g., insurance) and from which an associated person effects no more than 25 securities transactions in a calendar year, provided that advertisements or sales literature identifying such location also set forth locations from which the associated persons are directly supervised. Further, such activities attendant to the primary function performed as an occasional accommodation to customers will be conducted through and supervised by the associated person's designated registered branch office.

Similarly, the new definition exempts non-sales locations, e.g., where operations activities are conducted, from registering as a branch office. Such locations must be established solely for customer service and/or back office functions and not be held out to the public as a branch office, and no sales activities may be conducted from such locations.

The proposed definition of branch office would serve the entire broker-dealer community by recognizing the many different business models and streamlining the branch office registration process significantly. The scope of sales practice examinations conducted by the Exchange will be expanded to ensure compliance with the new rule amendments.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,⁸ in general, and section 6(b)(5) of the Act,⁹ in particular, which requires, among other things, that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in 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

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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, 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. 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 the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2002-34 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12).